

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Hilda Stott, individually and as Personal)
 Representative of the Estate of Jolly P.)
 Davis, deceased, and as Personal)
 Representative of the Statutory)
 Beneficiaries,)
)
 Plaintiffs,)
)
 v.)
)
 White Oak Manor, Inc.; White Oak)
 Management, Inc.; and White Oak Manor -)
 Spartanburg, Inc. d/b/a White Oak of)
 Spartanburg,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 C.A. NO.: 2015-CP-42-5123

ORDER

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 SC Court of Appeals

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Date of Hearing: March 22, 2016
Presiding Judge: Honorable J. Derham Cole
Attorney for Plaintiff: Raymond P. Mullman, Jr.
Attorney for Defendants: Matthew A. Henderson
Court Reporter: Linda Moffitt

This matter was before the Court on Defendants' Notice of Motion and Motion to Dismiss and/or Compel Arbitration. After hearing oral arguments from counsel, the Court denies the Motion to Dismiss and/or Compel Arbitration as to all parties, including both Survival and Wrongful Death actions for the reasons stated below.

A. BURDEN OF PROOF

The party seeking to enforce an agreement to arbitrate has the burden of establishing the existence of a valid arbitration agreement. See Aiken v. World Finance Corp. of S.C., 373 S.C. 144, 149, 644 S.E.2d 705, 708 (2007); MBNA America Bank, N.A. v. Christianson, 377 S.C. 210,

659 S.E.2d 209 (Ct. App. 2008). It is well established that “where one party denies the existence of an arbitration agreement raised by an opposing party, a court must immediately determine whether the agreement exists in the first place. If no agreement is found to exist, the court must deny any application to arbitrate. Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 644 S.E.2d 663, 667 (S.C. 2007). Whether a valid arbitration agreement exists is a matter for judicial determination.” York v. Dodgeland of Columbia, Inc., 406 S.C. 67, 78, 749 S.E.2d 139, 144 (Ct. App. 2013).

Whether the parties agreed to arbitrate is a question of substantive state law. Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 644 S.E.2d 663, 668 (S.C. 2007) (“General contract principles of state law apply in a court's evaluation of the enforceability of an arbitration clause.”).

B. FINDINGS OF FACT

This matter arises out of both Wrongful Death and Survival actions which Plaintiffs brought against Defendants involving nursing home negligence, custodial negligence and the resulting death of Jolly Davis (“Decedent”). Hilda Stott is Decedent’s niece and serves as personal representative of Decedent’s estate.

On January 2, 2013, Decedent was admitted to White Oak Manor – Spartanburg, Inc. d/b/a White Oak of Spartanburg (“facility”), a skilled nursing facility. White Oak Manor, Inc. is the parent corporation of the facility. White Oak Management, Inc. is a related entity that provides management services to the facility. Plaintiffs allege that while the Corporate Defendants did not provide direct health care or services to Decedent, they are Defendants in this matter because their control over the facility directly affected the quality of care received by Decedent.

At the time of admission, an employee at the facility presented Hilda Stott with the Resident and Facility Admission Agreement (the “Agreement”) and the Arbitration Agreement to sign on

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behalf of her uncle, Decedent. Decedent was admitted with physical injuries but Defendants' records reflect that he was awake, aware, and able to enter or refuse to enter contracts on his own. Hilda Stott signed the Agreement and the Arbitration Agreement on behalf of Decedent. However, the central question is whether Ms. Stott had authority to bind the Decedent to the agreement and to arbitration.

The Court finds that Defendants not only had an unauthorized agent sign the agreements on behalf of Decedent, they did so without asking Decedent to sign, despite his full capacity to sign. Decedent's ability to make his own decisions is evidenced by the Spartanburg Regional Healthcare System *Progress Note Addressing Decisional Capacity*, which was signed by Decedent's Attending Physician on January 2, 2013, the very same day the agreements were signed by Mrs. Stott. That Progress Note states "[t]his patient DOES possess the decisional capacity to make healthcare decisions for self."

Defendants allege in their Motion that Hilda Stott had a valid power of attorney based on a Durable Power of Attorney for Finance ("DPOA"). However that instrument was only valid *after* Decedent left the facility and did not give Hilda authority to sign at the time of signing. A valid DPOA would allow Hilda Stott to waive Jolly Davis's constitutional right to a jury trial against the Defendant facility; however, the DPOA in the present matter was not valid at the time of execution of the Arbitration Agreement and Hilda Stott, therefore, did not have authority to sign on her uncle's behalf. The DPOA that was submitted with Defendants' Motion was not valid at the time of signing of the agreements as it was not filed with the Register of Deeds until after Jolly Davis had already left the facility. Under South Carolina Code § 62-5-501 (2012), a durable power of attorney requires the same executory actions as a deed, including filing with the deeds office. In the present matter, the DPOA was not recorded with the Office of Register of Deeds for

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Spartanburg County until January 8, 2013, two days after Decedent permanently left the facility and six days after Hilda Stott signed the alleged Arbitration Agreement.

Further, Decedent's South Carolina Healthcare Power of Attorney ("HPOA") clearly states in the first paragraph that the power arises only "IF YOU CANNOT MAKE THE DECISION FOR YOURSELF." This instrument does not grant Hilda authority to enter into an arbitration agreement on behalf of a competent Jolly Davis. Also, the Supreme Court for the State of South Carolina made clear in Coleman v. Mariner Health Care, Inc. that authority to make healthcare decisions does not extend to arbitration agreements.

C. LACK OF AUTHORITY

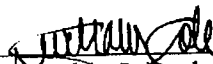
"The first element of a contract is that the parties have the capacity to contract... Further, capacity to contract relates to the status of the person rather than to circumstances surrounding the contract." (17 C.J.S. Contracts §32) Hilda Stott did not have that authority. Hilda Stott did not have authority under the DPOA to bind Jolly to arbitration because the DPOA was not valid at the time Hilda Stott signed the agreements and because the HPOA does not extend authority to the alleged Arbitration Agreement. Under SC Code § 62-5-501 (2012), *Protection of Persons Under Disability and Their Property*, the power of attorney must be recorded in the county's register of deeds.

First, the DPOA was recorded six days **after** the agreements were signed. Second, Decedent did not lack the capacity to contract for himself. Decedent was capable of making such a decision or demonstrating such an intention. Decedent never manifested any form of consent that established Hilda Stott was his agent, nor should Decedent have been required to manifest such consent because Decedent was wide awake, lucid, and able to make his own decisions regarding his rights.

In this case, Defendants had the capacity to determine whether Hilda Stott had authority to sign an arbitration agreement on Decedent's behalf. Defendant is a sophisticated business entity frequently interacting with residents and their families during the nursing home admission process. Defendants are familiar with the legal concepts of guardianship and powers-of-attorney. Defendants had the ability to ask Hilda Scott if she had a valid power of attorney and if she was Decedent's attorney in fact. Defendants had the ability to request supporting documentation for any such alleged power-of-attorney. Further, Defendants' own records indicate that Decedent possessed mental capacity, and the power-of-attorney instrument clearly states that the power arises only if Decedent is incapable of making such decisions. Since Defendants have failed to provide supporting information for the alleged valid authority of Hilda Scott, this Motion is denied.

Based upon the above, Defendants' Motion to Dismiss and to Compel Arbitration is hereby DENIED.

IT IS SO ORDERED.


The Honorable J. Derham Cole
Seventh Judicial Circuit

Spartanburg, South Carolina
July 29, 2016

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