RECEIVED
MAR 0 4 2015
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

---

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Circuit Court Judge

---

Case No. 2013-CP-46-2930
Appellate Case No. 2014-001624

---

Mae Ruth Davis Thompson, Individually and as the appointed Personal Representative of the Estate of Eula Mae Davis, Deceased . . . . . .Respondent,

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 . . . . . Appellants.

---

# FINAL BRIEF OF APPELLANTS

---

Monteith P. Todd
J. Michael Montgomery
Robert E. Horner
Alexander E. Davis
Sowell Gray Stepp & Laffitte, LLC
1310 Gadsden Street
Post Office Box 11449
Columbia, SC 29211
Telephone: (803) 929-1400

Attorneys for Appellants

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

### Cases

**Statutes**



**Other Authorities**

## ISSUES ON APPEAL

I. Did the trial court err in denying the Defendants' Motion to Compel Arbitration?

a. The trial court erred in concluding that the Plaintiff cannot be bound by the Arbitration Agreement under the Adult Health Care and Consent Act.

b. The trial court erred in finding there was no agency between the Decedent and her son, Andrew Davis, based on common law principles.

c. The trial court erred in finding that the Decedent was not an intended third-party beneficiary of the agreement.

d. The trial court erred in concluding that the Plaintiff is not equitably estopped from denying an agency relationship between Decedent and Andrew Davis.

## STATEMENT OF THE CASE

This appeal arises out of a wrongful death and survival lawsuit filed on September 26, 2013 by Mae Ruth Davis Thompson, as Personal Representative of the Estate of Eula Mae Davis. (Complaint). Plaintiff sued Thompson 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.; and UniHealth Post Acute Care – Rock Hill, LLC d/b/a UniHealth Post Acute Care – Rock Hill (collectively referred to herein as "Defendants").

The Decedent, Eula Mae Davis, entered UniHealth Post Acute Care – Rock Hill ("UPAC-Rock Hill" or "the Facility") rehabilitation facility on or about January 11, 2011. (R. p. 40, ¶20). Prior to her admission, Eula Mae Davis' son, Andrew Davis, executed various documents related to her admission on Ms. Davis' behalf, including admissions paperwork containing an Arbitration Agreement. (R. pp. 300-304; R. p. 289, l. 20 – 290, l. 10; R. pp. 65-67) Although Eula Mae Davis had no power of attorney ("POA"), these documents were executed by Andrew Davis as the representative of Ms. Davis. Eula Mae Davis suffered from dementia prior to her death, and Andrew Davis would often assist her in paying her bills. (R. p. 288, ll. 12-21; R. pp. 298-299; R. pp. 115-143). Andrew Davis also testified that he would sign admissions documents for his mother when she went to hospital or other healthcare providers and that she was comfortable with this arrangement. (R. p. 286, ll. 14-25). Ms. Thompson was present with her brother and mother at the time the admissions documents at issue, including the arbitration agreement, were executed by Andrew Davis and she did not raise any objections. (R. pp. 300-304; R. p. 289, l. 20 – 290, l. 10).

It is alleged that on January 12, 2011 at approximately 1:10 a.m., the morning following her admission, the Decedent was discovered face down on the floor by her bed. It is further alleged

that Ms. Davis was unresponsive and attempts to revive her were unsuccessful. (R. p. 40, ¶¶23-25). Plaintiff asserts that the Defendants' failure to take proper precautions to recognize and prevent a fall by Eula Mae Davis was the cause of her death, which the Defendants deny. (R. p. 40, ¶27).

Plaintiff Thompson, as Personal Representative of the Estate of Eula Mae Davis, commenced this action by filing a Notice of Intent to Sue on May 15, 2013 (R. pp. 13-35). Thompson filed her Summons and Complaint against the Defendants on September 26, 2013. (R. pp. 36-44). On November 4, 2013, the Defendants filed their Answer to the Complaint and raised certain defenses related to the signed arbitration agreement at issue in this appeal. (R. p. 49, ¶45).

Following the filing of the Summons and Complaint and the Defendants' Answer, the parties engaged in discovery with the agreement from Plaintiff's counsel that this discovery would not act as a waiver of Defendant's Motion to Compel Arbitration. On February 4, 2014, the Defendants filed their Motion to Compel Arbitration. (R. pp. 51-53).

On or about May 8, 2014, the trial court denied the Defendants' Motion to Compel Arbitration for the reasons addressed within this appeal. (R. pp. 1-6) The Defendants timely filed a Motion to Reconsider the denial of the motion. (R. pp. 202-211) On July 1, 2014, following a hearing, the trial court denied the Motion to Reconsider and affirmed its denial of the Motion to Compel Arbitration. (R. pp. 7-12) The Defendants filed their Notice of Appeal with the Court of Appeals on July 25, 2014 and with the York County Circuit Court on July 29, 2014. The Defendants served the Notice of Appeal on the Respondent on July 25, 2014. (R. pp. 218-219) This appeal followed.

## STANDARD OF REVIEW

The question of arbitrability of a claim is an issue for judicial determination unless the parties provide otherwise. *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001). This determination is subject to de novo review. *Gissel v. Hart*, 382 S.C. 235, 240, 676 S.E.2d 320, 323 (2009). Nevertheless, a circuit court's factual findings will not be reversed on appeal if any evidence reasonably supports the findings. *Aiken v. World Fin. Corp. of S.C.*, 373 S.C. 144, 148, 644 S.E.2d 705, 707 (2007).[1] Both federal and state policy favor arbitrating disputes. *Heffner v. Destiny, Inc.*, 321 S.C. 536, 537, 471 S.E.2d 135, 136 (1995) ("The policy of the United States and this State is to favor arbitration of disputes."); *Cox v. Woodmen of World Ins. Co.*, 347 S.C. 460, 464, 556 S.E.2d 397, 399 (Ct. App. 2001) ("There is a strong presumption in favor of the validity of arbitration agreements because of the strong policy favoring arbitration."). Therefore, all doubts regarding the scope of an arbitration clause must be resolved in favor of arbitration. *Carolina Care Plan, Inc. v. United Healthcare Servs., Inc.*, 361 S.C. 544, 550, 606 S.E.2d 752, 755 (2004). Questions of law, including statutory interpretation, are reviewed de novo. *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008) (citation omitted).

[1] There appears to be some conflict between these two standards of review as "[d]e novo review permits appellate court fact-finding, notwithstanding the presence of evidence supporting the trial court's findings." *Lewis v. Lewis*, 392 S.C. 381, 390, 709 S.E.2d 650, 654–55 (2011).

## LAW/ARGUMENT

### I. The trial court erred in denying the Defendants' Motion to Compel Arbitration.

#### a. The trial court erred in concluding that the Plaintiff cannot be bound by the Arbitration Agreement under the Adult Health Care and Consent Act.

The trial court ruled that the Plaintiff could not be bound by the Arbitration Agreement under the Adult Health Care Consent Act (S.C. Code Ann. § 44-66-10 *et. seq.* (2002)) ("the Act"). In reaching this decision, the court relied on the recent Supreme Court opinion in *Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 755 S.E.2d 450 (2014).[2] Because this decision does not preclude a party from establishing the validity of an arbitration agreement under the Act through common law principles, the trial court erred in denying the Defendants' Motion to Compel Arbitration.

Under the Act, where an adult is "unable to appreciate the nature and implications of [her] condition and proposed health care, to make a reasoned decision concerning the proposed health care, or to communicate that decision in an unambiguous manner," certain individuals, including the patient's adult children, are may consent on behalf of an incapacitated patient. S.C. Code Ann. §§ 44-66-20(8); 44-66-30(A) (2002). *See also Coleman*, 407 S.C. at 351, 755 S.E.2d at 453. In the instant case, the evidence revealed that Eula Mae Davis suffered from dementia prior to her death. (R. pp. 115-143; R. p. 288, ll. 12-21). Similarly, the Decedent's son, Andrew Davis, would often assist his mother in paying her bills. (R. pp. 285-287). Mr. Davis also testified that he would sign admissions documents for his mother when she went to the hospital or other healthcare providers and that she was comfortable with this arrangement. (R. p. 286, ll. 14-25). Because Ms.

[2] The *Coleman* opinion was published on March 12, 2014, the day before the initial hearing on the Defendants' Motion to Compel Arbitration in this matter.

Davis lacked a power of attorney and was unmarried, it is also uncontroverted that no individual had greater statutory authority under the Act than Andrew Davis for making decisions on behalf of his mother. *See* S.C. Code Ann. § 44-66-30(A) (2002) (setting forth the statutory priority list for healthcare decisions); (R. p. 286, ll. 12-13; R. p. 287, ll. 10-11) (noting that the Decedent did not have anyone as POA and was unmarried at the time of her death). Thus, the Act conferred authority on Mr. Davis to make decisions concerning his mother's healthcare.[3]

The trial court held that there could be no agency relationship under the Adult Healthcare Consent Act because the Arbitration Agreement is not a healthcare document covered under the Act. (R. pp. 1-6) (citing *Coleman*, 407 S.C. 346, 755 S.E.2d 450). Under the common law doctrine of merger,[4] however:

> The general rule is that, in the absence of anything indicating a contrary intention, where instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction, the courts will consider and construe the documents together. The theory is that *the instruments are effectively one instrument or contract.*

---

[3] The trial court did not make a specific finding that the Decedent was "unable to appreciate the nature and implications of [their] condition and proposed health care, to make a reasoned decision concerning the proposed health care, or to communicate that decision in an unambiguous manner." S.C. Code Ann. § 44-66-20(6)(2002). However, it is clear from the trial court's order that it found the Act applicable to the instant case. (R. pp. 1-6).

[4] In *Coleman*, the Supreme Court discusses the doctrine of merger under the heading "Estoppel." 407 S.C. at 355, 755 S.E.2d at 455. Presumably this is because the appellant in that case titled their merger argument as such. As the Court in *Coleman* implicitly recognized in discussing the "common law doctrine of merger" and enumerating its requirements, merger is a legal doctrine separate from estoppel. *See also* 17A Am. Jur. 2d *Contracts* § 379 (2004) (noting that merger of documents means that they are considered "in the eyes of the law, one contract or instrument" and are "transaction[s] constituting a contract"). Arbitration agreements must be construed in accordance with the general principals of contract law and agency law that would apply to any other contract. *Herron v. Century BMW*, 387 S.C. 525, 531, 693 S.E.2d 394, 397 (2010), *vacated sub nom. Sonic Automotive, Inc.*, ___ U.S. ___, 131 S.Ct. 2872, 179 L. Ed. 2d 1184 (2011), *reinstated,* 395 S.C. 461, 719 S.E.2d 640 (2011). To the extent the Court disagrees with this interpretation, the Appellant would incorporate the arguments in this section in its argument on estoppel, *infra*, by reference.

*Coleman*, 407 S.C. at 355, 755 S.E.2d at 455 (citing *Klutts Resort Realty, Inc. v. Down Round Dev. Corp.*, 268 S.C. 80, 88, 232 S.E.2d 20, 24 (1977)) (emphasis added).

In *Coleman*, the Supreme Court refused to construe the admissions agreement and arbitration agreement as a single document. The Supreme Court specifically held that the documents were "executed at the same time, by the same parties, for the same purposes, and in the course of the same transaction." *Coleman*, 407 S.C. at 355, 755 S.E.2d at 455. However, the Court also found that an anti-merger clause in the admission agreement demonstrated an intention by the parties that the documents not merge. *Id.* Therefore, the documents were to be construed separately and the arbitration agreement could not fall within the Act. *Id.*; *Klutts*, 268 S.C. at 88, 232 S.E.2d at 24 (holding that documents executed at the same time by the same parties for the same purpose and in the course of the same transaction merge but only "in the absence of anything indicating a contrary intention").

In the instant case, the agreements exhibit no such anti-merger clause. In *Coleman*, the anti-merger clause noted by the Supreme Court read:

> This Agreement, including all Exhibits hereto, *and the Arbitration Agreement* between the Facility and the Resident, if the parties sign one, supersede all other agreements, either oral or in writing between the parties, and contain all of the promises and agreements between the parties. Each party to this Agreement acknowledges that no representations, inducements, or promises have been made by any party or anyone acting on behalf of any party, that are not contained in this Agreement *or in the Arbitration Agreement*. This Agreement may be amended only by a written agreement signed on behalf of [...]

407 S.C. at 355, 755 S.E.2d at 455 (emphasis added). The Court noted that this clause demonstrated the "separatedness" of the documents on its face. *Id.* The documents executed by Andrew Davis not only lack an anti-merger clause, but clearly indicate an intention that all the documents, including the Arbitration Agreement, be construed as one.

In the instant case, there is no anti-merger clause as in *Coleman*, and the Admissions Agreement indicates no intention that the Arbitration Agreement be treated separately from the other documents which are part of the admissions packet. In fact, the Admission Agreement for the Facility contains the following language:

> I. This Agreement shall be construed, governed and enforced under the laws of the State of South Carolina. This Agreement *together with all exhibits* is the exclusive statement of the terms and conditions between the parties with respect to the matters set forth herein, and supersedes all prior agreements, negotiations, representations, tender documents, and proposals, written and oral with respect to the subject matter hereof. Variance from, or additions to, the terms and conditions of this Agreement in any written notification from Patient/Resident shall be of no effect.

(R. p. 76) (emphasis added). By its plain language, the Admission Agreement treats the other signed documents as exhibits which are part of the admission contract.

Because all these documents were executed at the same time (January 11, 2011), by the same parties (UPAC-Rock Hill and Andrew Davis on behalf of Eula Mae Davis), for the same purpose (for her admission and care at the Facility), and during the course of the same transaction, the documents merged and the Arbitration Agreement is valid as a part of the Admission Agreement, which Mr. Davis had the authority to sign on behalf of his mother under the Act. Unlike in *Coleman*, there is no anti-merger clause in this case. Therefore, the Arbitration Agreement joined with the other admissions documents to form a single contract, and the trial court erred in denying the defendant's Motion to Compel Arbitration.

**b. The trial court erred in finding there was no common law agency between the Decedent and her son, Andrew Davis.**

The trial court also erred in holding that the Decedent's son, Andrew Davis, was not authorized to sign his mother into UPAC-Rock Hill, despite testimony that established Mr. Davis had taken control of Decedent's affairs with her consent. The validity of the Arbitration

Agreement in this case must be determined in accordance with the general principles of contract law and agency law that would apply to any other contract. *Herron v. Century BMW*, 387 S.C. 525, 531, 693 S.E.2d 394, 397 (2010), *vacated sub nom. Sonic Automotive, Inc.*, ___ U.S. ___, 131 S.Ct. 2872, 179 L. Ed. 2d 1184 (2011), *reinstated,* 395 S.C. 461, 719 S.E.2d 640 (2011). Andrew Davis had taken over many of his mother's affairs without objection by her and thus had become a general agent for her. *See R&G Constr., Inc., v. Lowcountry Reg'l Transp. Auth.*, 343 S.C. 424, 433, 540 S.E.2d 113, 118 (Ct. App. 2000) ("When a principal, by any such acts or conduct, has knowingly caused or permitted another to appear to be his agent, either generally or for a particular purpose, he will be estopped to deny such agency to the injury of third persons who have in good faith and in the exercise of reasonable prudence dealt with the agent on the faith of such appearances.") (R. pp. 285-287); (R p. 298, l. 7 – p. 299, l. 10). Moreover, Defendants relied upon Mr. Davis' representations that he was authorized to sign Decedent into the home by accepting Decedent as a patient at the Facility and providing her care. There was no objection by anyone to his signing the paperwork, and he represented he was authorized to do so.

The trial court also failed to find an apparent agency relationship was established based upon the evidence presented. An apparent agency is established when the purported principal has represented another to be her agent by either affirmative conduct or conscious and voluntary inaction and there is reliance upon the agency representation with a corresponding change in position as a result. *Watkins v. Mobil Oil Corp.*, 291 S.C. 62, 67, 352 S.E.2d 284, 287 (Ct. App. 1986); *ZIV Television Programs, Inc. v. Associated Grocers, Inc. of South Carolina*, 236 S.C. 448, 453, 114 S.E.2d 826, 828 (1960). "The apparent authority of an agent results from conduct or other manifestations of the principal's consent, whereby third persons are justified in believing the agent is acting within his authority." *R & G Constr.*, 343 S.C. at 433–34, 540 S.E.2d at 118. "Such

authority is implied where the principal passively permits the agent to appear to a third person to have the authority to act on his behalf." *Id.* at 434, 540 S.E.2d at 118. "Agency may be implied or inferred and *may be proved circumstantially by the conduct of the purported agent exhibiting a pretense of authority with the knowledge of the alleged principal.*" *Id.* (emphasis added).

In the present case, Eula Mae Davis allowed, passively or otherwise, her son Andrew Davis to not only sign her into the Facility, but also to handle multiple other financial affairs for her. The Plaintiff, Ms. Davis' daughter, testified that her brother, Andrew Davis, was responsible for all of her mother's financial affairs, business dealings, and that her brother was the one who would sign documents for her. (R. pp. 298-299). He had done this for several years without his mother ever manifesting to him that he did not have the authority to make such decisions or sign things on her behalf. (R. pp. 285-287; 290); (R. p. 298, l. 7 – p. 299, l. 10). Moreover, Mr. Davis admitted he visited the Facility and felt like it was an appropriate place for his mother. When asked specifically if he signed the paper work on behalf of his mother, Mr. Davis stated "I probably did" and that he remembered doing so. (R. p. 290, ll. 3-7.) Also, when asked, he stated that his mother was "all right with [him] signing documents for her." (R. p. 291, ll. 2-4).

The Plaintiff, Ruth Mae Thompson, was present and witnessed her brother signing the documents on her mother's behalf. She did not voice any objection or give any indication to the Facility that her brother was not authorized to sign the documents. In fact, based on her previous testimony, she expected her brother to sign the documents when her mother was admitted and would have expected him to sign other contracts on their mother's behalf. (R. p. 300-301). Thus, Andrew Davis had the apparent authority to handle his mother's affairs in general, as well as her admission into the nursing home, specifically. *See Pee Dee Nursing Home v. Florence Gen. Hosp.*, 309 S.C. 80, 419 S.E.2d 834 (Ct. App. 1992) ("The doctrine of apparent authority provides that

the principal is bound by the acts of its agent when it has placed the agent in such a position that persons of ordinary prudence, reasonably knowledgeable with business usages and customs, are led to believe the agent has certain authority and they in turn deal with the agent based on that assumption. . . . [T]he concept of apparent authority depends upon manifestations by the principal to a third party and the reasonable belief by the third party that the agent is authorized to bind the principal."). Therefore, the trial court erred in denying the Defendants' Motion to Compel Arbitration.

**c. The trial court erred in finding that the Decedent was not a third-party beneficiary of the agreement.**

The trial court ruled that the Decedent could not be bound to the Arbitration Agreement as a third-party beneficiary because there was never a valid contract. This was error.

Under South Carolina law, "[a] third-party beneficiary is a party that the contracting parties intend to directly benefit." *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005) (citing *Touchberry v. City of Florence*, 295 S.C. 47, 48-49, 367 S.E.2d 149, 150 (1988) ("[t]he presumption that [a] contract is not enforceable by an individual may be overcome by showing that he was intended to be the direct beneficiary of the contract")). Although Decedent did not sign the contract, she was the resident being admitted to the Facility and thus the direct beneficiary of the contract. Ms. Davis' care was the essential purpose of all the agreements in the admissions paperwork, including the Arbitration Agreement, and as a third-party beneficiary, she (and her estate) are bound by the Arbitration Agreement. *See THI of S.C. at Columbia, LLC v. Wiggins*, 2011 WL 4089435 (D.S.C. Sept. 13, 2011) (rejecting argument that family member did not have authority to bind resident to arbitration); *Cook v. GGNSC Ripley, LLC*, 786 F. Supp. 2d 1166, 1171-72 (N.D. Miss. 2011) (holding arbitration agreement in contract for nursing home care

was enforceable against third-party beneficiary and her estate under third-party beneficiary principles); *Owens v. Coosa Valley Health Care, Inc.*, 890 So. 2d 983 (Ala. 2004) (same); *Trinity Mission Health & Rehab. v. Scott*, 19 So. 3d 735 (Miss. Ct. App. 2008) (same). As discussed in section I(a), *supra*, the doctrine of merger means that the agreements signed by Andrew Davis are to be treated as a single contract. *See Klutts Resort Realty, Inc. v. Down Round Dev. Corp.*, 268 S.C. 80, 88, 232 S.E.2d 20, 24 (1977). Thus, even if the Adult Health Care Consent Act does not apply to the documents at issue, the Arbitration Agreement remains binding on the Decedent as the third-party beneficiary of the admissions documents, including the Arbitration Agreement.

Moreover, even assuming that the Arbitration Agreement is separate from the other admissions documents signed by Andrew Davis on behalf of his mother, which Defendants deny, there is a valid arbitration agreement between Andrew Davis and the UPAC-Rock Hill, and the Decedent was the third-party beneficiary of that specific document. By its terms, the Arbitration Agreement provides that it is binding as to the signatory individually and in a representative capacity on behalf of the admitted patient. (R. p. 80). Thus, even if the Arbitration Agreement is deemed to be a separate agreement, the agreement is valid as to Andrew Davis and, therefore, a contract exists between Andrew Davis and the Facility, of which the Decedent is the third-party beneficiary.

An Arbitration Agreement confers its own benefits on the signatory parties. As South Carolina appellate courts have noted, the reason for the statewide policy favoring arbitration is that "[t]he fundamental premise upon which this policy is grounded is the laudable goal of providing a relatively quick and inexpensive resolution of contractual disputes by avoiding the expense and delay of extended court proceedings." *Batten v. Howell*, 300 S.C. 545, 547, 389 S.E.2d 170, 171 (Ct. App. 1990) (quoting *Trident Tech. College v. Lucas & Stubbs, Ltd.*, 286 S.C. 98, 104, 333

S.E.2d 781, 785 (1985)) (internal quotation marks omitted). In addition to the general benefits that the Decedent received as a third-party beneficiary of the Arbitration Agreement, the agreement itself provides benefits for the Decedent. For example, under the agreement, the Facility agrees to compensate the arbitration service for up to five (5) days of hearing costs on behalf of both parties, thereby saving the Decedent a significant amount of money. (R. p. 82, ¶ G). Therefore, the Decedent is a third-party beneficiary of the Arbitration Agreement itself, just as she is the third-party beneficiary of the other admissions documents, and the Arbitration Agreement is binding on the Decedent.

Finally, even if the Decedent was not a third-party beneficiary of the Arbitration Agreement, the agreement is still binding on her Estate. Andrew Davis, one of the Estate's beneficiaries, signed a binding Arbitration Agreement with the Facility, agreeing to send all disputes regarding his mother's care to arbitration. (R. pp. 80-84). Thus, Andrew Davis' claims are subject to arbitration. As the claims of the other beneficiaries of the Estate are inextricably intertwined with Davis' claims and the members of the group share a close relationship, the Arbitration is binding as to the Estate. *See Long v. Silver*, 248 F.3d 309, 320-21 (4th Cir. 2001) *overruled on other grounds by Hertz Corp. v. Friend,* 559 U.S. 77 (2010) (holding that the "the facts and claims against the Corporation and its shareholders are so closely intertwined that [Plaintiff's] claims against the non-signatory shareholders of the Corporation are properly referable to arbitration even though the shareholders are not formal parties to the 1972 Agreement [containing the arbitration clause]"); *Sunkist Soft Drinks, Inc. v. Sunkist Growers, Inc.*, 10 F.3d 753, 757 (11th Cir. 1993)) *overruled on other grounds by Arthur Andersen, LLP v. Carlisle*, 556 U.S. 624, 129 S.Ct. 1896, 173 L. Ed. 2d 832 (holding that where entities have a "close relationship," the claims have a close relationship to the contract containing the arbitration

agreement, and the claims are "intimately founded in and intertwined with the underlying contract obligations," a non-signatory cannot avoid arbitration). Therefore, the Plaintiff's claims are subject to arbitration.

**d. The trial court erred in concluding that the Plaintiff is not equitably estopped from denying an agency relationship between Decedent and Andrew Davis.**

The trial court also erred in holding that that the Plaintiff was not estopped from denying the agency relationship between Andrew Davis and his mother, so that the Estate is bound by the Arbitration Agreement. The Court of Appeals has held that a nonsignatory can be bound by an arbitration provision within a contract executed by other parties. *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 288-89, 733 S.E.2d 597, 600-01 (Ct. App. 2012) ("Well-established common law principles dictate that in an appropriate case a nonsignatory can enforce, or be bound by, an arbitration provision within a contract executed by other parties.") (citing *Int'l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411, 416-17 (4th Cir. 2000)). These common law principles include agency and estoppel, at issue here, among others. *Pearson*, 400 S.C. at 289-90, 733 S.E.2d at 601. "Equitable estoppel precludes a party from asserting rights he otherwise would have had against another when his own conduct renders assertion of those rights contrary to equity." *Int'l Paper*, 206 F.3d at 417-18 (citation and internal quotation marks omitted). "A nonsignatory is estopped from refusing to comply with an arbitration clause 'when it receives a direct benefit from a contract containing an arbitration clause.'" *Id.* (quoting *Am. Bureau of Shipping v. Tencara Shipyard S.P.A.*, 170 F.3d 349, 353 (2d Cir. 1999)). "Generally, these cases involve non-signatories who, during the life of the contract, have embraced the contract despite their non-signatory status but then, during litigation, attempt to repudiate the arbitration clause in the contract." *E.I. DuPont de Nemours & Co. v. Rhone Poulenc Fiber & Resin Intermediates, S.A.S.*, 269 F.3d 187, 200 (3d Cir. 2001) (citing *Tencara Shipyard*, 170 F.3d at 353 (finding non-

signatory derived benefit from contract and could not avoid the arbitration clause contained therein)). As noted by the Federal District Court in *Jackson v. Iris.com*:

> [A] party may not rely on the contract when it works to its advantage, and repudiate it when it works to its disadvantage. . . . [W]here . . . a signatory seeks to enforce an arbitration agreement against a non-signatory, the doctrine estops the non-signatory from claiming that he is not bound to the arbitration agreement when he receives a direct benefit from a contract containing an arbitration clause.

524 F. Supp. 2d 742, 749-50 (E.D. Va. 2007) (citing *Hughes Masonry Co. v. Greater Clark Cnty. Sch. Bldg. Corp.*, 659 F.2d 836, 839 (7th Cir. 1981); *Int'l Paper*, 206 F.3d at 418; *Am. Bankers Ins. Grp. v. Long*, 453 F.3d 623, 628 (4th Cir. 2006); *R.J. Griffin & Co. v. Beach Club II Homeowners Ass'n*, 384 F.3d 157, 162 (4th Cir. 2004); *Tencara Shipyard*, 170 F.3d at 353 (holding nonsignatory was estopped from denying applicability of arbitration clause when nonsignatory received "direct benefits" from contract including lowered insurance rates and the ability to sail under the French flag)).

In the present case, Decedent accepted the benefits of all the agreements signed by her son, Andrew Davis. She was admitted to the Facility and began receiving medical care. She also became capable of enforcing the Arbitration Agreement against the Facility in the event she had a complaint or issue. Andrew Davis executed numerous documents benefitting Decedent as part of her admission to the Facility. (R. pp. 65-114). The Estate is not free to pick and choose which parts of her Admission Agreement it wants to enforce and those it does not. Factually, Mr. Davis agrees that he believed he had the authority to sign the paperwork. When asked specifically if he signed the paper work on behalf of his mother, Mr. Davis stated "I probably did" and that he remembered doing so. (R. p. 290, ll. 3-7). Also, when asked, he stated that his mother was "all right with [him] signing documents for her." (R. p. 291, ll. 2-4).

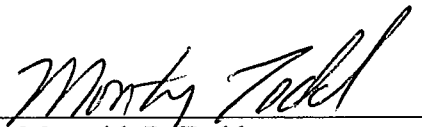
Finally, Andrew Davis represented in the contract itself that he was authorized to sign it. ("***If this Agreement is signed by the Patient/Representative's representative, that individual represents he or she is authorized and has no reason to believe that the Patient/Resident would not have signed this Agreement if he or she were competent and able to do so.***") (R. p. 81, ¶ C) (emphasis added). His sister, the Plaintiff in this action, was present while the agreements were signed and made no effort to repudiate her brother's representations that he was authorized to sign the agreements on his mother's behalf. (R. p. 300-304; R. p. 289, l. 20 – p. 290, l. 10). Now, however, Plaintiff seeks to repudiate these agreements on the basis that her brother was not authorized to sign them on his mother's behalf. The Plaintiff should be estopped from taking this contrary position. Additionally, as discussed in section c, *supra*, the very last sentence of the agreement notes that in signing the Agreement, the Patient/Resident Representative binds both the Patient/Resident and the Patient/Resident Representative. Andrew Davis, Plaintiff Thompson, and the Estate should be estopped from denying that Mr. Davis had the authority to sign the agreement, or that they are bound by it, as it is undisputed they believed he had the authority, represented he had the authority, and allowed the Decedent to benefit from all of the documents executed at admission.

## Conclusion

For the reasons set forth herein, the Court of Appeals should reverse the trial court's decision and remand the matter to the trial court for the entry of an order compelling arbitration.

Respectfully Submitted,

SOWELL GRAY STEPP & LAFFITTE, LLC

BY: 

Monteith P. Todd
J. Michael Montgomery
Robert E. Horner
Alexander E. Davis
1310 Gadsden Street
Post Office Box 11449
Columbia, SC 29211
Telephone: (803) 929-1400

Attorneys for Appellants

March 4, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
MAR 0 4 2015
SC Court of Appeals

---

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Circuit Court Judge

---

Case No. 2013-CP-46-2930
Appellate Case No. 2014-001624

---

Mae Ruth Davis Thompson, Individually and as the appointed Personal Representative of the Estate of Eula Mae Davis, Deceased . . . . . .Respondent,

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 . . . . . Appellants.

---

**CERTIFICATE OF COUNSEL**

---

The undersigned hereby certifies that this Final Brief complies with Rule 211(b), SCACR.

SOWELL GRAY STEPP & LAFFITTE

BY: _____

Monteith P. Todd
J. Michael Montgomery
Robert E. Horner
Alexander E. Davis
Sowell Gray Stepp & Laffitte, LLC
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
Phone: (803) 929-1400
*Attorneys for Appellants*

March 4, 2015

RECEIVED
MAR 0 4 2015
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

---

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Circuit Court Judge

---

Case No. 2013-CP-46-2930
Appellate Case No. 2014-001624

---

Mae Ruth Davis Thompson, Individually and as the appointed Personal Representative of the Estate of Eula Mae Davis, Deceased . . . . . .Respondent,

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 . . . . . Appellants.

---

PROOF OF SERVICE

---

I, the undersigned Legal Assistant, of the law offices of Sowell Gray Stepp & Laffitte, LLC, attorneys for Appellants, do hereby certify that I have served all counsel in this action with a copy of the Final Brief of Appellants by mailing a copy of same to counsel via United States Mail, postage prepaid, at the following address(es):

Counsel Served:

John G. Felder, Jr., Esquire
McGowan, Hood & Felder
1517 Hampton Street
Columbia, SC 29201

Robin C. Owens

Robin C. Owens, Legal Assistant

March 4, 2015