

Rules of Civil Procedure. At the pleading stage, a plaintiff must plead the ultimate facts which will be proved at trial but not the evidence to prove those facts. *Clark v. Clark*, 293 S.C. 415, 416, 361 S.E.2d 328, 328 (1987).

In the present case, Plaintiff has alleged causes of action against all Defendants for Negligence, Negligent Infliction of Emotional Distress, and Intentional Infliction of Emotional Distress. After review of the Plaintiff's Complaint and hearing the arguments of counsel, I find that Plaintiff has sufficiently plead each cause of action as stated therein, and therefore, I deny Defendants' Motion to Dismiss.

II. Defendants' Motion to Compel Arbitration

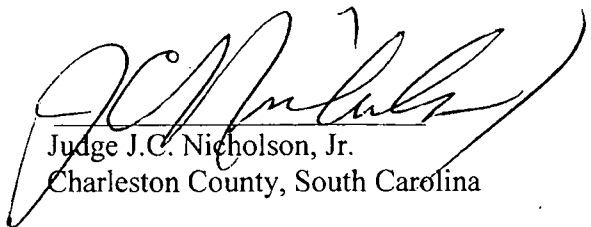
While there is a presumption in favor of arbitration agreements, this presumption only applies where a valid arbitration agreement exists between the parties. *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596, 553 S.E.2d 110 (2001). Arbitration is a matter of contract, and a party cannot be forced to waive her constitutional right to a jury and arbitrate a claim where she has not agreed to do so. *Id.* at 597; *see also Chassereau v. Global Sun Pools, Inc.*, 611 S.E.2d 305 (S.C. Ct. App. 2005), *decision aff'd*, 644 S.E.2d 718 (2007); *Rent-A-Center West, Inc. v. Jackson*, 561 U.S. 63 (2010). However, the United States Supreme Court and South Carolina Courts have recognized that under appropriate circumstances a nonsignatory may be bound by an arbitration provision in a contract executed by other parties. *See Arthur Andersen, LLP v. Carlisle*, 556 U.S. 624, 129 S. Ct. 1896, 1902 (2009) (noting theories of "assumption, piercing the corporate veil, alter ego, incorporation by reference, third-party beneficiary, waiver or estoppel" may be used to bind a nonsignatory); *see also Wilson v. Willis*, 416 S.C. 395, 786 S.E.2d 571 (Ct. App. 2016), *reh'g denied* (June 24, 2016).

In the instant case, Defendants assert that Plaintiff's claims are subject to an arbitration agreement contained within the "Residency Agreement" for its Brookdale Charleston facility. The agreement relied on by Defendants shows that it was signed by James Walker as the power of attorney for Bonnie Walker, the grandmother of the Plaintiff. Nothing in the agreement shows that Plaintiff was a party to the arbitration agreement or that Mr. Walker had any authority to bind Plaintiff to such an agreement. Also, no facts have been presented to justify binding Plaintiff to arbitration under one of the theories cited above. Moreover, Plaintiff's tort claims appear to be separate and distinct from any wrongful death or survival claims arising out of the decedent's injuries and death.

CONCLUSION

For the above reasons, the Defendants' Motion to Dismiss and Motion to Compel Arbitration are hereby DENIED. This case is properly before the Court and discovery shall proceed.

IT IS HEREBY ORDERED this 28 day of September, 2017


Judge J.C. Nicholson, Jr.
Charleston County, South Carolina