STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
Teresa Murphy, as Personal Representative for the Estate of Isaac Strong,	)	Civil Action No.: 2018-CP-46-01459
Plaintiff,	)	
v.	)	
Hunt Valley Holdings, LLC f/k/a Fundamental Long Term Care Holdings, LLC; Fundamental Clinical and Operational Services, LLC; Fundamental Consulting, LLC; Fundamental Administrative Services, LLC; THI of Baltimore, Inc.; THI of South Carolina, LLC; THI of South Carolina at Rock Hill, LLC d/b/a Magnolia Manor of Rock Hill; and Amisub of S.C., Inc. d/b/a Piedmont Medical Center,	)	**ORDER**
Defendants.	)	

This matter came before the Court on Defendant THI of South Carolina, LLC d/b/a Magnolia Manor Rock Hill's ("THI") Motion to Dismiss and Compel Arbitration or, Alternatively, to Compel Arbitration and Stay Proceedings. A hearing was held on August 30, 2018. After considering the parties' written submissions and oral arguments and for the reasons stated below, THI's motion is **DENIED**.[1]

FACTS

Plaintiff's Complaint alleges Isaac Strong was admitted to Magnolia Manor of Rock Hill ("Facility") on December 22, 2014, following a multi-week hospitalization in Piedmont Medical

[1] Defendants Fundamental Administrative Services, LLC, Fundamental Clinical and Operational Services, LLC, and THI of South Carolina, LLC also filed motions to stay Plaintiff's claims against them pending resolution of THI's motion to compel arbitration. In light of the Court's ruling denying to compel arbitration, the motions to stay are dismissed as moot.

Center related to a stroke that caused persistent weakness along his right side. (Compl. ¶¶ 25, 28). Four days before Mr. Strong was transferred to the Facility, his daughter Teresa Murphy was presented with two contracts. The first was an "Admission Agreement" that governed the type of care Mr. Strong would receive at the Facility and Mr. Strong's financial obligation to pay for those services. On the Admission Agreement's final page, labeled as "Page 12 of 12," there was an "Entire Agreement" provision indicating these 12 pages constituted "the entire agreement and understanding between the parties" concerning Mr. Strong's admission to the Facility. Ms. Murphy signed the Admission Agreement on the "Signature of Representative" line. Ms. Murphy was not Mr. Strong's conservator, guardian, or attorney-in-fact.

On the same day, Ms. Murphy signed a contract called "Arbitration Agreement." This contract was not part of the 12 pages comprising the Admission Agreement but was its own separate entity (labeled "Page 1 of 1") with its own signature blocks. The Arbitration Agreement, purportedly a contract between the Facility and Mr. Strong, provides for alternative dispute resolution for any claim a party may bring against another arising out of Mr. Strong's admission in the Facility. Ms. Murphy signed the Arbitration Agreement on the line labeled "Resident/Representative Signature." THI informed the Court that Mr. Strong agreeing to arbitrate was not a prerequisite to his admission at the Facility.

When Mr. Strong arrived in the Facility on December 22, 2014, he had a pressure ulcer and was at an elevated risk of developing new ulcers. (Compl. ¶ 28). Orders were entered requiring that Mr. Strong be turned or repositioned ever two hours. (Compl. ¶ 26). However, over the next couple weeks, Mr. Strong's pressure ulcer worsened, becoming infected and then septic. (Compl. ¶¶ 31-33). Mr. Strong's condition grew increasingly severe over the following months requiring hospitalizations and procedures before his passing away on September 5, 2015. (Compl. ¶¶ 34-

46). On May 14, 2018, Ms. Murphy initiated this action as the personal representative for Mr. Strong's estate. The Complaint alleges wrongful death and survival claims arising from Defendants' failure to properly treat Mr. Strong's skin condition while at PMC and the Facility. On July 17, 2018, THI filed a Motion to Compel Arbitration and Petition to Stay State Court Proceedings. Relying on the Arbitration Agreement that Mr. Strong did not sign, THI argues Plaintiff must arbitrate rather than litigate her claims.

LEGAL REASONING

I. There is no valid agreement to arbitrate claims stated in Plaintiff's Complaint.

Plaintiff's Complaint alleges causes of action for negligence (wrongful death and survivor actions). The survival claim relates to duties established and breached during Isaac Strong's life and damages sustained during his life. This claim belongs to Mr. Strong. Plaintiff Teresa Murphy (Mr. Strong's personal representative) presents this claim on Mr. Strong's behalf. See S.C. Code Ann. § 15-5-90 (stating that claims "survive both to and against the personal or real representative...of a deceased person"). Accordingly, THI must show a valid and enforceable arbitration agreement between Mr. Strong and THI to prevail on its motion. Defendants' motion, memorandum, and attached documents do not meet this burden.

Basic contract law holds that a contract binds only those parties who show an "objective manifestation of . . . assent at the time the contract was made." Laser Supply & Services, Inc. v. Orchard Park Assoc., 382 S.C. 326, 334, 676 S.E.2d 139, 143-44 (Ct. App. 2009). Mr. Strong did not sign the Arbitration Agreement or personally give any other objective manifestations of assent to this contract. THI contends Mr. Strong is bound to the agreement through the signature of Teresa Murphy, whom THI asserts was acting as Mr. Strong's agent. Defs.' Mem. at 6-9. For agency situations, the legal burden is on the party asserting that an agency exists. Frasier v. Palmetto

Homes of Florence, Inc., 323 S.C. 240, 244, 473 S.E.2d 865, 867 (Ct. App. 1996). In this case, THI must show that all necessary elements of an agency relationship are "clearly established" by the facts. Id. A party dealing with an agent has a duty to use due care to ascertain the scope of the agent's authority to act. Frasier v. Palmetto Homes of Florence, Inc., 323 S.C. 240, 244, 473 S.E.2d 865, 867 (Ct. App. 1996).

A. The Admission Agreement and Arbitration Agreement are Separate Contracts that do not Merge.

As discussed below, THI argues the Arbitration Agreement signed by Teresa Murphy is valid because, even though she had no actual authority to sign it on Mr. Strong's behalf, she was Mr. Strong's apparent agent or, in the alternative, Mr. Strong's estate is estopped from contesting her alleged authority. These arguments have a common premise. Defendants stake both arguments to the notion that the Arbitration Agreement and Admission Agreement merge into a single contract that must be construed as a unit. For example, THI argues Mr. Strong created an agency relationship to support arbitration because he "accepted" admission. (Defs.' Mem. at 8). THI then argues Plaintiff is estopped from denying authority to bind Mr. Strong to arbitration because she does not deny authority to admit him to the Facility. (Defs.' Mem. at 12). Accepting merger is a prerequisite to accepting Defendants' arguments. However, recent case law governing nursing home arbitration contracts reject THI's argument. Hodge v. UniHealth Post-Acute Care of Bamberg, LLC, 422 S.C. 544, 573-74, 813 S.E.2d 292, 308 (Ct. App. 2018) (cert. denied Aug. 21, 2018); Thompson v. Pruitt Corp., 416 S.C. 43, 55, 784 S.E.2d 679, 686 (Ct. App. 2016); Coleman v. Mariner Health Care, Inc., 407 S.C. 346, 352, 755 S.E.2d 450 (2014).

South Carolina law states that contracts signed at the same time by the same parties and for the same purpose will be construed together "in the absence of anything indicating a contrary intention." Coleman, 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)). Coleman refused to apply the merger doctrine because language in the contracts "recognize[d] the 'separateness' of the admission and arbitration agreements." 407 S.C. at 355, 755 S.E.2d at 455. Thompson and Hodge applied Coleman and provided further examples of factors demonstrating "separateness" and preventing merger. 416 S.C. at 52, 784 S.E.2d at 684; 422 S.C. at 563, 813 S.E.2d at 302.

An admission contract with an "Entirety of Agreement" provision is separate "on its face" from an arbitration contract especially where the provision identifies the two contracts distinctly—i.e. "this [Admission] Agreement *or* in the Arbitration Agreement." Coleman, 407 S.C. at 355, 755 S.E.2d at 455 (emphasis added). In fact, when the arbitration and admission contracts have different pagination with different signature pages and the arbitration contract has "Arbitration Agreement" atop its first page, these factors further "indicat[e] the parties' intent for it to stand by itself as an independent contract." Thompson, 416 S.C. at 53 n. 1, 784 S.E.2d at 685 n. 1; Hodge, 422 S.C. at 562-63, 813 S.E.2d at 302. Separateness is further demonstrated when the nursing home makes clear that agreeing to arbitrate is not required to gain admission to the home. Thompson, 416 S.C. at 53, 784 S.E.2d at 685; Hodge, 422 S.C. at 562-63, 813 S.E.2d at 302.

Many of these same factors are present here. The "Admission Agreement" presented to Ms. Murphy contains an "Entire Agreement" provision stating that "this Agreement represents the entire agreement" related to Mr. Strong's admission to the Facility. Thus, "Agreement" is a defined term in this contract and, as stated in the contract's opening paragraph, is limited to the "Admission Agreement," not the separate Arbitration Agreement. Like in Hodge, the separate contracts have separate signature pages and separate pagination—i.e. the Admission Agreement ends with "Page 12 of 12" while the Arbitration Agreement is "Page 1 of 1." As in Thompson, the arbitration agreement states its independence with its "Arbitration Agreement" title. Moreover, THI's counsel

argued at the hearing that agreeing to arbitrate was not required for Mr. Strong to be admitted to Defendants' facility. To the extent there are any ambiguities in this contract language, they must be resolved against merger. Coleman, 407 S.C. at 355-56, 755 S.E.2d at 455; Thompson, 416 S.C. at 53, 784 S.E.2d at 685 (citing Coleman). THI was in sole control of the language chosen for these form contracts of adhesion and it was their responsibility to make merger clear if they so desired.

In sum, THI cannot meet its burden to prove merger. The Admission Agreement and Arbitration Agreement are distinct and should not be construed as a unit.

B. Teresa Murphy was not Mr. Strong's Actual or Apparent Agent.

Agency is a "fiduciary relationship that results from the manifestation of consent by one person to another to be subject to the control of the other and to act on his behalf." Peoples Fed. Savs. & Loan Ass'n v. Myrtle Beach Golf & Yacht Club, 310 S.C. 132, 145, 425 S.E.2d 764, 773 (Ct. App. 1992) (citing Restatement (Second) of Agency § 1 (1958)). An agency relationship may be established with clear evidence of actual or apparent authority conferred by the purported principal on the purported agent. Cowburn v. Leventis, 366 S.C. 20, 39, 619 S.E.2d 437, 448 (Ct. App. 2005). Actual authority is "expressly conferred upon the agent by the principal." Richardson v. PV, Inc., 383 S.C. 610, 615, 682 S.E.2d 263, 265 (2009). Apparent authority is based on "representations made by the principal to the third party and reliance by the third party on those representations." Young v. S.C. Dep't of Disabilities & Special Needs, 374 S.C. 360, 367, 649 S.E.2d 488, 491 (2007). To prove apparent authority, a party must show (1) purported principal consciously or impliedly represented another to be his agent; (2) reliance on the representation by a third party; and (3) change in position by third party in reliance on the representation. Cowburn, 366 S.C. at 39-40, 619 S.E.2d at 448.

South Carolina law provides that an agency relationship cannot be established solely by the words and actions of the purported agent. Id. For apparent authority to exist, "[e]ither the principal must intend to cause the third person to believe the agent is authorized to act for him, or he should realize his conduct is likely to create such belief." R & G Constr., Inc. v. Lowcountry Reg'l Transp. Auth., 343 S.C. 424, 433, 540 S.E.2d 113, 118 (Ct. App. 2000). THI has not identified any conduct by Mr. Strong showing he intended to cause THI to believe Teresa Murphy was authorized to act for him. In fact, THI argued at the hearing Mr. Strong suffered from serious health issues that may have affected his ability to understand events occurring during his admission.

THI then argues Mr. Strong represented Teresa Murphy had authority to waive his jury trial right simply by his continued residency in the Facility. Defs.' Mem. at 8. The Court rejects this argument for several reasons. First, Defendants conclude Mr. Strong's presence alone can constitute an affirmative representation. Defs.' Mem. at 7-8 (citing Carraway v. Beverly Enters. Ala., Inc., 978 So.2d 27, 30-31 (Ala. 2007)). Carraway is not binding precedent in this Court and its expansive view of apparent agency was rejected in Hodge, where the court rejected the notion that a nursing home resident represents his/her family member has authority to enter an arbitration agreement on the resident's behalf simply by failing to object to the family member's signature. 422 S.C. at 573-74, 813 S.E.2d at 308 (noting home argued resident "represented" her husband had authority by "allowing him to procure her admission" but still finding "no evidence . . . that [the resident], as the principal, represented husband was her agent"). THI makes a similar argument to the one Hodge rejected. Defs.' Mem. at 8 (suggesting Mr. Strong created apparent agency relationship "by allowing Ms. Murphy to procure Mr. Strong's admission to the Facility").

Second, even accepting THI's recently rejected premise, any representation Mr. Strong's presence conveyed could only cover admission and not arbitration. As THI argued during the hearing, Mr. Strong's admission was in no way contingent on agreeing to arbitrate disputes. Third, THI's argument conflates the Admission Agreement and Arbitration Agreement in another important way. THI argues Mr. Strong "accept[ed] the benefits of the contracts." Def's. Mem. at 8. However, the only "benefit" THI cites is admission itself, a benefit THI has admitted to be separate from arbitration. THI never attempts to explain what supposed "benefit" of the independent Arbitration Agreement Mr. Strong derived during his time as a resident in Defendants' facility. Any such attempt would have been futile given the Court of Appeals' unambiguous ruling in Thompson which held that "any possible benefit emanating from the [arbitration agreement] alone is offset by the [arbitration agreement's] requirement that [resident] waive her right to access the courts and her right to a jury trial." 416 S.C. at 60, 784 S.E.2d at 688. Since Mr. Strong made no affirmative representations that Ms. Murphy had authority to sign the Arbitration Agreement on his behalf, the Court rejects THI's actual and apparent agency arguments.

C. Plaintiff is not Estopped from Challenging the Arbitration Agreement's Validity.

THI argues Plaintiff is equitably estopped from opposing enforcement of the Arbitration Agreement. Equitable estoppel is a contract defense for which the asserting party "bears the burden of establishing all the 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 conducted 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.

THI briefly mentions some of these elements but make no effort to apply them. Def's. Mem. at 10 (citing Boyd v. BellSouth Tele. Tele. Co., Inc., 369 S.C. 410, 422, 633 S.E.2d 136, 142 (2006)). Instead, THI suggests an alternative equitable estoppel standard and rely on federal cases. Defs.' Mem. at 17-18. THI contend their contract-based argument is subject to federal law rather than the law of South Carolina, the state where the alleged contract was signed and its alleged parties resided. The Court rejects this argument as at odds with U.S. Supreme Court precedent. An arbitration contract concerning interstate commerce are governed by the FAA but its provisions apply state law to enforceability questions such as the application of equitable estoppel. 9 U.S.C. § 2 (requiring enforcement of arbitration contract "save upon such grounds as exist at law or in equity for the revocation of any contract"). The FAA does not "alter background principles of state contract law regarding the scope of agreements (including the question of who is bound by them)." Arthur Anderson LLP v. Carlisle, 556 U.S. 624, 630 (2009). Arthur Andersen specifically applied this principle to equitable estoppel arguments. Id. at 632 (noting question on remand was "whether the relevant state contract law recognizes equitable estoppel"). At least eight

federal circuits[2] along with multiple district[3] and state courts[4] have cited Arthur Andersen with multiple courts modifying or overruling precedent to comply with the Supreme Court's ruling.

Moreover, the Court finds THI could not prevail even if its equitable estoppel argument was governed by federal law. THI relies primarily on International Paper Co. v. Schwabedissen Maschinen & Anlaeen GMBH, 206 F.3d 411, 417-18 (4th Cir. 2000) which held that a party may be estopped from denying arbitration when he has received a "direct benefit" from a contract containing an arbitration clause. THI then argues Mr. Strong's admission to the Facility was the required "direct benefit." In doing so, THI tie their estoppel argument inextricably to their flawed merger argument. See Coleman, 407 S.C. at 355, 755 S.E.2d at 455 (noting nursing home's "equitable estoppel argument is premised on [the home's] contention that, under state law, the

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[2] Richmond Health Facilities v. Nichols, 811 F.3d 192, 195 (6th Cir. 2016) (citing Arthur Anderson) ("in determining the enforceability of an arbitration agreement, we apply state law of contract formation"); Crawford Prof'l Drugs, Inc. v. CVS Caremark Corp., 748 F.3d 249, 255 (5th Cir. 2014) (holding "state contract law" applied to equitable estoppel issue and noting prior decisions "based on federal common law, rather than state contract law . . . have be modified to conform with Arthur Andersen"); Kramer v. Toyota Motor Corp., 705 F.3d 1122, 1128 (9th Cir. 2013) (citing Arthur Andersen and applying California law to the equitable estoppel analysis); Awuah v. Coverall N. Am., Inc., 703 F.3d 36, 41-42 (1st Cir. 2012) (same for Massachusetts law); The Republic of Iraq v. BNP Paribas USA, 472 Fed. Appx. 11, 13-14 (2d Cir. 2012) (same for New York law); Lenox MacLaren Surgical Corp. v. Medtronic, Inc. 449 Fed. Appx. 704, 708 n. 2 (10th Cir. 2011) (finding Arthur Andersen "made it clear that state law governs who may be bound to an arbitration clause"); Lawson v. Life of the S. Ins. Co., 648 F.3d 1166, 1172 (11th Cir. 2011) (holding that "to the extent any of our earlier decisions indicate to the contrary, those indications are overruled or at least undermined to the point of abrogation by [Arthur Andersen]"); Donaldson Co. v. Burroughs Diesel, Inc., 581 F.3d 726, 732 (8th Cir. 2009) ("The Supreme Court has ruled that state contract law governs the ability of nonsignatories to enforce arbitration provisions").

[3] MacDonald v. Unisys Corp., 951 F. Supp. 2d 729, 736-38 (E.D. Pa. 2013) ("Post-Arthur Anderson, it is incontrovertible that state law governs the equitable estoppel and third-party beneficiary determinations"); Hospira, Inc. v. Therabel Pharma N.V., Case No. 12-C-8544, 2013 WL 3811488 *11-14 (N.D. Ill. July 19, 2013) (citing Arthur Andersen and applying state law to equitable estoppel analysis); FR 8 Singapore Pte. Ltd. v. Albacore Maritime Inc., 794 F. Supp. 2d 449, 455 (S.D.N.Y. 2011) ("the question of who was bound by [arbitration] agreement was treated as a question of state law").

[4] See e.g., Carter v. TD Ameritrade Holding Corp., 721 S.E.2d 256, 261-62 (N.C. Ct. App. 2012) (citing Arthur Andersen and considering ratification argument under state law).

admission agreements and the [arbitration agreements] merged"). Admission can be the "direct benefit" that forces Plaintiff to arbitrate only if admission and arbitration are governed by the same contract. For the reasons outlined above, the two contracts are separate, they do not merge, and Mr. Strong's admission does not support equitable estoppel.

Again, precedent is decisive on this point. Citing International Paper, the Court of Appeals recently held in Thompson that any benefit of admission "is of no moment" for the application of equitable estoppel to a separate arbitration contract. 416 S.C. at 59-60, 784 S.E.2d at 688; see also Coleman, 407 S.C. at 354-55, 755 S.E.2d at 455. Hodge cited and reaffirmed Thompson's estoppel analysis. 422 S.C. at 558-59, 813 S.E.2d at 300.[5] Since admission is unavailable as a "direct benefit" to support estoppel, THI would be required to point to some benefit Mr. Strong received from the Arbitration Agreement alone. However, Mr. Strong and his estate derived no benefit from the Arbitration Agreement. Hodge, 422 S.C. at 563, 813 S.E.2d at 302 (finding family members, resident, and resident's estate "received no benefit from the Arbitration Agreement"). Even if they had, "any possible benefit emanating from the [Arbitration Agreement] alone is offset by the [Arbitration Agreement's] requirement that [Mr. Strong] waive [his] right to access the courts and [his] right to a jury trial." Thompson, 416 S.C. at 60, 784 S.E.2d at 688.

THI then makes a broader argument that it would be "manifestly inequitable" for Plaintiff to pursue a tort claim based on the Admission Agreement while denying Ms. Murphy's authority to sign the Arbitration Agreement. Defs.' Mem. at 18. Defendants misunderstand the legal distinction between health care and dispute resolution decisions. It is not unusual for a family

[5] Hodge was also skeptical of the notion that admission was a benefit to the resident considering Complaint allegations that the nursing home's acts during the admission caused the resident's death. 422 S.C. at 563, 813 S.E.2d at 303 ("we find it difficult to find [resident] benefitted even from being admitted").

member to have authority to admit a loved one to a nursing home while lacking authority to waive the loved one's jury trial right. That is what the Adult Health Care Consent Act permits. It provides statutory authority for family members to make an incapacitated loved one's "health care" decisions but leaves the conferral of authority to arbitrate for powers of attorney or other legal instruments outlined in the probate code. Coleman, 407 S.C. at 353, 755 S.E.2d at 454 (finding statutory power to make "health care" decisions limited to nursing home admission and related financial decisions). Plus, Plaintiff is not asserting any claim based on the Admission Agreement; she alleges only common-law negligence claims. See Hodge, 422 S.C. at 563, 813 S.E.2d at 302 ("because [resident and estate] are not suing for a breach of the Admission Agreement, they are not attempting to enforce that agreement" and are not estopped from challenging the Arbitration Agreement).

In sum, THI's equitable estoppel argument is rejected under South Carolina and federal law as interpreted in Thompson and Hodge.[6]

D. Ms. Murphy did not have Inherent Agency Power to Bind Mr. Strong or his Estate to Arbitration.

THI next ask the Court to find a binding agency relationship even if Ms. Murphy lacked actual or apparent authority to admit Mr. Strong to the Facility. Def's. Mem. at 12-13. THI cites

[6] THI assert "agency by estoppel" as a separate basis for compelling arbitration (Def's. Mem. at 10-12) but the arguments in that section are subsumed by THI's other arguments. THI cites a sentence from R & G Construction holding that a principal is estopped from denying the existence of an agency relationship. However, that same sentence makes clear that estoppel only applies if the principal has acted in a way to create an agency relationship. For the reasons stated in Section 2(B), there is no agency relationship here. THI then cite Boyd v. BellSouth Tele. Tele. Co., Inc., 369 S.C. 410, 422, 633 S.E.2d 136, 142 (2006), but the elements cited there are for equitable estoppel. Finally, THI relies heavily on McCutcheon v. THI of S.C. at Charleston, LLC, an unreported federal district court. No. 2:11-cv-02861, 2011 WL 6318575 (D.S.C. Dec. 15, 2011). Any value McCutcheon may have held is significantly undercut by the facts that the McCutcheon reviewed merged contracts and that this (at best) persuasive authority preceded the binding rulings in Coleman, Thompson, and Hodge.

just one South Carolina case in support of this proposition. Smith v. Fitton & Pittman, Inc., 264 S.C. 129, 212 S.E.2d 925 (1975). Smith was later overruled but, even on its own, Smith does not support THI's theory because the only reference to agency in the whole opinion was the court rejecting the inherent agency theory. Id. at 134, 212 S.E.2d at 927 ("appellant has offered no authority, and we have found none, that [individual] would have inherent agency power . . ."). There is no basis for inherent agency in South Carolina law for nursing home arbitration contracts.

E. The South Carolina Bill of Rights for Residents of Long-Term Care Facilities did not Authorize Ms. Murphy to Bind Mr. Strong to Arbitration.

Finally, the Court rejects Defendants' argument that a statute designed to protect nursing home residents' dignity and personal integrity actually paves the way for a resident to lose his right to litigate claims for nursing home neglect. (Defs.' Mem. at 13-14). The "Bill of Rights" for nursing home residents is intended to help residents "retain their individuality and personal freedom" and to support residents' "need for self-determination." S.C. Code Ann. § 44-81-20. To make these rights meaningful, the statute requires nursing homes to provide a written explanation of each right to the resident or his representative and provides a grievance procedure to address alleged violations. S.C. Code Ann. §§ 41-81-40, -60. Defendants cite this statute to suggest that, because Ms. Murphy may have been the "representative" who received a copy of Mr. Strong's explanation of the Bill of Rights, she then gained legal authority to bind him to arbitration. However, the Bill of Rights makes no mention of arbitration, and the Court finds neither the statute's language nor its legislative purpose support arbitration in this case.

F. THI is not Entitled to Depose Ms. Murphy or to Conduct Other Discovery before the Court Rules on its Motion.

Finally, THI argued at the hearing that it should be allowed to depose Ms. Murphy or conduct additional discovery to support its agency and estoppel arguments before the Court rules on arbitration. Hodge recently rejected a similar argument. 422 S.C. at 575, 813 S.E.2d at 309. As

discussed above, agency depends on the representations of the purported principal (i.e. Mr. Strong) and cannot be formed based on the representations of the purported agent (i.e. Ms. Murphy). Accordingly, Ms. Murphy's deposition "would not add anything to [the agency] determination." Id. at 578, 813 S.E.2d at 310. Moreover, while THI argues on reply that it needs additional discovery on Mr. Strong's mental capabilities when the arbitration contract was signed, records documenting Mr. Strong's mental faculties at admission lie within THI's own medical records. The Court finds no need for additional discovery to rule on the issues raised in THI's motion.

CONCLUSION

For all these reasons, THI's motion to dismiss/compel arbitration is **DENIED**. In light of this ruling, the motions to stay filed by Defendants Fundamental Administrative Services, LLC, Fundamental Clinical and Operational Services, LLC, and THI of South Carolina, LLC are **DISMISSED AS MOOT**.

IT IS SO ORDERED

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William A. McKinnon
Circuit Court Judge, 16th Judicial Circuit

October ___, 2018

York Common Pleas

Case Caption: Teresa Murphy , plaintiff, et al VS Hunt Valley Holdings, Llc , defendant, et al

Case Number: 2018CP4601459

Type: Order/Dismissal

So Ordered

/s William A. McKinnon, #2761, Circuit Judge