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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BAMBERG COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2015-CP-05-00124
Appellate Case No. 2015-002493

Polly McGill and Mary Broxton as Co-Personal Representatives of
the Estate of Virginia Butler, deceased, Plaintiffs,

Of whom Polly McGill, as Personal Representative of the Estate of
Virginia Butler

Respondent,

v.

The Regional Medical Center Foundation d/b/a The Regional Medical
Center and Pruitt Health-Bamberg, LLC d/b/a Uni-Health Post-Acute
Care of Bamberg, LLC, Defendants,

Of which Pruitt Health-Bamberg, LLC d/b/a Uni-Health Post Acute
Care of Bamberg, LLC

Appellant.

MOTION TO DISMISS

Respondent Polly McGill, as Personal Representative of the Estate of Virginia
Butler, moves to dismiss this appeal for lack of jurisdiction. The Court lacks jurisdiction
in this matter because Appellant's Notice of Appeal was served more than thirty days
after Appellant received written notice of entry of the order denying its motion to dismiss
and to compel arbitration. Rule 203(b)(1), SCACR; Elam v. S.C. Dep't of Transp., 361

S.C. 9, 17, 602 S.E.2d 772, 776 (2004) (holding that timeliness of an appeal is a jurisdictional requirement).

On September 9, 2015, the circuit court held a hearing on Appellant's motion, took the matter under advisement, and asked the parties to submit proposed orders. W. Andrews Aff. ¶ 2, attached as **EXHIBIT 1**.¹ The court denied the motion and signed Respondent's proposed order on September 30, 2015. (Filed order attached as **EXHIBIT 2**). The order was filed with the Bamberg County Clerk of Court on October 5, 2016,² and received in the mail by Respondent's counsel on October 8, 2015. W. Andrews Aff. ¶ 3; M. Holland Aff. ¶¶ 2-3, attached as **EXHIBIT 4**. Appellant chose to pursue a Rule 59(e), SCRPC motion (attached as **EXHIBIT 5**) but did not serve it until October 23, 2015. The circuit court denied Appellant's Rule 59(e), SCRPC motion on November 4, 2015. (Order attached as **EXHIBIT 6**). Appellant served its Notice of Appeal on December 4, 2015, which was 57 days after the parties received written notice of the order denying Appellant's motion to dismiss and to compel arbitration.

A notice of appeal must be served on all respondents within thirty days "after receipt of written notice of entry of the order or judgment." Rule 203(b)(1), SCACR. Appellant's Notice of Appeal was untimely because it was served on December 4, 2015, more than thirty days after the parties received notice of the circuit court's order denying Appellant's motion (October 8, 2015). The time for perfecting an appeal is stayed while a Rule 59 motion is pending but only when that motion is "timely" made. Rule 203(b)(1), SCACR. For Appellant's Rule 59(e), SCRPC, motion to be timely it had to have been

¹ Since a Record on Appeal has not been filed, affidavits and other documents supporting Respondent's position are attached as exhibits. See Rule 240(c)(3), SCACR.

² The filing date is also included on page three of the case's listing in the Bamberg County Public Index, attached as **EXHIBIT 3**.

served “not later than 10 days after receipt of written notice of the entry of the order.” The circuit court’s order was received in Respondent counsel’s Columbia office on October 8, 2015 and was added to his electronic file the same day. *W. Andrews Aff.* ¶ 3; *M. Holland Aff.* ¶¶ 2-3. Accordingly, Appellant’s deadline for serving a Rule 59 motion was October 19, 2015.³ Since Appellant did not serve its Rule 59 motion until October 23, 2015, the deadline for perfecting an appeal was not stayed. Without the benefit of a stay, Appellant’s Notice of Appeal was untimely because it was filed 57 days after the parties received written notice of the order denying Appellant’s motion to dismiss and to compel arbitration.

Appellant’s Rule 59 motion filing demonstrates the timing error. Appellant argues its motion was timely as measured from October 13, 2015, the date it received the circuit court’s order “via hand delivery from co-defendant’s counsel.” See **EXHIBIT 5** at 1. However, the measuring date is based on when a party receives written notice of the order from the circuit court and not when the resulting order is later circulated between co-parties. *Wells Fargo Bank, N.A. v. Fallon Props. S.C., LLC*, 413 S.C. 642, 646 776 S.E.2d 575, 577 (Ct. App. 2015) (“Receipt of written notice is the critical event under Rule 203(b)(1)”); see also *Canal Ins. Co. v. Caldwell*, 338 S.C. 1, 5-6, 524 S.E.2d 416, 418 (Ct. App. 1999) (rejecting party’s attempt to extend Rule 59 measuring date beyond day when “written notice” was first obtained). The October 13 measuring date Appellant’s Rule 59 motion proposes was eight days after the circuit court’s order was filed and five days after the parties received the filed order in the mail.

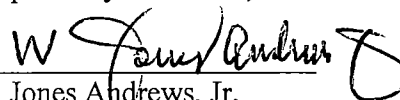
³ Ten days measured from October 8, 2015, is October 18th but, since that date falls on a Sunday, Appellant’s deadline was the 19th. See Rule 6(a), SCRCP.

Since Appellant's Rule 59 motion was untimely, its Notice of Appeal is untimely, this Court lacks jurisdiction, and the appeal should be dismissed. Caldwell, 338 S.C. at 5, 524 S.E.2d at 418 (finding untimely notice of appeal "divests this court of subject matter jurisdiction and results in dismissal of the appeal").

CONCLUSION

Based on the arguments stated above, Respondent respectfully requests an order dismissing the appeal for lack of jurisdiction.

Respectfully submitted,


W. Jones Andrews, Jr.
McGowan, Hood & Felder, LLC
1517 Hampton Street
Columbia, SC 29201
(803) 779-0100
jandrews@mcgowanhood.com

Jordan C. Calloway
McGowan, Hood & Felder, LLC
1539 Health Care Drive
Rock Hill, SC 29732
(803) 327-7800
jcalloway@mcgowanhood.com

Attorneys for Respondent

April 9, 2016
Columbia, SC

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BAMBERG
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2015-CP-05-00124
Appellate Case No. 2015-002493

Polly McGill and Mary Broxton, as Co-Personal Representatives of
The Estate of Virginia Butler, Deceased, Plaintiffs

Of Whom Polly McGill, as Personal Representative of the Estate of
Virginia Butler is the.....Respondent.

The Regional Medical Center Foundation d/b/a The Regional Medical Center and Pruitt Health-Bamberg,
LLC d/b/a Uni-Health Post Acute Care of Bamberg, LLC, Defendants

Of Whom Pruitt Health-Bamberg, LLC d/b/a Uni-Health Post Acute
Care of Bamberg, LLC is the.....Appellant.

PROOF OF SERVICE

I, the undersigned paralegal, of the law offices of McGowan Hood & Felder, LLC, attorneys for
Respondent do hereby certify that I have served all counsel in this action with a copy of the Motion to
Dismiss by mailing a copy of same to counsel via United States Mail, postage prepaid, at the following
address(es):

Michael C. Tanner, Esquire
P.O. Box 1061
Bamberg, SC 29003

Monteith P. Todd, Esquire
Sowell Gray Stepp & Laffitte, LLC
P. O. Box 11449
Columbia, SC 29211

April 19, 2016

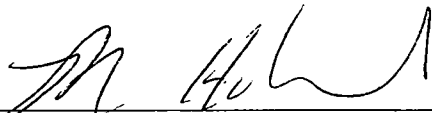

Mary Holland, Paralegal

EXHIBIT 1

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BAMBERG COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2015-CP-05-00124
Appellate Case No. 2015-002493

Polly McGill and Mary Broxton as Co-Personal Representatives of
the Estate of Virginia Butler, deceased, Plaintiffs,

Of whom Polly McGill, as Personal Representative of the Estate of
Virginia Butler

Respondent,

v.

The Regional Medical Center Foundation d/b/a The Regional Medical
Center and Pruitt Health-Bamberg, LLC d/b/a Uni-Health Post-Acute
Care of Bamberg, LLC, Defendants,

Of which Pruitt Health-Bamberg, LLC d/b/a Uni-Health Post Acute
Care of Bamberg, LLC

Appellant.

AFFIDAVIT OF W. JONES ANDREWS, JR.

PERSONALLY APPEARING BEFOR ME, W. Jones Andrews, Jr., being duly sworn,
deposes and says as follows:

1. I am an attorney with McGowan, Hood & Felder, LLC. I represent Polly McGill
as the Personal Representative of Virginia Butler's estate in a medical and nursing home
negligence action filed in June 2015 against Pruitt Health-Bamberg, LLC d/b/a Uni-

Health Post-Acute Care of Bamberg, LLC ("Appellant") and The Regional Medical Center Foundation d/b/a The Regional Medical Center.

2. On September 9, 2015, I attended a hearing on Appellant's motion to dismiss and to compel arbitration. At the conclusion of the hearing, the Honorable G. Thomas Cooper, Jr. took the matter under advisement and instructed both parties to submit proposed orders.

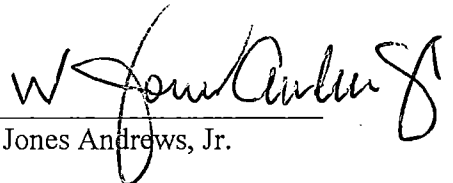
3. On October 8, 2015, a copy of a filed order denying Appellant's motion to dismiss and to compel arbitration arrived in the mail at my Columbia office. My paralegal added it to our electronic case file the same day.

4. On October 23, 2015, Appellant served by mail a motion for reconsideration that arrived in my office shortly thereafter.

5. On November 4, 2015, Judge Cooper issued an order denying Appellant's motion for reconsideration.

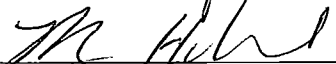
6. On December 4, 2015, Appellant served by mail a notice of appeal that arrived in my office shortly thereafter.

FURTHER AFFIANT SAYETH NOT.
This 19 day of April, 2016.



W. Jones Andrews, Jr.

Sworn to and subscribed before me,
This 19 day of April, 2016.



Notary Public for SC
My commission expires: December 1, 2025

EXHIBIT 2

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF BAMBERG)

SECOND JUDICIAL CIRCUIT

Polly McGill and Mary Broxton, as Co-
Personal Representatives of the Estate of
Virginia Butler, deceased)

Plaintiffs,)

v.)

ORDER

The Regional Medical Center Foundation)
d/b/a The Regional Medical Center and)
Pruitt Health-Bamberg, LLC d/b/a)
Uni-Health Post-Acute Care of Bamberg,)
LLC,)

Defendants.)

FILED
BAMBERG COUNTY
2015 OCT -5 AM 9:52
JAMES H. HILBERT
CLERK OF COURT
SOUTH CAROLINA

This matter comes before the Court on Defendant Pruitt Health-Bamberg, LLC's Motion to Dismiss and to Compel Arbitration. Based on the Court's review of the parties' written submissions and oral arguments during a hearing on September 9, 2015, the Court **DENIES** Defendant's motion.

BACKGROUND

Virginia Butler was a resident at Defendant's Bamberg nursing home in January-February 2014. As all times relevant to this action, Ms. Butler's medical records indicated that she suffered from dementia. Ms. Butler was transferred to Defendant's facility from The Regional Medical Center where she had received treatment for a broken leg suffered in a fall. While at Defendants' facility, Ms. Butler had pressure ulcers that progressed to stage 4. Ms. Butler's pressure ulcers became infected and she died a few weeks later. Plaintiffs' Complaint alleges that Defendant breached its duty in caring for Ms. Butler's pressure ulcers.

When Ms. Butler arrived at the nursing home, Defendant's staff approached Ms. Butler's family members with several documents. Mary Robinson, Ms. Butler's niece, was approached by a representative from Defendant while Ms. Robinson was at work. M. Robinson Aff. ¶ 4. Ms. Robinson was not Ms. Butler's guardian, conservator, or attorney in fact. M. Robinson Aff. ¶ 5. The documents included an Admission Agreement and a separate Arbitration Agreement. By its terms, "the signing of th[e] [Arbitration] Agreement [was] not a precondition to admission, expedited admission, or the furnishing of services" to Ms. Butler. Arbitration Agreement at 5. The Arbitration Agreement granted the resident 30 days to revoke its terms without affecting the resident's admission at the home. *Id.* Following Ms. Butler's death, Plaintiffs filed the current action in the Bamberg County Court of Common Pleas on June 11, 2015. On July 10, 2015, Defendant filed a Motion to Dismiss and Compel Arbitration.

ANALYSIS

Defendant presents two arguments in support of its motion. First, Defendant argues that Plaintiffs must arbitrate their claims because Ms. Robinson was authorized to enter the Arbitration Agreement by the Adult Health Care Consent Act (S.C. Code Ann. §§ 44-66-10 to -80) ("the Act"). Second, Defendant asserts the contract defense of equitable estoppel and argues Plaintiffs are equitably estopped from denying enforcement of the Arbitration Agreement. However, neither argument is supported by South Carolina law. The Act only applies to "health care decisions" and not to independent agreements regarding resolution of legal claims. Equitable estoppel does not apply in this case because Defendant has failed to meet its burden of proving all required elements of the doctrine as identified in earlier South Carolina Supreme Court precedent.

GO 2

A. Adult Health Care Consent Act

The Act's primary purpose is to identify and authorize individuals to make "decisions concerning . . . health care" on behalf of a person "unable to consent." S.C. Code Ann. § 44-66-30(A). The Act intends "to insure that the patient's wishes **concerning her medical treatment** are honored whenever possible." Coleman v. Mariner Health Care, Inc., 407 S.C. 346, 353, 755 S.E.2d 450, 454 (2014) (emphasis added). The Act establishes the order of priority for those individuals authorized to make health care decisions. The first level of decision-making priority, pursuant to the Act, is granted to a legally-appointed guardian and an attorney-in-fact empowered pursuant to a duly executed durable power of attorney. S.C. Code Ann. § 44-66-30(A). An incapacitated individual's adult children and extended family members are further down in priority. Id.

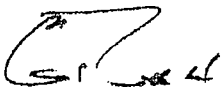
The Act expressly limits the decision-making power of any individual to only "health care" decisions. S.C. Code Ann. § 44-66-30(A). "Health care" is defined in the Act and the South Carolina Supreme Court recently construed the definition to limit an individual's decision-making authority to: (1) "provision or withholding of medical care including placement in a facility which provides such care;" and (2) "certain financial decisions . . . to pay for services rendered." Coleman, 407 S.C. at 352, 755 S.E.2d at 453. An individual's power under the Act applies "primarily to traditional health care decisions" and only "secondarily" to financial matters related to those decisions. Id. at 353, 755 S.E.2d at 454.

The Act grants only limited decision-making power related to nursing home admission. An individual authorized by the Act may enter an agreement to admit a resident to a nursing home and may enter a contract agreeing to pay for nursing home services. Coleman, 407 S.C. at 353-54, 755 S.E.2d at 454. A potential resident or her family are typically presented with

multiple contracts and other documents when the family contemplates admitting their loved one to a nursing home. Coleman demonstrates that the Act does not apply to all documents associated with nursing home admission. Specifically, the Act does not apply if a document “was not required for [the resident’s] admission, contained no provision for medical, nursing, or health care services to be provided for [the resident], and did not require any financial commitment to pay for such services.” Id. at 353, 755 S.E.2d at 454.

Based on the Coleman standard, the Act does not apply to the Arbitration Agreement. Plaintiffs do not contest that Ms. Butler meets the Act’s definition of a patient that is “unable to consent” and does not contest whether Ms. Robinson fits within the category of individuals identified in the Act as authorized to make “health care” decisions on Ms. Butler’s behalf. Instead, Plaintiffs argue that Ms. Robinson was not authorized by the Act to enter the Arbitration Agreement because the Arbitration Agreement does not involve “health care” decisions. The Court agrees the Arbitration Agreement does not contain any provision for medical, nursing, or health care services. The bolded and underlined language in Section I of the Arbitration Agreement indicates that its provisions are intended only for dispute resolution. Arbitration Agreement at 1. The Arbitration Agreement also does not contain any provisions relating to payment for medical, nursing, or health care services. Only the scope of arbitrable disputes and procedures for an arbitration hearing are included in the Arbitration Agreement.

Despite its focus on dispute resolution, Defendant argues that the Arbitration Agreement is still governed by the Act’s provisions because it merged with the Admission Agreement, a “health care” contract signed at the same time as the Arbitration Agreement. Coleman acknowledged a common law merger rule. 407 S.C. at 355, 755 S.E.2d at 455 (quoting Klutts Resort Realty, Inc. v. Down’Round Dev. Corp., 268 S.C. 80, 88, 232 S.E.2d 20, 24 (1977)).



However, there are several express limitations on the merger rule's operation. First, the rule only applies "where instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction." Id. Second, the rule may be displaced by the parties' contrary intentions as expressed in the contract. Coleman, 407 S.C. at 355, 755 S.E.2d at 455. Third, in determining whether the rule applies and in determining whether the parties expressed a contrary intent, all ambiguities in the Arbitration Agreement must be construed against Defendant since it was the sole drafter of all contracts presented to Ms. Butler's family before her admission to Defendant's facility. Id. at 355-56, 755 S.E.2d at 455 (citing Davis v. KB Home of S.C., Inc., 394 S.C. 116, 713 S.E.2d 799 n. 4 (Ct. App. 2011)).

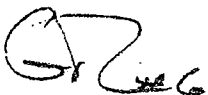
After reviewing the parties' memoranda along with the Arbitration Agreement and Admission Agreement, the Court finds that the common law merger rule does not apply because the parties clearly expressed their intent that the documents were to be considered separate and independent agreements.¹ The Arbitration Agreement identifies itself as a "voluntary agreement," indicating that a resident's potential admission to Defendant's facility was not dependent on any agreement to arbitrate. That notion was explicitly reaffirmed later in the Arbitration Agreement where Defendant drafted language indicating that "The signing of this Agreement is not a precondition to admission, expedited admission, or the furnishing of services to the Patient/Resident by the Healthcare Center." Arbitration Agreement at 5. Additionally, the

¹ Defendant argues that the Court should not rely on the separate and independent nature of the Arbitration Agreement largely for policy reasons. Defendant argues that applying merger to separate and independent arbitration agreements is advisable because, without merger, nursing home providers have an incentive to relocate arbitration provisions from a separate document to their admission agreements where they are less likely to be noticed or seriously considered by a resident or her representative. See Coleman, 407 S.C. at 358, 755 S.E.2d at 456-57 (Toal, C.J., dissenting). With full respect for the Chief Justice's dissent, the four-justice majority in Coleman found that, under Klutts, separate and independent agreements overcome the common law merger rule. Coleman, 407 S.C. at 355, 755 S.E.2d at 455. Pursuant to *stare decisis*, this Court is bound by the opinion of the Court in Coleman and not by its dissent.

Arbitration Agreement includes a 30 day revocability period in which a resident could choose to repudiate the Arbitration Agreement without any effect on the Admission Agreement or admission to Defendant's facility. Id. Coleman identified a 30 day revocability clause in an arbitration agreement as "evidencing an intention that each contract remain separate." Id. at 355, 755 S.E.2d at 455.

Defendant attempts to distinguish Coleman by arguing the 30 day revocability clause was not essential to Coleman's holding but offers the Court nothing from the Supreme Court's opinion to support this conclusion. Coleman found that the clause "evidenc[ed] an intent that each contract remain separate." Id. There is no indication that this clause alone is insufficient to overcome the common law merger rule. Under the plain language of Klutts, the merger rule is rebutted by "anything indicating a contrary intention." Klutts Resort Realty, Inc., 268 S.C. at 88, 232 S.E.2d at 24 (emphasis added). The Court is also not persuaded by Defendant's argument that the revocability period should not be considered on the merger question because Plaintiffs did not exercise it. Coleman and Klutts considered the parties' intent based solely on the language used in the agreements and not based on any post-formation conduct. See also Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC, 374 S.C. 483, 498, 649 S.E.2d 494, 501 (Ct. App. 2007) (finding contract parties' intention must be "derived from the language of the contract" and, in the absence of ambiguity, the contract language "alone determines the document's force and effect").

Additionally, the evidence does not demonstrate that the Arbitration Agreement and Admission Agreement meet Klutts' baseline requirements for merger. Merger can only potentially apply where two or more contracts are executed at the "same time, by the same parties, for the same purpose." Klutts Resort Realty, Inc., 268 S.C. at 88, 232 S.E.2d at 24. The



Admission Agreement and Arbitration Agreement are not between the same parties. The Admission Agreement names Defendant and Ms. Butler as parties while the Arbitration Agreement names Defendant, Ms. Butler, and Ms. Robinson as parties. Admission Agreement at 1; Arbitration Agreement at 1. While Defendant claims the agreements were executed for the same purpose, that conclusion is not supported by the contract language. Defendant argues that both contracts were executed for Ms. Butler's "admission and care at the facility." Def.'s Mem. in Supp. of Mot. to Dismiss at 8. However, the Arbitration Agreement was not executed for Ms. Butler's admission because, as is clear from the Arbitration Agreement itself, that agreement "is not a precondition to admission . . . or the furnishing of services to the Patient/Resident by the Healthcare Center." Arbitration Agreement at 5.

In sum, there is evidence that the parties intended that the Arbitration Agreement was not to merge with the Admission Agreement even though there was not an explicit anti-merger clause. The Arbitration Agreement was "voluntary," was explicitly intended to be independent of Defendant's decision to admit a resident to its facility, and could be revoked at the resident's option for 30 days without effect on admission. This evidence indicates the parties' anti-merger intent. Plus, the evidence does not demonstrate that the two agreements were executed by the same parties for the same purpose. For all these reasons, Defendant's motion is denied.

B. Equitable estoppel

Defendant also argues that Ms. Butler and Plaintiffs² are equitably estopped from denying enforcement of the Arbitration Agreement Ms. Robinson signed at the time of Ms.

² Defendant asks the Court to find that Ms. Butler's wrongful death beneficiaries are equitably estopped from opposing arbitration even though they did not participate in Ms. Butler's nursing home admission and were not even ascertainable until Ms. Butler's death. See Jones v. Leagan, 384 S.C. 1, 16, 681 S.E.2d 6, 14 (Ct. App. 2009). Several courts have found Defendant's position untenable. Lawrence v. Beverly Manor, 273 S.W.3d 525 (Mo. 2009) (en banc); Bybee v.

Butler's admission. Equitable estoppel is a contract defense and the party asserting this defense bears the burden of proving all of its elements." Kelly v. Logan, Jolley & Smith, 383 S.C. 626, 638, 682 S.E.2d 1, 7 (Ct. App. 2009). Equitable estoppel requires proof that the party to be estopped (1) acted in a way amounting to a false representation; (2) intended that such conduct be acted on by the other party; and (3) had actual or constructive knowledge of the real facts. Strickland v. Strickland, 375 S.C. 76, 84, 650 S.E.2d 465, 470 (2007). The party asserting estoppel must (1) lack knowledge and the means of knowledge of the truth of the facts in question; (2) rely on the conduct of the party estopped; and (3) make a prejudicial change in position in reliance on conduct of the party to be estopped. Id.


Defendant has not met its burden to establish these elements. There is no evidence Ms. Butler acted in a way amounting to a false representation to Defendant regarding Ms. Robinson's status or that Ms. Butler intended for Defendant to act in reliance on her conduct. Ms. Butler's diminished mental capacity prevented her from forming the required intent for Defendant to rely on her conduct. Additionally, the evidence shows Defendant cannot meet its burden to show they lacked knowledge or the means of knowledge of the truth of the facts in question. This element requires Defendant to show it did not know Ms. Robinson lacked authority to sign the arbitration agreement on her aunt's behalf and Defendant lacked the ability to make this determination. Equitable doctrines such as estoppel favor diligent parties who actively endeavor to protect their rights. A person cannot claim to have been misled and cannot rely on equitable estoppel if the party, by the exercise of reasonable diligence, could have acquired knowledge to determine the truth of facts in question. See Binkley v. Rabon Creek Watershed Conservation Dist. of Fountain Inn, 348 S.C. 58, 70-71, 558 S.E.2d 902, 908-09 (Ct. App. 2001).

Abdulla, 189 P.3d 40, 43 (Utah 2003) ("a decedent does not have the power to contract away the wrongful death action of his heirs").



In this case, Defendant had the capacity to determine whether Ms. Robinson had authority to sign an arbitration agreement on Ms. Butler's behalf. Defendant is a sophisticated business entity frequently interacting with residents and their families during the nursing home admission process. Defendant is familiar with the legal concepts of guardianship and powers-of-attorney. Defendant had the ability to ask Ms. Robinson whether she was Ms. Butler's guardian or attorney-in-fact and had the ability to request supporting documentation. Since Defendant has not cited or provided evidence on all required elements of equitable estoppel, its Motion is **DENIED**.

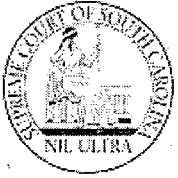
IT IS SO ORDERED.



Hon. G. Thomas Cooper, Jr.
Circuit Court Judge

COLUMBIA, South Carolina
September 30, 2015

EXHIBIT 3



Bamberg County Second Judicial Circuit Public Index



[Bamberg County Home Page](#) [South Carolina Judicial Department Home Page](#) [SC.GOV Home Page](#)

Switch View

Virginia Butler (Estate of) , plaintiff, et al VS The Regional Medical Center Foundation dba , defendant, et al

Case Number:	2015CP0500124	Court Agency:	Common Pleas	Filed Date:	06/15/2015
Case Type:	Common Pleas	Case Sub Type:	Medical Malpract 220	File Type:	Jury
Status:	Appeal	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:		Disposition Date:		Disposition Judge:	
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties

Click the icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
<input checked="" type="checkbox"/> Andrews, William Jones Jr.	1517 Hampton St. Columbia SC 29201				Plaintiff Attorney		06/15/2015
<input type="checkbox"/> Broxton (Co-Personal Representative), Mary					Plaintiff		06/15/2015
<input checked="" type="checkbox"/> Butler (Estate of), Virginia					Plaintiff		09/29/2015
<input checked="" type="checkbox"/> dba The Regional Medical Center					Defendant		06/15/2015
<input checked="" type="checkbox"/> dba Unihealth Post Acute Care of Bamberg LLC					Defendant		12/07/2015

McGill (Co-Personal Representative), Polly					Plaintiff	06/15/2015
<input checked="" type="checkbox"/> Pruitt Health Bamberg LLC dba					Defendant	12/07/2015
<input checked="" type="checkbox"/> Tanner, Michael C.	PO Box 1061 Bamberg SC 29003				Defendant Attorney	07/10/2015
<input checked="" type="checkbox"/> The Regional Medical Center Foundation dba					Defendant	06/15/2015
<input checked="" type="checkbox"/> Todd, Monteith Powell	PO Box 11449 Columbia SC 29211				Defendant Attorney	06/29/2015

Actions

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Pruitt Health Bamberg LLC dba	Order Denying Defendant Pruitt Health-Bamberg Motion To Reco	Order		01/14/2016-11:53		
Butler (Estate of), Virginia	ADR/Alternative Dispute Resolution (Workflow)	Action		01/11/2016-11:18		
Pruitt Health Bamberg LLC dba	Appeal/Notice of Appeal	Filing		12/07/2015-16:19		
dba Unihealth Post Acute Care of Bamberg LLC	Appeal/Notice of Appeal	Filing		12/07/2015-16:19		
Andrews, William Jones Jr.	Roster/Notice of Motions Roster Publication Sent	Action		11/10/2015-15:50		
Todd, Monteith Powell	Roster/Notice of Motions Roster Publication Sent	Action		11/10/2015-15:50		
Tanner, Michael C.	Roster/Notice of Motions Roster Publication Sent	Action		11/10/2015-15:50		
Pruitt Health	Motion/Reconsider	Motion		10/27/2015-10:41	01/14/2016-10:41	

Bamberg LLC dba					
Pruitt Health Bamberg LLC dba	Order Denying Def Pruitt Health-Bamberg Motions	Order		10/05/2015-11:30	
Butler (Estate of), Virginia	Order/Amend	Order		09/29/2015-15:53	
Butler (Estate of), Virginia	Motion/Alter and/or Amend	Motion		09/29/2015-15:51	09/29/2015-15:51
Andrews, William Jones Jr.	Roster/Notice of Motions Roster Publication Sent	Action		08/26/2015-10:40	
Todd, Monteith Powell	Roster/Notice of Motions Roster Publication Sent	Action		08/26/2015-10:40	
Tanner, Michael C.	Roster/Notice of Motions Roster Publication Sent	Action		08/26/2015-10:40	
dba The Regional Medical Center	Answer/Answer	Filing		07/29/2015-12:29	
Pruitt Health Bamberg LLC dba	Motion/Dismiss and Compel Arbitration	Motion		07/15/2015-11:28	09/09/2015-11:28
dba Unihealth Post Acute Care of Bamberg LLC	Motion/Dismiss and Compel Arbitration	Motion		07/15/2015-11:28	09/09/2015-11:28
Tanner, Michael C.	Service/Acceptance Of Service	Filing		07/10/2015-15:24	
Todd, Monteith Powell	Service/Acceptance Of Service	Filing		06/29/2015-16:45	
Butler (Estate of), Virginia	Summons & Complaint	Filing		06/15/2015-11:13	

Financials**Summary**

Fine/Costs:	\$550.00	Total Paid for fine/costs:	\$225.00	Balance Due:	\$325.00
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Costs

Description	Cost Code	Amount	Charge Action	Disbursed Amount
Civil Filing Fee County 44%/100%	CVFFCN	\$44.00		\$44.00
Civil Filing Fee State 56%	CVFFST	\$56.00		\$56.00
SCJD Filing Fee Proviso \$50 / \$25	SCJDPV	\$50.00		\$50.00
Motion/Order Filing Fee \$25	MOTION	\$25.00		\$25.00
Motion/Order Filing Fee \$25	MOTION	\$25.00		\$25.00
Motion/Order Filing Fee \$25	MOTION	\$25.00		\$25.00
Civil Filing Fee State 56%	CVFFST	\$56.00		\$0.00
Civil Filing Fee County 44%/100%	CVFFCN	\$44.00		\$0.00
SCJD Filing Fee Proviso \$50 / \$25	SCJDPV	\$50.00		\$0.00
Motion/Order Filing Fee \$25	MOTION	\$25.00		\$0.00
Civil Filing Fee State 56%	CVFFST	\$56.00		\$0.00
Civil Filing Fee County 44%/100%	CVFFCN	\$44.00		\$0.00
SCJD Filing Fee Proviso \$50 / \$25	SCJDPV	\$50.00		\$0.00

Payments

Payment Date	Receipt Number	Entered By	Transaction Type Code	Payment Amount
10/27/2015	12588	c05pthomas	PY	\$25.00
09/29/2015	12551	c05pthomas	PY	\$25.00
07/15/2015	12460	c05pthomas	PY	\$25.00

06/15/2015	12420	c05pthomas	PY	\$150.00
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EXHIBIT 4

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BAMBERG COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2015-CP-05-00124
Appellate Case No. 2015-002493

Polly McGill and Mary Broxton as Co-Personal Representatives of
the Estate of Virginia Butler, deceased, Plaintiffs,

Of whom Polly McGill, as Personal Representative of the Estate of
Virginia Butler

Respondent,

v.

The Regional Medical Center Foundation d/b/a The Regional Medical
Center and Pruitt Health-Bamberg, LLC d/b/a Uni-Health Post-Acute
Care of Bamberg, LLC, Defendants,

Of which Pruitt Health-Bamberg, LLC d/b/a Uni-Health Post Acute
Care of Bamberg, LLC

Appellant.

AFFIDAVIT OF MARY HOLLAND

PERSONALLY APPEARING BEFOR ME, Mary Holland, being duly sworn, deposes
and says as follows:

1. I am a paralegal for Attorney W. Jones Andrews Jr. with McGowan, Hood & Felder, LLC.

2. On October 8, 2015, a copy of a filed order denying Pruitt Health-Bamberg, LLC d/b/a Uni-Health Post-Acute Care of Bamberg LLC's motion to dismiss and to compel arbitration arrived in the mail at our Columbia office.

3. Pursuant to our standard office procedure, I added the order to our electronic case file the same day (October 8, 2015). See Screen Shot of electronic file with date stamp, attached as **EXHIBIT A**.

FURTHER AFFIANT SAYETH NOT.
This 19 day of April, 2016.


Mary Holland

Sworn to and subscribed before me,
This 19 day of April, 2016.



Notary Public for SC
My commission expires: 10/1/16

EXHIBIT A

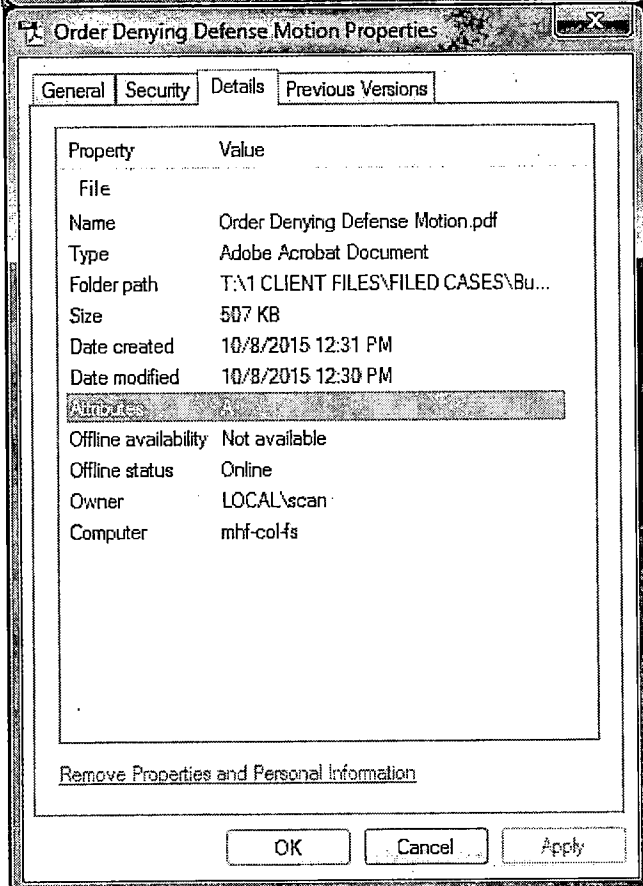
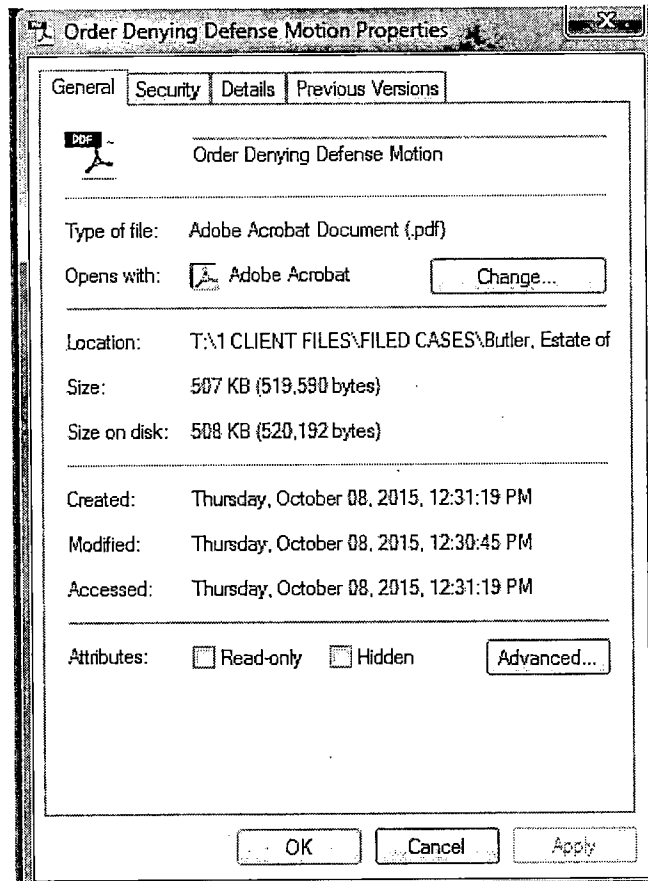


EXHIBIT 5

October 23, 2015

Honorable James B. Hiers
Clerk of Court, Bamberg County
Bamberg County Courthouse
Post Office Box 150
Bamberg, SC 29003

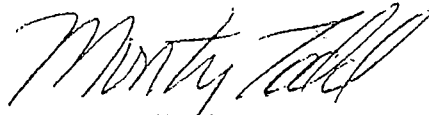
RE: Polly McGill and Mary Broxton, as Co-Personal Representatives for the Estate of Virginia Butler, Deceased v. The Regional Medical Center Foundation d/b/a The Regional Medical Center and Pruitt Health – Bamberg, LLC d/b/a UniHealth Post-Acute Care Bamberg, LLC
Civil Action No. 15-CP-05-124
Our File No. 5593/1545

Dear Mr. Hiers:

I enclose for filing the originals and one copy of Defendant's, Pruitt-Health-Bamberg, LLC d/b/a UniHealth Post-Acute Care of Bamberg, LLC's, Motion for reconsideration in regard to the above matter, together with the appropriate filing fee. Please return a clocked-in copy of same to me in the envelope provided.

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:rc
Enclosures

cc: W. Jones Andrews, Esquire
Michael C. Tanner, Esquire

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BAMBERG)
)
Polly McGill and Mary Broxton, et al.)
 Plaintiff,)
 vs.)
)
Regional Medical Center, et al.)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 SECOND JUDICIAL CIRCUIT
 CASE NO.: 2015-CP-05-124
**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

Plaintiff's Attorney: W. Jones Andrews, Bar No. _____ Address: McGowan Hood & Felder 1517 Hampton Street Columbia, SC 29201 Phone: 803-779-0100 Fax 803-256-0702 E-mail: _____ Other: _____	Defendant's Attorney: Monteith P. Todd, Bar No. 5593 Address: Sowell Gray Stepp & Laffitte, LLC 1310 Gadsden Street, P.O. Box 11449 Columbia, SC 29211 Phone: 803-929-1400 Fax 803-231-7887 E-mail: mtodd@sowellgray.com Other: _____
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

- MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)
- FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)
- PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: Defendant PruittHealth's Motion for Reconsideration
 Estimated Time Needed: 20 minutes Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

Written motion attached
 Form Motion/Order
 I hereby move for relief or action by the court as set forth in the attached proposed order.

 Signature of Attorney for Plaintiff / Defendant Date submitted _____

SECTION III: Motion Fee

PAID - AMOUNT: \$ _____
 EXEMPT: (check reason) _____

- Rule to Show Cause in Child or Spousal Support
- Domestic Abuse or Abuse and Neglect
- Indigent Status State Agency v. Indigent Party
- Sexually Violent Predator Act Post-Conviction Relief
- Motion for Stay in Bankruptcy
- Motion for Publication Motion for Execution (Rule 69, SCRPC)
- Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions
 Name of Court Reporter: _____
- Other: _____

<p style="text-align: center;">JUDGE'S SECTION</p> <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
 MOTION FEE COLLECTED: \$ _____
 CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BAMBERG) SECOND JUDICIAL CIRCUIT

Polly McGill and Mary Broxton, as Co-) Civil Action No. 2015-CP-05-124
Personal Representatives of the Estate of)
Virginia Butler, deceased,)
) Plaintiff,)

vs.)

The Regional Medical Center Foundation) **DEFENDANT’S, PRUITT HEALTH-**
d/b/a The Regional Medical Center and) **BAMBERG, LLC’S NOTICE OF**
Pruitt Health-Bamberg, LLC d/b/a) **MOTION AND MOTION FOR**
Unihealth Post-Acute Care of Bamberg,) **RECONSIDERATION**
LLC,)
) Defendants.)

Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, Defendant Pruitt Health-Bamberg, LLC (“Defendant”) hereby moves this Court for reconsideration of its Order Denying Defendants’ Motion to Compel Arbitration dated September 30, 2015, and filed October 5, 2015. Counsel for Defendants received notice of this Order via hand delivery from co-defendant’s counsel in this case on October 13, 2015. Accordingly, this motion is timely pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure.

In the interest of judicial economy, the Defendant will not repeat the facts, as the Court is aware of them. Additionally, the Defendant incorporates verbatim, as if repeated herein, the prior Memorandum submitted in support of its position in favor of arbitration.

The Court’s Order in this case addresses two issues raised by Plaintiff in opposition to Defendant’s, Pruitt Health-Bamberg, LLC’s Motion to Compel Arbitration – merger under the Adult Healthcare Consent Act and Estoppel.

I. The Court erred in holding that the arbitration agreement was not part of the admissions agreement and, therefore, binding

In its Order, the Court held “that the common law doctrine of merger rule does not apply because the parties clearly expressed their intent that the documents were to be considered separate and independent agreements.” In support of this, the Court relied on the fact that the arbitration agreement “identifies itself as a ‘voluntary agreement’ and that the arbitration agreement has a thirty day revocability clause. Further, the Court held that there can be no merger because the documents were not executed at same time, by the same parties, and for the same purpose.

In holding that there was no merger, the Court relied on the South Carolina Supreme Court decision Coleman v. Mariner Health Care, Inc., 407 S.C. 346, 755 S.E.2d 450 (2014). The arbitration agreement in that decision, however, where the court held there was no merger between the arbitration agreement and the admissions agreement, was not the same as the arbitration agreement in the instant case. 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*.

407 S.C. at 355, 755 S.E.2d at 455 (emphasis added). As the Coleman court held, “[o]n its face, *this clause* recognizes the ‘separatedness’ of the AA and the admission agreement, not a merger of the two contract.” Id. (emphasis added). This was the primary basis for the Supreme Court’s holding that there was no merger in Coleman. Yet this language is absent from the instant case. Instead, the admission and arbitration agreement in the instant case contain language of *inclusion*, including the statement that the agreement includes *all exhibits thereto*. See Exhibit 1, p. 9,

Defendant's, Pruitt Health-Bamberg, LLC'S, Memorandum in Support of Motion to Dismiss and Compel Arbitration (hereinafter "Exhibit 1").¹ Moreover, the arbitration agreement itself denotes at the bottom of each page that it is part of the "Admission Packet – South Carolina Healthcare Centers." Exhibit 2, Defendant's, Pruitt Health-Bamberg, LLC'S, Memorandum in Support of Motion to Dismiss and Compel Arbitration (hereinafter "Exhibit 2").² This same language is present at the bottom of each page of the admission agreement. Exhibit 1.

The Court held that in spite of this inclusionary language in the admissions and arbitration agreements, and a lack of exclusionary language like that relied upon by the South Carolina Supreme Court in Coleman, the merger doctrine does not apply because the arbitration agreement was "voluntary" and included a 30 day revocability period. The voluntariness of the arbitration agreement fails to distinguish it in any meaningful way from the admissions agreement. Defendant concedes that the agreement is voluntary, as the entire admissions agreement for admission to the Pruitt-Health Bamberg facility was voluntary. Similarly, a patient being admitted to the facility is able to make a number of elections regarding his/her care at the facility as part of their admissions paperwork. See, e.g., Exhibit 1, p. 3 (indicating doctor and pharmacy choices of patient); Exhibit 3³ (additional choices and acknowledgements with regard to care at the facility). This is no different from the ability of the patient to opt in or out of arbitration as part of the admissions agreements.

Similarly, the admissions agreement expressly includes the right of the facility and the patient/patient's representative to modify the terms of the agreement. This can be done by the consent of the parties, and the patient/representative also maintains the ability to reject within thirty

¹ This exhibit has been previously provided to the Court.

² This exhibit has been previously provided to the Court.

³ Attached hereto.

(30) days any changes to the admissions agreement offered by the facility. Exhibit 1, p. 9. In fact, this thirty (30) day time period for changes to the agreement is utilized throughout the admission agreement. Exhibit 1. Thus, nothing about the voluntariness of the arbitration agreement or the thirty (30) day time period for this decision sets it apart or distinguishes it from the remaining provisions of the admissions packet.

The Court also found that there could be no merger because the documents were not executed "at the same time, by the same parties, for the same purpose." Klutts Resort Realty, Inc. v. Down 'Round Dev. Corp., 268 S.C. 80, 88, 232 S.E.2d 20, 24 (1977). The Court does address whether the agreements were executed at the same time. However, it appears clear from the face of these documents that both were executed on January 31, 2014. Exhibits 1; 2. Thus, this element is met.

The Court found that the agreements were not between the same parties. This finding is error. While the Court held that the admission agreement was only between Ms. Butler and the Defendant, while the arbitration agreement was between Ms. Butler, the Defendant, and Ms. Robinson, this conclusion is not borne out by the language of the contracts. On the first page, the admission agreement states that it is "made and entered into this 31st day of January, year 2014, by and between UniHealth PAC Bamberg (Healthcare Center), Virginia Butler (Patient/Resident), *and certain other undersigned parties.*" Exhibit 1, p. 1 (emphasis added). The agreement goes on to make it clear that these undersigned parties are the patient's representative(s) who sign the agreement. See Exhibit 1, p. 2-3 (setting forth the responsibilities of the patient and/or her representative). Ms. Robinson signed this agreement and, therefore, is bound by the agreement. Thus, both agreements involve the same parties.

While the Court found that the agreements are not for the same purpose, this holding cannot stand under Coleman. In examining the arbitration agreement in Coleman, the Supreme Court explicitly held that the arbitration agreement and admissions agreement in that case “were executed at the same time, by the same parties, for the same purposes, and in the course of the same transaction.” 407 S.C. at 355, 755 S.E.2d at 455. See also McCutcheon v. THI of S.C. at Charleston, LLC, 2011 WL 6318575 at * 3 (D.S.C. Dec. 15, 2011) (holding that “the Arbitration Agreement and Admissions Agreement, while separate documents, while separate documents, were executed by the same parties, at the same time, and regarding the same transaction; therefore, they constitute the entire agreement between the parties”) (citing Klutts, 268 S.C. 80 232 S.E.2d 20). There is nothing in this case that distinguishes the purpose of the arbitration agreement at issue from the one at issue in Coleman. Therefore, the Court is bound by the decision in Coleman with regard to the purpose of the arbitration agreement, and any holding to the contrary is error.

II. The Court erred in holding that the Plaintiffs are not equitably estopped from denying validity of the arbitration agreement

The Court also held that the Plaintiff could not be equitably estopped from denying the validity of the arbitration agreement. The Court held that Defendants cannot establish equitable estoppel because it cannot show false representation and reliance by the Defendant. This is error.

In the instant case, Ms. Robinson, acting through Ms. Butler has her representative, represented to the Defendant that Ms. Butler was authorized to sign agreements on behalf of Ms. Robinson. She signed all the admissions paperwork as a representative of Ms. Butler, who was the third-party beneficiary of the contracts at issue. See, e.g., Helms Realty, Inc. v. Gibson-Wall Co., 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005) (“A third-party beneficiary is a party that the contracting parties intend to directly benefit.”). Additionally, she specifically represented through these signatures that she was authorized to sign the agreement on behalf of Ms. Butler. See Exhibit

2, p. 2 (“If this Agreement is signed by the Patient’s/Resident’s representative, that individual represents that he or she is authorized [to sign the agreement]”).

Nothing in the South Carolina case law suggests that a nursing home is required to verify and authenticate legal documents appointing guardians or attorneys-in-fact prior to admission. The failure to do so does not constitute a lack of reasonable diligence on the part of the nursing home, especially where the representative has made specific representations to the contrary to the nursing home. Further, 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)). Instead, the concept of “[e]quitable 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).

In fact, trial courts in South Carolina continue to enforce arbitration agreements signed by representative family members on the basis of estoppel and third-party beneficiary doctrines. 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 under concepts of equitable estoppel and third-party beneficiary doctrine); THI of S.C. at Magnolia Manor-Inman, LLC v. Gilbert, 2015 WL 1268185 at *2 (D.S.C. Mar. 19, 2015); McCutcheon v. THI of S.C. at Charleston, LLC, 2011 WL 6318575 (D.S.C. Dec. 15, 2011) (holding that personal representative was bound under doctrines of equitable estoppel and third-party beneficiary). In Gilbert, 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 Gilbert 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 *2.⁴ Thus, the Court should reconsider its denial of the Defendant's Motion to Compel Arbitration.

III. The arbitration agreement is enforceable under the FAA

The Court's Order did not explicitly rule on whether the arbitration agreement itself was valid and enforceable under the Federal Arbitration Act (FAA). Under the FAA, a party seeking arbitration must only show two things in order to compel arbitration: (1) that a written agreement to arbitrate exists, and (2) that the written agreement is contained within a contract involving interstate commerce. 9 U.S.C. § 2 (2006).

The claims in this case fall within the scope of the arbitration agreement. The plaintiff's Complaint alleges negligent acts or omissions in the care of Ms. Adams, which ultimately resulted her hospitalization and death. (See Complaint). The arbitration agreement signed by Ms. Robinson as Ms. Butler's agent covers all claims related to the patient's stay at the Defendant's facility. Exhibit 2, p. 1. Further, as the South Carolina Supreme Court has recently held, nursing home residency agreements such as this one "implicate interstate commerce and, thus, the FAA." Dean v. Heritage Healthcare of Ridgeway, LLC, 408 S.C. 371, 381, 759 S.E.2d 727, 732 (2014). Just as in Dean, the residency agreement in the instant case requires that meals and medical

⁴ Although it is unclear in the Order, the Court suggests that the wrongful death beneficiaries of the decedent cannot be equitably estopped from opposing arbitration based on extrajurisdictional case law. However, the South Carolina

supplies be provided to the resident. (Exhibit 4, Affidavit of Brandon Radford). These meals and medical supplies are provided by out-of-state vendors and shipped across state lines. Id. Therefore, the agreement at issue involves interstate commerce and is enforceable under the FAA.

IV. Ms. Butler's wrongful death beneficiaries may be bound by the arbitration agreement

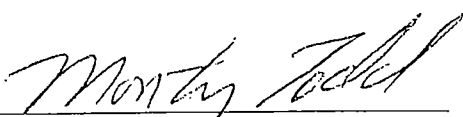
Although it is unclear in the Order, the Court suggests in a footnote that the wrongful death beneficiaries of the decedent cannot be equitably estopped from opposing arbitration based on extrajurisdictional case law. However, this case law is contrary to the South Carolina Supreme Court's decision in Dean v. Heritage Healthcare of Ridgeway, LLC, 408 S.C. 371, 759 S.E.2d 727 (2014). In Dean, the supreme court stated that "that courts may not refuse to compel arbitration simply because a wrongful death claim is involved." 408 S.C. at 378, 759 S.E.2d at 731, n.3 (citing Marmet Health Care Ctr., Inc. v. Brown, ___ U.S. ___, 132 S.Ct. 1201, 1203-04, 182 L.Ed.2d 42 (2012)). See also S.C. Code Ann. § 62-3-703 ("a personal representative of a decedent domiciled in this State at his death has the same standing to sue and be sued in the courts of this State . . . as his decedent had immediately prior to his death"); THI of S.C. at Magnolia Manor-Inman, LLC v. Gilbert, 2014 WL 6863550 at *3 (D.S.C. Oct. 31, 2014) (holding that personal representative in survival/wrongful death action was bound by arbitration agreement signed during nursing home admission). Dean involved a claim similar to the one in the instant case, discussing enforcement of a nursing home arbitration agreement. Thus, to the extent the Court's Order holds to the contrary, this portion of the Order should be reconsidered based on controlling supreme court precedent.

Conclusion

For the reasons set forth herein, the Court erred in concluding that the Arbitration Agreement was not binding on the decedent or her heirs. The Defendant respectfully requests the

Court to reconsider its prior Order, withdraw it, and find that Plaintiff's lawsuit should be dismissed or stayed pending arbitration.

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By: 
Monteith P. Todd
Alexander E. Davis
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Defendant Pruitt Health-Bamberg, LLC d/b/a
Unihealth Post-Acute Care of Bamberg, LLC

Columbia, South Carolina

Oct 23, 2015

ACKNOWLEDGMENT OF RECEIPT OF NOTICE OF PRIVACY PRACTICES FOR PROTECTED HEALTH INFORMATION

Patient/Resident Name: VIRGINIA BUTLER
Patient/Resident Social Security Number: [REDACTED]

I understand that UniHealth PAC Bamberg (healthcare center/ agency name) is part of a corporation which may share my health information for treatment, billing and healthcare operations. I have been given a copy of the organization's Notice of Privacy Practices that describes how my health information is used and shared. I understand that the corporation has the right to change this notice at any time. I may obtain a current copy by contacting this healthcare center/agency at (803)245-7525 (healthcare center/agency telephone number) or by contacting the Corporate Privacy Officer by calling 1-800-222-0321.

For Healthcare Center/Agency Use Only:

If unable to obtain written acknowledgment, please document reason and good faith efforts below:

My signature below constitutes my acknowledgment that I have been provided with a copy of the Notice of Privacy Practices.

PATIENT/RESIDENT/REPRESENTATIVE:

VIRGINIA BUTLER
Print Patient/Resident's Name

Patient/Resident's Signature

MARY ROBINSON
Print Patient/Resident Representative's Name

Patient/Resident Representative's Signature

CHRIS ARNOLD
Print Healthcare Center/Agency Representative's Name

Healthcare Center/Agency Representative's Signature

UniHealth PAC Bamberg
Legal Name of Healthcare Center/Agency

Date

PNEUMOCOCCAL VACCINE
CONSENT / REFUSAL

It is the policy of UniHealth PAC Bamberg (healthcare center) that a one time Pneumococcal Vaccine be given to each patient/resident who resides in this healthcare center unless contraindicated by the physician or refused by the patient/resident or family.

Permission to receive the vaccine will be obtained on admission. A one-time order for the vaccine will be obtained from the physician upon admission to the healthcare center.

CONSENT

Had IN 2013

I have been informed of this policy and the side effects, benefits and risks* of the vaccine. I do wish to receive the Pneumococcal Vaccine.

REFUSAL

I have been informed of this policy and the side effects, benefits and risks* of the vaccine. I do not wish to receive the Pneumococcal Vaccine.

PATIENT/RESIDENT/REPRESENTATIVE:

VIRGINIA BUTLER
Print Patient/Resident's Name

Patient/Resident's Signature

MARY ROBINSON
Print Patient/Resident Representative's Name

Mary Robinson
Patient/Resident Representative's Signature

CHRIS ARNOLD
Print Healthcare Center Representative's Name

Chris A. Arnold
Healthcare Center Representative's Signature

UniHealth PAC Bamberg
Legal Name of Healthcare Center

01/31/14
Date

*Side effects, benefits and risks of the Influenza Vaccine are attached and may be copied and distributed to patients/residents and family members.

ANNUAL INFLUENZA (FLU) VACCINE
CONSENT / REFUSAL

It is the policy of UniHealth PAC Bamberg (healthcare center) that an annual Influenza (Flu) Vaccine be given to each patient/resident who resides in this healthcare center unless contraindicated by the physician or refused by the patient/resident or family, and depending on the availability of the vaccine.

Permission to receive the vaccine will be obtained on admission and will remain in place unless revoked by the physician, patient/resident or family. A one-time standing order for the vaccine will be obtained from the physician upon admission to the healthcare center. The order will remain valid and appear each October on the Physician Order sheet unless discontinued by the physician.

CONSENT

 I have been informed of this policy and the side effects, benefits and risks* of the vaccine. I do wish to receive the flu vaccine each year, depending on the availability of the vaccine.

REFUSAL

I have been informed of this policy and the side effects, benefits and risks* of the vaccine. I do not wish to receive the flu vaccine yearly.

Had IN Oct. 2013

PATIENT/RESIDENT/REPRESENTATIVE:

VIRGINIA BUTLER
Print Patient/Resident's Name

Patient/Resident's Signature

CHRIS ARNOLD
Print Healthcare Center Representative's Name

Chris D. Arnold
Healthcare Center Representative's Signature

MARY ROBINSON
Print Patient/Resident Representative's Name

Mary Robinson
Patient/Resident Representative's Signature

UniHealth PAC Bamberg
Legal Name of Healthcare Center

01/31/14
Date

*Side effects, benefits and risks of the Influenza Vaccine are attached and may be copied and distributed to patients/residents and family members.

PATIENT/RESIDENT OR AUTHORIZED PERSON
ACKNOWLEDGMENT OF RESTRAINT REDUCTION PROGRAM

UniHealth PAC Bamberg (healthcare center name), in accordance with new federal and state laws, has a very stringent program regarding the use of physical and chemical restraints on patients/residents. Our philosophy of providing patients/residents with the highest possible quality of care and life is reflective of our belief that it is essential for our patients/residents to maintain their dignity and independence by being permitted to take "the normal risks of everyday life". Restraints used in an attempt to remove these normal risks of living violate the rights of patients/residents, greatly reduces their quality of life, and presents significant physical and psychological risks. For these reasons, it is the philosophy of this healthcare center to promote a restraint free environment, as designated in the Restraint Reduction Program.

In accordance with federal and state laws, restraint use in our healthcare center will only be considered to treat a medical symptom/condition that endangers the physical safety of the patient/resident or other patients/residents and under the following conditions: 1) as a last resort measure after a trial period where restraint free measures have been undertaken and proven unsuccessful; 2) with a physician order; 3) with the consent of the patient/resident; 4) when the benefits of the restraint outweigh the identified risks. If restraint use is deemed necessary, the goal will be to use the least restrictive type of restraint for the shortest period of time possible, with a structured plan for time out of the restraint and for restraint elimination.

Every patient/resident at this healthcare center will be individually assessed upon admission regarding the need for appropriate safety measures and will be periodically reassessed as their needs change throughout their stay at our healthcare center. The Restraint Reduction Committee will collaborate to promote a restraint free environment.

By virtue of my signature, I state that I have received, read, and had an opportunity to discuss any questions I have had concerning this restraint policy. Additionally, I state that I clearly understand and agree with this program.

PATIENT/RESIDENT/REPRESENTATIVE:

VIRGINIA BUTLER
Print Patient/Resident's Name

Patient/Resident's Signature

MARY ROBINSON
Print Patient/Resident Representative's Name

Mary Robinson
Patient/Resident Representative's Signature

CHRIS ARNOLD
Print Healthcare Center Representative's Name

Chris D. Arnold
Healthcare Center Representative's Signature

UniHealth PAC Bamberg
Legal Name of Healthcare Center

01/31/14
Date

ACKNOWLEDGMENT
OF TRANSFER/LIFT PROGRAM

This program has been implemented in an effort to provide a safe and healthy environment for individuals in our care and for those that provide their care.

The TOTAL MECHANICAL LIFT will be used for individuals who cannot bear weight on their legs and can only offer minimal assistance with their transfers/lifts.

The SIT OR STAND MECHANICAL LIFT will be used for individuals who can bear weight on their legs and can offer assistance with their transfers/lifts.

A lift will not be used for individuals who can assist greater than 50% with their transfers/lifts in order to continue to promote their highest level of functioning.

I have received a full explanation of the Transfer/Lift Program, and if requested, I can receive additional information.

PATIENT/RESIDENT/REPRESENTATIVE:

VIRGINIA BUTLER
Print Patient/Resident's Name

Patient/Resident's Signature

MARY ROBINSON
Print Patient/Resident Representative's Name

Mary Robinson
Patient/Resident Representative's Signature

CHRIS ARNOLD
Print Healthcare Center Representative's Name

Chris D. Arnold
Healthcare Center Representative's Signature

UniHealth PAC Bamberg
Legal Name of Healthcare Center

01/31/14
Date

ADVANCE DIRECTIVES CHECKLIST

Healthcare Center: UniHealth PAC Bamberg

Patient/Resident Name: VIRGINIA BUTLER

Please read the following (3) statements and initial each: (If the patient/resident is unable to comprehend the information, the person admitting the patient/resident will initial and receive the information.)

1. I have been given written materials on my rights to accept or refuse medical and surgical treatments and my rights to formulate advance directives.	<u>MR</u> Initials
2. I understand that I am not required to have an advance directive in order to receive medical treatment at this healthcare center.	<u>MR</u> Initials
3. I understand that the terms of any advance directive that I have executed will be followed by the staff and physicians of this healthcare center to the extent permitted by law.	<u>MR</u> Initials

Please check one of the following statements:

- I have executed an advance directive and will provide a copy to the healthcare center. I understand that the staff and physicians of this healthcare center will not be able to follow the terms of my advance directive until I provide a copy of it to the staff.
- I have not executed an advance directive, and do not wish to discuss advance directives further at this time.
- I have not executed an advance directive but would like to obtain additional information about advance directives. Information was provided. MR Initials
- Patient/resident is unable to comprehend what advance directives are, but this was explained to the family as part of our community education effort.

PATIENT/RESIDENT/REPRESENTATIVE:

VIRGINIA BUTLER

Print Patient/Resident's Name

Patient/Resident's Signature

MARY ROBINSON

Print Patient/Resident Representative's Name

Mary Robinson
Patient/Resident Representative's Signature

CHRIS ARNOLD

Print Healthcare Center Representative's Name

Healthcare Center Representative's Signature

UniHealth PAC Bamberg

Legal Name of Healthcare Center

Date

01/21/14

The following advance directives or DNR orders have been executed and are complete:

[] Living Will; [] DPAHC; [] DNR Order; [] Organ Donation; [] Body Donation

CERTIFICATE OF SERVICE

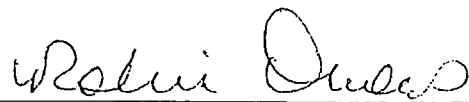
I, the undersigned legal assistant, of the law offices of Sowell Gray Stepp & Laffitte, LLC, attorneys for defendant, Pruitt-Health-Bamberg, LLC d/b/a UniHealth Post-Acute Care of Bamberg, LLC, do hereby certify that I have served all counsel in this action with a copy of the document/pleading shown below by mailing a copy of same to counsel via United States Mail, postage prepaid, at the following address(es):

Document Served: Defendant, Pruitt Health Bamberg, LLC d/b/a UniHealth Post Acute Care of Bamg, LLC's, Motion for Reconsideration

Counsel Served:

W. Jones Andrews, Jr., Esquire
McGowan, Hood & Felder
1517 Hampton Street
Columbia, SC 29201

Michael C. Tanner, Esquire
Post Office Box 1061
Bamberg, SC 29003



Robin C. Owens
Legal Assistant

10/23, 2015

EXHIBIT 6

STATE OF SOUTH CAROLINA

COUNTY OF BAMBERG

Polly McGill and Mary Broxton, as Co-
Personal Representatives of the Estate of
Virgina Butler, deceased

Plaintiffs,

v.

The Regional Medical Center Foundation
d/b/a The Regional Medical Center and Pruitt
Health-Bamberg, LLC d/b/a Uni-Health Post
Acute Care of Bamberg, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
OF THE SECOND JUDICIAL CIRCUIT

C/A No.: 2015-CP-05-00124

ORDER DENYING DEFENDANT'S
MOTION TO RECONSIDER


FILED
BAMBERG COUNTY
2015 NOV -9 AM 11:15
JAMES C. COOPER, JR.
CLERK OF COURT
BAMBERG, SC

This matter comes before the Court by way of Defendant Pruitt Health-Bamberg, LLC's Motion to Reconsider pursuant to Rule 59(e), SCRPC. Specifically, Defendant asks this Court to reconsider its Order Denying Defendant's Motion to Compel Arbitration filed October 5, 2015.

After careful consideration of the record in this case and the submissions of the parties, this Court has decided to abandon Footnote 2 of its Order. In reviewing the remainder of its Order, this Court is unable to discover any material fact or principle of law that has either been overlooked or disregarded and further finds no error of law or facts not appropriately considered. Accordingly, this Court hereby **DENIES** Defendant's Motion under Rule 59(e), SCRPC, to Reconsider this Court's Order filed October 27, 2015. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

IT IS SO ORDERED.

Columbia, South Carolina
November 4, 2015



G. Thomas Cooper, Jr., Judge
Fifth Judicial Circuit

McGowan, Hood & Felder, LLC

Chad A. McGowan (SC, GA, NC)
S. Randall Hood
John G. Felder, Jr.
W. Jones Andrews, Jr.
Jordan C. Calloway
Susan F. Campbell
Deborah G. Casey (NC)
Ashley White Creech
Shawn B. Deery
Chance M. Farr (NC)



Lara Pettiss Harrill
Patrick M. Killen
Anna S. Magann
William A. McKinnon (SC, DC)
Robert V. Phillips
James Stephen Welch* (SC, OK)
Joseph G. Wright, III*
Of Counsel*

Writer's Email: jfelder@mcgowanhood.com

April 19, 2016

RECEIVED

APR 25 2016

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk of Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: Polly McGill and Mary Broxton as Co-Personal Representatives of the Estate of Virginia Butler, Deceased
v. The Regional Medical Center Foundation d/b/a The Regional Medical Center and Pruitt Health-Bamberg, LLC d/b/a Unihealth Post-Acute Care of Bamberg
Appellate Case No.: 2015-002493

Dear Ms. Kitchings:

Please find enclosed for filing Plaintiffs' original Motion, six copies, and Certification and Proof of Service in the above Captioned matter. Please return a clocked-in copy of same to McGowan Hood & Felder.

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.

Sincerely,



Mary Holland

/mfh

Enclosures

cc: Monteith P. Todd, Esquire
Michael Tanner, Esquire