

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GEORGETOWN)	
)	
HENRY G. THOMAS (and ELLIE)	
PENNINGTON THOMAS, as Personal)	
Representatives of the Estate of JOHANNA)	
THOMAS, deceased.)	
)	
Plaintiffs,)	
)	C.A. # 2017-CP-22-0040
v.)	
)	
MORNINGSIDE OF SOUTH CAROLINA L.P.;)	
LIFE TRUST AMERICA, INC.; FSQ/LTA)	
HOLDINGS, INC.; FSQ, INC.; FIVE STAR)	
QUALITY CARE, INC.; ANITA N.)	
WILLIAMS; JOHN DOE; JANE DOE;)	
RICHARD ROE CORPORATION; and MARY)	
DOE CORPORATION,)	
)	
Defendants.)	

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SC Court of Appeals

**ORDER DENYING DEFENDANTS' MOTION TO DISMISS
AND TO COMPEL ARBITRATION**

This matter came on for an evidentiary hearing on March 24, 2017 upon Defendants' Motion to Dismiss and to Compel Arbitration. The Court, having reviewed the file, heard the arguments of counsel, and being otherwise duly advised in the premises, hereby finds and decides as follows:

1. Johanna Thomas was admitted to Morningside of Georgetown (Morningside) on April 30, 2014 and placed under the care, supervision, and control of the Defendants.
2. Johanna Thomas was a resident at Morningside from April 30, 2014 through June 26, 2015, with the exception of hospital admissions.
3. Johanna Thomas died on July 20, 2015.

4. Plaintiffs filed this action in the Georgetown County Court of Common Pleas, alleging that Johanna Thomas suffered injuries and death due to the Defendants' negligence.
5. There is no evidence that Joanna Thomas was incompetent on April, 16, 2014, at the time of her admission to Morningside.
6. Joanna Thomas' daughter, Ellie Thomas, signed all Morningside admission documents, including the Arbitration Agreement, as "Responsible Party" without, however, a Power of Attorney or Health Care Power of Attorney.
7. The Arbitration Agreement was a separate agreement not incorporated in the admission documents.
8. Ellie Thomas had authority under the Adult Health Care Consent Act S.C. Code § 44-66-10 *et seq.* to sign admission documents to admit her mother to Morningside on April 16, 2014. There is no evidence, other than that given by statute, that Ellie Thomas had actual, apparent, or implied authority to sign away Joanna Thomas' constitutional right to a trial by jury by agreeing to arbitrate disputes as set out in the separate Arbitration Agreement. *See Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 755 S.E.2d 450 (2014).
9. "In *Coleman*, our Supreme Court held an arbitration agreement signed by the surrogate in that case was separate from the agreement to admit the patient to a health care facility and 'concerned neither health care nor payment, but instead provided an optional method for dispute resolution between [the facility] and [the patient or her surrogate] should issues arise in the future.' 407 S.C. at 353–54, 755 S.E.2d at 454. The court further held, 'Under the Act, [the surrogate] did not have the capacity to bind [the patient] to this voluntary arbitration agreement.' *Id.* at 354, 755 S.E.2d at 454."

Thompson v. Pruitt Corp., 416 S.C. 43, 51, 784 S.E.2d 679, 684 (Ct. App. 2016), reh'g denied (Apr. 21, 2016), cert. denied (Dec. 2, 2016).

10. In *Thompson*, the Supreme Court agreed with the circuit court judge's order denying Appellant's Motion to Compel Arbitration where the circuit court said: "[t]he manifest purpose of the Act is to enable contracting parties in a healthcare situation to enter into a binding agreement when express authority has not been conferred upon an agent for that purpose. It further eliminates the need to deal with questions of apparent agency or authority in order to make such a contract binding. However, the Act does not confer such authority with respect to an Arbitration Agreement[] such as the one in issue in this case. See *Coleman v. Mariner Health Care, Inc.*, Supreme Court, Opinion No. 27362 [407 S.C. 346, 755 S.E.2d 450], filed March 12, 2014. As the Arbitration Agreement does not deal with healthcare decisions, the provisions of the Act do not apply to establish the necessary principal-agent relationship. *Id.*"

11. This case is properly before the Court and discovery shall proceed.

It is, therefore, ORDERED and ADJUDGED that the Defendants' Motion to Dismiss and Compel Arbitration be, and the same is hereby, DENIED.

Entered this 11th day of April, 2017.

Judge G. Thomas Cooper, Jr.
Presiding Judge



Georgetown Common Pleas

Case Caption: Henry G Thomas , plaintiff, et al VS Morningside of South Carolina
LP , defendant, et al
Case Number: 2017CP2200040
Type: Order/Other

So Ordered

s/ Honorable G. Thomas Cooper, Jr. Circuit
Judge 2126