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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Circuit Court Judge

RECEIVED

MAR 17 2016

SC Court of Appeals

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.

PETITION FOR REHEARING

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Pursuant to Rule 221(a), SCACR, Appellants, 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 AcuteCare-RockHill, LLC d/b/a UniHealth Post Acute Care-Rock Hill (hereinafter “Appellants” or “Pruitt”),¹ submit this Petition for Rehearing of this Court’s opinion filed March 2, 2016, which affirmed the circuit court’s Order denying Appellants’ Motion to Compel Arbitration. *Thompson v. Pruitt Corp.*, Op. No. 5384 (S.C. Ct. App. filed Mar. 2, 2016).

The grounds for this petition are two-fold. First, under the common law doctrine of merger, the admissions agreement merged with the arbitration agreement in this case, creating a single, enforceable contract. Second, even in the absence of merger, the common law contract doctrines of agency, third-party beneficiary, and equitable estoppel bind Respondent to the arbitration agreement at issue, as has been repeatedly found by both state and federal courts interpreting these agreements under the Federal Arbitration Act (“FAA”). Therefore, the Court should reconsider its decision.

I. The admission agreement and arbitration agreement do not have indicia of separateness that prevent the merger of the documents

The common law doctrine of merger treats as one contract all “instruments . . . executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction.” *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)). In the instant case, the only evidence is that all parties understood the admission

¹ Appellants will refer to UniHealth Post Acute Care – Rock Hill rehabilitation facility as “the Facility.”

agreement and arbitration agreement to be part of the same agreement *at the time the documents were executed*.

There is no ambiguity in the agreement itself. The mere fact that the arbitration agreement was revocable within a thirty (30) day period does not indicate its “separatedness” from the admission agreement. The admission agreement was voluntary as well and nothing prevented the decedent from leaving the Facility at any time, or her children from taking her out of the Facility. There is no difference between disclaiming an agreement in this fashion and disclaiming an agreement in writing. Both were purely voluntary. Indeed, the admission agreement also gave the decedent the power to revoke and changes or additions to the admission agreement within the same thirty (30) day period prescribed by the arbitration agreement. (R. p. 76).

In fact, the thirty (30) day revocation period referred to in *Coleman* was nothing more than, an additional consideration supportive of the Supreme Court’s prior finding that “[o]n its face, this [anti-merger] clause recognizes the ‘separatedness’ of the AA and the admission agreement, not a merger of the two (2) contracts.” *Coleman*, 407 S.C. at 355, 755 S.E.2d at 455. Nothing in the *Coleman* opinion suggests that the mere presence of a revocability clauses for the arbitration agreement, standing alone, supports a finding of non-merger. Moreover, only a few months after the *Coleman* decision, the Supreme Court examined an almost identical arbitration agreement and admissions agreement as in this case, which included the 30 day revocation and identical language that this court finds indicates “separateness.” *See Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371 (S.C. 2014). If this Court were correct in its analysis, then the Supreme Court would have explicitly held that the 30 day revocation period and other language relied on herein was dispositive in not enforcing the arbitration agreement.

Instead, the Court reversed decades of precedent in finding nursing home arbitration agreements enforceable and remanded the matter on issues of capacity and meeting of the minds. Further, the facts of *Dean* are analogous to this case wherein the daughter admitted her mother to the facility and lacked a power of attorney. The explicit concern of the Supreme Court on remand was not the lack of a power of attorney or even lack of merger under *Coleman* for that matter but whether the mother had capacity and should have signed the agreement herself. On remand, the circuit court found she did not have capacity and enforced the arbitration agreement based on the daughter's signature. This court's decision here is fundamentally in conflict with the outcome of *Dean*.

Instead, the facts in this case indicate the specific intention of the parties that the agreements merge. Unlike in *Coleman*, there is no anti-merger clause in this agreement, which never refers to the arbitration agreement separately from the admissions agreement. (R. p. 76) (“[t]his agreement *together with all exhibits* is the exclusive statement of the terms and conditions between the parties”). Rather, a caption on the lower left corner of the arbitration agreement identifies the documents as part of the “Admission Packet-South Carolina Healthcare Centers.” (R, pp. 80-84). This caption is similarly affixed to the admission agreement and the other admissions documents signed by Andrew Davis as the representative of his mother and demonstrates that all the documents in this admission packet should be considered together. (See, e.g., R. pp. 68-79; 85-114). Further, the contents of the arbitration agreement relate solely to the admission of Ms. Davis to the Facility, and “if there are any provisions in one instrument limiting, explaining, or otherwise affecting the provisions of another, they will be given effect between the parties so that the whole agreement as actually made may be effectuated.” *Klutts*, 268 S.C. at 88-89, 232 S.E.2d at 24.

Most importantly, Andrew Davis understood that the arbitration agreement he was signing was part of the admission agreement to the Facility. In his deposition testimony, Andrew Davis recalled signing the arbitration agreement and that he and a representative of the Facility “went through it, *as an admission document.*” (R. p. 292, ll. 5-7) (emphasis added). When asked if he remembered anything about signing the arbitration agreement, Mr. Davis testified that he “remember[ed] going through the process of filling out *the admission agreement.* Arbitration is a word that would stick to your mind, you know.” (R. p. 293, ll. 3-6) (emphasis added). Thus, Andrew Davis himself understood that the arbitration agreement was part of the admission agreement to the Facility.²

Further, “[i]t is the policy of this state and federal law to favor arbitration and any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration.” *Landers v. Fed. Dep. Ins. Corp.*, 402 S.C. 100, 109, 739 S.E.2d 209, 213 (2013) (internal quotation marks and citations omitted). In fact, “the Supreme Court has announced its ‘healthy regard for the federal policy favoring arbitration; and has explained that the Federal Arbitration Act . . . ‘establishes that, as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, *whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability.*’” *Am. Recovery Corp. v. Computerized Thermal Imaging, Inc.*, 96 F.3d 88, 92 (4th Cir. 1996) (quoting *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Co.*, 460 U.S. 1, 24-25 (1983))

² The Appellants assert that there was no ambiguity in the Admission Agreement regarding the meaning of the term “exhibits.” However, to the extent such an ambiguity exists, “where a contract is ambiguous, parol evidence may be admitted to supply the deficiency and establish the true intent.” *Skinner v. Elrond*, 308 S.C. 239, 244, 417 S.E.2d 599, 602 (Ct. App. 1992) (citing *U.S. Leasing Corp. v. Janicare, Inc.*, 294 S.C. 312, 364 S.E.2d 202 (Ct. App. 1988)). *See also Klutts*, 268 S.C. 80, 232 S.E.2d 20 (“it is the general rule parol evidence is admissible to show the true meaning of an ambiguous written contract”).

(emphasis added); *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 626 (1985) (when examining contract to arbitrate under the FAA “as with any other contract, the parties’ intentions control, *but those intentions are generously construed as to issues of arbitrability*”) (emphasis added). Therefore, federal law mandates that any uncertainty regarding whether to compel arbitration must be resolved *in favor of arbitration*, not against it. Thus, to the extent there is conflicting evidence, the Court should reconsider its decision and compel arbitration.

Finally, this issue is preserved for review. The circuit court expressly held that Adult Health Care Consent Act (“AHCCA”) applied to the case at hand, but that the Supreme Court decision in *Coleman* prohibited the application of the AHCCA to the arbitration agreement in this case. (R. p. 5). The Appellants argued in the circuit court that even if the circuit court interpreted *Coleman* in that fashion, other common law doctrines nevertheless mandated that Respondent was bound by the arbitration agreement.

In fact, in the quote cited by the Court in its opinion, Appellants were making the argument, which is discussed, *infra*, that the estoppel issue is actually a distinct issue from the issue of merger, and that the Appellants’ *estoppel argument* is not premised on merger but rather on more traditional considerations of equitable estoppel. (R.p. 280, l. 19 – p. 281, l. 6) (stating that “*as to the estoppel argument . . . [Coleman] just said their argument was premised upon the doctrine of merger, and since there was no merger, essentially they didn’t even have to address the estoppel issue*” and noting that Appellants estoppel argument is not premised on merger) (emphasis added). It has been the Appellants’ contention that the existence or absence of merger is not germane to the issue of whether or not the decedent could be bound to the

arbitration agreement under the principals of equitable estoppel.³ (See, Appellants' Final Brief, p. 6 n. 4). Thus, Appellants' statement in the lower court that their estoppel argument is not premised on merger does not prohibit Appellants from arguing that the AHCCA is applicable to this agreement, an issue that was raised and ruled on by the circuit court.⁴ See, e.g., *Staubes v. City of Folly Beach*, 339 S.C. 406, 529 S.E.2d 543 (2000) (holding that issue of negligence claim was properly preserved for review where it was argued and ruled on by the lower court even where it was not pled by Appellants and initially raised at hearing by Respondent). To the extent the Court disagrees, Appellants assert that where an issue is not preserved for review, it should not be reached by the appellate courts, and the Court should withdraw the portion of its opinion related to the issue of merger. See *Beverly S. v. Kayla R.*, 395 S.C. 399, 401, 718 S.E.2d 224, 225 (Ct. App. 2011) ("An appellate court will not consider an issue that has not been preserved for appellate review") (citation omitted).

II. The common law contract doctrines of agency, third-party beneficiary, and equitable estoppel bind Respondent to the arbitration agreement at issue

Arbitration must also be compelled based on the common law doctrines of agency, third-party beneficiary, and equitable estoppel, regardless of the issue of merger.

a. Agency

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

³ The circuit noted its own confusion at the discussion of merger under the heading "estoppel" in *Coleman*. (R. p. 280, l. 24).

⁴ While the Court of Appeals is not precluded from raising the issue of error preservation of its own volition, it should be noted that at oral argument Respondent agreed with Appellants that this issue had been properly preserved for review. See *Atl. Coast Builders and Contractors, LLC v. Lewis*, 398 S.C. 323, 332-33, 730 S.E.2d 282, 287 (2012) (Toal, C.J., concurring) (observing that courts are not precluded from raising preservation issues but noting that doubts should be resolved in favor of preservation and "the silence of an adversary [on the preservation issue] should serve as an indicator to the court of the obscurity of the purported procedural flaw").

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). There is nothing in the record that would demonstrate that Andrew Davis was confined to acting on behalf of his mother in healthcare and financial decisions only, but rather that she had entrusted him to handle all of her affairs and was comfortable with this arrangement. (R. pp. 285-287); (R. p. 291, ll. 2-4); (R p. 298, l. 7 – p. 299, l. 10).

Even to the extent that the actual agency given to Andrew Davis was limited, the Facility was "justified in believing [Mr. Davis] [wa]s acting within his authority" in signing the arbitration agreement for his mother, based on his prior exercise of authority over her affairs. *R & G Constr.*, 343 S.C. at 433–34, 540 S.E.2d at 118. *See also*, 23 S.C. Jur. Agency § 2 ("the declarations of an admitted general agent, within the scope of his authority, are admissible as evidence and binding on the principal") (citations omitted). Further, "[a]gency 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.*" *R & G Constr.*, 343 S.C. at 434, 540 S.E.2d at 118. (emphasis added). Here, Andrew Davis not only exhibited a pretense of authority with his mother's knowledge, but admits that she had affirmatively given him

permission to act in this capacity. (R. p. 291, ll. 2-4) (“Q: And your mother all right with you signing documents for her? A: Yes.”); (R. p. 300-301) (“Q: Now, who signed the paperwork? A: Probably Phillip [Andrew Davis]. Q: And if there was a contract your mother was entering into . . . would Phillip sign the contract for her? A: Yes.”). Thus, the court’s finding on apparent authority is inapposite to Respondents’ own admissions. The record shows that Andrew Davis was an agent of his mother and his signature on the admissions documents, including the arbitration agreement, is binding as to her and the Respondent.

b. Third-party beneficiary and equitable estoppel

The Respondent is also bound under the common law doctrines of third-party beneficiary and estoppel. As an initial matter, Appellants assert that Eula Mae Davis was clearly the third-party beneficiary of the admissions agreements in question, as 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).

Even assuming, *arguendo*, that the arbitration agreement is separate from the admissions agreement, however, the decedent was the third-party beneficiary of that agreement as well. The fact that Andrew Davis was not authorized to execute the arbitration agreement on his mother’s

behalf (which Appellants deny) does not mean that she cannot be the third-party beneficiary of that agreement. The doctrine of third-party beneficiary does not require that a party attempt to enforce the contract containing the arbitration agreement, therefore precluding all tort claims from the agreement's reach. Such an outcome is contrary to federal court interpretations of arbitration agreements in this context under the FAA. *See THI of S.C. at Magnolia Manor-Inman, LLC v. Gilbert* 2015 WL 1268185 (D.S.C. Mar. 19, 2015) adopting report and recommendation, *THI of S.C. at Magnolia Manor-Inman, LLC v. Gilbert*, 2014 WL 6863550 (D.S.C. Oct. 31, 2014); *McCutcheon v. THI of S.C. at Charleston, LLC*, 2011 WL 6318575 (D.S.C. Dec. 15, 2011); *THI of S.C. at Columbia, LLC v. Wiggins*, 2011 WL 4089435 at (D.S.C. Sept. 13, 2011).

As the FAA is a federal statute, South Carolina Courts must apply federal law and not the law of South Carolina or other state courts in determine the arbitrability of claims. *See, e.g., Davis v. Tripp*, 338 S.C. 226, 525 S.E.2d 528 (Ct. App. 1999) (holding that state courts must interpret federal law when deciding issues under the Federal Employers' Liability Act); *State v. George*, 119 S.C. 120, 111 S.E. 880 (1921) (noting that "state courts are not bound to follow the federal decisions, *except in cases involving a federal question*"). In fact, even under South Carolina law, non-signatories can be bound by an arbitration provision within a contract executed by other parties. *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 733 S.E.2d 597 (Ct. App. 2012); *Wilson v. Willis*, Op. No. 5387 (S.C. Ct. App. filed Mar. 2, 2016). To require the assent of the third-party to be bound to such an arbitration agreement would eviscerate this rule under both state and federal law. *See, Pearson*, 400 S.C. 281, 733 S.E.2d 597; *Int'l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F. 3d 411 (4th Cir. 2000) (holding a non-signatory can be bound by an arbitration agreement under federal law).

Further, as has been held by federal courts in South Carolina, the capacity of the non-signatory is of no moment in determining whether she is bound as a third-party beneficiary of an agreement. *THI of S.C. at Magnolia Manor-Inman, LLC v. Gilbert* 2015 WL 1268185 at *1-2. This is precisely because her assent is not required in order to be bound as a third-party beneficiary. Thus, the arbitration agreement remains binding on her estate.

Importantly, Eula Mae Davis was the third-party beneficiary of both the admission and arbitration agreements. As an initial matter, because Ms. Davis' care at the Facility was the essential purpose of both the admission and arbitration portions of the agreement, the arbitration agreement is binding on her estate as a third-party beneficiary on the basis of her admission and care at the facility. *McCutcheon v. THI of S.C. at Charleston*, 2011 WL 6318575 at *3. This is true regardless of whether the court considers the agreements to be separate documents. *Id.*

Even assuming she cannot be bound on this basis, Ms. Davis was still bound as the third-party beneficiary of the arbitration agreement itself, which confers its own benefits. 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). These benefits are concrete, as can be seen by the reference made to them by both the South Carolina Court of Appeals and the South Carolina Supreme Court. Additionally, the arbitration agreement provides for payment of certain fees and expenses by the Facility, another added benefit of arbitration. (R. p. 82, ¶ G).

Further, it is not for the Court to decide whether the benefits of the arbitration agreement are outweighed by the waiver of a jury trial. As all state and federal courts have repeatedly held, an individual may sign an arbitration agreement waiving the right to a jury trial. *E.g. Moses H. Cone Mem'l Hosp. v. Mercury Constr. Co.*, 460 U.S. 1, 24 (1983) (holding that federal policy strongly favors of arbitration, even where issues of arbitrability arise); *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 626 (1985) (same); *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 553 S.E.2d 110 (2001) (“[t]he policy of the United States and South Carolina is to favor arbitration of disputes”). In fact, federal courts have specifically held that arbitration is favored because of “Congress’ view that arbitration constitutes a more efficient dispute resolution process than litigation.” *Adkins v. Labor Ready, Inc.*, 303 F.3d 496 (4th Cir. 2002). Even where the individual as not signed an agreement, she may still be bound as a non-signatory under longstanding principles of contract law. *E.g., Pearson*, 400 S.C. 281, 733 S.E.2d 597; *Int’l Paper*, 206 F. 3d 411; *Am. Bankers Ins. Grp. v. Long*, 453 F.3d 623 (4th Cir. 2006); *E.I. DuPont de Nemours & Co. v. Rhone Poulenc Fiber & Resin Intermediates, S.A.S.*, 269 F.3d 187 (3d Cir. 2001); *Am. Bureau of Shipping v. Tencara Shipyard S.P.A.*, 170 F.3d 349 (2d Cir. 1999). Simply put, there is nothing in state or federal law that prevents Ms. Davis from being bound by the arbitration agreement because she loses her right to a jury trial. In fact, Congress has specifically indicated its view that arbitration is favored over the litigation process.

Finally, federal arbitration law mandates that the Respondents are bound by the doctrine of equitable estoppel. In South Carolina, federal courts interpreting the FAA have repeatedly found that estates may be bound to nursing home arbitration agreements under the doctrine of equitable estoppel. *See THI of S.C. at Magnolia Manor-Inman, LLC v. Gilbert* 2015 WL 1268185, adopting report and recommendation, *THI of S.C. at Magnolia Manor-Inman, LLC v.*

Gilbert, 2014 WL 6863550; *McCutcheon v. THI of S.C. at Charleston, LLC*, 2011 WL 6318575; *THI of S.C. at Columbia, LLC v. Wiggins*, 2011 WL 4089435. This is true regardless of whether the arbitration agreement is contained within the admission agreement or in a separate document. *McCutcheon*, 2011 WL 6318575 (holding that “[e]ven if the Arbitration Agreement and Admissions Agreement constitute two separate contracts . . . it would be inequitable . . . to allow the plaintiff to assert that [family member] had authority to sign the Admissions Agreement . . . but lacked such authority to sign the Arbitration Agreement” and holding that the plaintiff was equitably estopped from denying the arbitration agreement’s enforceability). Federal law makes no distinction between the individual making the representations as to his ability to sign a contract in a representative capacity and that same individual serving as the personal representative of the decedent’s estate. *See id.*

In the instant case, it would be extremely inequitable for the same individuals, Ms. Davis’ to take two contrary positions – i.e. that the Andrew Davis had the authority to bind his mother to the admissions and arbitration agreements and that he does not have that authority. Andrew Davis and Mae Ruth Davis Thompson, the decedent’s daughter and personal representative, were both present at the time the agreements were signed. Not only do they now, as the sole beneficiaries of Eula Mae Davis’ estate, take a contrary position to that taken at the time of their mother’s admission, they take a contrary position in this litigation to what they currently still believe – that Andrew Davis had the authority to sign the agreements on behalf of their mother, which they testified to in their depositions. (R. p. 291, ll. 2-4) (“Q: And your mother all right with you signing documents for her? A: Yes.”); (R. p. 300-301) (“Q: Now, who signed the paperwork? A: Probably Phillip [Andrew Davis]. Q: And if there was a contract your mother was entering into . . . would Phillip sign the contract for her? A: Yes.”).

“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.” *Pearson*, 400 S.C. at 290, 733 S.E.2d at 601 (quoting *Int’l Paper*, 206 F.3d at 417-18). Here, despite asserting to the Appellants that Andrew Davis was authorized to sign all the paperwork on behalf of his mother, he and his sister now claim in court that they lack this authorization, even while maintaining in their own testimony a contrary position. Such an assertion would be inequitable and is prohibited under South Carolina and federal law. *See id.*; *Wilson*, Op. No. 5387 at *8 (“[t]o allow [a plaintiff] to claim the benefit of the contract and simultaneously avoid its burdens would both disregard equity and contravene the purposes underlying the enactment of the [FAA]”) (citation omitted); *THI of S.C. at Magnolia Manor-Inman, LLC v. Gilbert* 2015 WL 1268185, adopting report and recommendation, *THI of S.C. at Magnolia Manor-Inman, LLC v. Gilbert*, 2014 WL 6863550; *McCutcheon v. THI of S.C. at Charleston, LLC*, 2011 WL 6318575; *THI of S.C. at Columbia, LLC v. Wiggins*, 2011 WL 4089435.

CONCLUSION

For the reasons set forth herein, Appellants respectfully request this Court grant a rehearing in this matter or reconsider this matter and reverse the decision of the circuit court.

Respectfully Submitted,

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THE STATE OF SOUTH CAROLINA
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APPEAL FROM YORK COUNTY
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S. Jackson Kimball, Circuit Court Judge

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Mae Ruth Davis Thompson, Individually and as the appointed
Personal Representative of the Estate of Eula Mae Davis, Deceased Respondent,
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Pruitt Corporation d/b/a UHS-Pruitt Corporation; UHS-Pruitt Holdings,
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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 Petition for Rehearing by mailing a copy of same to counsel via United
States Mail, postage prepaid, at the following address(es):

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March 17, 2016

March 17, 2016

VIA HAND DELIVERY

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

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RE: Mae Ruth Davis, Individually and as the Appointed Personal Representative Of the Estate of Eula Mae Davis, Deceased v. Pruitt Corporation d/b/s 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
State Court Civil Action No. 13-CP-46-2930
Appellate Case No. 2014-001624
Our File No. 5593/1526

Dear Ms. Kitchings:

I enclose for filing the original and seven copies of a Petition for Rehearing on behalf of the appellants in the above matter, together with the appropriate filing fee. Please return a clocked-in copy of same to me for our records.

By copy of this letter to counsel shown below, I am serving a copy of same upon them by mail. Thank you for your assistance.

Yours truly,



Monteith P. Todd

MPT:rco

Enclosures

cc: John G. Felder, Jr., Esquire