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| STATE OF SOUTH CAROLINA<br>COUNTY OF GREENVILLE | IN THE COURT OF COMMON PLEAS<br>C.A. No.: 2019-CP-23-00473 |
| Estate of Patricia Royston, by and through the appointed Personal Representative, Marianne McCoig, Individually, and on behalf of the statutory beneficiaries,<br><br>Plaintiffs,<br><br>vs.<br><br>Hunt Valley Holdings, LLC a/k/a Fundamental Long Term Care Holdings, LLC; Fundamental Clinical and Operational Services, LLC; Fundamental Administrative Services, LLC; and THI of South Carolina at Magnolia Place at Greenville, LLC d/b/a Magnolia Place-Greenville,<br><br>Defendants. | **ORDER DENYING DEFENDANTS' MOTION TO DISMISS, COMPEL ARBITRATION AND STAY COURT PROCEEDINGS** |



This matter came before the Court on Defendants' Motion to Dismiss and Compel Arbitration. After reviewing the parties' submissions and arguments, the Court finds no valid arbitration contract between Ms. Royston and Defendants because: (1) the Arbitration Agreement is not signed by both parties and was produced, unsigned, by the Plaintiff during discovery, and (2) the parties on the Arbitration Agreement are not those parties specifically listed in the lawsuit. Accordingly, the Defendants' motion is **DENIED.**

## FACTUAL BACKGROUND

This matter arises out of two civil actions --- a Survival Action and a Wrongful Death action. Both actions involve allegations of corporate negligence and nursing home neglect resulting in the alleged wrongful death of Patricia Royston.

Magnolia Place-Greenville ("Facility") is owned and operated by Hunt Valley Holdings, LLC, formerly known as Fundamental Long Term Care Holdings, Inc. The claims are brought against the nursing home facility THI of South Carolina at Magnolia Place at Greenville, LLC d/b/a Magnolia Place – Greenville, as well as Fundamental Clinical and Operational Services, LLC, Fundamental Administrative Services, LLC, and Hunt Valley Holdings, LLC a/k/a Fundamental Long Term Care Holdings, LLC, these latter three entities being hereinafter referred to as the "Corporate Defendants."

Marianne McCoig was Patricia's daughter and now serves as the personal representative of Patricia's estate. Patricia was admitted as a short-term resident into the Facility on December 19, 2016. The Arbitration Agreement was allegedly provided to Patricia, but the facility claims they are not in possession of it, and the copy Plaintiffs produced was not signed by the facility. There is no evidence the Arbitration Agreement was signed by Patricia Royston during the admission process and provided to Defendants. Defendants acknowledge the copy at issue was not signed by any Facility representative.

Ms. McCoig initiated the current action on January 31, 2019. The Complaint alleges wrongful death and survival claims arising from Defendants' failure to monitor and supervise Patricia's safety and well-being while at the Facility. On July 26, 2019, Defendants filed a Motion to Dismiss, Compel Arbitration, and Stay Court Proceedings.

## LEGAL STANDARD

In order to compel arbitration, the Facility bears the burden to prove a valid and enforceable arbitration contract. Not all arbitration clauses are per se enforceable. Aiken v. World Finance Corp. of S.C., 373 S.C. 144, 149, 644 S.E.2d 705, 708 (2007); MBNA America Bank, N.A. v. Christianson, 377 S.C. 210, 659 S.E.2d 209 (Ct. App. 2008). Courts interpret a jury trial waiver narrowly and construe contract ambiguities against the Facility as the party that drafted the Arbitration Agreement. WDI Meredith & Co. v. Am. Telesis, Inc., 359 S.C. 474, 480, 597 S.E.2d 885 (Ct. App. 2004). Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 644 S.E.2d 663, 668 (2007). Whether the parties agreed to arbitrate is a question of substantive state law. In Chassereau v. Global Sun Pools, Inc., the Supreme Court stated:

> **Although we are constrained to resolve all doubts in favor of arbitration, this is not an absolute truism intended to replace careful judicial analysis**. While actions taken in an arrangement such as the one entered into by these parties might have the potential to generate several legal claims and causes of action, we have no doubt that Chassereau did not intend to agree to arbitrate the claims she asserts in the instant case. Accordingly, we hold that these claims are not covered by the arbitration agreement at issue in the instant case.

373 S.C. 168, 644 S.E.2d 718, 720-21 (2007) (emphasis added).

While the Federal Arbitration Act ("FAA") includes a presumption favoring arbitration, it only applies *after* the court finds there is a valid, enforceable arbitration agreement. 9 U.S.C. § 4 ("The court shall make an order directing the parties to proceed to arbitration" but only "upon being satisfied that the making of the agreement…is not in issue").[1] The FAA looks to state law to decide the threshold questions of contract formation.[2] Therefore, arbitration agreements guided

[1] See also EEOC v. Waffle House, 534 U.S. 279, 293-294, 122 S.Ct. 754, 764, 151 L.Ed.2d 755 (4th Cir. 2014); Toler's Cove Homeowners Ass'n v. Trident Constr. Co., Inc., 355 S.C. 605, 612, 586 S.E.2d 581 (2003).

[2] Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 542 S.E.2d 360, 364 (2001); Towles v. United Healthcare Corp., 338 S.C. 29, 37, 524 S.E.2d 839, 844 (Ct. App. 1999) ("the court should apply 'ordinary state-law principles that govern the formation of contracts.'").

by the FAA are subject to the same defenses applicable to all other contracts.[3] The judicial inquiry may include an examination of contractual defects such as lack of mutual assent and want of consideration, as well as other grounds existing at law or equity, including fraud, duress, and unconscionability.[4]

## LEGAL ANALYSIS

The Facility's motion to compel arbitration is effectively a motion to enforce a contract. In the ordinary course, a nursing home resident who alleges injury would bring her claims before the Court as Plaintiff has done here and the nursing home would mount its defense in the same forum. A valid contract to arbitrate their disputes is the only way for the parties to opt out of the litigation process. The Court finds the Facility had no such contract with Ms. Royston. The "Arbitration Agreement" on which the Facility's motion relies is invalid because it is not signed by both parties, and the parties on the Arbitration Agreement are not those parties specifically listed in this lawsuit.

### A. The Arbitration Agreement is not a valid and enforceable agreement because it was not signed by the party seeking its enforcement.

The Arbitration Agreement is a separate document from the Admission Agreement with the Facility. At the bottom of the Arbitration Agreement there were lines provided for the resident and an agent of Facility to sign, date, and print their names. While not dated, Ms. Royston allegedly signed at the signature line reserved for "Resident/Representative Signature". A signature line existed for Facility to execute the agreement as well. A blank was provided for the facility to sign as "Authorized Agent of Facility", and a separate blank for the agent to print his/her

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[3] Rent-A-Center, West. Inc. v. Jackson, 561 U.S. 63, 130 S. Ct 2772, 2776, 177 L.Ed.2d 403 (2010) Simpson, 373 S.C at 14, 644 S.E.2d at 663 ("general contract principles of state law apply in a court's evaluation of the enforceability of an arbitration clause.").

[4] See Sydnor v. Conseco Fin. Servicing Corp., 252 F.3d.302, 205 (4th Cir.2001).

name and title. At no time did anyone from Facility ever sign and execute the agreement on behalf of Facility. It is also interesting to note that the only agreement in the record, or known to exist, was found in her personal effects and produced by the Plaintiff in discovery. The Defendant did not have a copy in its possession. That leaves outstanding the question of whether the Plaintiff ever delivered to the Defendant her signed copy. As previously noted, the Facility bears the burden of proving that a valid arbitration agreement exists and was executed.

Because the facility did not sign the agreement, there is no indicia of mutual assent as required for a valid enforceable arbitration agreement. See Rodarte v. Univ. of S.C., 419 S.C. 592, 603, 799 S.E.2d 912, 917-18 (2017) (quoting Laser Supply & Servs., Inc. v. Orchard Park Assocs., 382 S.C. 326, 334, 676 S.E.2d 139, 143-44 (Ct. App. 2009) (noting South Carolina law requires court to consider only "objective manifestations of the parties' assent at the time the contract was made")). The alleged agreement by its express terms, "**THE PARTIES CONFIRM THAT EACH OF THEM UNDERSTANDS THAT EACH HAS WAIVED THE RIGHT TO TRIAL BEFORE A JUDGE OR JURY AND THAT EACH CONSENTS TO ALL OF THE TERMS OF THE VOLUNTARY AGREEMENT.,"** requires both parties to sign and confirm in writing that they are waiving their right to a jury trial and consenting to the terms of the agreement by affixing their signatures. The Arbitration Agreement itself references the parties' intention to select arbitration, however, there is no party signature on behalf of Facility and its affiliates. The fact that there is a signature line for "Authorized Agent of Facility" and that it is left blank further indicates that there was no mutual assent. See Baier v. Darden Restaurants, 420 S.W.3d 733, 739 (Mo. Ct. App. 2014).

**B. The parties on the Arbitration Agreement are not those parties specifically listed in this lawsuit.**

All Defendants are all related entities[5] of the nursing home and have a significant relationship in the ownership, operation, and management of the nursing home, and derive significant economic benefits from its revenue.

In Hawthorne v. Fundamental et al., these same Defendants moved to compel arbitration on behalf of the Corporate Defendants stating that "The arbitration agreement contractually ***is enforceable by each of the moving defendants as either a parent company, agent or as an employee of the facility and legally is enforceable by these defendants under the circumstances*** and Pennsylvania law in any event. In addition, Defendants argued that Patricia and his estate equitably are estopped from arguing that the arbitration agreement is not binding and enforceable ***by each of the defendants***." Hawthorne v. Fundamental et al., No. 2:12cv1826 (2013).

Furthermore, Plaintiff's claims against Defendants are based on a theory of unified operation and control. Each is alleged to have participated in exactly the same wrongful conduct. Agency law extends the right to enforce an arbitration award against agents, sister corporations, subsidiaries, and parent/ownership entities of a contracting party "where the interests of such parties are directly related to, if not congruent with, those of a signatory." Pritzker v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 7 F.3d 1110, 1112 (3d Cir. 1993) (citing Isidor Paiwonsky Associates, Inc. v. Sharp Properties, 998 F.2d 145, 155 (3d Cir. 1993)). Plaintiff alleges each Corporate Defendant is a parent entity, agent or employee of the Facility that shares a congruent interest. Plaintiff thus presumptively would be able to enforce any judgment from the proceeding against the Corporate Defendant and, in turn, each can rely on the principles of agency law and the broad scope of the FAA to compel and participate in the Arbitration Agreement. Id. ("Where the parties to such a clause unmistakably intend to arbitrate all controversies, which might arise

[5] Related entity is an industry term that means the entities are have common ownership, management, and control.

between them, their agreement should be applied to claims against agents or entities related to the signatories."); Sharp Properties, 998 F.2d at 155 ("Applying Barrowclough [v. Kidder, Peabody & Co., 752 F.2d 923 (3d Cir. 1985)]' s logic here, because Bared's and ARI's interests are directly related, if not in fact congruent, it can fairly be assumed that within the arbitration proceedings ARI advanced arguments protective of Bared's interests. There is, therefore, no reason to conclude that the Federal Arbitration Act's overarching policy favoring the enforcement of arbitration awards does not apply to this case.").

It is also worth noting that at the beginning of the Arbitration Agreement in question where the parties are identified the Facility has listed itself as "Magnolia Place *of* Greenville." (Emphasis added). In actuality the Facility's correct title would be Magnolia Place – Greenville which is the name THI of South Carolina at Magnolia Place at Greenville, LLC is doing business as. It is up to the drafter of the Arbitration Agreement to be able to sufficiently and correctly identify themselves as a party of the Arbitration Agreement. Failure to do so must be construed against the drafting the party.

**CONCLUSION**

For the foregoing reasons, Defendants' Motion to Dismiss and Compel Arbitration or Alternatively, to Compel Arbitration and Stay Proceedings, is DENIED.

AND IT IS SO ORDERED

Signature to Follow

Greenville Common Pleas

**Case Caption:** Patricia Royston , plaintiff, et al vs. Hunt Valley Holdings LLC , defendant, et al

**Case Number:** 2019CP2300473

**Type:** Order/Other

So Ordered

s/ Robin B. Stilwell 2158