STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	C/A NO.: 2018-CP-26-06576
Cleo Bertiaux as Guardian for Kathryn G. Parrish,	)	
Plaintiff,	)	**ORDER GRANTING DEFENDANT'S MOTION TO DISMISS AND COMPEL ARBITRATION**
-vs-	)	
NHC Healthcare/Garden City, LLC,	)	
Defendant.	)	

This matter came before this Court on March 5, 2018, upon a motion by the Defendant NHC Healthcare/Garden City, LLC for an order dismissing this case and compelling binding arbitration pursuant to the Agreement to Arbitrate (the "Agreement") signed by Cleo Bertiaux (the "Plaintiff"), on June 21, 2017. This is an alleged medical malpractice action. Present at the hearing were attorneys Lydia Magee, Esquire, on behalf of Defendant NHC Healthcare/Garden City, LLC (the "Defendant"), and Robert Dodson, Esquire, on behalf of the Plaintiff Cleo Bertiaux as Guardian for Kathryn G. Parrish. After reviewing the pleadings, motions, memorandums of law submitted by both parties, hearing oral arguments, and considering the law, the Court grants the Defendant's Motion to Dismiss and Compel Arbitration of the claims asserted by Plaintiff for the reasons set forth below.

I. FACTUAL FINDINGS AND PROCEDURAL HISTORY

On or about August 3, 2015, the Horry County Probate Court issued an Order appointing Plaintiff Cleo Bertiaux as the Guardian of her mother, Kathryn Parrish, due to Ms. Parrish's dementia. Approximately two years later, on or about June 22, 2017, Ms. Parrish was admitted to NHC Healthcare/Garden City, LLC. Prior to Ms. Parrish's admission, on June 21, 2017, NHC

Healthcare/Garden City, LLC and Plaintiff entered into an Admission and Financial Agreement for the provision of heath care services to Patient. Plaintiff also signed a Preadmission Agreement and Agreement to Arbitrate and Waive Jury Trial with NHC Healthcare/Garden City, LLC (the "Agreement").

The Arbitration Agreement provides that the parties—including "their employees, agents, representatives, affiliates, fiduciaries, medical directors, officers, directors, governing bodies, management companies, insurers, attorneys, predecessors, successors, assigns, third party beneficiaries, heirs, executors, administrators, or any of them, and all persons, entities or corporations with whom any of the former have been, are now, or may be affiliated" —agree to follow the dispute resolution procedure set forth in the Arbitration Agreement executed concurrently with the other admissions documents. The scope of the arbitration provision can be generally summarized as follows:

1. The parties agree to follow the "Grievance Procedure" described in the Patient Rights Booklet for any claims or disputes arising out of or in connection with the care rendered to the Patient;

2. Where the amount in controversy does not exceed the statutory limits for submission to the South Carolina Small Claims Court, then the controversy shall be submitted to that court; and

3. Any disputes with an amount in controversy exceeding the statutory limits for submission to the South Carolina Small Claims Court shall be resolved by binding arbitration. There are no set limits on the award of actual or punitive damages in either of the Agreements.

Ms. Parrish, an 87-year-old widowed female, was admitted to NHC Healthcare/Garden City, LLC on June 22, 2017 with admitting diagnoses of displaced oblique fracture of the right femur, repeated falls, osteoarthritis, morbid obesity, dementia, atherosclerotic heart disease, chronic atrial fibrillation, diastolic congestive heart failure, and chronic obstructive pulmonary disease. The allegations underlying Plaintiff's Complaint stem from an alleged fall that Ms.

Parrish suffered while a patient at Defendant's facility.

On April 4, 2018, Plaintiff, in her capacity as Guardian for Kathryn Parrish, filed with the Horry County Clerk of Court a Notice of Intent to File Suit in a Medical Malpractice Case, with an attached expert affidavit, pursuant to S.C. CODE ANN. § 15-79-125. These pleadings were assigned C/A No. 2018-NI-26-00013. Thereafter, on November 14, 2018, the parties participated in mediation required under S.C. CODE ANN. § 15-79-125(C); however, this pre-suit mediation ended in an impasse.

On or about November 21, 2018, Plaintiff filed a Summons and Complaint in this Court alleging, among other things, that Defendant negligently provided care to Ms. Parrish resulting in her fall. The Complaint was served on Defendant's registered agent on November 28, 2018.

On December 27, 2018, Defendant filed a Motion to Dismiss and Compel Arbitration of all claims related to the care provided to Ms. Parrish by Defendant and its employees. The Defendant argued that by filing the Summons and Complaint with this Court, Plaintiff failed to comply with the terms set forth in the Arbitration Agreement. Specifically, Defendant alleges that the Plaintiff has failed to follow the Grievance Procedure described in the Patient Rights Booklet for claims or disputes arising out of or in connection with the Patient's care. Defendant further argued that despite the fact that the amount in controversy exceeds the limits for submission to small claims court, Plaintiff has also failed to make an attempt to arbitrate this matter as required under the Arbitration Agreement.

ARGUMENT

Both state and federal policy favor arbitration of disputes. Zabinski v. Bright Acres Assocs., 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001); see also Carolina Care Plan, Inc. v. United HealthCare Servs., Inc., 361 S.C. 544, 553, 606 S.E.2d 752, 757 (2004) (observing "the

strong presumption favoring arbitration of disputes") (citing Prima Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395 (1967)). Once it is clear that the parties have a contract that provides for arbitration between them, any doubts concerning the scope of the arbitration shall be resolved in favor of arbitration. Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24-25 (1983); S.C. Pub. Serv. Auth. v. Great W. Coal (Ky.), Inc., 312 S.C. 559, 564, 437 S.E.2d 22, 25 (1993); Towles v. United Healthcare Corp., 338 S.C. 29, 41, 524 S.E.2d 839, 846 (Ct. App. 1999). Unless a court can say with positive assurance that the arbitration clause is not susceptible to any interpretation that covers the dispute, arbitration should generally be ordered. Zabinski, 346 S.C. at 597, 553 S.E.2d at 118-19; see also Towles, 338 S.C. at 41, 524 S.E.2d at 846 ("Motions to compel arbitration should not be denied unless the arbitration clause is not susceptible of any interpretation that would cover the asserted dispute."). "[A]rbitration agreements enjoy a strong presumption of validity in federal and state courts." Dean v. Heritage Healthcare of Ridgeway, LLC, 408, S.C. 371, 380, 759 S.E.2d 727, 731-32 (2014)

The Arbitration Agreement in the instant case provides that the parties agree to submit to binding arbitration:

> all disputes against each other and their employees, agents, representatives, affiliates, fiduciaries, medical directors, officers, directors, governing bodies, management companies, insurers, attorneys, predecessors, successors, assigns, third party beneficiaries, heirs, executors, administrators, or any of them, and all persons, entities or corporations with whom any of the former have been, are now, or may be affiliated, arising out of or in any way related or connected to the Patient's stay and the care provided at the Center [NHC Healthcare/Garden City, LLC], including but not limited to any disputes concerning alleged personal injury to the Patient caused by improper or inadequate care, including allegations of medical malpractice; any disputes concerning whether any statutory or regulatory provisions relating to the Patient were violated; any dispute related to Center's charges to the Patient; and any other dispute under state or federal law based on contract, tort, or statute that exceeds the state's small claims court statutory limits as later defined. (emphasis added).

The Complaint alleges that Ms. Parrish suffered personal injury due to alleged improper or inadequate care by Defendant and its employees. Thus, the Arbitration Agreement clearly

reflects the intent of the parties to arbitrate the claims alleged in Plaintiff's Complaint.[1]

However, Plaintiff argues a principle of contract law, namely that the language of the contract alone determines the contract's force and effect, to support her position that there was no legally binding Arbitration Agreement because the legal name of Defendant was incorrectly handwritten into the Agreement. Although the correct legal name of Defendant is "NHC Healthcare/Garden City, LLC," during the preparation of the admission documents for signature, the words "National Healthcare Garden City, LLC" were inadvertently handwritten for the name of the Defendant. There is no dispute that National Healthcare Garden City, LLC is a nullity and does not legally exist.

Plaintiff asserts that the Defendant's Motion to Dismiss and Compel Arbitration should be denied because the Agreement is "between two different parties which are not the named parties to this litigation." Plaintiff suggests that if this Court were to grant the Defendant's Motion to Dismiss and Compel Arbitration that the Court would, in essence, be re-writing the Agreement between the parties. This Court disagrees. The South Carolina Supreme Court has held that a contract is "good between the parties, no matter how incorrect the name used in the paper may be, if it appears they were intended as the names of the parties to be bound by the contract or receive its benefits." Cobb & Seal Shoe Store v. Aetna Ins. Co., 78 S.C. 388, 58 S.E. 1099 (1907) (emphasis added).

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[1]The Arbitration Agreement also provides that "[t]he Federal Arbitration Act shall apply to determine the arbitrability of any dispute and the scope of the arbitration agreement." As such, the Arbitration Agreement expressly invoked the FAA. See Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 538, 542 S.E.2d 360, 363-64 (holding an agreement that provides it shall be governed by the FAA is enforceable in accordance with its terms. The Defendant also noted that there was involvement of interstate commerce also which also makes the FAA applicable. See 9 U.S.C. § 2. "Generally, any arbitration agreement affecting interstate commerce . . . is subject to the FAA.") Landers v. Federal Deposit Ins. Co., 402 S.C. 100, 108, 739 S.E.2d 209, 213 (2013) (citing Circuit City Stores, Inc. v. Adams, 532 U.S. 105, (2001). Plaintiff did not dispute that this Agreement was subject to the Federal Arbitration Act.

Plaintiff relies upon an unpublished Fourth Circuit case, Weckesser v. Knight Enterprises S.E., 735 Fed. Appx. 816 (2018), as the basis for his argument. However, this Court finds that Plaintiff's reliance upon Weckesser is misplaced as the present case is factually and legally distinct from Weckesser.

The Weckesser case involved an arbitration agreement between a cable service technician and his putative employer for various employment-related claims. In Weckesser, the Plaintiff signed a Service Agreement with the Defendant, wherein the name of the putative employer/Defendant written into the Service Agreement was correctly listed as Knight Enterprises, LLC. The Service Agreement did not contain any reference to arbitration. Plaintiff signed a separate Arbitration Rider; however, in the Arbitration Rider the name of the company identified as contracting with Plaintiff was listed as Jeffry Knight, Inc. d/b/a Knight Enterprises[2]. Other language within the Arbitration Rider also noted that the agreement was with "Jeffry Knight, Inc. d/b/a Knight Enterprises and the undersigned." Significantly, both Jeffry Knight, Inc. d/b/a Knight Enterprises, and Knight Enterprises, LLC were separate legal entities in South Carolina duly registered with the Secretary of State. Accordingly, the Fourth Circuit recognized that each entity was separate and legally distinct from the other. Moreover, the Fourth Circuit noted: "Jeffry Knight is an actual legal entity. And that entity is no stranger to Patrick Weckesser—it's the parent company of Knight Enterprises, for whom he worked." Weckesser, 735 Fed. App. at 820. The Court found that it was reasonable "to believe that Jeffry Knight might (for example) require employees of its subsidiaries to sign an arbitration waiver to cabin its own liability. For this reason alone, it's much more plausible than in Cobb & Seal that the parties intended what the writing stated: that the Arbitration Rider applied to disputes between

[2]Apparently, in Weckesser, the individual who signed the Arbitration Rider for Defendant also signed it Jeffry Knight, Inc. d/b/a Knight Enterprises as the parent company of Knight Enterprises.

Weckesser and Jeffry Knight, and not to disputes with its subsidiary." Id.

This case is plainly factually distinct from Weckesser, as there is no legal entity in South Carolina known as "National Healthcare Garden City, LLC," the name which was incorrectly written into the Arbitration Agreement. As such, unlike in Weckesser, Plaintiff cannot say that there was any confusion about with whom she thought she was contracting at the time. This Court is compelled to look at what the parties' intentions were when signing this Agreement, and clearly the intention was that the Defendant would provide nursing care services to Ms. Parrish, and in exchange, the Defendant would receive remuneration and the benefit of the Arbitration Agreement should any disputes arise regarding Ms. Parrish's care.

This Court finds that the reasoning of the Weckesser case actually supports the Defendant's argument in this case that the Arbitration Agreement in question is enforceable. As noted by the Fourth Circuit, the primary issue is whether the two "companies" at issue actually legally exist to form a real and substantive question as to who the proper contracting parties may be. In this case, the scrivener's error in the handwritten portion of the Agreement is not a legal entity, which Plaintiff readily conceded at oral argument and in his memorandum. Thus, the Court finds that in this case, there can be no potential for confusion as to with whom the Plaintiff was agreeing to contract in signing the Arbitration Agreement as there was in Weckesser. The Court believes that this ruling is consistent with Cobb & Seal Shoe Store v. Aetna Ins. Co., which held that a contract is good between two parties no matter how incorrect the names used in the agreement as long as the intent was to be bound by the contract or to receive the benefit of the contract. See Cobb, 78 S.C. 388, 58 S.E. 1099. Accordingly, this Court finds that the Arbitration Agreement is binding and enforceable between the parties, as the only legal conclusion which can be drawn is that it appears that the parties intended to be bound by the

contract and receive the benefits of that contract.

III. CONCLUSION

This Court concludes that the terms and conditions of the Arbitration Agreement must be enforced against Plaintiff, and that Plaintiff must submit the claims raised in his Complaint against Defendant to arbitration in accordance with the provisions of the Arbitration Agreement.

THEREFORE IT IS ORDERED that the Motion to Dismiss and Compel Arbitration filed by Defendant be GRANTED for the reasons set forth herein.

SIGNATURE PAGE TO FOLLOW

Horry Common Pleas

Case Caption: Cleo Bertiaux , plaintiff, et al VS NHC Healthcare Garden City LLC

Case Number: 2018CP2606576

Type: Order/Compel

So Ordered

s/ Larry B. Hyman 2152