

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM BAMBERG COUNTY  
Court of Common Pleas

OCT 13 2015

SC Court of Appeals

Clifton Newman, Circuit Court Judge

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Case No. 2014-CP-05-17 and 19  
**Appellate Case No. 2015-001183**

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Camille Hodge, Jr., as Personal Representative of the Estate  
of Mable Hodge, Deceased ..... Respondent,

v.

UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County  
Nursing Center; United Health Services of South Carolina, Inc.;  
United Health Services, Inc.; UHS-Pruitt Holdings, Inc. a/k/a  
UHS-Pruitt Corp.; R. Dale Padgett, MD, PA; and Dr. Herbert A. Moskow,

of Whom UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County  
Nursing Center; United Health Services of South Carolina, Inc.;  
United Health Services, Inc.; and UHS-Pruitt Holdings, Inc. a/k/a  
UHS-Pruitt Corp. are ..... Appellants.

Camille Hodge, Sr., ..... Respondent,

v.

UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County  
Nursing Center; United Health Services of South Carolina, Inc.;  
United Health Services, Inc.; UHS-Pruitt Holdings, Inc. a/k/a  
UHS-Pruitt Corp.; R. Dale Padgett, MD, PA; and Dr. Herbert A. Moskow,

of Whom UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County  
Nursing Center; United Health Services of South Carolina, Inc.;  
United Health Services, Inc.; and UHS-Pruitt Holdings, Inc. a/k/a  
UHS-Pruitt Corp. are ..... Appellants.

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**FINAL BRIEF OF APPELLANTS**

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

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### ISSUES ON APPEAL

- III. Did the trial court err in refusing to compel the deposition of Camille Hodge, Sr.?
- IV. Did the trial court err in denying the Defendants' Motion to Dismiss and Compel Arbitration or, Alternatively, Compel Arbitration and Stay Proceedings?
  - a. The trial court erred in relying on the unpublished opinion *Scott v. Heritage Healthcare of Estill, LLC*, Op. No. 2014-UP-317 (S.C. Ct. App. filed Aug. 6, 2014).
  - b. The trial court erred in finding there was no common law agency between the Decedent and her husband, Camille Hodge, Sr.
  - c. The trial court erred in finding that the Decedent was not a third-party beneficiary of the agreement.
  - d. The trial court erred in concluding that the Plaintiffs are not equitably estopped from denying an agency relationship between Decedent and Camille Hodge, Sr.

## STATEMENT OF THE CASE

This appeal arises out of a lawsuits filed on February 7, 2014 and February 10, 2014 by Camille Hodge, Jr., as Personal Representative of the Estate of Mable Hodge, and Camille Hodge, Sr., individually, respectively. (R. p. 71); (R. p. 81). Plaintiffs sued UniHealth Post-Acute Care of Bamberg, LLC, f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; and United Health Services, Inc.; UHS-Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp. (collectively referred to herein as “Defendants”)<sup>1</sup>, as well as R. Dale Padgett, MD, PA and Dr. Herbert A. Moskow.

The Decedent, Mable Hodge, entered UniHealth Post Acute Care – Bamberg (“UPAC- Bamberg” or “the Facility”) rehabilitation facility on or about August 31, 2010. (R. p. 76, ¶16). Prior to her admission, Ms. Hodge’s husband, Camille Hodge, Sr., executed various documents related to her admission on Ms. Hodge’s behalf, including admissions paperwork containing an arbitration agreement. (R. pp. 167-213). These documents were executed by Mr. Hodge, Sr. as the representative of Ms. Hodge. This was not unusual, as Ms. Hodge allowed Mr. Hodge, Sr., to sign medical documents for her on other occasions as well. (R. pp. 262, 265-280); (R. p. 371, ll. 14-22). Ms. Hodge stayed at the facility for over three weeks without objecting to her admission.

It is alleged that beginning on September 20, 2010, Ms. Hodge complained to staff at UPAC-Bamberg that her back was hurting and that she was unable to stand or move her legs. This condition allegedly worsened over the following days until the morning of

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<sup>1</sup> Dr. Dale Padgett, PA and Dr. Moskow did not have Arbitration Agreements with the plaintiff and have not appealed the trial court’s decision regarding arbitration. Therefore, the term “Defendants” in this case will be used to refer only to UniHealth Post-Acute Care of Bamberg, LLC, f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; and United Health Services, Inc.; and UHS-Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp.

September 24, 2010, when Ms. Hodge was no longer able to feel her legs or arms and was unable to stand. She was ultimately transported to Richland Memorial Hospital with paralysis from the waist down. (R. pp. 77-78, ¶¶17-22). Plaintiffs assert that the Defendants' failure to evaluate, test, diagnose, and treat Ms. Hodge's conditions was the cause of her paralysis and other complications. (R. p. 78, ¶24).

Plaintiffs Camille Hodge, Jr., as Personal Representative of the Estate of Mable Hodge, and Camille Hodge, Sr., individually, commenced these actions by filing a Notice of Intent to Sue on August 21, 2013 (R. p. 17). Plaintiff Hodge, Jr. filed his Summons and Complaint against the Defendants on February 7, 2014. (R. p. 71). Plaintiff Hodge, Sr. filed a separate Complaint on February 10, 2014. (R. p. 81).

On March 18, 2014, the Defendants filed their Answers to the Complaint of Camille Hodge, Jr., expressly reserving their right to be heard on their Motion to Dismiss and Compel Arbitration or, Alternatively to Compel Arbitration and Stay Proceedings. (R. p. 91); (R. p. 98); (R. p. 104); (R. p. 110). Contemporaneously, Defendants filed a Motion to Dismiss and Compel Arbitration or, Alternatively to Compel Arbitration and Stay Proceedings. (R. p. 141). On March 27, 2014, the Defendants filed their Answers to the Complaint of Camille Hodge, Sr., expressly reserving their right to be heard on their Motion to Dismiss and Compel Arbitration or, Alternatively to Compel Arbitration and Stay Proceedings. (R. p. 116); (R. p. 123); (R. p. 129); (R. p. 135). Again, Defendants contemporaneously filed a Motion to Dismiss and Compel Arbitration or, Alternatively to Compel Arbitration and Stay Proceedings with regard to the allegations in the Camille Hodge, Sr. Complaint. (R. p. 146).

Following the filing of their Answers and Motions, Defendants requested that they be allowed to depose Mr. Hodge, Sr. on topics solely related to the arbitration issue. After Plaintiffs objected to this request, Defendants filed their Motion to Compel the deposition of Mr. Hodge, Sr. on April 15, 2014. (R. p. 215).

On February 20, 2015, the Honorable Clifton Newman held a hearing on the Defendants' Motion to Dismiss and Compel Arbitration or, Alternatively to Compel Arbitration and Stay Proceedings in both cases, as well as the Defendants' Motion to Permit Deposition of Camille Hodge Sr. on Issues Related to the Arbitration Agreement and several other outstanding motions that are not at issue in this appeal. On March 15, 2015, the trial court filed its Order Denying Defendants' Motion to Dismiss or Alternatively to Compel Arbitration. (R. p. 1). That same day, the trial court filed its Order Denying Defendants' Motion to Compel Deposition of Camille Hodge, Sr. (R. p. 13). The Defendants timely filed a Motion to for Reconsideration of the denial of their motions. (R. p. 282; R. p. 304). On May 4, 2015, the trial court denied the Defendants Motion for Reconsideration. (R. p. 15). The Defendants filed their Notice of Appeal with the Court of Appeals on June 2, 2015. (R. p. 326; R. p. 346) The Defendants served the Notice of Appeal on the Respondent on June 2, 2015. 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. *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 379, 759 S.E.2d 727, 731 (2014). Nevertheless, a circuit court's factual findings will not be reversed on appeal if the findings are reasonably supported by the evidence. *York v. Dodgeland of Columbia, Inc.*, 406 S.C. 67, 78, 749 S.E.2d 139, 144 (Ct. App. 2013). 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). “[T]he party resisting arbitration bears the burden of proving that the claims at issue are unsuitable for arbitration.” *Dean*, 408 S.C. at 379, 759 S.E.2d at 731 (citation omitted).

A trial court’s “rulings on discovery matters will not be disturbed on appeal absent a clear abuse of discretion.” *Dunn v. Dunn*, 298 S.C. 499, 502, 381 S.E.2d 734, 735 (1989) (citing *Hook v. Rothstein*, 281 S.C. 541, 316 S.E.2d 690) (Ct. App. 1984)). Abuse of discretion occurs “where the appellant shows that the conclusion reached by the lower court was without reasonable factual support, resulted in prejudice to the right of appellant, and,

therefore, amounted to an error of law. *Dunn*, 298 S.C. at 499, 381 S.E.2d at 735 (citing *Darden v. Witham*, 263 S.C. 183, 209 S.E.2d 42 (1974)).

**I. The trial court erred in refusing to compel the deposition of Camille Hodge, Sr., as the determination of the enforceability of the arbitration agreement involved issues of fact.**

As an initial matter, the trial court erred in refusing to compel the deposition testimony of Camille Hodge, Sr. The determination of whether or not to compel arbitration in this case revolves around questions of agency, third-party beneficiary law, and equitable estoppel. Because all these issues involve questions of fact, the trial court abused its discretion in refusing to allow Defendants to depose Mr. Hodge, Sr. on the issues related to arbitration prior to the court's ruling on arbitration.

In South Carolina, the existence of an agency relationship is a question of fact. *Am. Fed. Bank FSB v. Number One Main Joint Venture*, 321 S.C. 169, 173-74, 467 S.E.2d 439, 442 (1996) (citing *Gamble v. Stevenson*, 305 S.C. 104, 406 S.E.2d 350 (1991)). Similarly, the determination of a party's status as a third-party beneficiary is a question of fact. *See Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005) (upholding a grant of summary judgment because there was no evidence appellant was an intended third-party beneficiary). Equitable estoppel also often involves questions of fact. *See Gaymon v. Richland Mem'l Hosp.*, 327 S.C. 66, 68, 488 S.E.2d 332, 333 (1997) (holding that "equitable estoppel may involve a question of fact for the fact-finder").

In the instant case, the Defendants should have been allowed to depose Camille Hodge, Sr. on the issues of agency, third-party beneficiary, and equitable estoppel. In its Order Denying Defendants' Motion to Dismiss or, Alternatively, to Compel Arbitration and Stay Proceedings, the Court held that there was an "absence of any evidence that Mable

Hodge gave her husband express authority to act for her.” (R. p. 8). Similarly, the trial court held “[i]t is essential to the doctrine of apparent agency that the purported principal has in some fashion represented or ‘held out’ the purported agent as having been given authority by the principal.” (R. p. 9). The trial court concluded that Defendants “presented no such evidence to the Court.” *Id.*

Yet the trial court refused to allow Defendants to depose the alleged agent, Camille Hodge, Sr., on the issues related to arbitration and the Decedent’s admission to the Facility. Essentially, the trial court held that the Defendants failed to present sufficient factual support for their agency claims while denying them the opportunity to procure that evidence. There was evidence in this case that Ms. Hodge had authorized her family members, including her husband, to make medical decisions on her behalf, as Mr. Hodge Sr. had signed numerous medical documents for her on other occasions. (R. pp. 262, 265-280); (R. p. 371, ll. 14-22). The Defendants should be allowed to inquire into the scope of Mr. Hodge, Sr.’s authority to act as an agent on his wife’s behalf, and it was abuse of discretion for the trial court to prevent this inquiry. Therefore, the trial court’s Order Denying Defendants’ Motion to Compel Deposition must be reversed.

**II. The trial court erred in denying the Defendants’ Motion to Dismiss and Compel Arbitration or, Alternatively, Compel Arbitration and Stay Proceedings.**

The trial court also erred in failing to compel arbitration in this matter. The court based its decision on an erroneous interpretation of an unpublished Court of Appeals opinion, while ignoring the well-settled common law doctrines of agency, third-party beneficiary, and equitable estoppel. Therefore, the trial court’s Order Denying Defendants’

Motion to Dismiss or, Alternatively, to Compel Arbitration and Stay Proceedings must be reversed.

**a. The trial court erred in relying on the unpublished opinion *Scott v. Heritage Healthcare of Estill, LLC*, Op. No. 2014-UP-317 (S.C. Ct. App. filed Aug. 6, 2014).**

The trial court based its decision largely on a three-factor test created from the unpublished Court of Appeals opinion *Scott v. Heritage Healthcare of Estill, LLC*, Op. No. 2014-UP-317 (S.C. Ct. App. filed Aug. 6, 2014). The three factors used by the trial court in determining not to compel arbitration were: (1) Ms. Hodge was competent at the time Mr. Hodge, Sr. signed the arbitration agreement on her behalf but UPAC-Bamberg failed to obtain Ms. Hodge's signature; (2) Mr. Hodge, Sr. had no health care power of attorney with regard to Ms. Hodge; and (3) UPAC-Bamberg's "Arbitration Checklist" instructs that if a patient is competent then the Facility's employees should obtain the patient's signature on the arbitration agreement. (R. pp. 6-7). The Court concluded "that these three factors prevent UPAC[-Bamberg] from compelling arbitration pursuant to the Arbitration Agreement under the facts of this case." *Id.* This conclusion was in error.

Initially, the trial recognizes in its Order that the *Scott* opinion is unpublished and has no precedential value. (R., p. 5 n.3). *See also* Rule 268(d)(2), SCACR ("Memorandum opinions and unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved."). Nevertheless, it relies on the opinion as "persuasive" and utilizes a three-factor test constructed from statements in the unpublished *Scott* opinion. Not only does the unpublished opinion have no precedential value, the "test" utilized by the trial court is not meant to be construed as such. The *Scott* opinion merely sets forth its decision to affirm the lower court decision as a series of brief

factual statements. Furthermore, the lengthy string cites following the portion of the opinion quoted in the trial court's order reveal that the Court of Appeals considered additional facts not set forth in the quoted portion of the unpublished opinion. *Scott*, Op. No. 2014-UP-317 at \*2.

Further, the test relied on by the trial court ignores established agency, third-party beneficiary, and equitable estoppel law as discussed at length in sections b-d, *infra*. For example, under the trial court's test, even where a patient has identified another person as her agent and expressly authorized that individual to sign documents on her behalf, the agency claim would still fail because the patient was competent and had no healthcare power of attorney. Not only is this holding contrary to South Carolina agency law, it would also run afoul of federal arbitration law, which requires that arbitration agreements be treated the same as all other contracts. *See, e.g. Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 24 (1991) (noting that the purpose of the FAA "was to reverse the longstanding judicial hostility to arbitration agreements . . . and to place arbitration agreements on the same footing as other contracts"); *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 67 (2010) ("[t]he FAA thereby places arbitration agreements on an equal footing with other contracts"). The trial court's test would mean that arbitration contracts would be declared invalid under the same circumstances that other contracts would be enforceable under the law of agency, third-party beneficiary, and equitable estoppel, a result expressly prohibited by federal law. Therefore, the trial court's reliance on a test created from the factual statements set forth in *Scott* is misplaced, and the court's decision must be reversed.

**b. The trial court erred in finding there was no common law agency between the Decedent and her husband, Camille Hodge, Sr.**

The trial court erred in holding that the Decedent's husband, Camille Hodge, Sr., was not authorized to sign his wife into UPAC-Bamberg. 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). Mr. Hodge had taken over many of his wife's medical affairs without objection by her and thus had become an 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. 262, 265-280); (R. p. 371, ll. 14-22). The Defendants relied upon Mr. Hodge, Sr.'s representations that he was authorized to sign Decedent into the Facility. Ms. Hodge permitted him to sign contracts on her behalf on this occasion and on prior occasions.

The trial court 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, Ms. Hodge allowed, passively or otherwise, her husband Mr. Hodge, Sr., to not only sign her into the Facility, but also to handle other medical affairs for her. There is no evidence of any objection to Mr. Hodge, Sr. signing the UPAC-Bamberg admissions documents on behalf of Ms. Hodge. Thus, Mr. Hodge, Sr. had the apparent authority to handle his wife's medical affairs, 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. Hodge’s 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).

In its Order, the trial court held that the admissions agreement and the arbitration agreement were separate contracts. Thus, even though Ms. Hodge received benefits from

her admission to the Facility, these benefits were based on a contract that was separate from the arbitration agreement signed by Mr. Hodge, Sr. (R. pp. 9-10). This holding was error.

Under the common law doctrine of merger:

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.*

*Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 355, 755 S.E.2d 450, 455 (2014) (citing *Klutts Resort Realty, Inc. v. Down Round Dev. Corp.*, 268 S.C. 80, 88, 232 S.E.2d 20, 24 (1977)) (emphasis added).

The trial court relied on the *Coleman* decision for its holding that the admission agreement and arbitration agreement signed by Mr. Hodge, Sr. were separate and did not merge. 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 in *Coleman* 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 do not contain an 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 Mr. Hodge, Sr. do not contain an anti-merger clause and 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. 175) (emphasis added). By its plain language, the admission agreement treats the other signed documents as exhibits which are part of the admission contract. Further, the arbitration agreement, like the other documents signed in conjunction with Ms. Hodge’s

admission to the facility, is stamped on the bottom left corner of each page as part of the "Admission Packet-South Carolina Healthcare Centers." (R. pp. 179-183). (*See also* R. pp. 167-178, 184-213). This language further evinces the intent of the parties to treat all the admissions documents, including the arbitration agreement, as a single agreement.

Because all these documents were executed at the same time (August 30, 2010), by the same parties (UPAC-Bamberg and Mr. Hodge, Sr. on behalf of Ms. Hodge), 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. 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. Because Ms. Hodge's care was the essential purpose of all the admissions agreement, including the arbitration agreement, she was the third-party beneficiary of the agreement, including the arbitration agreement, and she (and her estate) are bound by the arbitration agreement. Therefore, the trial court erred in denying the defendant's Motion to Compel Arbitration.

Even assuming that the arbitration agreement is separate from the other admissions documents signed by Mr. Hodge, Sr. on behalf of his wife, which Defendants deny, there is a valid arbitration agreement between Camille Hodge, Sr. and UPAC-Bamberg, and the Decedent was the third-party beneficiary of that specific document. By its express 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. pp. 179, 183). Thus, even if the arbitration agreement is deemed to be a separate agreement, the agreement is valid

as to Mr. Hodge, Sr. and, therefore, a contract exists between Mr. Hodge, Sr. 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. 181, ¶ 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. Camille Hodge, Sr., 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. 179-183) Thus, Mr. Hodge’s claims are subject to arbitration. As the claims of the other beneficiaries of the Estate are inextricably intertwined with Mr. Hodge’s 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).

Further, Mr. Hodge, Sr.’s own claims must be compelled to arbitration, as he is a signatory to the arbitration agreement and his claims arise out of the care and treatment of Ms. Hodge. At the hearing on these motions, the Court indicated that it was issuing its opinion to apply to both the claims of the estate and Mr. Hodge, Sr.’s claim, individually. However, the trial court held that none of the claims were subject to arbitration. Even if the estate’s claims are not subject to arbitration, which Defendants deny, Mr. Hodge’s must still be compelled to arbitration as an individual signatory to the agreement. Although Mr. Hodge, Sr.’s claim is independent of the estate’s claims, because the claims are so intertwined, the estate’s claims should be compelled to arbitration as well. Therefore, the Plaintiffs’ claims are subject to arbitration, and the Order of the trial court must be reversed.

**d. The trial court erred in concluding that the Plaintiffs are not equitably estopped from denying an agency relationship between Decedent and Camille Hodge, Sr.**

The trial court also erred in holding that that the Plaintiffs were not estopped from denying the agency relationship between Mr. Hodge and his wife, 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)).

This equitable estoppel is a concept separate from the concept of estoppel discussed by *Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 755 S.E.2d 450 (2014). The *Coleman* decision was premised entirely on the idea of the existence or non-existence of the common law doctrine of merger. However, as noted above, the common law doctrine of equitable estoppel is a separate doctrine which prevents a party from accepting the benefits of an agreement and later attempting to repudiate that agreement. The continued validity of this common law doctrine has been recognized in the arbitration context subsequent to the *Coleman* decision. See *THI of S.C. at Magnolia Manor-Inman, LLC v. Gilbert*, 2015 WL 1268185 at \*2 (D.S.C. Mar. 19, 2015). In *THI*, the court explicitly rejected the defendant's claim that the *Coleman* decision operates to prohibit an agreement from binding a personal representative of the estate of a nursing home patient under

common law principles of third-party beneficiary doctrine and equitable estoppel. *Id.* As the *THI* court held, “*Coleman’s* ‘rejection’ of an estoppel argument” based on the explicit separateness of the arbitration agreement and admissions agreement in that case does not prevent “the benefits of admission [from] operat[ing] to stop the defendant from rejecting arbitration now.” *Id.* at \*2.

In the present case, Decedent was admitted to the Facility, began receiving medical care, and accepted the benefits of all the agreements signed by her husband, Mr. Hodge, Sr. She also became capable of enforcing the arbitration agreement against the Facility in the event she had a complaint or issue. Mr. Hodge executed numerous documents benefitting Decedent as part of her admission to the Facility. (R. pp. 167-213). The Plaintiffs are not free to pick and choose which parts of her admission agreement they wish to enforce and those they do not.

Finally, Mr. Hodge, Sr. 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. 180) (emphasis added). The Decedent, who stayed at the Facility for several weeks, made no effort to repudiate her husband’s representations that he was authorized to sign the agreements on her behalf. Similarly, there is no evidence that Plaintiff Camille Hodge, Jr., who was involved in his mother’s healthcare, made any attempt to repudiate the agreement signed by Mr. Hodge, Sr. Now, however, Plaintiff Camille Hodge, Jr. seeks to repudiate these agreements on the basis that his father was not authorized to sign them on his mother’s behalf. The Plaintiff should be estopped from

taking this contrary position. Mr. Hodge, Sr., Plaintiff Hodge, Jr., and the Estate should be estopped from denying that Mr. Hodge, Sr. had the authority to sign the agreement, or that they are bound by it, as it is undisputed he 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. In the alternative, the Court of Appeals should reverse the trial court's decision and instruct the trial court to enter an order compelling the deposition testimony of Camille Hodge, Sr., so that appropriate factual inquiry may be made into the circumstances surrounding his alleged agency.

SOWELL GRAY STEPP & LAFFITTE, LLC

BY: 

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

Attorneys for Appellants

October 13, 2015

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

RECEIVED

APPEAL FROM BAMBERG COUNTY  
Court of Common Pleas

OCT 13 2015

Clifton Newman, Circuit Court Judge

SC Court of Appeals

Case No. 2014-CP-05-17 and 19  
**Appellate Case No. 2015-001183**

Camille Hodge, Jr., as Personal Representative of the Estate  
of Mable Hodge, Deceased ..... Respondent,

v.

UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County  
Nursing Center; United Health Services of South Carolina, Inc.;  
United Health Services, Inc.; UHS-Pruitt Holdings, Inc. a/k/a  
UHS-Pruitt Corp.; R. Dale Padgett, MD, PA; and Dr. Herbert A. Moskow,

of Whom UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County  
Nursing Center; United Health Services of South Carolina, Inc.;  
United Health Services, Inc.; and UHS-Pruitt Holdings, Inc. a/k/a  
UHS-Pruitt Corp. are ..... Appellants.

Camille Hodge, Sr., ..... Respondent,

v.

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Nursing Center; United Health Services of South Carolina, Inc.;  
United Health Services, Inc.; and UHS-Pruitt Holdings, Inc. a/k/a  
UHS-Pruitt Corp. are ..... Appellants.

CERTIFICATE OF COUNSEL

Counsel for Appellants certifies that the Final Brief of Appellants complies with Rule 211(b) of the South Carolina Appellate Court Rules.

BY:   
\_\_\_\_\_  
Monteith P. Todd  
Robert E. Horner  
J. Michael Montgomery  
Sowell Gray Stepp & Laffitte, LLC  
1310 Gadsden Street  
Post Office Box 11449  
Columbia, SC 29211  
(803) 929-1400  
*Counsel for Appellants*

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**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 C. Moylan, III, Esquire  
Meliah Bowers Jefferson, Esquire  
Wyche, PA  
801 Gervais Street, Suite B  
Post Office Box 12247  
Columbia, SC 29211

Bakari T. Sellers, Esquire  
J. Preston Strom, Esquire  
Strom Law Firm, LLC  
2110 N. Beltline Boulevard  
Columbia, SC 29204

*Counsel for Respondent*

James D. Nance, Esquire  
Nance, McCants & Massey  
218 Newberry Street, SW  
Post Office Box 2881  
Aiken, SC 29802

*Counsel for R. Dale Padgett, MD, PA and  
Dr. Herbert A. Moskow*

October 13, 2013



Robin C. Owens, Legal Assistant

October 13 2015

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SC Court of Appeals

**VIA HAND DELIVERY**

Honorable Jenny Abbott Kitchings  
Clerk, SC Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

RE: Camille Hodge, Jr., as Personal Representative of the Estate  
Of Mable Hodge v. UniHealth Post-Acute Care of Bamberg  
f/k/a Bamberg County Nursing Center; United Health Services  
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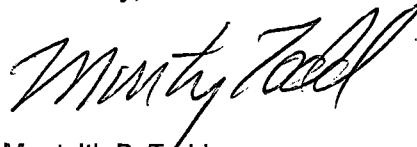
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and Dr. Herbert A. Moskow  
Appellate Case No. 2015-001183 (Consolidated for Appeal)  
Our File No. 5593/1530

Dear Ms. Kitchings:

I enclose for filing the originals (unbound) and fifteen copies each of the Final Brief of Appellants and Final Reply Brief of Appellants in the above-referenced matter. Please return a clocked-in copy of same to me for our records.

By copy of this letter to counsel shown below, we are serving a copy of each of our briefs upon them by mail. Thank you for your assistance.

Yours truly,



Monteith P. Todd

MPT:rc0  
Enclosures

cc: John C. Moylan, III, Esquire  
Meliah Bowers Johnson, Esquire  
James Nance, Esquire  
Bakari Sellers, Esquire  
J. Preston Strom, Esquire