THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Case No. 2020-000381
Lower Court Case No. 2019-CP-10-00966

Laverne Mitchell, as Personal Representative of the Estate of Florine Blake,

Respondent,

v.

Sandpiper Rehab & Nursing – Delaware, LLC d/b/a Sandpiper Rehab & Nursing and Annette Goodwin,

Appellants.

INITIAL BRIEF OF APPELLANTS

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(1) Whether the Circuit Court erred in holding that the Arbitration Agreement is not enforceable?

(2) Whether, alternatively, the Circuit Court erred in failing to order jurisdictional discovery regarding the circumstances surrounding the execution of the Arbitration Agreement and the authority of its signatories?

STATEMENT OF THE CASE

This is an appeal from the Circuit Court's denial of Defendants' Motion to Dismiss and Compel Arbitration. On February 25, 2019, Plaintiff/Respondent Laverne Mitchell, in her capacity as Personal Representative of the Estate of Florine Blake, deceased (hereinafter "Plaintiff" or "Respondent") filed a Summons and Complaint. (Complaint). She alleges nursing home negligence against Defendants Sandpiper Rehab & Nursing-Delaware, LLC d/b/a Sandpiper Rehab & Nursing, and Annette Goodwin, the then-administrator of Sandpiper Rehab & Nursing, a skilled nursing facility located in Mt. Pleasant, South Carolina (hereinafter "Defendants" or "Sandpiper"), arising out of the care of her mother, Mrs. Florine Blake. Defendants accepted service on April 3, 2019, and filed a Motion to Dismiss and / or To Compel Arbitration on April 17, 2019. (Motion to Dismiss).

The parties filed opposing memoranda of law on October 25, 2019. (Sandpiper's Memorandum of Law ISO its Motion to Dismiss). On October 30, 2019, the Circuit Court held a combined hearing regarding both Defendant's Motion to Dismiss and Plaintiff's May 13, 2019, Motion to Compel Discovery. (Transcript of Hearing). It issued a Form 4 Order on November 4, 2019, denying Defendants' Motion to Dismiss and Compel Arbitration. (November 4, 2019, Order Denying Motion to Dismiss). Defendants filed a Motion to Reconsider on November 13, 2019. (Motion to Reconsider). The Circuit Court entered an Order denying that Motion on February 21, 2020. (February 21, 2020, Order Denying Motion to Reconsider). On February 28, 2020, Defendants filed the instant Notice of Appeal. (Notice of Appeal).

STANDARD OF REVIEW

Arbitrability is an issue reserved for judicial determination. *Partain v. Upstate Auto. Grp.*, 386 S.C. 488, 491, 689 S.E.2d 602, 603 (2010). Therefore, "[a]rbitrability determinations are subject to de novo review." *Johnson v. Heritage Healthcare of Estill, LLC*, 416 S.C. 508, 512, 788 S.E.2d 216, 218 (2016) (quoting *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 379, 759 S.E.2d 727, 731 (2014)). "The litigant opposing arbitration bears the burden of demonstrating that he has a valid defense to arbitration." *Id.* (citing *Dean*, 408 S.C. at 379, 759 S.E.2d at 731; *Gen. Equip. & Supply Co. v. Keller Rigging & Constr., S.C., Inc.*, 344 S.C. 553, 556, 544 S.E.2d 643, 645 (Ct. App. 2001). Finally, "[t]he policy of the United States and South Carolina is to favor arbitration of disputes." *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001) (citing *Tritech Elec., Inc. v. Frank M. Hall & Co.*, 343 S.C. 396, 399, 540 S.E.2d 864, 865 (Ct. App. 2000).

STATEMENT OF THE FACTS

On October 11, 2013, Laverne Mitchell admitted her mother, Florine Blake, to Sandpiper, a skilled nursing facility in Mt. Pleasant, South Carolina. (Admissions Agreement). To effectuate her mother's admission, she reviewed and signed multiple admissions documents, including an admissions agreement and an arbitration agreement. (Admissions Agreement; Arbitration Agreement). In February 2015, Mrs. Blake executed a durable power of attorney in favor of Mrs. Mitchell, which was then recorded. (Durable Power of Attorney). According to the text of this document, Mrs. Mitchell held broad legal authority over the affairs of her mother, Mrs. Blake, including the power to contract, the power to submit disputes to arbitration, and the

power to do "all other things" that Mrs. Blake could do in the management of her own affairs. (*Id.*).

In 2019, Mrs. Mitchell filed suit against Sandpiper, alleging that it was professionally negligent in the care of her mother and that this negligence caused her to develop a pressure ulcer and to pass away in April 2018 at 90 years old. (Plaintiff's Complaint, esp. Ex. A, Affidavit of Plaintiff's Nursing Expert). Sandpiper denies negligence and contends that Mrs. Blake's wounds were unavoidable due to her natural aging and disease process. (Sandpiper's Memorandum of Law ISO its Motion to Dismiss, p. 2; Transcript of Hearing, p. 4, l. 5-8).

Central to this appeal is the two-page Arbitration Agreement executed by Mrs. Mitchell on October 11, 2013. At the top of the first page in capital letters, the Agreement sets forth its purpose: "AGREEMENT TO BINDING ARBITRATION." (Arbitration Agreement). Immediately beneath that heading it says "PLEASE NOTE: SIGNING THIS AGREEMENT IS NOT A CONDITION OF ADMISSION. The Resident and/or Resident's representative understand(s) that agreeing to binding arbitration of legal disputes means that Resident is waiving Resident's right to sue in a court of law and to a trial by jury." (*Id.*, ¶ 1). Next, the agreement sets forth the parties, and then, in the third paragraph, it requires that "[a]ny legal controversy, dispute, disagreement or claim of any kind arising out of, or related to Resident's residence…shall be settled first through mediation and, if not resolved within three months, exclusively by binding arbitration." (*Id.*, ¶ 3). It clearly applies to malpractice claims: "This includes all controversies…including, but not limited to…all negligence

and malpractice claims." (*Id.*, ¶ 3). The Agreement then sets forth the governing law "the terms of this Agreement shall be governed and interpreted under the Federal Arbitration Act, 9 U.S.C. §§ 1-16, (2006) as may be amended ("FAA"). (*Id.*, ¶ 4).

On its second page, the Agreement contains provisions detailing Mrs. Mitchell's role in its execution. It provides that the signatories "acknowledge reading this Agreement to Binding Arbitration and agree with its terms…I understand that this Agreement is voluntary." (*Id.*, ¶ 10). Furthermore:

> "[i]f the individual signing this Agreement is the Responsible Party, he or she is doing so on behalf of a person for whom he or she is legally responsible…**the signature below affirms that he or she has the authority to contract** with the Sandpiper, and that his or her execution of this agreement is in furtherance of that authority including the authority to enter into his Agreement to Binding Arbitration."
>
> (*Id.*, ¶ 11).

Mrs. Mitchell signed the Agreement, subject to a thirty-day revocation period spelled out in bold lettering. She did not revoke the Agreement. (Sandpiper's Memorandum of Law ISO its Motion to Dismiss, p. 4). She represented to the facility that she had the power to bind her mother to the Agreement. (Arbitration Agreement, ¶ 11; Arbitration Agreement p. 3). Finally, her signature was witnessed by a representative of Defendant, who affirmed that Mrs. Mitchell "has singed this Agreement to Binding Arbitration in my presence…and that they understand and agree to its terms." (*Id.*). Notwithstanding her representation that she had authority to enter the agreement, that she understood the agreement, and that she agreed to waive the right to trial by jury, Plaintiff now seeks to break the contract and proceed

with litigation. (Plaintiff's Complaint). Mrs. Mitchell's Complaint alleges that Sandpiper was medically negligent in the care of her mother. (*Id.*). These allegations fall squarely within the Agreement and therefore must be submitted to binding arbitration.

Defendants filed their Motion to Dismiss and Compel Arbitration based on the executed Arbitration Agreement and the General POA, arguing that the subsequent POA serves as evidence of Mrs. Mitchell's legal authority and status as her mother's general agent and attorney-in-fact. (Transcript of Hearing p. 7-8; Sandpiper's Memorandum of Law ISO its Motion to Dismiss, p. 6-8). On the eve of the hearing, Plaintiff filed an Affidavit in which she averred that her mother was competent at the time of admission, that she never gave her legal authority to bind her to arbitration, and that she did not possess actual or apparent authority to bind her mother to arbitration. (Affidavit of Laverne Mitchell dated October 10, 2019). At the hearing, held on October 30, 2019, the Circuit Court orally denied Defendants' Motion to Dismiss but seemed to grant their request to compel jurisdictional discovery. (Transcript of Hearing, p. 16, ll. 20-24). The subsequent Form 4 Order however was silent as to jurisdictional discovery, so Defendants filed a Motion to Reconsider, which was also denied, giving rise to this appeal.

ARGUMENT

The Circuit Court erred in holding that the Arbitration Agreement at issue in this case is not enforceable and in its refusal to submit the case to jurisdictional discovery. Its order must be reversed for the following several reasons: first, the law favors the enforcement of valid agreements to arbitrate and that it places the burden

upon the party opposing arbitration. Second, the "cardinal rule" is to look to the language of a contract when determining the intention of the parties to a contract. Third, in its refusal to enforce this contract, the Circuit Court applied a heightened standard of proof to this particular contract that South Carolina courts do not apply to contracts in other contexts, and, therefore, it failed to comply with the overwhelming thrust of public policy in this area, which is to favor the enforcement of agreements to arbitrate and to treat them exactly the same as any other contract. Fourth, and finally, the Circuit Court failed to follow the clear mandate requiring a "full enquiry," i.e. jurisdictional discovery, into the execution of the Arbitration Agreement at issue.

The Circuit Court's denial of Defendants' Motion to Dismiss and Compel Arbitration is immediately appealable and subject to de novo review. *See, e.g., Johnson*, 416 S.C. 508, 512, 788 S.E.2d 216, 218 (2016); *Towles v. United HealthCare Corp.*, 338 S.C. 29, 34, 524 S.E.2d 839, 842 (Ct. App. 1999). Under the de novo standard, the party opposing arbitration bears the burden" to demonstrate "a valid defense." *Johnson*, 416 S.C. at 512; 788 S.E.2d at 218. This is a burden Plaintiff cannot carry.

I. THIS COURT'S ANALYSIS IS SUBJECT TO A STRONG POLICY IN FAVOR OF ARBITRATION.

"[T]here is a strong presumption in favor of the validity of arbitration agreements because both state and federal policy favor arbitration of disputes." *Herron v. Century BMW*, 387 S.C. 525, 531, 693 S.E.2d 394, 397 (2010). In enacting the Federal Arbitration Act, Congress established clear policy in support of

arbitration agreements, "requiring that [courts] 'rigorously enforce agreements to arbitrate.'" *Shearson/Amer. Exp., Inc. v. McMahon*, 482 U.S. 220, 226 (1987) (quoting *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1 (1983)). Finally, the sweep of the Federal Arbitration Act is broad, coextensive with the limits of Congressional Commerce Clause power. *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 280 (1995).

This strong policy in favor of arbitration reflects the belief of Congress that arbitration is fair and beneficial. The United States Supreme Court has echoed the same holding that that "there are real benefits to the enforcement of arbitration provisions." *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 122-123 (2001). "The advantages of arbitration are many: it is usually cheaper and faster than litigation; it can have simpler procedural and evidentiary rules; it normally minimizes hostility and is less disruptive of ongoing and future business dealings among the parties; it is often more flexible in regard to scheduling of times and places of hearings and discovery devices. . . ." *Allied-Bruce Terminix*, 513 U.S. at 280 (quoting H. R. Rep. No. 97-542, p. 13 (1982)). The United States Supreme Court has specifically held that this federal policy in favor of arbitration includes claims involving a skilled nursing facility's care. *See Marmet Health Care Ctr., Inc. v. Brown*, 565 U.S. 530, 533 (2012) (finding that a prohibition against pre-dispute agreements to arbitrate personal-injury or wrongful-death claims against nursing homes is a categorical rule prohibiting arbitration of a particular type of claim, and that rule is contrary to the terms and coverage of the FAA). The South Carolina Supreme Court, noting that

"[t]he basic purpose of the FAA is to overcome courts' refusals to enforce agreements to arbitrate" held that a similar nursing home residency and arbitration agreement were subject to interpretation under the FAA. *Dean v. Heritage Healthcare*, 408 S.C. at 379, 759 S.E.2d at 731.

Under the FAA, a party seeking arbitration must only show two things in order to compel arbitration: (1) that a written agreement to arbitrate exists, and (2) that the written agreement is contained within a contract involving commerce. 9 U.S.C. § 2 (2006). Section 4 of the FAA specifically states that "[t]he 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 (2006) (emphasis added). "By its terms, the Act leaves no place for the exercise of discretion by the district court, but instead mandates that courts *shall* direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed." *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985).

The FAA establishes the foundational policy lens through which Defendants' Motion to Dismiss and Compel Arbitration must be interpreted. The FAA places arbitration agreements "on equal footing with all other contracts" by making them "valid, irrevocable, and enforceable." *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 333 (2011). Under the FAA, a court may not refuse to enforce an arbitration agreement unless the party opposing arbitration establishes "a generally applicable

contract defense," and not some defense that singles out arbitration agreements. *Id*. Congress enacted the FAA to replace "ancient judicial hostility to arbitration" with "emphatic federal policy" in favor of arbitration that requires courts to "generously construe[]" the "intention of the parties" in accordance with the "strong presumption" in favor of arbitration. *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 626 (1985).

A strong presumption in favor of arbitration is also a well-settled policy in South Carolina. Specifically, South Carolina appellate courts have consistently recognized that arbitration agreements "enjoy a strong presumption of validity" arising from "the strong policy favoring arbitration" under both federal and state law. *Towles*, 338 S.C. at 35, 524 S.E.2d at 842. In short, both the FAA and South Carolina law require that courts resolve any doubt in favor of enforcing arbitration.

Here, the FAA governs the Arbitration Agreement at issue. (Arbitration Agreement, ¶ 4.); *see also Dean*, 408 S.C. at 382, 759 S.E.2d at 733 (applying the FAA to skilled nursing facility arbitration agreements). However, the Circuit Court did exactly what the FAA prohibits: it applied a heightened standard for scrutinizing the contractual authority of the parties to this Arbitration Agreement that South Carolina courts do not apply to other contracts. In so doing, the Circuit Court failed to acknowledge the FAA's clear mandate favoring arbitration agreements. *Id*. The proper approach, unlike that which the circuit court applied, requires deference to the "emphatic federal policy" establishing a "strong presumption" in favor of

arbitration when determining the scope of an agent's authority. *Mitsubishi Motors Corp.*, 473 U.S. at 626.

II. THE ARBITRATION AGREEMENT IS FACIALLY ENFORCEABLE ON THE BASIS OF ITS CLEAR AND INCONTROVERTIBLE LANGUAGE.

The question before the Court is whether Mrs. Mitchell demonstrated that the scope of her authority did not encompass executing an arbitration agreement with her mother's skilled nursing facility. Considering that Mrs. Mitchell both represented in signing the Arbitration Agreement that she had such authority and then obtained, in early 2015, written evidence of that authority, only to disclaim it in a last-minute affidavit, she has not met her burden of proof in this action of demonstrating that contract at issue is not enforceable. The Order of the Circuit Court must therefore be reversed.

A. The Arbitration Agreement is a Valid Contract.

Under South Carolina law, the Arbitration Agreement contains all of the necessary and familiar elements that create an enforceable contract. "A contract is an obligation which arises from actual agreement of the parties manifested by words, oral or written, or by conduct. A contract exists where there is an agreement between two or more persons upon sufficient consideration either to do or not to do a particular act." *Regions Bank v. Schmauch*, 354 S.C. 648, 660-61, 582 S.E.2d 432, 439 (Ct. App. 2003) (internal citations omitted). The Arbitration Agreement contains an offer, an acceptance, and the signatures of the parties evincing their intent to be bound by its terms, supported by valuable consideration. (Arbitration Agreement). It therefore contains all of the required elements of a contract.

Under South Carolina law, a person signing a contract 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 v. State Farm Mut. Auto. Ins. Co.*, 269 S.C. 584, 587, 239 S.E.2d 76, 77 (1977); *DeHart v. Dodge City of Spartanburg*, 311 S.C. 135, 139, 427 S.E.2d 720, 722 (Ct. App. 1993); and *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). Similarly, "although the right to a trial by jury is a substantial right, and the courts '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). Further, 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. *See Towles*, 338 S.C. 29, 524 S.E.2d 839; *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).

B. Mrs. Mitchell Possessed Apparent Authority to Enter the Contract.

Because the contract contains all of the necessary elements, the only issue remaining is whether the signatories possessed the authority to enter the contract.

The validity of the Arbitration Agreement in this case must be determined in accordance with the general principles of contract law and agency law that would apply to any other contract. *Herron v. Century BMW*, 387 S.C. 525, 531, 693 S.E.2d 394, 397 (2010), vacated sub nom. *Sonic Automotive, Inc.*, 563 U.S. 971, 131 S.Ct. 2872, 179 L. Ed. 2d 1184 (2011), reinstated, 395 S.C. 461, 719 S.E.2d 640 (2011). It is axiomatic that a person who signs a contract or other written document cannot avoid the effect of the document by claiming he did not read it. *See Regions Bank*, at 354 (internal citations omitted). As noted above, not only is a person signing a contract responsible for reading the document and making sure of its contents, but every contracting party owes a duty to the other parties to learn its contents before signing.

On the date of execution, Mrs. Mitchell represented that she was her mother's agent. The Arbitration Agreement is clear as to the authority of signatories. In signing, the Mrs. Mitchell represented that she possessed authority to contract and she affirmed that she was "doing so on behalf of any person for whom he or she is legally responsible for all fiduciary obligations." (Arbitration Agreement, ¶ 11). By her signature, Mrs. Mitchell further represented that she in fact had authority to enter an arbitration agreement on behalf of her mother. (Id.).

In South Carolina, however, an agency relationship cannot be established on the conduct of the purported agent alone. *R & G Constr., Inc. v. Lowcountry Reg'l Transp. Auth.*, 343 S.C. 424, 433, 540 S.E.2d 113, 118 (Ct. App. 2000). "The proper focus in determining a claim of apparent authority is not on the relationship between the principal and the agent, but on that between the principal and the third party."

Id. Apparent authority can be manifested via the words or conduct of the principal. *Id.* "[A]ffirmative conduct or conscious and voluntary inaction" are sufficient "to establish apparent agency." *Id.* (citing *Watkins v. Mobil Oil Corp.*, 291 S.C. 62, 352 S.E.2d 281 (Ct. App. 1986)). Furthermore, "[s]uch authority is implied where the principal passively permits the agent to appear to a third person to have the authority to act on his behalf." *Id.* (citing *Genovese v. Bergeron*, 327 S.C. 567, 490 S.E.2d 608 (Ct. App. 1997)).

According to the Affidavit Mrs. Mitchell presented on the eve of the hearing on Defendants' Motion to Dismiss, her mother was competent at the time of her admission to Sandpiper. (Affidavit of Laverne Mitchell dated October 10, 2019). There is no record of Mrs. Blake directing facility staff not to deal with her daughter. In fact, the only evidence is that she allowed her daughter to serve as her Responsible Party and Guarantor. (Admissions Agreement, p. 14). Properly placing the focus on the relationship between the principal (Mrs. Blake) and the third party (Sandpiper), it is clear that, through her "conscious and voluntary inaction," Mrs. Blake affirmed Mrs. Mitchell's role as her agent in spite of Mrs. Mitchell's protestations otherwise. Finally, it is notable that Mrs. Mitchells' averments are directly contrary to the representations she made during the execution of the Arbitration Agreement.

The last piece of this factual puzzle is the Durable Power of Attorney executed by Mrs. Blake in favor of Mrs. Mitchell in February 2015, sixteen months after admission. In it, Mrs. Blake affirms that her daughter has full legal authority to do "all things" as her attorney-in-fact. The record suggests that this was not a new

development. In fact, it does not appear that she ever provided the Power of Attorney to Sandpiper, likely because it had zero effect on the status quo. In sum, Mrs. Mitchell represented to Sandpiper that she was her mother's agent, induced Sandpiper's reliance upon that representation, and then the parties changed position due to those representations. An apparent agency was established and a valid contract requiring arbitration entered. *See, e.g. Genovese*, 327 S.C. at 575, 490 S.E.2d at 612 (holding "the elements of apparent agency are: (1) purported principal consciously or impliedly represented another to be his agent; (2) reliance upon representation; and (3) change of position to relying party's detriment)." The Arbitration Agreement is a valid contract entitled to enforcement by this Court.

III. THE CIRCUIT COURT ERRED IN ITS FAILURE TO ORDER JURISDICTIONAL DISCOVERY, WHICH IS MANDATED BY THE FAA AND SOUTH CAROLINA DECISIONAL LAW.

Where, as here, there may be unresolved questions of fact, the South Carolina Supreme Court has directed that the circuit court must make a "full inquiry" into the circumstances surrounding the execution of an arbitration agreement. *Dean*, 408 S.C. at 388, n. 13. Furthermore, the FAA itself requires that, when "the making of the arbitration agreement…[is] in issue, the court shall proceed summarily to the trial thereof." 9 U.S.C. § 4. The Federal Courts have therefore developed a procedure whereby the party seeking to compel arbitration has the opportunity to find facts and then has the opportunity to be heard. According to the Fourth Circuit, "when a party resisting arbitration challenges the existence of an agreement to arbitrate, the court should initially apply a standard 'akin to…summary judgment.'" *Chorley Enters., Inc. v. Dickey's Barbecue Rests., Inc.*, 807 F.3d 553, 564 (4th Cir. 2015). Motions practice

may resolve this issue when "it's apparent from a quick look at the case that no material disputes of fact exist" but when such a motion "presents unresolved questions of material fact, the FAA 'call[s] for an expeditious and summary hearing' to resolve those questions." *Howard v. Ferrellgas Partners*, L.P., 748 F.3d 975, 978 (10th Cir. 2014); *Dillon v. BMO Harris Bank, N.A.*, 787 F.3d 707, 713 (4th Cir. 2015) (alteration in original).

"If there is an issue of fact as to the making of the agreement for arbitration, then a trial is necessary." *Bensadoun v. Jobe-Riat*, 316 F.3d 171, 175 (2d Cir. 2003). The Court may not "deny the motion without holding 'any trial to resolve [a] dispute of fact.'" *Dillon*, 787 F.3d at 713. As discussed above, the FAA controls this Court's interpretation of the Arbitration Agreement. Sandpiper contends it has proven that Mrs. Mitchell possessed authority as her mother's agent. However, to the extent there is any unresolved question regarding Mrs. Mitchell's authority, especially given the fact that her Affidavit prepared in anticipation of the hearing on Defendants' Motion to Dismiss directly contradicted the clear terms of the contract, Defendants are entitled to jurisdictional discovery. Sandpiper has consistently requested that the Court order jurisdictional discovery so that it may have the opportunity to conduct the "full inquiry" into the facts and circumstances surround the execution of the Arbitration Agreement envisioned by our Supreme Court in *Dean*. Simply put, without jurisdictional discovery, the Circuit Court has not met its obligation, imposed by the FAA, to conduct a full inquiry into the facts surrounding the execution of this Arbitration Agreement.

CONCLUSION

At bottom, the analysis is straightforward: Mrs. Mitchell executed a binding arbitration agreement and represented that she had the legal authority to do so. Her authority was subsequently affirmed by her mother's conduct, including the execution of the Durable Power of Attorney. As her mother's agent, Mrs. Mitchell should be compelled to arbitrate under the clear terms of the Agreement and mandate of the FAA. Appellants therefore respectfully request that this Court reverse the Circuit Court's denial of Defendants' Motion to Dismiss and Compel Arbitration. Furthermore, and alternatively, to the extent the Court is not satisfied with the extent of factual development, it should reverse the circuit court's denial of Appellants' request for jurisdictional discovery and order that the parties engage in a full inquiry into the circumstances surrounding the execution of the Arbitration Agreement at issue in this appeal.

Respectfully submitted,

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June 4, 2020

THE STATE OF SOUTH CAROLINA
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APPEAL FROM CHARLESTON COUNTY
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Bentley D. Price, Circuit Court Judge

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v.

Sandpiper Rehab & Nursing – Delaware, LLC d/b/a Sandpiper Rehab & Nursing and Annette Goodwin,

Appellants.

PROOF OF SERVICE

I certify that I have served a copy of Appellant's Initial Brief by email and by depositing it in the United States Mail, postage prepaid, on June 4, 2020, addressed to their attorneys of record at Post Office Box 348, Mt. Pleasant, SC 29465-0348.

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June 4, 2020

VIA ONE DRIVE ELECTRONIC SUBMISSION

Honorable Jenny Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *Laverne Mitchell as Personal Representative of the Estate of Florine Blake v. Sandpiper Rehab & Nursing-Delaware, LLC d/b/a Sandpiper Rehab & Nursing, and Annette Goodwin*
Charleston County Civil Case No.: 2019-CP-10-0966
Appellate Case No.: 2020-000381

Dear Ms. Kitchings:

Enclosed herewith for filing please find Appellants' Initial Brief, Designation of Matter and corresponding Proof of Service in this matter.

Please file the original and return the clocked copy in the enclosed self-addressed envelope. By copy of this correspondence, I am serving Respondent's counsel with the same.

Very truly yours,

s/Kevin R. Horton

Kevin R. Horton

KRH:cmr
Enclosures

cc(w/enc.): D. Nathan Hughey, Esq./Bradley H. Banyas, Esq. - *Via Email and U.S. Mail*

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