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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
Vermell Daniels as Personal Representative of the Estate of Annie Porter,	)	C/A No. 2019-CP-40-02295
Plaintiff,	)	**ORDER**
Versus	)	
THI of South Carolina at Columbia, LLC d/b/a Midlands Health & Rehabilitation Center,	)	
Defendant.	)	

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SC Court of Appeals

This matter was before the Court on Monday, August 26, 2019, at 2:00 p.m., in Richland County, South Carolina, upon Defendant THI of South Carolina at Columbia, LLC d/b/a Midlands Health & Rehabilitation Center's Motion to Dismiss and Compel Arbitration. Attorney Bradley H. Banyas of Hughey Law Firm, LLC was present representing the interests of the Plaintiff. Attorney Russell G. Hines of Young Clement Rivers, LLP was present representing the interests of the Defendant.

FACTS

Annie Porter was admitted to the Defendant's skilled nursing facility in December of 2017. The Defendant operates a skilled nursing facility, licensed by the South Carolina Department of Health and Environmental Control, R.61-17, *Standards for Skilled Nursing Facilities*. Plaintiff alleges that while a resident in the Defendant's facility, Ms. Porter was allowed to develop pressure sores, which resulted in her decline and eventual death. Annie Porter died on March 28, 2018. Vermell Daniels, Annie Porter's daughter and Plaintiff in this matter was appointed as Personal Representative of the Estate of Annie Porter on August 18, 2018 by the Kershaw County Probate Court, and filed this action on her behalf, including causes of action for Wrongful Death and Survivorship. Plaintiff filed the Notice of Intent to file suit on October 23, 2018. The parties participated in pre-suit mediation, which resulted in an impasse. Plaintiff filed her Summons and Complaint on April 25, 2019. Defendant THI of South Carolina at Columbia, LLC d/b/a Midlands

Health & Rehabilitation Center filed its Motion to Dismiss and Compel Arbitration on June 5, 2019. Plaintiff contends that the Arbitration Agreement is unenforceable under state contract law.

STANDARD OF REVIEW

A parties' right to a jury trial in South Carolina is governed by state law. Pelfrey v. Bank of Greer, 270 S.C. 691, 693, 244 S.E.2d 315, 316 (1978). The party seeking to enforce an agreement to arbitrate has the burden of establishing the existence of a valid arbitration agreement. 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). It is well established that "where one party denies the existence of an arbitration agreement raised by an opposing party, a court must immediately determine whether the agreement to arbitrate exists in the first place...If no agreement is found to exist, the court must deny any application to arbitrate." Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 22, 644 S.E.2d 663, 667 (2007) citing S.C. Code Ann. § 15-48-20(a) (2005). Whether a valid arbitration agreement exists is a matter for judicial determination. York v. Dodgeland of Columbia, Inc., 406 S.C. 67, 78, 749 S.E.2d 139, 144 (Ct. App. 2013).

In determining whether an agreement to arbitrate exists, "the court should apply 'ordinary state-law principles that govern the formation of contracts.'" Towles v. United Healthcare Corp., 338 S.C. 29, 37, 524 S.E. 2d 839, 844 (Ct. App., 1999). Arbitration is available only when the parties involved contractually agree to arbitrate. Id. South Carolina common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement. Player v. Chandler, 299 S.C. 101, 105, (1989). Arbitration will be denied if a court determines no agreement to arbitrate existed. S.C. Code Ann. § 15-48-20(a).

ANALYSIS

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1. **The Arbitration Agreement is not enforceable because Vermell Daniels lacked actual or apparent authority to sign the Arbitration Agreement for Annie Porter.**

The legal consequences of an agent's actions can only be attributed to the principle when the agent as actual or apparent authority. Charleston Registry v. Young Clement, 359 S.C. 635, 598 S.E.2d 717 (Ct. App. 2004). 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 (Ct. App. 1996). South Carolina law requires that to prove apparent authority, the Defendant must show "... (1) that the purported principal consciously or impliedly represented another to be his agent; (2) that there was reliance upon the representation; and (3) that there was a change of position to the relying party's detriment." Cowburn v. Leventis, 366 S.C. 39, 619 S.E.2d 448 (Ct. App. 2005). The basis of apparent authority is representations made by the principal to the third party and reliance by the third party on those representations. Young v. S.C. Department of Disabilities and Special Needs, 374 S.C. 360, 367, 649 S.E.2d 488, 491 (2007). The proper focus in determining a claim of apparent authority is not on the relationship between the principal and the agent but that between the principal and the third party. Vereen v. Liberty Life Insurance Company, 306 S.C. 423, 412, S.E.2d 425 (Ct. App. 1991). The burden of establishing agency is on the party asserting that a principal agency relationship exists. Id.

The issue of arbitration agreements in skilled nursing facilities has been addressed at the Court of Appeals and Supreme Court, and the case is very similar to Coleman v. Mariner Health Care, Inc, 407 S.C. 346, 755 S.E.2d 450 (2014); Hodge v. UniHealth Post-Acute Care of Bamberg, LLC, 422 S.C. 544, 813 S.E.2d 292, 304 (Ct. App. 2018); and Thompson v. Pruitt Corp., 416 S.C. 43, 784 S.E.2d, 679 (Ct. App. 2016). In all three of these cases, our Courts have found Arbitration Agreements to be unenforceable where a family member signed an Arbitration Agreement near the time of admission to a skilled nursing facility for the Decedent and did not have any actual authority to do the same. In all three cases, the Courts found that no implied

authority nor estoppel applied. Presently, a review of the admissions and arbitration documents by the Defendant would have informed them that Vermell Daniels did not have actual authority by way of a Power of Attorney, nor Court Appointed Guardianship to bind her mother, nor did she ever indicate that she had any apparent authority to enter in to contracts on behalf of her mother. The Adult Health Care Consent Act ("AHCCA") does not confer legal authority to Ms. Daniels to enter into contracts on behalf of her mother, nor does the South Carolina Bill of Rights for Residents of Long-Term care Facilities.

This Court finds that the present case is nearly identical to Hodge and Thompson. In Hodge, the South Carolina Court of Appeals discussed a Maryland case, Dickerson v. Longoria, 414 Md. 419, 995, A.2d 721, 743 (2010). The Court specifically stated, "'This limited range of acts performed on the [decedent]'s behalf suggest, at most [he] may have conferred on [the personal representative] the authority to make health care and financial decisions on his behalf, but no more than that.'" Hodge at 567. Further, in Thompson, the Court determined that " 'The authority conveyed by a principal to an agent to handle finances or make health care decisions does not encompass executing an agreement to resolve legal claims by arbitration, thereby waiving the principal's right of access to the courts and to a jury trial.'" Thompson at 686. Thus, the arbitration agreement and admissions documents do not merge in to one. Based upon the above, Ms. Daniels did not have the actual or apparent authority to sign the Arbitration Agreement on behalf of Ms. Porter.

2. **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. 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

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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. Daniels acted in a way amounting to a false representation to Defendant regarding Ms. Porter's status or that Ms. Daniels intended for Defendant to act in reliance on her conduct. Additionally, the evidence shows Defendant cannot meet its burden to show they lacked knowledge or the means of knowledge of the truth of the facts in question. 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).

In this case, Defendant had the capacity to determine whether Ms. Daniels had authority to sign an arbitration agreement on Ms. Porter's behalf. The Defendant is a sophisticated business entity frequently interacting with residents and their families during the nursing home admission process. Defendant are or should be familiar with the legal concepts of guardianship and powers-of-attorney. Defendants had the ability to ask Ms. Daniels whether she was Ms. Porter's guardian or attorney-in-fact and had the ability to request supporting documentation. Since the Defendant has not cited or provided evidence on all required elements of equitable estoppel, Plaintiff is not equitably estopped from denying the arbitration agreement.

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

Under the Federal Arbitration Agreement ("FAA"), arbitration is required when there is a

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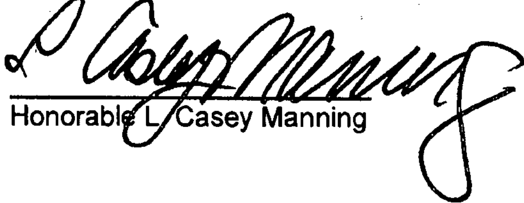
valid arbitration agreement and a dispute exists which is within the scope of the agreement. Under the arbitration clause, neither prong is satisfied. As discussed in the sections above, there is no valid arbitration agreement because Ms. Daniels did not have the legal authority to execute a valid arbitration agreement or health care admission agreement. Accordingly, the FAA does not apply.

CONCLUSION

After consideration of the pleadings, motions and arguments of counsel, I find that there is no valid Arbitration Agreement, and therefore the Defendant's Motion to Dismiss is DENIED.

IT IS SO ORDERED.



Honorable L. Casey Manning

NOV. 5 2019
~~September 16,~~ 2019
Columbia, South Carolina

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