STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	
Orveletta Alston as Personal Representative of the Estate of Willie Earl Alston, Sr.,	)	C/A No. 2017-CP-26-1351
Plaintiff,	)	**ORDER**
Versus	)	
Conway Manor, LLC, Raymond Tiller, and John and Jane Does 1-10,	)	
Defendants.	)	

This matter comes before the Court on Defendants Conway Manor, LLC, Raymond Tiller, and John and Jane Does 1-10's Motion to Stay Action and Compel Arbitration and for Protective Order. Based on the Court's review of the parties' written submissions and oral arguments during a hearing on November 1, 2017, the Court **DENIES** the Defendants' motion.

BACKGROUND

The Defendants operate a nursing home, licensed by the South Carolina Department of Health and Environmental Control, R.61-17, *Standards for Licensing Nursing Homes*. Willie Earl Alston, Sr. was admitted to the Defendant' nursing home facility on or about December 17, 2015. Upon admission, Mr. Alston was documented to return home with his wife after short-term rehabilitation. At all relevant times, it was documented that Mr. Alston suffered from dementia. Plaintiff alleges that while Mr. Alston was a resident, he developed pressure ulcers. Willie Earl Alston, Sr. died on April 22, 2016.

When Mr. Alston arrived at the Defendants' nursing home, Defendant's staff approached

Mr. Alston's daughter, Kimberly Alston-Wood. Ms. Alston-Wood was not Mr. Alston's guardian, conservator, or attorney in fact. The documents included an Admission Agreement which included a clause with an Arbitration Agreement. Mr. Alston's wife, Orveletta Alston, was appointed as Personal Representative of the Estate of Willie Earl Alston, Sr. on May 27, 2016 and filed this action on his behalf, alleging that the Defendants breached their duty in caring for Mr. Alston. On June 21, 2017, Defendants' filed a Motion to Stay Action and Compel Arbitration and for Protective Order. Oral arguments were heard on November 1, 2017.

ANALYSIS

Arbitration is a matter of contract and South Carolina Courts must determine the enforceability of an arbitration agreement based on principles of contract law. Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 538, 542 S.E.2d 360, 364 (2001). The policy of this State is to favor arbitration of disputes. Toler Cove Homeowner's Ass'n v. Trident Constr. Co., Inc., 355 S.C. 605, 612, 581 (2003). However, an arbitration agreement is not enforceable when a party to the contract lacks the capacity to contract.

1. **The Arbitration Agreement is not enforceable because Kimberly Alston-Wood lacked the capacity to contract on behalf of her father.**

In South Carolina, actual authority is expressly conferred upon the agent by the principal, but apparent authority exists where the principal knowingly permits the agent to exercise authority or when the principal holds the agent out as possessing such authority. Roberson v. S. Fin. Of South Carolina, Inc., 365 S.C. 6,9, 615 S.E.2d 112, 115 (S.C. 2005). It is the duty of one dealing with an agent to use due care to ascertain the scope of the agent's authority. Frasier v.

Palmetto Homes of Florence, 473 S.E.2d 865 (S.C. App. 1996). While the Plaintiffs did not expressly argue apparent authority, Ms. Alston-Woods authority status was raised by both parties, therefore the Court shall analyze both actual and apparent authority.

Here, Defendants argue in their motion that because Mr. Alston suffered dementia prior to and at the time of his admission, he did not have capacity to enter into a binding contract. Therefore by Defendants' own admission, Mr. Alston could not explicitly authorize, hold out, or knowingly permit Ms. Alston-Wood to sign the Arbitration Agreement, in satisfaction of the elements of the doctrine of apparent authority. Additionally, a review of the admissions and arbitration documents by Defendants would have informed them that Ms. Alston-Wood did not have authority by way of a Power of Attorney to bind her father. Ms. Alston-Woods, did not indicate at any time on the Admission Agreement that she had any authority to enter the contract on behalf of her father.

Additionally, Ms. Alston-Wood possessed no statutory, legal authority to bind Mr. Alston into a contract. The Adult Health Care Consent Act ("AHCCA") does not confer legal authority to Ms. Alston-Wood to enter into a contract on behalf of her father. S.C. Code Ann. § 44-66-30 notes that "(A) where a patient is unable to consent, decisions concerning his health care may be made by the following persons in order of priority: . . . . .(4) a spouse of the patient... (5) an adult child of the patient..." The statute specifically provides for a surrogate to make decisions regarding procedures and treatment of human disease and ailments. However, the statute does not authorize surrogates to enter into legal contracts waiving a person's right to a jury trial. Even if it did, Ms. Alston-Wood lacked priority under the statute because Mr. Alston's wife was alive

and making his health care decisions. The purpose of the AHCCA 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. "However the [AHCCA] does not confer such authority with respect to an Arbitration Agreement...." Thomspon, at 52. Additionally, neither party argued under S.C. Code Ann. § 44-66-30(D) that Mr. Alston's wife, who had top priority, was not reasonably available, unwilling to make decisions, or unable to make healthcare decisions for Mr. Alston.

Furthermore, the S.C. Bill of Rights for Resident of Long-Term Care Facilities does not confer legal authority to Ms. Alston-Wood to enter into a contract on behalf of her father. Under the Bill of Rights, a "representative" is defined as a "resident's legal guardian, committee, or next of kin or other person acting as agent of a resident who does not have a legally appointed guardian." S.C. Code Ann. §44-81-30(3). Mr. Alston did not have a legally appointed guardian or attorney in fact at the time of his admission. Therefore, the Bill of Rights would grant Mr. Alston's wife, as next of kin, as his representative, not Ms. Alston-Wood.

This Court finds the Supreme Court of South Carolina's decision in Coleman v. Mariner Health Care, Inc., 407 S.C. 346, 755 S.E.2 450 (2014) is very similar to the facts of the case at hand. In Coleman, the Circuit Court denied the nursing home defendants" motion to stay the action and compel arbitration because the sister of the resident who signed the arbitration and admission agreements lacked capacity to bind her sister to the arbitration agreement. In affirming the Circuit Court's Order in Coleman, the Supreme Court found that although the AHCCA did give the resident's sister "authority to make 'healthcare decision' on behalf of her sister, consent

for medical treatment for someone unable to consent is not the same as binding an incompetent person to a legally binding contract such as an arbitration agreement without authority to do so." Id. The Court reasoned that the Act only extends authority to surrogates to make traditional health care decisions and financial decisions that arise out of those decisions. The Court further addressed this in Thompson v. Pruitt Corp., 416 S.C. 43, holding that an arbitration agreement was separate from the admission agreement. In Thompson, the Court found that while the resident's son was authorized to execute an admission agreement under the AHCCA, the Act did not convey any authority for the son to sign an arbitration agreement on behalf of his father. The Court specifically addressed the fact that the terms of the Admission Agreement indicate that it either incorporated, or merged with, the Arbitration Agreement, but declined to merge the two. Id. at 52. Simply stated, an Arbitration Agreement is a legal document which does not concern health care related decisions. Likewise, an Admission agreement is a medical document which does not concern legal related decisions. One cannot simply be contained in the other and its health care or legal distinction is masked by the other.

In accordance with the foregoing, Ms. Alston-Wood lacked the actual or apparent authority, pursuant to statute, to make health care decisions on behalf of Mr. Alston as his agent. She furthermore lacked the actual or apparent authority to make legal decisions on behalf of Mr. Alston, which includes the agreement to arbitrate disputes by arbitration. Ms. Alston-Wood had no legal authority whatsoever to sign the Arbitration Agreement. Absent legal authority or at least some measure of apparent authority, the Arbitration Agreement is void and unenforceable.

2. **Willie Alston, Sr. was not a third-party beneficiary to the Arbitration Agreement because Kimberly Alston-Wood did not have capacity to bind him to the contract.**

Defendants' argument that Willie Alston, Sr. is bound by the Arbitration Agreement executed by his daughter as a third-party beneficiary is without merit. Mr. Alston did benefit from the Admissions Agreement to the facility, however Ms. Alston-Wood lacked authority under the AHCCA and the S.C. Bill of Rights to execute on his behalf. Along the same lines, Ms. Alston-Wood did not have authority to legally bind her father to the Arbitration Agreement contract for the reasons set forth above in Coleman and Thompson, because the Arbitration Agreement and Admission Agreement did not merge together. As such, this Court finds Willie Alston, Sr. was not a third-party beneficiary to the Arbitration Agreement because the contract was never valid.

3. **Plaintiff is not equitably estopped from denying the Arbitration Agreement.**

Defendants also argue that Plaintiff should be equitably estopped from denying enforcement of the Arbitration Agreement and that under the doctrine of equitable estoppel a party should not be permitted to sue under certain provisions of a contact while disclaiming provisions of the same contract. 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 the

estoppel must 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 the conduct of the party to be estopped. Id.

Defendant has not met its burden to establish these elements. There is no evidence Ms. Alston-Wood acted in a way amounting to a false representation to Defendants regarding Mr. Alston's status or that Ms. Alston-Wood intended for Defendant to act in reliance on her conduct. Mr. Alston's diminished capacity prevented him from forming the required intent for Defendants to rely on his conduct. Additionally, the evidence shows Defendants 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 Defendants to show it did not know Mr. Alston lacked authority to sign the arbitration agreement on her father'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. 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).

Defendants had the capacity to determine whether Ms. Alston-Wood had authority to sign an arbitration agreement on Mr. Alston's behalf. Defendants are 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 Ms. Alston-Wood whether she was Mr. Alston's guardian or

attorney-in-fact and had the ability to request supporting documentation. Since Defendants have not cited or provided evidence on all required elements of equitable estoppel, Plaintiff is not equitably estopped from denying the arbitration agreement.

Furthermore, while typically the Defendants argument that equitable estoppel would prevent a party from cherry picking certain previsions to rely upon while disavowing other, there is an exception in cases such as these circumstances. As stated above, Mr. Alston was suffering from dementia prior to being admitted to Conway Manor, thus he was prevented from having the requisite intent and knowledge to assent to the Arbitration Agreement. Therefore, there must be some legal authority for Ms. Alston-Woods to sign on behalf of her father. The Admissions Agreement and the Arbitration Agreement were signed at the same time, in the course of the same transaction. The Agreements, however, do not merge. The two agreements are independent of one another, as reflected in the language of the Admission Agreement, indicating the execution of the Admission agreement was not contingent upon an Optional Arbitration Clause. The Optional Arbitration Clause stated:

> "Any action, dispute, claim, or controversy, of any kind (tort, contract, equitable or statutory, including but not limited to claims of violation of resident's rights(now existing or hereafter arising between the parties, in anyway arising form or relating to this Agreement governing the Resident's stay a[t] the Facility, shall be resolved by binding arbitration.... **OPTIONAL: if the parties do not agree to this Arbitration Clause, please mark with an X to void this clause only."**

As previously stated the AHCCA provides for the health and wellbeing of an incapacitated adult, an Arbitration agreement is a legal document not for the care of an incapacitated adult, and is outside of the scope of the AHCCA. Therefore, because the Court finds

that the two documents did not merge and there was no legal authority for Ms. Alston-Woods to sign on Mr. Alston's behalf, equitable estoppel does not apply to the Arbitration agreement.

4. **The FAA does not mandate the enforcement of the Arbitration Agreement**

Under the Federal Arbitration Agreement ("FAA"), arbitration is required when there is a valid arbitration agreement and a dispute exists which is within the scope of the agreement. Under the arbitration clause, neither prong is satisfied. As discussed in the sections above, there is no valid arbitration agreement because Ms. Alston-Wood did not have the legal authority to execute a valid arbitration agreement or health care admission agreement. Accordingly, the FAA does not apply.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Arbitration Agreement in question is unenforceable and Defendants' Motion to Dismiss is **DENIED.**

The Honorable Larry B. Hyman, Jr.

1-11, 2018
Conway, South Carolina