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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	C.A. No.: 2023-CP-42-04152 & 2023-CP-42-04153
	)	
Varesa Goodman, Individually and as Personal Representative of the Estate of Dennis Edwards,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**ORDER DENYING DEFENDANTS' MOTION TO ALTER, AMEND, AND/OR RECONSIDER MOTION TO COMPEL ARBITRATION AND MOTIONS TO STAY**
	)	
THI of South Carolina at Spartanburg, LLC d/b/a Magnolia Manor-Spartanburg, Fundamental Administrative Services, LLC, Fundamental Clinical and Operational Services, LLC, THI of Baltimore, Inc., THI of South Carolina, LLC, Hunt Valley Holdings, LLC, and Rusty Flathmann,	)	
	)	
Defendants.	)	

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SC Court of Appeals

This matter came before the Court on Defendant THI of South Carolina at Spartanburg, LLC d/b/a Magnolia Manor-Spartanburg's ("Facility") Motion to Alter, Amend, and/or Reconsider Motion to Compel Arbitration and Motions to Stay this Court's denial of THI of South Carolina, LLC d/b/a Magnolia Manor-Spartanburg's Motion to Compel arbitration and Defendants Fundamental Administrative Services, LLC, Fundamental Clinical and Operational Services, LLC, THI of Baltimore, Inc., THI of South Carolina, LLC, and Rusty Flatmann's Motions to Stay. After reviewing the Motions, Memoranda, and any attachments thereto presented and submitted on behalf of the parties, this Court hereby denies Defendants' Motion.

LEGAL ANALYSIS AND CONCLUSIONS

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I. Defendants raise no issues not previously considered or ruled upon by the Court.

Defendants' Motion to Alter and/or Amend is nearly the same arguments made by Defendants in the original Motion to Compel Arbitration and Motions to Stay. A party moving pursuant Rule 59(e) must demonstrate more than a "mere disagreement" with the Court's order. Hutchinson v. Stanton, 994 F.2d 1076 (4th Cir. 1993). A Rule 59(e) motion is not a proper forum to relitigate all matters or to raise arguments or present evidence that could have been raised prior to the entry of judgment. Charles Alan Wright and Arthur R. Miller. Federal Practice and Procedures § 2810.1 (3d ed.). Defendants raise no errors of law by the Court, and further, Defendants do not identify any issues not ruled upon by the Court pertinent to the motions.

II. Defendants' Motion to Compel Arbitration is denied because there was no authority for Varesa Goodman to sign the Arbitration Agreement on behalf of Dennis Edwards, and the agreements did not merge.

There is no evidence that Varesa Goodman (also referred to as "Daughter") had any legal authority, as defined by the laws of this state, under South Carolina statutory or case law to sign, which would give her the authority to sign the Arbitration Agreement on behalf of Dennis Edwards (also referred to as "Decedent"). These issues were extensively addressed in this Court's original order denying the Motions. Plaintiff has noted, this argument has been reviewed and rejected by the South Carolina Court of Appeals with these Defendants regarding the same Arbitration Agreement. Similar arguments have been made on at least nineteen (19) occasions or more. Of these nineteen (19), as noted by the Plaintiff, eighteen (18) were unpublished decisions and one (1) was a published decision, which included Solesbee v. Fundamental Clinical and Operational Services, LLC, 426 S.C. 638, 885 S.E.2d 144 (Ct. App. 2023). These decisions involved the same or similar

admissions agreement and arbitration agreement currently before this Court and the South Carolina Court of Appeals and Supreme Court have yet to uphold one of these agreements based upon Defendants' arguments of merger or equitable estoppel.

Despite this, Defendants continue to assert that Solesbee is an error of law by the South Carolina Court of Appeals, and that this Court should ignore the precedent of the Court of Appeals and South Carolina Supreme Court, a notion which this Court does not intend to follow. Varesa Goodman had no apparent or inherent authority to bind Decedent under the Arbitration Agreement.

The Decedent's estate is not estopped from denying the validity of the Arbitration Agreement. Legal consequences of an agent's actions can only be attributed to the principal when the agent has actual or apparent authority. Charleston Registry v. Young Clement, 598 S.E.2d 717, 359 S.C. 635, 642 (Ct. App. 2004). Apparent authority is based upon "representations made by the principal to the third party and reliance by the third party on those representations." Young v. S.C. Department of Disabilities and Special Needs, 374 S.C. 360, 367, 649, S.E.2d 488, 491 (2007). Apparent authority exists when the principal is bound by the acts of its agent after the principal has placed the agent in such a position that a person of ordinary prudence, reasonably familiar with business usages and custom is led to believe the agent has certain authority and in turn, deals with the agent based on the assumption. Muller v. Myrtle Beach Golf and Yacht Club, 303 S.C. 137, 399 S.E.2d 430 (Ct. App. 1990), rev'd on other grounds.

South Carolina law requires that to prove apparent authority, the Defendants must show "… (1) that the purported principal consciously or impliedly represented another to be his agent; (2) that there was reliance upon the representation; and (3) that there was a

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change of position to the relying party's detriment." Cowburn v. Leventis, 366 S.C. 39, 619 S.E.2d 448 (Ct. App. 2005). The basis of apparent authority is representations made by the principal to the third party and reliance by the third party on those representations. Young v. S.C. Department of Disabilities and Special Needs, 374 S.C. 360, 367, 649 S.E.2d 488, 491 (2007). The proper focus in determining a claim of apparent authority is not on the relationship between the principal and the agent but between the principal and the third party. Vereen v. Liberty Life Insurance, Company, 306 S.C. 423, 412 S.E.2d 425 (Ct. App. 1991). The burden of establishing agency is on the party asserting that a principal agency relationship exists.

As previously noted in this Court's original order denying these motions, aside from the agreement itself, the Defendants have presented no evidence that Decedent represented implicitly or explicitly to the Defendants that Varesa Goodman had authority to enter into the Arbitration Agreement on behalf of Decedent. As the South Carolina Court of Appeals noted in Hodge v. UniHealth Post-Acute Care of Bamberg, 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018) where it discussed a Maryland case, Dickerson v. Longoria, 95 A.2d 721, 743, 414 Md. 419 (2010), and specifically stated that " 'This limited range of acts performed on the [decedent]'s behalf suggest, at most, [he] may have conferred on [the personal representative] the authority to make health care and financial decisions on his behalf, but no more than that.'" Id. As further noted by the South Carolina Court of Appeals in Hodge, the Dickerson Court, and The Supreme Court of Nebraska which was quoted in Hodge, "…a son who had authority to sign health care documents on behalf of his mother did not have authority to sign an arbitration agreement on her behalf." Hodge citing Dickerson and Koricic v. Beverly Enterprises-Nebraska, Inc., 773 N.W.2d 145, 149-

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52 (Neb. 2009). More importantly, the Hodge court relied upon the Court of Appeals' decision in Thompson v. Pruitt Corp., 784 S.E.2d, 679, 416 S.C. 43, 55 (Ct. App. 2016), cert. denied, S.C. Sup. Ct. Order dated Dec. 2, 2016, where the Thompson court determined "'**The authority conveyed by a principal to an agent to handle finances or make health care decisions does not encompass executing an agreement to resolve legal claims by arbitration, thereby waiving the principal's right of access to the courts and to a jury trial.**'" Hodge quoting Thompson at 55, 784 S.E. 2d at 686, emphasis added.

As a result, there is no evidence that Varesa Goodman had any authority/agency to enter into the Arbitration Agreement on Dennis Edwards' behalf and is not estopped from denying the existence of the agreement as Decedent did not take any action or convey that Varesa Goodman had such authority. Hodge v. Uni-Health Post-Acute Care of Bamberg, 813 S.E.2d 292, 422 S.C. 544 (S.C. Ct. App. 2018); Thompson v. Pruitt Corp., 416 S.C. 43, 784 S.E.2d 679 (Ct. App. 2016); Coleman v. Mariner Health Care, Inc., 755 S.E.2d 450, 407 S.C. 346 (S.C. 2014); and Solesbee v. Fundamental Clinical and Operational Services, LLC, 426 S.C. 638, 885 S.E.2d 144 (Ct. App. 2023).

Further, applying the requirements in Hodge, there can be no equitable estoppel in this case. The Admissions Agreement and Arbitration Agreement did not merge, as this Court has already noted. Many of the factors identified in prior appellate court cases, including Hodge, Thompson, Coleman and Solesbee, which demonstrate that the arbitration agreement and admission agreement do not merge, exist in this case as well. Hodge v. Uni-Health Post-Acute Care of Bamberg, 813 S.E.2d 292, 422 S.C. 544 (S.C. Ct. App. 2018); Thompson v. Pruitt Corp., 416 S.C. 43, 784 S.E.2d 679 (Ct. App. 2016); Coleman v. Mariner Health Care, Inc., 755 S.E.2d 450, 407 S.C. 346 (S.C. 2014); and

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Solesbee v. Fundamental Clinical and Operational Services, LLC, 426 S.C. 638, 885 S.E.2d 144 (Ct. App. 2023).

Example of such factors that exist to distinguish the Admission and Arbitration Agreements include the fact that the Admission Agreement was required for admission, but the Arbitration Agreement was not required for admission according to the Defendant's own brief and argument. Further, the Admission Agreement was to be administered under state and federal law while the Arbitration Agreement was only construed according to federal law. The Admission Agreement could be terminated at any time, but the Arbitration Agreement provided it could not be terminated and would "remain in effect for all care rendered at the facility and shall survive any termination or breach of this agreement or the admission agreement." The Admission Agreement contained a severability provision, which was assignable by the Facility, had the right to be modified by the Facility, and contained the entire agreement and superseded all other agreements. Multiple other differences also existed such as who is defined as parties, the scope of the agreements, pagination of the agreements, etc. As a result, there is significant evidence that there is no merger of the Admission Agreement and Arbitration Agreement.

Further, as Hodge noted, Plaintiff is not suing under the Arbitration Agreement or attempting to invoke the Arbitration Agreement itself as a basis for the claims and Plaintiff has filed no action alleging a breach of contract under the Admission Agreement. Therefore, Plaintiff is not seeking to invoke the benefit of any of the contracts executed by Varesa Goodman. See Wilson v. Willis, 416 S.C. 395, 786 S.E.2d 571 (S.C. App. 2016); Weaver v. Lentz, 348 S.C. 672, 678, 561 S.E.2d 360, 363 (Ct. App. 2002). Further, as the Wilson Court noted, "Equitable estoppel is, ultimately, a theory designed to prevent

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injustice, and it should be used sparingly. See Hirsch v. Amper Fin. Servs., LLC, 215 N.J. 174, 71 A.3d 849, 852 (N.J. 2013) (Observing equitable estoppel should be used sparingly to compel arbitration and noting it 'is more properly viewed as a shield to prevent injustice rather than a sword to compel arbitration'); 28Am. Jur. 2d Estoppel and Waiver §29 (2011) (stating equitable estoppel should be used with restraint and only in exceptional circumstance)." Id. at 345

As a result, Defendants cannot maintain that the agreements merged or that Plaintiff should be equitably stopped from denying the existence of the Arbitration Agreement. Further, this argument has been rejected by the South Carolina Court of Appeals and South Carolina Supreme Court on numerous occasions in unpublished and published opinions, and this Court sees no basis why this case is any different.

III. The Arbitration Agreement is not enforceable because it does not identify the proper parties to the agreement and there was no meeting of the minds.

As previously noted by this Court, the Arbitration Agreement is unenforceable because it lacks mutual assent and meeting of the minds. Contract formation demands the mutual assent of the proposed parties. Eden v. Laurel Hill, Inc., 271 S.C. 360, 364, 247 S.E.2d 434, 436 (1978)(citing Kitchens v. Lee, 221 S.C. 59, 59, S.E.2d 67 (1952)).

It is well known in contract law that a contract must contain a meeting of the minds for a valid contract to exist and be enforceable. The Arbitration Agreement required that the Facility identify both their resident and the appropriate name of the facility to define the parties to the agreement. The Arbitration Agreement does not identify the proper name for the facility to be a party to the agreement.

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Proper parties to a contract are essential terms to the contract. The Defendants have the burden to prove who the parties were as contained within the four corners of the agreement. Vagueness of expression, indefiniteness, and uncertainty as to any of the essential terms of an agreement have often been held to prevent the creation of an enforceable contract." Reed v. Boykin, 282 S.C. 614, 327 S.E.2d 68 (S.C. App., 1984). Looking at the Arbitration Agreement within the four corners of the agreement, there is no identification of the party for Defendants indicating that it was open "THI of South Carolina at Spartanburg, LLC" or "Magnolia Manor Spartanburg" as a party to this agreement. The agreement states that the party is "MMS". "MMS" is not a facility or legal entity and is not a defined term, and therefore, it is impossible to enforce because there is no mutual assent or meeting of the minds as to who the necessary and proper parties are to the agreement and the agreement must be construed against the Defendants as the drafting entities. Furthermore, the agreement does not even identify that Dennis Edwards was entering into an Arbitration Agreement with the appropriate name for the facility. As a result, the Agreement is vague and lacks necessary correct terms to enable a meeting of the minds and mutual assent.

IV. The Arbitration Agreement is unenforceable because Defendants failed to follow the regulatory requirements to enforce a valid arbitration agreement in a skilled nursing facility claim per 42 C.F.R. §483.70(n) and Guidance to Surveyors.

The requirements of the regulations for skilled nursing facilities require facilities be able to prove the following:

(1) That the terms and conditions of the arbitration agreement are clearly explained to the resident and/or his/her representative;

(2) It is explained to the resident and his/her representative that the arbitration agreement is voluntary and not required for admission to the facility;

(3) The facility must explain the arbitration agreement to the resident and resident's representative in a manner and form which they understand, and the facility "must ensure there is evidence that the resident or their representative has acknowledged understanding of the agreement;"

(4) Further, when a signature is used to acknowledge understanding, additional evidence is needed to establish that the resident or their representative understood what was being signed;

(5) If the resident is cognitively impaired, such should be taken into account in determining whether or not the resident is able to understand the contents of the agreement;

(6) The facility is required to distinguish the arbitration agreement from the admission agreement, especially if the arbitration agreement is contained within the admission agreement and allow the resident or their representative to decline the arbitration agreement without declining the admission agreement;

(7) It must be clearly explained to the resident or resident's representative that there is thirty (30) days to withdraw or terminate the agreement should they change their mind;

(8) The facility must explain to the resident or their representative how the resident or their representative may withdraw from or terminate the

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arbitration agreement within the thirty (30) days should they desire to do so; and

(9) The facility may not require, force, or pressure the resident or his/her representative to sign the binding arbitration agreement.

42 C.F.R. §483.70(n).

Aside from the plain language of the agreement, Defendants offered no evidence to support that they met these requirements. The evidence submitted in this motion regarding this issue was provided by Daughter's affidavit which set forth that the agreement was not explained to her in the terms required as described above. In fact, the Guidance to Surveyors established by the Federal Regulations and by the Federal Government for the implementation of the regulations as a facility specifically states :

> "In some cases, the binding arbitration agreement may specify that the resident or his/her representative acknowledges understanding by signing the document. When a signature is used to acknowledge understanding, additional evidence may be needed to establish that, in fact, the resident or their representative understood what he or she was signing. It may not be sufficient that the resident or their representative signed the document."

State Operations Manual, Appendix PP – Guidance to Surveyors for Long-Term Care Facilities, Guidance Section 483.70(n)(1)(2)(i)(ii)(3)-(5).

Defendants were required to meet these regulations for a binding arbitration agreement to exist. Any arbitration agreement that violates Federal law or legal requirements is an invalid contract under South Carolina law. An illegal contract is unenforceable. . Berkebile v. Outen, 426 S.E.2d 760, 762 n. 2 (1993). "The general rule is that courts will not enforce a contract which is violative of public policy, statutory law,

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or provisions of the Constitution." Id. As a result, the Arbitration Agreement is unenforceable.

V. The Arbitration Agreement is unenforceable as to the wrongful death claim and the statutory beneficiaries.

The Arbitration Agreement is unenforceable as to the wrongful death statutory beneficiaries because they were not parties or signatories to the agreement. The alleged Arbitration Agreement, by its own terms, is an agreement between "MMS ('Facility') its agents, employees and servants, and Dear Sir or Madam, ('Resident') or Varesa Goodman ('Resident's Durable Power of Attorney for Health Care'/'Resident's Legal Guardian'/'Resident's Responsible Party' hereafter collectively 'Representative')". Therefore, any purported agreement to arbitrate any claims was (by the terms of the contract which was drafted by the Defendants) only on behalf of the Facility and Resident or Resident's Representative. Even if Decedent had been competent during his admission, he may have had the authority to bind himself and his claims to arbitration but never had that opportunity. However, even if the agreement had purported to include the statutory beneficiaries' claims, Daughter did not have the legal authority to bind Decedent's statutory beneficiaries who are not parties/signatories to the Arbitration Agreement. The signatory to the agreement is Daughter on behalf of Decedent and Facility. Daughter was only asked to sign the agreement on behalf of Decedent and was not even aware of the Arbitration Agreement per her affidavit. No other parties are parties to this agreement. The scope of the agreement does not include statutory beneficiaries' claims.

Furthermore, South Carolina law is clear that a wrongful death claim exists for the statutory beneficiaries and that such claims are distinct and separate from those brought

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under survival action claims. Bennett v. Spartanburg Railway Gas and Electric Co., 97 S.C. 27, 81 S.E. 189 (1914).

Instead, Defendants are insisting that Daughter, on behalf of Decedent, had the power to waive the right to a jury trial on a claim that did not exist when the Arbitration Agreement was presented, but never belonged to Decedent and covered injuries suffered exclusively by the statutory beneficiaries, not the resident/decedent. This Court has previously gone into extensive detail in the original Order establishing the history and separateness of the wrongful death claim from the survival action claim.

It is not this Court's contention that the Arbitration Agreement is not enforceable simply because this is a wrongful death action. Rather, the Arbitration Agreement is not enforceable as to the wrongful death action because the statutory beneficiaries were not parties nor signatories to the agreement and cannot be bound to such agreement when they were not parties and when Decedent had no power to bind them. Defendants raise no new errors of law or issues not properly addressed in the original order or motion which were not previously raised or addressed. As a result, because the statutory beneficiaries have separate and independent claims and were not covered by the scope of the agreement nor parties/signatories in their individual capacities to the agreement, the Arbitration Agreement drafted by the Facility cannot reach to claims of the wrongful death statutory beneficiaries.

CONCLUSION

Based upon the foregoing reasons, Defendants' Motion to Alter, Amend, and/or Reconsider Order Denying Motion to Compel Arbitration and Motions to Stay is hereby denied.

IT IS SO ORDERED.

(Presiding Judge's Electronic Signature to Follow)

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Spartanburg Common Pleas

Case Caption:	Varesa Goodman , plaintiff, et al VS Thi Of South Carolina At Spartanburg Llc , defendant, et al
Case Number:	2023CP4204153
Type:	Order/Other

IT IS SO ORDERED!

s/J. Derham Cole 2053