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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HAMPTON	)	C.A. No.: 2018-CP-25-00308 (Wrongful Death)
	)	
Frances Crittington, as Personal Representative of the Estate of Patricia Hayes,	)	
	)	
Plaintiff,	)	
	)	**ORDER GRANTING DEFENDANTS' MOTION TO DISMISS AND COMPEL ARBITRATION**
vs.	)	
	)	
PruittHealth-Estill, LLC, f/k/a Uni-Health Post Acute Care of the Lowcountry, LLC, United Health Services of South Carolina, Inc., PruittHealth Consulting Services, Inc., f/k/a United Clinical Services, Inc., PruittHealth Therapy Service, Inc., f/k/a United Rehab, Inc., PruittHealth, Inc., f/k/a UHS Pruitt Corporation, and Neil Pruitt, Jr.,	)	
	)	
Defendants.	)	
	)	

RECEIVED
AUG 29 2019
SC Court of Appeals

This matter is before the Court on a Motion to Dismiss and Compel Arbitration (the "Motion") brought by Defendants PruittHealth-Estill, LLC, f/k/a Uni-Health Post Acute Care of the Lowcountry, LLC, United Health Services of South Carolina, Inc., PruittHealth Consulting Services, Inc., f/k/a United Clinical Services, Inc., PruittHealth Therapy Service, Inc., f/k/a United Rehab, Inc., PruittHealth, Inc., f/k/a UHS Pruitt Corporation, and Neil Pruitt, Jr. (collectively the "Defendants"). The Defendants filed the Motion based on a valid and enforceable arbitration agreement that was signed by both Ms. Patricia Hayes ("Ms. Hayes"), the resident related to this lawsuit, and by Frances Crittington, her personal representative in this lawsuit and former power of attorney. The agreement requires any and all disputes arising from the resident's care or stay at

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the nursing facility to be resolved by binding arbitration.[1] See Dean v. Heritage Healthcare of Ridgeway, LLC, 408 S.C. 371 (2014) (reversing the circuit court for refusing to send a wrongful death case to arbitration and finding that the Federal Arbitration Act applied to a nursing home arbitration agreement similar to the agreement at issue in this case). The Court held a hearing on the Motion on January 9, 2019. At the hearing, Plaintiff was represented by Neil E. Alger, Esquire and, Defendants were represented by Joshua S. Whitley, Esquire. The Court has carefully considered the pleadings, memorandums, exhibits, case law, oral arguments, and other relevant matters applicable to the Motion. After careful consideration of the information noted above, and for the reasons set forth below, the Court **GRANTS** Defendants' motion to compel arbitration and dismiss this action.

I. STATEMENT OF RELEVANT FACTS

This case arises from the residency of Ms. Hayes at PruittHealth-Estill, a skilled nursing facility. Ms. Hayes was admitted into PruittHealth-Estill on January 6, 2015. Ex. A, Face Sheet. Prior to being admitted to the PruittHealth-Estill, Ms. Hayes was a patient at Hampton Regional Medical Center. Ex. B, Hampton Regional Medical Center Discharge Summary. She was admitted to Hampton Regional Medical Center with chest pain and was noted to have pain and swelling to her right wrist consistent with an acute gout attack. Id. at 3. She also had a soft tissue infection of the left foot. Id. Ms. Hayes was initially set for discharge on January 1, 2015, but due to the development of left-sided weakness on that afternoon, she was not discharged until January 6, 2015. Id. at 4. Upon admission to PruittHealth-Estill, Ms. Hayes's admitting diagnosis was peripheral vascular disease. Ex. A, Face Sheet. She was also suffering from late effect CVA,

[1] Ms. Frances (Tina) Crittington also signed the Arbitration Agreement as the Patient/Resident Representative for Ms. Hayes. For clarity, Ms. Hayes is the resident related to this lawsuit and Ms. Crittington is the Plaintiff in this case and Personal Representative of the Estate of Ms. Hayes.

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chronic kidney disease, diabetes, UTI, hypertension, hyperlipidemia, gout, and had a foot ulcer. Id. On the day of admission, Ms. Hayes's cognitive pattern was noted as alert and, according to the nursing notes, she was verbally responsive. Ex. C, Skilled Daily Nursing Note.

In order to be admitted into the facility, Ms. Hayes and her Patient/Resident Representative, Ms. Crittington, met with Ms. Gail Scott to review and sign admissions documents on January 9, 2015. Ms. Scott was then serving as a Human Resources Payroll staff member and served as the representative for the PruittHealth-Estill facility during the admission of Ms. Hayes. Ex. D, Affidavit of Gail Scott. Ms. Hayes, Ms. Crittington, and Ms. Scott reviewed and executed various admission documents, including the arbitration agreement (the "Arbitration Agreement") relevant to the Motion. Id. Ms. Scott, as part of her standard procedure, used an arbitration checklist to ensure that the arbitration agreement was executed effectively and appropriately. Id.; see also Ex. E, Arbitration Checklist.

Ms. Hayes and Ms. Crittington executed an admission agreement. Ex. F, Admission Agreement. Ms. Hayes and Ms. Crittington were then presented with the Arbitration Agreement, which Ms. Scott explained to them. Ex. D, Affidavit of Gail Scott. Ms. Hayes initialed each page of the five-page Arbitration Agreement, including the signature page. Ex. G, Arbitration Agreement. The Arbitration Agreement was also signed by both Ms. Hayes and Ms. Crittington. Id. Ms. Hayes and Ms. Crittington did not question, disclaim, or refuse to sign the Arbitration Agreement. Ex. D, Affidavit of Gail Scott. Subsequently, Ms. Crittington obtained a general power of attorney over Ms. Hayes, which was recorded on January 23, 2015. Ex. H, Durable Power of Attorney. The Agreement allowed revocation within 30 days. Ex. E. Neither Ms. Hayes nor Ms. Crittington revoked the agreement.

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II. ANALYSIS

A. PLAINTIFF'S CLAIMS FALL WITHIN THE ARBITRATION AGREEMENT

Relevant to the Motion, Ms. Hayes expressly agreed to the Arbitration Agreement which sets forth its scope in pertinent parts as follows: "[a]ny and all claims or controversies arising out of or in any way relating to this Agreement or the Patient/Resident's Admission Agreement, including....any acts or omissions in connection with such care or services..., whether sounding in breach of contract, tort or breach of statutory or regulatory duties, ...**any claim based in negligence, any claim for damages resulting from death or injury to any person arising out of care or service rendered by the Healthcare Center** or by any officer, agent or employee...shall be submitted for arbitration." See Ex. G, Arbitration Agreement, at 1 of 5 (emphasis added).

Further, in conspicuous bold, underlined, and all caps writing at the immediate beginning of the Arbitration Agreement, it states:

> **THE PATIENT/RESIDENT AND THE HEALTHCARE CENTER UNDERSTAND AND ACKNOLWEDGE THAT THIS AGREEMENT IS A VOLUNTARY AGREEMENT TO SUBMIT FOR RESOLUTION BY ARBITRATION ANY DISPUTES THAT MAY ARISE IN THE FUTURE BETWEEN THE PARTIES. THE PARTIES FURTHER UNDERSTAND AND ACKNOWLEDGE THAT, AS TO ALL DISPUTES THAT ARE GOVERNED BY THIS AGREEMENT, EACH OF THE PARTIES IS WAIVING THE RIGHT TO TRIAL BY JURY, AND INSTEAD, ANY DISPUTES BETWEEN THE PARTIES SHALL BE RESOLVED THROUGH BINDING ARBITRATION.**

Id. at 1. This Arbitration Agreement is titled in all caps and bold writing "**ARBITRATION AGREEMENT.**" Id. Accordingly, both the subject matter and the rights waived are conspicuous and explicitly set forth.

Also, under the clear terms of the Arbitration Agreement, the governing law is the Federal Arbitration Act (the "FAA"), which is codified at 9 U.S.C. §§ 1- 16. See Id. at 4 (stating "this

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Agreement shall be governed by and enforced under federal law, specifically, the Federal Arbitration Act (9 U.S.C. §§ 1- 16), as opposed to state arbitration law …[t]he parties specifically exclude the application of South Carolina's Uniform Arbitration Act").

Of note, in bold writing prior to the signature block, the Arbitration Agreement states "the Patient/Resident's Representative [] has read this Agreement in its entirety, and understands the language in which it is written." Id. at 4. Moreover, the Arbitration Agreement has a provision that allowed the resident or her representative to revoke the Arbitration Agreement within thirty days of signature. Id. at 5. No revocation occurred. The Arbitration Agreement also advises the resident or her representative to seek legal counsel, if he or she desired. Id. Ms. Hayes and Ms. Crittington agreed to this Arbitration Agreement, as is evidenced by Ms. Hayes' initials on each page of the Arbitration Agreement and their signatures on the final page. Id. at 1-5. In the Complaint, Plaintiff claims broadly that the Defendants were negligent with respect to the care and treatment of Ms. Hayes, which caused her death. Accordingly, Plaintiff's claims fall within the scope of the Arbitration Agreement – i.e., it regards the care and services rendered to the resident and it arises in tort.

B. The Parties' Agreement to Arbitrate Any Claims Under the Federal Arbitration Act is Binding and Enforceable

In Dean v. Heritage Healthcare of Ridgeway, LLC [n/k/a PruittHealth of Ridgeway, LLC], 408 S.C. 371 (2014), the Supreme Court held that the FAA indeed applied to the arbitration agreement in the nursing home context. In the Dean case, the Court reversed twenty years of precedent and held that nursing home arbitration agreements do involve interstate commerce and, therefore, agreements made pursuant to the FAA are enforceable. Id. at 382 (holding "we find Timms is a relic of the past, decided before the broad definition of interstate commerce set forth in Allied-Bruce. Consequently, we explicitly overrule Timms in its entirety and find that the

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residency agreement here does, in fact, involve interstate commerce, and thus is governed by the FAA"). Therefore, following the Supreme Court's decision in Dean, the Agreement is enforceable as it was entered pursuant to the FAA.

C. THE PARTIES HAD AN ENFORCEABLE CONTRACT AND THERE WAS A MEETING OF THE MINDS AS TO THE ESSENTIAL TERMS OF THE ARBITRATION AGREEMENT

Under South Carolina law, an arbitration agreement is enforceable if it has the necessary elements to create a valid and enforceable contract. A valid and enforceable contract exists when there is an offer, acceptance, and consideration. See Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003) (stating "another way, there must be an offer and an acceptance accompanied by valuable consideration"). Further, a person who signs a contract or other written document cannot avoid the effect of the document by claiming he did not read it. Id. at 663. A person signing a document is responsible for reading the document and making sure of its contents. Id. Every contracting party owes a duty to the other party to the contract and to the public to learn the contents of a document before he signs it. Id. One who signs a written instrument has the duty to exercise reasonable care to protect himself. See Maw v. McAlister, 252 S.C. 280, 285, 166 S.E.2d 203, 205 (1969); see also Evans, 269 S.C. at 587, 239 S.E.2d at 77; DeHart v. Dodge City of Spartanburg, 311 S.C. 135, 139, 427 S.E.2d 720, 722 (Ct. App. 1993); Jones v. Cooper, 234 S. C. 477, 109 S.E.2d 5 (1959) (holding one entering into a written contract should read it and avail himself of every opportunity to understand its content and meaning). "[A]lthough the right to a trial by jury is a substantial right, and we 'strictly construe' such waivers, '[a] person who signs a contract or other written document cannot avoid the effect of the document by claiming that he did not read it." Wachovia Bank v. Blackburn, 407 S.C. 321, 332-3, 755 S.E.2d 437, 443 (2014) (internal citations omitted). Finally, the law does not impose a duty on one party to an agreement to explain to the other party what he could learn from simply reading the document. Towles v.

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United Healthcare Corp., 338 S.C. 29, 524 S.E.2d 839 (Ct. App. 1999); see also Wachovia, 407 S.C. at 333, 755 S.E.2d at 443 (holding the law does not require a bank to explain to an individual what he could learn from reading the document).

Here, the facts clearly show there was an offer, acceptance, signatures demonstrating the intention of the parties to enter into the Agreement (meeting of the minds), and consideration. Ms. Hayes and Ms. Crittington met with a PruittHealth-Estill representative to sign admissions documents, including the Arbitration Agreement. Ex. D, Affidavit of Gail Scott. The Arbitration Agreement was explained to both Ms. Hayes and Ms. Crittington. Id. Then, Ms. Hayes initialed each page of the five-page Arbitration Agreement, including the signature page. Ex. G, Arbitration Agreement. The Arbitration Agreement was also signed on the final page by both Ms. Hayes and Ms. Crittington.[2] Id. Further, Ms. Hayes and Ms. Crittington did not question, disclaim, or refuse to sign the Arbitration Agreement. Ex. D, Affidavit of Gail Scott. Accordingly, there was a meeting of the minds, which produced an enforceable contract to arbitrate.

D. ARBITRATION UNDER THE FAA IS JUDICIALLY FAVORED AND MANDATORY

In Dean, the South Carolina Supreme Court held that nursing home arbitration agreements do invoke interstate commerce, which implicates the federal case law highly favoring arbitration as the preferred means to dispute resolution. 408 S.C. at 371. The United States Supreme Court has stated that the FAA, reflects "a liberal federal policy favoring arbitration agreements." Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24, 103 S. Ct. 927, 74 L. Ed. 2d 765

[2] The Court notes that Ms. Crittington obtained a general power of attorney over Ms. Hayes, which was recorded on January 23, 2015. Ex. H, Durable Power of Attorney. This further proves that Ms. Hayes was able to enter into the Arbitration Agreement considering she was able to enter into the Durable Power of Attorney. Further, the Court notes that there is clear evidence that Ms. Crittington had apparent authority to enter into this Arbitration Agreement on behalf of Ms. Hayes, as she sat there with Ms. Hayes and signed the document alongside her.

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(1983). Underlying this policy is Congress's view that arbitration constitutes a more efficient dispute resolution process than litigation. See Brantley v. Republic Mortgage Ins. Co., 2004 U.S. Dist. LEXIS 28831 (D.S.C. 2004), aff'd 424 F.3d 393 (4th Cir. 2005); see also Hightower v. GMRI, Inc., 272 F.3d 239, 241 (4th Cir. 2001). Accordingly, "due regard must be given to the federal policy favoring arbitration, and ambiguities as to the scope of the arbitration clause itself must be resolved in favor of arbitration." Brantley at 5 (quoting Volt Info. Sciences, Inc. v. Bd. of Tr. of Leland Stanford Jr. Univ., 489 U.S. 468, 475-76, 109 S. Ct. 1248, 103 L. Ed. 2d 488 (1989)); see also Towles v. United Healthcare Corp., 338 S.C. 29, 41, 542 S.E.2d 839, 846 (Ct. App. 1999) (stating South Carolina courts "must address questions of arbitrability with a healthy regard for the federal policy favoring arbitration"). The United States Court of Appeals for the Fourth Circuit has gone as far as to say that motions to compel arbitration "should not be denied unless it may be said with positive assurance that the arbitration [agreement] is not susceptible of an interpretation that covers the asserted dispute." Peoples Sec. Life Ins. Co. v. Monumental Life Ins. Co., 867 F.2d 809, 812 (4th Cir. 1989) (quoting United Steelworkers of Am. v. Warrior & Gulf Navigation Co., 363 U.S. 574, 582-83, 80 S. Ct. 1347, 4 L. Ed. 2d 1409 (1960).

Moreover, the clear language of the FAA is not permissive but instead mandates enforcement of arbitration agreements. Section 4 of the FAA provides in pertinent part as follows:

> The court shall hear the parties, and *upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court* ***shall*** *make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement.*

9 U.S.C. § 4 (emphasis added). Thus, by its terms, the FAA mandates that parties must arbitrate where there is a signed agreement to do so. See Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213, 218 (1985). Thus, because, here, there is a signed agreement to arbitrate and the claim arises

within the scope of the Arbitration Agreement, the Court must compel arbitration. See Dean, 408 S.C. 371.

Moreover, the United States Supreme Court reaffirmed its commitment to arbitration under the FAA, admonishing a state supreme court for refusing to enforce the arbitration clause, and specifically did so in the setting of a long-term care resident's negligence claims against the facility where they resided. See Marmet Health Care Center, Inc., et al., v. Brown, 565 U.S. 530, 132 S. Ct. 1201, 1203-04, 182 L. Ed. 2d 42 (2012) (holding from the outset that "State and federal courts must enforce the Federal Arbitration Act"). In Marmet, the Supreme Court held that arbitration agreements for a resident's claim of personal injury are enforceable and wholly preempt a state's public policy to the contrary. Id. at 532-33. In making its ruling that the FAA preempts West Virginia's policy, the Supreme Court added, "[t]he [the FAA's] text includes no exception for personal-injury or wrongful-death claims. It requires courts to enforce the bargain of the parties to arbitrate." Id. (quoting Dean Witter Reynolds Inc. v. Byrd, 470 U.S. 213, 217, 105 S. Ct. 1238, 84 L. Ed. 2d 158 (1985)). Explicitly relying on Marmet, the South Carolina Supreme Court noted that "courts may not refuse to compel arbitration simply because a wrongful death claim is involved." Dean, 408 S.C. at 378, n. 3.

Accordingly, this Court has an obligation to enforce the Arbitration Agreement as Ms. Hayes and Ms. Crittington expressly agreed to arbitration under the FAA. The Court notes that the facts of this case are even more persuasive than those in the Marmet decision that compelled arbitration because, here, the Arbitration Agreement is a separate agreement that sets forth in straight forward language the terms of the arbitration, has conspicuous cautionary clauses and has a signature at the end – all dealing solely with arbitration. See Ex. G, Arbitration Agreement. Whereas, in Marmet, the arbitration that was compelled was agreed to based on a singular clause

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in the Resident's Agreement. See Marmet, at 532-33 (holding "[t]he contract[] included a clause requiring the parties to arbitrate all disputes). Nevertheless, the Supreme Court ordered that clause to be strictly enforced. Id. Therefore, this Court shall do the same here.

III. CONCLUSION

For the reasons noted above, the Court finds that there is a valid and enforceable contract between the parties that requires all of Plaintiff's claims in this lawsuit to be heard in arbitration. Accordingly, the Defendants' Motion to Dismiss and Compel Arbitration is hereby **GRANTED**.

_____
The Honorable Eugene C. Griffith, Jr.
Presiding Judge, Eighth Judicial Circuit

_____, South Carolina
_____, 2019

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Hampton Common Pleas

Case Caption: Frances Crittington , plaintiff, et al VS Pruitthealth-Estill, Llc , defendant, et al

Case Number: 2018CP2500308

Type: Order/Other

It is so ordered

Eugene C. Griffith, Jr. 2154