

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF YORK
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2013CP4602930

Mae Ruth Davis Thompson Eula Mae Davis	Pruitt Corporation UHS-Pruitt Holdings, INC United Health Services Of South Carolina, INC United Rehab INC Unihealth Post Acute Care-Rock Hill, LLC	UHS-Pruitt Corporation UHS Of South Carolina-East LLC United Clinical Services Inc Rock Hill Healthcare Properties Inc
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PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Robert E Horner	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

ORDER

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
n/a	n/a	n/a

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge

may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

s/s. Jackson Kimball

Circuit Court Judge

3063

Judge Code

5/8/2014

Date

For Clerk of Court Office Use Only

This judgment was entered on May 8, 2014, and a copy mailed first class or placed in the appropriate attorney's box on May 8, 2014, to attorneys of record or to parties (when appearing pro se) as follows:

John Gressette Felder Jr.
Mcgowan Hood And Felder
1517 Hampton Street
Columbia, SC 29201

Monteith Powell Todd
PO Box 11449
Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Mae Ruth Davis Thompson, Individually)
and as the appointed Personal)
Representative of the Estate of Eula Mae)
Davis, deceased,)

Plaintiff,)

v.)

Pruitt Corporation d/b/a UHS-Pruitt)
Corporation; UHS-Pruitt Holdings, Inc.;)
UHS of South Carolina-East, LLC;)
United Health Services of South Carolina,)
Inc.; United Clinical Services, Inc.;)
United Rehab, Inc.; Rock Hill Healthcare)
Properties, Inc.; Uni-Health Post Acute)
Care-Rock Hill, LLC d/b/a UniHealth)
Post Acute Care-Rock Hill,)

Defendants.)

ORDER

Case No. 2013CP46-2930

2014 MAY - 8 AM 8:33
CLERK OF COURT
YORK COUNTY, SC

This matter came before me on March 13, 2014, upon Defendants' Motion to Dismiss and Compel Arbitration or, Alternatively, to Compel Arbitration and Stay Proceedings in this case. Representing Plaintiff was John G. Felder, and representing Defendants was Robert E. Horner. Based on the submissions and arguments of the parties, I make the following findings and conclusions.

STATEMENT OF CASE

The following facts are clearly established in the record, and are adopted by me as the facts of this case. The parties have acknowledged that it is for this court to determine the factual issues pertaining to arbitrability for the purpose of ruling on this motion.

On January 11, 2011, Plaintiff and her brother, Andrew Davis ("Davis"), accompanied their mother Eula Mae Davis ("Decedent") to Uni-Health Rock Hill ("Uni-Health"), a nursing care facility, to admit Decedent to the facility for rehabilitation care.¹ As the admission process

¹ For ease of discussion, the term "Uni-Health" is used throughout this order to refer to the interests of all the Defendants, as those interests may appear, or be established, in subsequent proceedings.

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proceeded, Davis and Plaintiff met with Uni-Health's staff to complete and execute necessary paperwork, and discuss Decedent's admission and care at the facility. In conjunction with Uni-Health's staff, Davis completed a number of forms associated with the admission process. Included were a detailed Admission Agreement, and a separate five-page Arbitration Agreement. The Arbitration Agreement provides that it applies to "[a]ny and all claims or controversies arising out of or in any way relating to [the] Agreement or the Patient/Resident's Admission Agreement, . . . or the Patient/Resident's stay at, or the care of services provided by [Uni-Health], or any acts or omissions in connection with such care or services." The Arbitration Agreement also seeks to bind potential future wrongful death beneficiaries to arbitration. The Arbitration Agreement precludes a jury trial and limits discovery that would otherwise be permitted under the South Carolina Rules of Civil Procedure.

Davis signed both the Admission Agreement and the Arbitration Agreement for Decedent on lines calling for the signature of "Patient/Resident Representative." His intended capacity was obviously as Decedent's "Representative." Decedent was not present in the meeting with Uni-Health's staff, as she was in the process of being transferred from a local hospital to Uni-Health. Decedent had never executed a power-of-attorney appointing Davis as her attorney-in-fact. Nor had she executed any other document giving Davis express authority to contract on her behalf in making healthcare decisions, or any other matter.

Prior to her admission to Uni-Health, Decedent permitted Davis to assist her with her finances, which amounted to paying her bills, and receiving and cashing her monthly Social Security check. The Decedent signed documents on her own behalf pertaining to renting her home. According to Davis and Plaintiff, Decedent also continued to handle her own affairs, as well as permitting Davis to do so. The Decedent, herself, had no prior contact with Defendants' facility, and never represented that Davis was her agent, either expressly, or impliedly. There is nothing in the record to indicate that Uni-Health relied on Davis' prior acts on behalf of Decedent in accepting him as Decedent's "Representative" for the purpose of executing the Admission Agreement and the Arbitration Agreement.

Plaintiff asserts that there is no valid Arbitration Agreement, because Davis lacked authority, express or implied, to enter the agreement on behalf of Decedent. Defendants assert that there was such authority, either express, or implied, by virtue of an agency relationship held by Davis, as evidenced by his assisting Decedent with her personal and financial affairs.

The parties acknowledge that the validity of the Arbitration Agreement must be

Handwritten signature and initials, possibly "M" and "B", written in black ink.

determined in accordance with the general principles of contract and agency law applicable to any other contract.

DISCUSSION

The dispositive issue before the court in this matter is whether Plaintiff is bound by the Arbitration Agreement signed by Davis as "Representative" of Decedent. It is undisputed that Davis held no power of attorney, or similar document, of any kind expressly granting such power or authority.

The Adult Health Care Consent Act (S.C. Code Ann. § 44-66-10 *et seq.* (1976, as amended) ("Act") confers such authority in regard to health care decisions, and thereby bound both Uni-Health and Decedent's estate in regard to the terms and conditions of the Admission Agreement. The manifest purpose of the Act is to enable contracting parties in a healthcare situation to enter into a binding agreement when express authority has not been conferred upon an agent for that purpose. It further eliminates the need to deal with questions of apparent agency or authority in order to make such a contract binding.

However, the Act does not confer such authority with respect to an Arbitration Agreement, such as the one in issue in this case. *See Coleman v. Mariner Health Care, Inc.*, Supreme Court, Opinion No. 27362, filed March 12, 2014. As the Arbitration Agreement does not deal with healthcare decisions, the provisions of the Act do not apply to establish the necessary principal-agent relationship. *Id.*

Therefore, if Plaintiff is to be bound by the Arbitration Agreement, it must be the result of an express or implied-in-law principal-agent relationship between the Decedent and Davis. Davis must have been cloaked with actual or apparent authority to contract with Uni-Health concerning arbitration as an alternate method of resolving any dispute between the parties.

An agency relationship may be established with clear evidence of actual or apparent authority conferred by the principal on the alleged agent. *Cowburn v. Leventis*, 366 S.C. 20, 39, 619 S.E.2d 437, 448 (Ct. App. 2005). Actual authority is ". . . expressly conferred upon the agent by the principal." *Richardson v. PV, Inc.*, 383 S.C. 610, 615, 682 S.E.2d 263, 265 (2009). It is clear that there was no such action by Decedent.

Apparent authority is based on ". . . representations made by the principal to the third party and reliance by the third party on those representations." *Young v. S.C. Dep't of Disabilities & Special Needs*, 374 S.C. 360, 367, 649 S.E.2d 488, 491 (2007). To prove apparent authority, a party must show ". . . (1) that the purported principal consciously or impliedly


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represented another to be his agent; (2) that there was a reliance upon the representation; and (3) that there was a change of position to the relying party's detriment." *Cowburn*, 366 S.C. at 39, 619 S.E.2d at 448. The burden of establishing agency is upon the party asserting that a principal-agent relationship exists. *Frasier v. Palmetto Homes of Florence, Inc.*, 323 S.C. 240, 244, 473 S.E.2d 865, 867 (Ct. App. 1996).

Evidence is lacking to satisfy Uni-Health's burden in this case. First, there is no evidence that Decedent made any express representation to Uni-Health's staff. Indeed, she never spoke with Uni-Health's staff concerning her admission. Second, there is no evidence that Uni-Health relied upon the fact that Davis assisted Decedent with her affairs by paying her bills and depositing her Social Security check. The depositions of Davis and Plaintiff do not indicate that Uni-Health's staff was made aware of that fact.

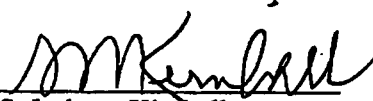
Further, Decedent personally executed the lease documents for her home. Although Davis took Decedent to medical appointments, there is no evidence that he was involved in the appointments as acting on Decedent's behalf. While Decedent was "comfortable" with Davis "sign[ing] her in" to the hospital, she assumed that responsibility herself as well. (Davis deposition at p. 17, lines 1-25.)

In short, I conclude that Decedent did not expressly or impliedly represent to Uni-Health that Davis was her agent for the purpose of signing the Arbitration Agreement. I further conclude that Uni-Health did not rely on any apparent agency relationship in regard to the Arbitration Agreement. Thus, I conclude that Decedent and Plaintiff were not bound to the Arbitration Agreement, and that the Arbitration Agreement cannot be enforced against Plaintiff. It follows that Decedent's heirs are likewise not bound.

Therefore, since the Arbitration Agreement is unenforceable, Defendants' motion to compel arbitration must be denied. As this ruling is dispositive of the issue presented, no ruling on the ancillary issues presented is required.

AND IT IS SO ORDERED.

April 11, 2014


S. Jackson Kimball
Special Circuit Court Judge
York County

#4

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF YORK
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2013CP4602930

Mae Ruth Davis Thompson Eula Mae Davis	Pruitt Corporation UHS-Pruitt Holdings, INC United Health Services Of South Carolina, INC United Rehab INC Unihealth Post Acute Care-Rock Hill, LLC	UHS-Pruitt Corporation UHS Of South Carolina- East LLC United Clinical Services Inc Rock Hill Healthcare Properties Inc
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PLAINTIFF(S)

DEFENDANT(S)

Submitted by: The Court	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

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 Rule 43(k), SCRPC (Settled); Other: _____
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 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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s/S. Jackson Kimball

3063

7/2/2014

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on July 2, 2014, and a copy mailed first class or placed in the appropriate attorney's box on July 2, 2014, to attorneys of record or to parties (when appearing pro se) as follows:

John Gressette Felder Jr. McGowan Hood And Felder 1517
Hampton Street Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

Monteith Powell Todd PO Box 11449 Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Mae Ruth Davis Thompson, Individually)
and as the appointed Personal)
Representative of the Estate of Eula Mae)
Davis, deceased,)

Case No. 2013-CP-46-2930

Plaintiff,)

v.)

ORDER

Pruitt Corporation d/b/a UHS-Pruitt)
Corporation; UHS-Pruitt Holdings, Inc.;)
UHS of South Carolina-East, LLC;)
United Health Services of South Carolina,)
Inc.; United Clinical Services, Inc.;)
United Rehab, Inc.; Rock Hill Healthcare)
Properties, Inc.; Uni-Health Post Acute)
Care-Rock Hill, LLC d/b/a UniHealth)
Post Acute Care-Rock Hill,)

Defendants.)

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2014 JUL -2 PM 1:19
DAVID H. THOMPSON
C.C.C.P. & GS
YORK COUNTY, SC

This matter came before me on June 19, 2014, upon Defendants' Motion to Reconsider my April 11, 2014, Order, denying Defendants' Motion to Dismiss and Compel Arbitration or, in the Alternative, to Compel Arbitration and Stay Proceedings. Based on the submissions and arguments of the parties, I make the following findings and conclusions.

STATEMENT OF CASE

This case concerns the events occurring at the time of Eula Mae Davis's admission to Defendants' skilled nursing facility, and an Arbitration Agreement presented for signature during the admission process. The facts are established in the record, and a statement of facts is included in the prior order. For purposes of the current motion, I adopt the previous statement of facts, and incorporate the same by reference.

Defendants' Motion to Reconsider cites five bases for reconsidering the Court's previous Order: (1) The facts show Eula Mae Davis's son was authorized to sign Ms. Davis into Defendants' facility; (2) The evidence showed an apparent agency relationship; (3) Ms. Davis was a third-party beneficiary of the Arbitration Agreement between her son and Defendants; (4)

Plaintiff is estopped from denying an agency relationship between Ms. Davis and her son; and, (5) If the Court reconsiders its earlier order and concludes Plaintiff is bound by the Arbitration Agreement, then Ms. Davis's beneficiaries are also bound by the Agreement.

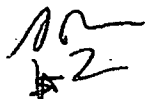
DISCUSSION

Defendants first two arguments relate to agency principles thoroughly addressed in the Court's earlier Order. After considering the parties' submissions and arguments, I reaffirm the earlier findings and conclusions. Agency is a "... fiduciary relationship which results from the manifestation of consent by one person to another to be subject to the control of the other and to act on his behalf." *Peoples Fed. Savs. & Loan Ass'n v. Myrtle Beach Golf & Yacht Club*, 310 S.C. 132, 145, 425 S.E.2d 764, 773 (Ct. App. 1992) (citing Restatement (Second) of Agency § 1 (1958)). An agency relationship may be established with clear evidence of actual or apparent authority conferred by the purported principal on the purported agent. *Cowburn v. Leventis*, 366 S.C. 20, 39, 619 S.E.2d 437, 448 (Ct. App. 2005). Actual authority is "... expressly conferred upon the agent by the principal." *Richardson v. PV, Inc.*, 383 S.C. 610, 615, 682 S.E.2d 263, 265 (2009). Apparent authority is based on "... representations made by the principal to the third party and reliance by the third party on those representations." *Young v. S.C. Dep't of Disabilities & Special Needs*, 374 S.C. 360, 367, 649 S.E.2d 488, 491 (2007).

To prove apparent authority, a party must show: (1) the purported principal consciously or impliedly represented another to be his agent; (2) reliance on the representation by a third party; and, (3) change in position by third party in reliance on the representation. *Cowburn*, 366 S.C. at 39-40, 619 S.E.2d at 448. As found in the prior Order, Defendants offered no evidence that Ms. Davis expressly or impliedly represented her son to be her agent for purposes of signing the Arbitration Agreement. Defendants also failed to meet their burden of proving Defendants relied on any apparent agency relationship. Thus, I deny Defendants' Motion to Reconsider concerning actual and apparent agency, and reaffirm the earlier findings and conclusions on those issues. *See Order at 3-4.*

In their third asserted basis for reconsideration, Defendants argue that Ms. Davis was a third-party beneficiary to an Arbitration Agreement formed between Defendants and her son. As discussed above, Ms. Davis's son had no legal authority to enter a contract on his mother's behalf, and while he assisted her in some of her personal business, it does not appear that he entered into binding contracts on her behalf.

Since Ms. Davis did not sign the Arbitration Agreement, and Andrew Davis had neither



actual, nor apparent, authority to enter the agreement on Ms. Davis' behalf, there is no valid and enforceable agreement to arbitrate. There can be no third-party beneficiary without a valid contract. See *Hardaway Concrete Co., Inc. v. Hall Contracting Co.*, 374 S.C. 216, 225, 647 S.E.2d 488, 492 (Ct. App. 2007) (considering a potential third-party beneficiary only after determining the existence of a valid and enforceable contract). This is a principle recognized in other jurisdictions.¹ Fundamentally, there was never intended to be a contract between Defendants and Andrew Davis upon which to premise a 'third party beneficiary' theory. The contract was based upon the son having authority to act directly for Ms. Davis, not that Ms. Davis would somehow benefit from a separate bargain between Defendants and Andrew Davis. Accordingly, Defendants' third basis for reconsideration is denied.

Defendants' fourth argument is that Plaintiff is estopped from denying an agency relationship between Ms. Davis and her son. Defendants' Motion initially refers to 'estoppel' in a general sense (Defendants' Mem. at 5), but later discusses the doctrine of equitable estoppel. Accordingly, I consider only whether Defendants' met their burden to have the court apply the doctrine of equitable estoppel.

Equitable estoppel requires proof that the party to be estopped: (1) acted in a way amounting to a false representation; (2) intended that such conducted be acted on by the other party; and, (3) had actual or constructive knowledge of the real facts. *Strickland v. Strickland*, 375 S.C. 76, 84, 650 S.E.2d 465, 470 (2007). It also requires that the party asserting estoppel must (1) lack knowledge and the means of knowledge of the truth of the facts in question; (2) rely on the conduct of the party estopped; (3) make a prejudicial change in position in reliance on conduct of party estopped. *Id.* Based on the parties' submissions and arguments, Defendants have not met their burden to satisfy these elements. As discussed above, Defendants have not proved that they relied on the conduct of the party against whom they seek to apply estoppel.

¹ See *Licata v. GGNSC Malden Dexter LLC*, 2 N.E.2d 840, 848 (Mass. 2014) (since "no one with authority to do so signed the arbitration agreement," there was no valid agreement and could be no third-party beneficiary); *GGNSC Omaha Oak Grove, LLC v. Payich*, 708 F.3d 1024 (8th Cir. 2013) (finding son lacked legal authority to sign for mother and there was no valid arbitration agreement to which the resident could be a third-party beneficiary); *GGNSC Batesville, LLC v. Johnson*, 109 So.3d 562, 565 (Miss. 2013) ("For a third-party beneficiary to exist, a valid contract must first exist"); *Dickerson v. Longoria*, 995 A.2d 721, 742 (Md. 2010) ("Before one can enforce a contract, however, whether as a party to the contract or as a third-party beneficiary, there must be a contract to enforce"); *Adams Cmty. Care Ctr., LLC v. Reed*, 37 So.3d 1155, 1160 (Miss. 2010) ("For a third-party beneficiary to exist, there must first exist a valid contract executed by one with 'legal capacity' to enter the contract").

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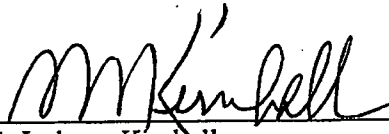
Defendants had no contact at all with Ms. Davis concerning her admission or the arbitration agreement, and they do not contend otherwise. Thus, Defendants have not met their burden, and their Motion to Reconsider on this basis is denied.

Defendants' final argument asks the Court to find that Ms. Davis's statutory beneficiaries are bound to the Arbitration Agreement. This argument is premised upon the Court first finding that a valid agreement exists, and that Ms. Davis is bound by its terms. Since I find and conclude that there is no valid agreement, no ruling on this issue is necessary.

In summary, I reaffirm the findings and conclusions of the prior order. Therefore, based on the prior order and the additional discussion herein, it is ordered that Defendants' Motion to Reconsider be denied.

AND IT IS SO ORDERED.

July 1, 2014


S. Jackson Kimball
Special Circuit Court Judge
York County

#4