THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

RECEIVED
Oct 08 2020
SC Court of Appeals

Bentley D. Price, Circuit Court Judge

Case No. 2020-CP-10-01205
Appellate Case No. 2020-001117

Teresa Dalton, as Personal Representative of the
Estate of Ethel Ruckart, ...Respondent,

v.

Mount Pleasant Manor, LLC, and
Bruce White, ... Appellants.

INITIAL APPELLANTS' BRIEF OF MOUNT PLEASANT MANOR, LLC AND BRUCE WHITE

W. McElhaney White
Holcombe Bomar, P.A.
P.O. Drawer 1897
Spartanburg, SC 29304
(864) 594-5300
mwhite@holcombebomar.com

Attorneys for Appellants

TABLE OF CONTENTS

PAGE

Table of Authorities i

Statement of the Issues on Appeal 1

Statement of the Case 2

Statement of the Facts 3

Standard of Review 5

Argument 6

I. The trial court must be overturned because Ms. Dalton had capacity to enter into the Arbitration Agreement and Admission Agreement pursuant to Ms. Ruckart's Health Care Power of Attorney. 6

II. The trial court improperly denied Appellants' Motion because Respondent is equitably estopped from denying the existence of an enforceable Admission Agreement and incorporated Arbitration Agreement 12

III. The trial court erred in denying Appellants' Motion because Ms. Ruckart was the intended and direct beneficiary of the Admission Agreement into which the Arbitration Agreement as merged 15

IV. The trial court erred in denying Appellants' Motion because Mr. White is entitled to compel arbitration as a non-signatory to the Admission Agreement and Arbitration Agreement. 17

V. The trial court improperly denied Appellants' Motion because the Federal Arbitration Act mandates arbitration since Respondent had authority to enter the Admission Agreement and the Respondent's claims fall within the scope of the incorporated Arbitration Agreement 18

VI. The trial court improperly denied Appellants' Motion because the Federal Arbitration Act mandates that the judicial proceedings be stayed pending completion of arbitration.. 21

VII. The trial court improperly denied Appellants' Motion because discovery requests issued pursuant to the South Carolina Rules of Civil Procedure are not proper in arbitration..22

Conclusion 22

TABLE OF AUTHORITIES

CASES **PAGES**

Arnold v. Arnold Corp., 920 F.2d 1269 (6th Cir. 1990)..17

Carolina Care Plan, Inc. v. United HealthCare Servs., Inc., 361 S.C. 544, 606 S.E.2d 752 (2004)..5

Citizens Bank v. Alafabco, Inc., 539 U.S. 52 (2003)..20

Coleman v. Mariner Health Care, et al., 407 S.C. 346, 755 S.E.2d 450 (2014)..................15

Comanche Indian Tribe of Okla. v. 49, LLC, 391 F.3d 1129 (10th Cir. 2004)..................20

Dean v. Heritage Healthcare of Ridgeway, LLC, et al., 408 S.C. 371, 759 S.E.2d 727 (2014)..9, 10, 21

Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213 (1985)..19

Hodge v. UniHealth Post-Acute Care of Bamberg, LLC et al., 422 S.C 544, 813 S.E.2d 292 (Ct.App.2018)..8, 9, 15

Hughes Masonry Co. v. Greater Clark County School Bldg. Corp., 659 F.2d 836 (7th Cir. 1981) 13,14

Int'l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH, 206 F.3d 411 (4th Cir. 2000) 13

Klutts Resort Realty, Inc. v. Down'round Development Corp., 268 S.C. 80, 232 S.E.2d 20 (1977)..12

Moses H. Cone Mem'l. Hosp. v. Mercury Constr. Corp., 460 U.S. 1 (1983) 19

Pearson v. Hilton Head Hosp., 400 S.C. 281, 733 S.E.2d 597 (Ct. App. 2012)................5

Scott v. Heritage Healthcare of Estill, LLC, Op. No. 2014-UP-317, 2014 WL 3845113 (S.C. Ct. App. Filed Aug. 6, 2014)[1]..9

S.C. Pub. Serv. Authority v. Great Western Coal, et al., 312 S.C. 559, 437 S.E.2d 22 (Ct. App. 1993)..17, 18

Southern Ill. Beverage, Inc. v. Hansen Beverage Co., 2007 WL 3046273 (S.D. Ill. 2007).. 13

Stokes v. Metropolitan Life Ins. Co., 351 S.C. 606, 571 S.E.2d 711 (Ct.App.2002)...... 19, 21

[1] This unpublished opinion is included only because it was addressed in Hodge v. UniHealth Post-Acute Care of Bamberg, LLC et al., 422 S.C 544, 813 S.E.2d 292 (Ct.App.2018)

Stott v. White Oak Manor, Inc. et al., 426 S.C. 568, 828 S.E.2d 82 (Ct.App.2019).........10, 11

THI of South Carolina at Columbia, LLC v. Wiggins, 2011 WL 4089435 (D.S.C. 2011)...14, 15, 16

Thompson v. Pruitt Corp., 416 S.C. 43, 784 S.E.2d 679 (Ct.App.2016)............................ 15

Trinity Mission Health & Rehabilitation of Clinton v. Estate of Scott, 19 So.3d 735 (Miss. Ct. App. 2008) 16

U.S. v. Bankers Ins. Co., 245 F.3d 315, 323 (4th Cir. 2001)... 13

Volt Info. Serv., Inc. v. Bd. of Trs. of Leland Stanford Jr. Univ., 489 U.S. 468, 474 (1989)... 19

Zabinski v. Bright Acres Assocs., 346 S.C. 580, 553 S.E.2d 110 (2001).......................5

STATUTES AND RULES

9 U.S.C. § 2... 18, 20

9 U.S.C § 3... 21, 22

S.C. Code Ann. § 15-48-10(b)(4) 19

Rule 26(c), SCRCP 22

STATEMENT OF THE ISSUES ON APPEAL

I. Whether the trial court erred in failing to order arbitration because Ethel Ruckart's daughter did, in fact, have authority to sign an admission agreement and arbitration agreement pursuant to Ethel Ruckart's Health Care Power of Attorney.

II. Whether the trial court erred in failing to order arbitration because Respondent is estopped from denying the existence of an enforceable Admission Agreement and incorporated Arbitration Agreement while Respondent simultaneously asserts claims founded in the duties arising out of other sections of the Admission Agreement.

III. Whether the trial court erred in failing to order arbitration because Ethel Ruckart was the intended and direct beneficiary of the Admission Agreement into which the Arbitration Agreement was merged.

IV. Whether the trial court erred in failing to order arbitration because Bruce White was entitled to compel arbitration as a non-signatory to the Admission Agreement and the Arbitration Agreement.

V. Whether the trial court erred in failing to order arbitration pursuant to the Federal Arbitration Act because Ethel Ruckart's daughter had authority to enter into the Admission Agreement and Arbitration Agreement and the Respondent's claims fall within the scope of the arbitration provision contained therein.

VI. Whether the trial court erred in failing to stay the judicial proceedings because the Federal Arbitration Act mandates that judicial proceedings be stayed pending completion of arbitration.

VII. Whether the trial court erred in failing to grant a protective order denying Respondent the right to serve discovery requests pursuant to the South Carolina Rules of Civil Procedure which are improper in arbitration.

STATEMENT OF THE CASE

On March 4, 2020, Teresa Dalton as Personal Representative of the Estate of Ethel Ruckart ("Respondent") filed a Summons and Complaint against Mount Pleasant Manor, LLC ("Mount Pleasant Manor") and Bruce White ("Mr. White") (collectively, "Appellants"). [Complaint.] Respondent alleged Appellants provided nursing home care to Ethel Ruckart ("Ms. Ruckart") which fell below the standard of care in 2018. Appellants timely answered on April 1, 2020, denying liability. [Answer.]

On May 1, 2020, Appellants filed a Notice of and Motion to Stay Action and Compel Arbitration and Motion for a Protective Order ("Motion"). [Notice of and Motion to Stay Action and Compel Arbitration and Motion for Protective Order.] The Motion was based on the terms and provisions of the arbitration clause found in the Arbitration Agreement. [Appellants' Memorandum in Support of Motion to Stay Action and Compel Arbitration and Motion for Protective Order, Ex. A.]

On May 12, 2020 Appellants prepared and filed a detailed memorandum of law addressing the Motion ("Memo in Support"). [Appellants' Memorandum in Support of Motion to Stay Action and Compel Arbitration and Motion for Protective Order.] On June 19, 2020, Respondent prepared and filed a memorandum in opposition to the Motion ("Memo in Opposition"). [Respondent's Memorandum in Opposition of Appellants' Motion to Stay Action and Compel Arbitration and Motion for Protective Order.] Then, on June 24, 2020, Appellants prepared and filed a memorandum in response to Respondent's Memo in Opposition. [Appellants' Memorandum in Response to Respondent's Memorandum in Opposition to Appellants' Motion to Stay Action and Compel Arbitration and for Protective Order.] Appellants and Respondent consented to the court

deciding the Motion on the briefs and without the necessity of a hearing in light of the issues surrounding COVID-19[2].

On July 6, 2020, The Honorable Bentley D. Price (the "trial court") issued a Form 4 Order denying the Motion without reciting findings of fact or conclusions of law. [July 6, 2020 Order.] On July 8, 2020, Appellants prepared and filed a Notice to Alter of Amend asking the trial court to reconsider its rulings, and to issue an order with findings of fact and conclusions of law. [Appellants' Notice of and Motion to Alter or Amend.]

On July 16, 2020, the trial court issued a Form 4 Order denying Appellants' Motion to Alter or Amend, again without reciting findings of fact or conclusions of law. [July 16, 2020 Order.] Then, on July 20, 2020, the trial court issued a third Form 4 Order. This Order denied the Motion to Alter or Amend on the basis that "an arbitration agreement is a legal contractual agreement between two parties and signed by both parties who have the express legal authority to do so, and that does not exist in this case". [July 20, 2020 Order.]

Appellants served Respondent with their Notice of Appeal on August 10, 2020, and Appellants filed their Notice of Appeal on August 11, 2020. [Notice of Appeal and Proof of Service.]

STATEMENT OF THE FACTS

Mount Pleasant Manor was the licensed operator of the Mount Pleasant Manor nursing home during Ms. Ruckart's residency. [Memo in Support, Ex. C, p. 1.] Ms. Ruckart was admitted to Mount Pleasant Manor on February 1, 2018. Ms. Ruckart, through her daughter and power of attorney, Teresa Dalton ("Ms. Dalton"), entered into an Admission Agreement and an Arbitration Agreement. [Memo in Support, Ex. A and B.]

---

[2] Thus, there is no hearing transcript in connection with this appeal.

The Arbitration Agreement provided:

> Any action, dispute, claim or controversy of any kind except for an action to collect a debt owed under this Agreement (tort, contract, equitable or statutory, including but not limited to claims of violations of Resident's Rights) now existing or hereafter arising between the parties, in anyway arising from or relating to the Admission Agreement governing the Resident's stay at the Facility, shall be resolved by binding arbitration. Such binding arbitration shall be governed by the provisions of the state Arbitration Code. As appropriate and in the event that the Arbitration Code is deemed to not apply, binding arbitration shall be governed by the Federal Arbitration Act. Notwithstanding anything in this Arbitration Agreement to the contrary, the arbitration will be conducted by a neutral arbitrator in a location convenient to both parties.
>
> Pursuant to the foregoing, Resident or Resident Representative hereby knowingly, voluntarily, and intentionally waives the right to trial by jury with respect to any claim, including any counterclaim, which Resident or Resident Representative may assert, arising from or relating to the Admission Agreement or any of the said documents or any relationship between the Facility and Resident, including the Resident's admission itself, or any other course of conduct, course of dealing statements (whether verbal or written) or actions of the Facility or Resident. Resident or Resident Representative represents and warrants that the waiver contained in this paragraph has been freely and voluntarily made after reviewing the same, or having had an opportunity to review the same, with counsel of Resident or Resident Representative's choice.
>
> **The Resident or Resident Representative acknowledges that this Arbitration Agreement is optional and the Resident's admission, readmission, or the continuation of his or her residence at the Facility is in no way conditioned upon entering into this Arbitration Agreement. Nothing in this Arbitration Agreement prohibits or discourages Resident or Resident Representative from communicating with any state, federal or local health-care or health-care related officials including the state Long Term Care Ombudsman. The Resident or Resident Representative acknowledges that this Arbitration Agreement has been explained to Resident or Resident Representative.** (emphasis in original).

[Memo. in Support, Ex. B, p. 1.]

Brooke Gabellieri, as Admissions Director of Mount Pleasant Manor, executed the Admission Agreement and the Arbitration Agreement on behalf of Mount Pleasant Manor. She met with Ms. Dalton and explained the admission process, the admission paperwork, and oversaw

the execution of the admission paperwork. She would also have answered any questions Ms. Dalton had. [Memo in Support, Ex. D, pp. 1 - 2.]

As part of the admission, Ms. Dalton also executed the Admission Agreement. [Memo. in Support; Ex. A, p. 14.]. Section 22(e) of the Admission Agreement incorporated and merged the Arbitration Agreement with and into the Admission Agreement. It provides in part:

> Entire Agreement. This Agreement and the attachments included in the Packet as listed in the Table of Contents constitute the Agreement and set forth the entire understanding of the parties relating to the subject matter hereof, and supersedes all prior agreements, understanding, and discussions relative to such subject matter. [Memo. in Support; Ex A, p. 12.]

The "Packet" identified in that section refers to the Admission Packet Checklist. The Admission Packet Checklist indicates the Arbitration Agreement is part of the Admission Agreement. [Memo. in Support, Ex. E.]

Pursuant to the Arbitration Agreement, the parties agreed to arbitrate any disputes arising out of Ms. Ruckart's care and treatment at Mount Pleasant Manor. [Memo. in Support, Ex. B.]

STANDARD OF REVIEW

"The question of the arbitrability of a claim is an issue for judicial determination, unless the parties provide otherwise." Zabinski v. Bright Acres Assocs., 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001) (internal citations omitted). "Determinations of arbitrability are subject to de novo review, but if any evidence reasonably supports the circuit court's factual findings, [the appellate] court will not overrule those findings." Pearson v. Hilton Head Hosp., 400 S.C. 281, 286, 733 S.E.2d 597, 599 (Ct.App.2012). Because federal and state policy favor arbitrating disputes, all doubts regarding the scope of an arbitration clause must be resolved in favor of arbitration. Carolina Care Plan, Inc. v. United HealthCare Servs., Inc., 361 S.C. 544, 550, 606 S.E.2d 752, 755 (2004).

ARGUMENT

I. The trial court must be overturned because Ms. Dalton had capacity to enter into the Arbitration Agreement and Admission Agreement pursuant to Ms. Ruckart's Health Care Power of Attorney.

The trial court's July 20, 2020 stated "The Motion to Reconsider to compel arbitration is denied for the following reasons: [a]n arbitration agreement is a legal contractual agreement between two parties and signed by both parties who have the express legal authority to do so, and that does not exist in this case". Appellants do not believe the trial court was questioning Mount Pleasant Manor's legal authority to enter into the Arbitration Agreement. Brooke Gabellieri, as Admissions Director of Mount Pleasant Manor, executed the Arbitration Agreement on behalf of Mount Pleasant Manor, and she was authorized to do so in her capacity. [Memo. in Support, Ex. C, p. 4; Ex. D, p. 2.] Furthermore, Respondent did not argue to the trial court that Brooke Gabellieri did not have such authority. [Memo in Opposition.] Thus, in the unlikely event that the trial court meant to suggest that Mount Pleasant Manor did not have legal authority to enter into the Arbitration Agreement through its Admissions Director Brooke Gabellieri, this was error.

Instead, in light of the arguments made to the trial court, the trial court's focus appears to be on the authority of Ms. Dalton to sign the Arbitration on Ms. Ruckart's behalf. By finding she did not have this authority, the trial court committed error.

On September 25, 2013, Ms. Ruckart executed a Health Care Power of Attorney and Advance Directive Regarding a Natural Death ("HCPOA") naming Ms. Dalton as her power of attorney. [Memo in Support, Ex. F.] In section 2 of that document, it states in part "[a]bsent revocation, the authority granted in this document shall become effective when and if my attending physician(s) determines that I lack capacity to make or communicate decisions relating to my

health care and will continue in effect during that incapacity, or until my death…". [Memo in Support, Ex. F, p. 1.]

Ms. Ruckart carried a diagnosis of dementia at the time of her admission to Mount Pleasant Manor. This was reflected in her chart from South Island Assisted Living months prior to her admission to Mount Pleasant Manor. [Memo in Support, Ex. G, p. 1.] Furthermore, John Kleckley, MD, her attending physician at Mount Pleasant Manor, noted she lacked the capacity to make her own medical decisions. [Memo in Support, Ex. G, pp. 5-6.]

Under Section 4 of the HCPOA, Ms. Ruckart granted Ms. Dalton the power and authority to:

> C. Consent to and authorize my admission to and discharge from a hospital, **nursing** or convalescent **home**, hospice, **long-term care facility** or other health care facility.
>
> H. Take any lawful actions that may be necessary to carry out these decisions, including but not limited to: (i) signing, executing, delivering and acknowledging **any agreement**, release, authorization **or other document** that may be necessary, desirable, convenient or proper in order to exercise and carry out any of these powers…(emphasis added)

In Section 7(B), the HCPOA provides:

> The powers conferred on my health care agent by this document may be exercised by my health care agent alone, and my health care agent's signature or action taken under the authority granted in this document may be accepted by persons as fully authorized by me and with the same force and effect as if I were personally present, competent and acting on my own behalf. All acts performed in good faith by my heath care agent pursuant to this document are done with my consent and shall have the same validity and effect as if I were present and exercised the powers myself and shall inure to the benefit of and bind me, my estate, my heirs, successors, assigns and personal representatives. The authority of my health care agent pursuant to this document shall be superior to and binding upon my family, relatives, friends and others.

[Memo in Support, Ex. G, pp. 2, 5-6.]

In Section 8(B), it notes that the HCPOA "shall not be affected or revoked by my incapacity or mental incompetence". [Memo in Support, Ex. G, p. 6.]

As noted in Section 4 of the HCPOA, Ms. Dalton was authorized to execute and deliver any agreement or other document in connection with Ms. Ruckart's admission to a nursing home or long-term care facility. [Memo in Support, Ex. G, p. 62.] These provisions of the HCPOA, as well as others, clearly authorized Ms. Dalton to execute the Admission Agreement, Arbitration Agreement, and other admission documents on Ms. Ruckart's behalf. In fact, Ms. Dalton correctly noted that she had this power on the signature page to the Admission Agreement in which it states, "Resident Representative is acting as: Power of Attorney". [Memo in Support, Ex. A., p. 14]

The HCPOA was broad enough to authorize Ms. Dalton to waive Mr. Ruckart's access to the courts and a jury trial, and to commit her to arbitrate any disputes. Not only does the plain language of the HCPOA support this notion, but the case law in our State does as well.

In the case of Hodge v. UniHealth Post-Acute Care of Bamberg, LLC et al., 422 S.C 544, 813 S.E.2d 292 (Ct.App.2018), Mable Hodge ("wife") entered the defendants' rehabilitation facility after being hospitalized for heart and kidney problems. Her husband, Camille Hodge ("husband"), executed some of the admission documents, including an admission agreement and arbitration agreement. Wife was still in the hospital when these agreements were executed by husband, and she was competent. The Court of Appeals noted "[s]he had no health care power of attorney at that time". Id. at 550, 813 S.E.2d at 296.

Shortly after her admission, wife developed health concerns which ultimately rendered her paralyzed from the waist down. She later died. Husband and their son filed suit, and the defendants moved to compel arbitration. The circuit court denied the motion, and in listing the facts supporting the court's ruling, the circuit court included a finding that wife had not executed

a general power of attorney or health care power of attorney (or any other document giving husband or other family members the authority to make contractual commitments or waivers on her behalf) at the time wife was admitted to the defendants' facility or when husband signed the arbitration agreement. (emphasis added). Id. at 553-554, 813 S.E.2d at 297.

The Hodge court also discussed the unpublished opinion in Scott v. Heritage Healthcare of Estill, LLC, Op. No. 2014-UP-317, 2014 WL 3845113 (S.C. Ct. App. Filed Aug. 6, 2014)[3]. The court noted that the personal representative of the estate of a patient who died at a facility brought suit, and in response, the defendants moved to compel arbitration. In denying the motion (which was upheld on appeal), the circuit court in Scott noted that the sister who signed the arbitration agreement did not possess a health care power of attorney to sign the contract on her behalf and the arbitration agreement was found to be unenforceable. Id. at 554-556, 813 S.E.2d at 298.

Ultimately, the Court of Appeals agreed with the trial court and agreed that the circuit court did not err in finding the husband was not the wife's agent. It so holding, it noted wife was competent at the time the arbitration agreement was signed and she did not represent to the facility that her husband was her agent, and husband did not have wife's health care power of attorney. (emphasis added). Id. at 573-574, 813 S.E.2d at 308.

Our Supreme Court, in Dean v. Heritage Healthcare of Ridgeway, LLC et al., 408 S.C. 371, 759 S.E.2d 727 (2014), also addressed a health care power of attorney in the arbitration context. Darlene Dean ("Dean") executed a nursing home residency agreement and a separate arbitration agreement at the time of her mother's admission to the facility. The court noted in a footnote that Dean "did not have a health care power of attorney empowering her to sign on the patient's behalf". Id. at 376, 389, 759 S.E.2d at 730, 737.

[3] This unpublished opinion is addressed herein only because it was specifically addressed in the Hodge opinion.

The court dealt with several arguments on the enforceability of the arbitration agreement, but it did not reach the issue of whether Dean had authority to sign the arbitration agreement. The court, again in a footnote, wrote "[w]e are concerned that, according to the Record, the patient did not sign either the residency agreement or the [arbitration] Agreement on her own behalf, despite being competent at the time, nor did [Dean] possess a health care power of attorney to sign either contract on the patient's behalf". Id. at 387-389, 759 S.E.2d 736 – 737.

More recently, our Court of Appeals dealt with this issue in Stott v. White Oak Manor, Inc. et al., 426 S.C. 568, 828 S.E.2d 82 (Ct.App.2019). Jolly Davis ("Davis") was admitted to White Oak Manor for rehabilitation and possibly long-term care on January 2, 2013. The same day, Hilda Stott ("Stott"), acting as Davis's authorized representative, signed White Oak's admission documents, including an arbitration agreement. Id. at 571-572, 828 S.E.2d at 84.

The initial evaluation of Davis found that he was alert and oriented. Over the next few weeks after admission he was transferred back and forth to the hospital before dying on January 16, 2013. Stott filed wrongful death and survival actions against White Oak Manor alleging improper care, and White Oak filed a motion to compel arbitration based upon the arbitration agreement signed at admission. Id. at 571-572, 828 S.E.2d at 84.

Stott held Davis's durable power of attorney for finance and a separate health care power of attorney. The court, in denying White Oak Manor's motion to compel arbitration, found (1) Davis was competent to sign the arbitration agreement at the time of his admission, (2) the durable power of attorney was not effective at the time of admission because it had not been recorded as required by law, and (3) the health care power of attorney did not authorize Stott to enter into the arbitration agreement because Davis was competent when the arbitration agreement was signed. Id. at 571-572, 828 S.E.2d at 84-85.

The Court of Appeals affirmed the circuit court's order. In so doing, it first found Stott did not have authority to sign the arbitration agreement under the durable power of attorney for finance. It noted a durable power of attorney for finance in South Carolina must be recorded in order to be effective. The durable power of attorney for finance from Davis to Stott was not recorded at the time the arbitration agreement was executed, and thus the court found this power of attorney was not effective to authorize Stott's execution of the arbitration agreement on Davis's behalf. Id. at 572-575, 828 S.E.2d at 85-86.

The court then turned to the health care power of attorney. The health care power of attorney, by its terms, was only effective upon Davis's mental incompetence. During the hearing on the motion to compel arbitration, White Oak Manor conceded that it did not question Davis's mental competence. The court noted this was consistent with the medical records which found him to be alert and oriented to time, place, and situation. Id. at 576-578, 828 S.E.2d at 87-88.

The court then held "[b]ecause we find [Davis] was mentally competent to sign the Arbitration Agreement, we affirm the circuit court's decision that Stott did not have authority under her durable health care power of attorney to sign the Arbitration Agreement". Id. at 578, 828 S.E.2d at 88.

As reflected in the cases described above, our Court of Appeals and Supreme Court have both discussed the importance of health care powers of attorney in the context of executing agreements (including arbitration agreements) when admitting a person to a nursing home. In the Stott decision, the court clearly indicated the result would have been different (i.e. the arbitration agreement would have been enforced) had Davis been incompetent at the time the arbitration agreement was executed.

Turning to the case at bar, Ms. Dalton held a validly executed Health Care Power of Attorney under North Carolina law. She presented it to Mount Pleasant Manor upon Ms. Ruckart's admission. At the time of Ms. Ruckart's admission, Ms. Ruckart lacked the capacity to make her own medical decisions, which was the triggering event for the effectiveness of the Health Care Power of Attorney. [Memo in Support, Ex. F, p. 1.]

Further, as noted above, the language of the Health Care Power of Attorney was clearly broad enough to cover the execution of the Admission Agreement and Arbitration Agreement with Mount Pleasant Manor, and Ms. Dalton acted well within her capacity as attorney-in-fact for Ms. Ruckart when she did so. Thus, the Admission Agreement and incorporated Arbitration Agreement are binding on Ms. Ruckart and her estate, heirs, successors, assigns and Personal Representative, which includes but is not limited to Ms. Dalton.

II. The trial court improperly denied Appellants' Motion because Respondent is equitably estopped from denying the existence of an enforceable Admission Agreement and incorporated Arbitration Agreement.

As discussed *supra*, the Arbitration Agreement was expressly incorporated into and merged with the Admission Agreement pursuant to Section 22(e) of the Admission Agreement. [Memo in Support, Ex. A, p. 12.] Further, the law supports such a notion. The common law rule of merger holds where instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction, the courts will consider and construe the instruments together. In other words, the instruments are in essence one instrument or contract. This is the case even when the transaction consumed more than one day, and the instruments have not been executed simultaneously. Klutts Resort Realty, Inc. et al. v. Down'Round Development Corporation et al., 268 S.C. 80, 88, 232 S.E.2d 20, 24 (1977).

Thus, in advancing Appellants' equitable estoppel argument, the focus will be on the Admission Agreement, understanding that the Admission Agreement includes the merged Arbitration Agreement, and that under the common law rule of merger, they are one in the same agreement.

The Admission Agreement served as the foundation for Ms. Ruckart's admission to Mount Pleasant Manor and the duties and obligations which Ms. Ruckart and Mount Pleasant Manor had to one another. Mount Pleasant Manor agreed to provide Ms. Ruckart with care and treatment, and Ms. Ruckart agreed to pay for the care and treatment. [Memo in Support, Ex. A.] Without the Admission Agreement, there would have been no relationship between the parties.

All the Respondent's claims are dependent on duties which arise from the Admission Agreement. Respondent cannot disclaim the integrated arbitration terms while at the same time assert claims arising under other terms of the Admission Agreement, and Respondent should be equitably estopped from doing so.

The doctrine of equitable estoppel "exists to prevent a litigant from unfairly receiving the benefit of a contract while at the same time repudiating what it believes to be a disadvantage in the contract, namely the contractual arbitration provision." Southern Ill. Beverage, Inc. v. Hansen Beverage Co., 2007 WL 3046273 at *11 (S.D. Ill. 2007). The Fourth Circuit has held that "no party suing on a contract should be able to enforce certain contract provisions while simultaneously attempting to avoid the terms of an arbitration provision therein." United States v. Bankers Ins. Co., 245 F.3d 315, 323 (4th Cir. 2001); see also Int'l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH, 206 F.3d 411, 418 (4th Cir. 2000) ("To allow [a plaintiff] to claim the benefit of the contract and simultaneously avoid its burdens would both disregard equity and contravene the purposes underlying enactment of the Arbitration Act." (internal quotation marks omitted)). It

would be manifestly inequitable to permit a party to claim the other has failed to perform on its contractual obligations, while at the same time allowing that party to avoid the arbitration provisions of the contract upon which the party bases its claims, when such claims are in the scope of the arbitration provisions. Hughes Masonry Co. v. Greater Clark County School Bldg. Corp., 659 F.2d 836, 838-39 (7th Cir. 1981). In other words, Plaintiff cannot "have it both ways" by relying upon certain terms of the Admission Agreement when it works to his advantage and repudiating others when it works to his disadvantage. Id.

In the case THI of South Carolina at Columbia, LLC v. Wiggins, 2011 WL 4089435 (D.S.C. 2011), the United States District Court of South Carolina addressed this issue directly. Deborah Wiggins executed an admissions contract for the admission of her father, Earl Hall, into the Magnolia Manor nursing home. After a dispute arose, Magnolia Manor moved to compel arbitration of the dispute. Wiggins countered by arguing the admissions contract was unenforceable because there was nothing in the record to indicate she had authority to act as agent for her father, to legally bind her father, or to waive her father's right to a jury trial. One of Magnolia Manor's arguments in response was that Wiggins, as personal representative of her father's estate, was estopped from denying the contract formation. Id. at *5.

The court noted that it was undisputed that the contract was signed by an immediate family member of Hall for the purpose of obtaining residential care for him at Magnolia Manor. After the contract was executed, Hall became a resident and received the benefits provided for under the admissions contract. The court then held that when Magnolia Manor performed in reliance on the terms of the admissions contract, and Hall received the benefits under the admissions contract, it would be inequitable for Hall's estate to avoid the arbitration provision within the admissions

contract. The court ruled that Hall's estate was equitably estopped from disclaiming the enforceability of the admissions contract and the arbitration provision contained therein. Id. at *6.

In the instant case, Respondent has brought claims arising from services rendered to Ms. Ruckart under the Admission Agreement between the parties. [Complaint.] Respondent's allegations fall within the scope of the integrated arbitration terms in the Admission Agreement. In accordance with the foregoing law, Respondent cannot assert claims against Appellants arising under the Admission Agreement while repudiating the integrated arbitration terms. Respondent should be estopped from doing so.[4]

III. The trial court erred in denying Appellants' Motion because Ms. Ruckart was the intended and direct beneficiary of the Admission Agreement into which the Arbitration Agreement as merged.

Ms. Ruckart, while not a signatory to the Admission Agreement, is a third-party beneficiary of the Admission Agreement. It is clear from the plain language of the Admission Agreement that Ms. Ruckart was an intended beneficiary and the purpose of the Admission Agreement was to ensure that Mount Pleasant Manor provide the services laid out therein. Ms. Ruckart did, in fact, receive those services. [Memo in Support, Ex. A.]

[4] It should be noted that both South Carolina's Supreme Court and Court of Appeals addressed equitable estoppel in Coleman v. Marnier Health Care, Inc. et al., 407 S.C. 346, 755 S.E.2d 450 (2014), and Thompson v. Pruitt Corporation, 416 S.C. 43, 784 S.E.2d 679 (Ct.App.2016). In neither case did the courts enforce the arbitration provisions under the doctrine of equitable estoppel; however, there was one important distinction which distinguished these cases from Wiggins and the case at bar. In both Coleman and Thompson, the courts noted the arbitration provisions were in Arbitration Agreements separate and apart from the Admission Agreements, and that there was no merger of the two agreements. As a result, the court in Coleman did not reach the actual merits of the equitable estoppel argument. The court in Thompson, on the other hand, provided a little more discussion on the topic. In discussing cases which have applied equitable estoppel, the court noted the nonsignatory's contractual benefit typically arose from another provision in the same contract that includes the arbitration provision, rather than an alleged benefit arising only under a separately executed arbitration agreement. Thompson, 784 S.E.2d at 688. Here, in the case at bar, there were contractual benefits directed to Ms. Ruckart in terms of the care and services she received under the Admission Agreement which also contained the integrated and merged arbitration provisions. Also, more recently, the South Carolina Court of Appeals addressed the equitable estoppel argument in Hodge v. UniHealth Post-Acute Care of Bamberg, LLC et al., 422 S.C. 544, 813 S.E.2d 292 (Ct.App. 2018). Again, like the facts of Coleman and Thompson, the admission agreement and arbitration agreement were separate agreements which the court found did not merge.

Ms. Ruckart is therefore obligated to arbitrate any claims within its scope, regardless of whether those claims are brought by a legal representative. *See* Trinity Mission Health & Rehabilitation of Clinton v. Estate of Scott, 19 So.3d 735 (Miss. Ct. App. 2008) (holding that a non-signatory, deceased mother, was an intended third-party beneficiary of a nursing home admission agreement that included an arbitration provision; and the arbitration provisions were enforceable against her daughter, who signed the admission agreement, since it was evident that the admissions agreement clearly was intended to provide benefits to her mother as a resident of the facility; accordingly the court held that mother was a third-party beneficiary of the contract; therefore, plaintiff was bound to arbitrate any claims within the scope of the arbitration provision).

The court in Wiggins also addressed this same issue. It noted under South Carolina law, a third-party beneficiary is someone the contracting parties intended to directly benefit. In that case, although Hall did not sign the admission agreement, he was named as the resident to be admitted to Magnolia Manor. The admission agreement referred to benefits and responsibilities of Hall, Magnolia Manor and the fiduciary, and Hall's care was the essential purpose of the admission agreement. The court held that Hall was the intended third-party beneficiary of the admission agreement signed by Wiggins in her capacity as an immediate family member, and that Hall and his estate were bound to the arbitration clause in the admission agreement. Id. at *6.

It is clear that the Admission Agreement was for Ms. Ruckart's benefit and that she directly benefited from its execution. It follows that Respondent is bound to arbitrate all claims against Appellants as a result of Ms. Ruckart's status as a third-party beneficiary under the Admission Agreement.

IV. The trial court erred in denying Appellants' Motion because Mr. White is entitled to compel arbitration as a non-signatory to the Admission Agreement and Arbitration Agreement.

Though Mr. White is not a signatory to the Admission Agreement and the incorporated Arbitration Agreement, Respondent alleges that Mr. White was involved in and responsible for Ms. Ruckart's care provided at Mount Pleasant Manor, and Respondent alleges causes of action against Mr. White based on the care provided to Ms. Ruckart at Mount Pleasant Manor. [Complaint.] Likewise, as evident through Mr. White joining in the Motion, Mr. White agrees to participate in binding arbitration as envisioned by the Admission Agreement and incorporated Arbitration Agreement. In such circumstances, South Carolina law recognizes that Mr. White has the right to seek arbitration notwithstanding the fact that he is not a signatory to the Admission Agreement and incorporated Arbitration Agreement.

In S.C. Pub. Serv. Authority v. Great Western Coal, et al., the plaintiff contracted with Great Western Coal for the provision of coal. 312 S.C. 559, 437 S.E.2d 22 (Ct.App.1993). The contract contained an arbitration clause. The plaintiff later brought suit against Great Western Coal, its president, and another employee, alleging that they had increased coal prices while lowering quality. Id. at 561, 437 S.E.2d at 23 – 24. Defendant's president, a non-signatory to the contract, filed a motion to dismiss and compel arbitration. Id. at 561, 437 S.E.2d at 24. The trial judge denied defendant president's motion because he did not sign the contract in his individual capacity, and defendant president appealed. Id. at 563, 437 S.E.2d at 24 – 25.

The Court of Appeals reasoned that "a party should not be allowed to avoid an arbitration agreement by naming nonsignatory parties in his complaint, or signatory parties in their individual capacity because this would nullify the rule requiring arbitration." Id. at 563, 437 S.E.2d at 24 - 25, citing Arnold v. Arnold Corp., 920 F.2d 1269 (6th Cir. 1990). The Court of Appeals further

reasoned that "when the nonsignatory parties are willing to submit to arbitration, the case should be arbitrated." Id. The Court of Appeals therefore, concluded, that the defendant president was seeking arbitration and held that the trial judge erred in denying the same simply because the defendant president did not sign the contract. Id.

Great Western Coal is directly on point. Just like Great Western Coal's president, Mr. White is not a signatory to the Admission Agreement and incorporated Arbitration Agreement in question, but the claims against Mr. White arise out of and relate to the relationship between Ms. Ruckart and Mount Pleasant Manor. Also, like Great Western Coal's president, Mr. White joined in the Motion and thus agreed to submit to binding arbitration.

Respondent cannot avoid the Admission Agreement and incorporated Arbitration Agreement provisions by naming a non-signatory. Likewise, Respondent cannot rely on the relationship created between Ms. Ruckart and Mount Pleasant Manor when the Admission Agreement and incorporated Arbitration Agreement were executed and repudiate those agreements when they work to Respondent's alleged disadvantage. Mr. White is therefore entitled to seek enforcement of the Admission Agreement and incorporated Arbitration Agreement.

V. The trial court improperly denied Appellants' Motion because the Federal Arbitration Act mandates arbitration since Respondent had authority to enter the Admission Agreement and the Respondent's claims fall within the scope of the incorporated Arbitration Agreement.

The Federal Arbitration Act ("FAA") requires that:

> A written provision in any maritime transaction or a contract evidencing a transaction involving interstate commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction or refusal, shall be valid, irrevocable, and enforceable, save upon such ground as exist at law or in equity for the revocation of any contract.

9 U.S.C. § 2.

The incorporated arbitration provisions in the Admission Agreement provide that the arbitration shall be governed by the provisions of the South Carolina Arbitration Code, and in the event that it is deemed not to apply, the arbitration shall be governed by the FAA. [Memo in Support, Ex. B, p. 1.] Section 15-48-10(b)(4) of the South Carolina Code provides that the South Carolina Arbitration Code shall not apply to any claim arising out of personal injury based on contract or tort. Thus, the South Carolina Arbitration Code does not apply; instead, the FAA is controlling in the instant case.

The FAA expresses a strong national policy in favor of arbitration and "establishes that, as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor or arbitration." Moses H. Cone Mem'l. Hosp. v. Mercury Construction Corp., 460 U.S. 1, 24-25, 103 S.Ct. 927 (1983). The FAA enforces arbitration agreements as written to prevent a party from avoiding their contractual obligations to arbitrate. Stokes v. Metropolitan Life Ins. Co., 351 S.C. 606, 612, 571 S.E.2d 711, 715 (Ct.App.2002); see also Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213 (1985). Additionally, the FAA's purpose was to "overrule the judiciary's longstanding refusal to enforce agreements to arbitrate and place them on the same footing as other contracts." Volt Informational Serv., Inc. v. Bd. of Trustees of Leland Stanford Jr. Univ., 489 U.S. 468, 474 (1989) (citation and internal quotation marks omitted).

Under the FAA, arbitration is required when there is a valid arbitration agreement and a dispute exists which is within the scope of the agreement. Under the incorporated arbitration clause of the Admission Agreement, both prongs are satisfied. First, there are valid arbitration clauses in place for the reasons presented above and incorporated herein. See, supra, Arguments I, II, III and IV. Secondly, as will be discussed immediately below, Respondent's claims are within the scope of the arbitration provisions.

a. The Respondent's claims are within the scope of the arbitration provisions.

Respondent's claims are clearly within the scope of the arbitration clause incorporated in the Admission Agreement, as noted in the Statement of the Facts above. Respondent's claims include negligence, negligence per se, fraud and misrepresentation, violation of the South Carolina Unfair Trade Practices Act, wrongful death and survivorship, all which allegedly stem from the care and treatment received by Ms. Ruckart under the Admission Agreement. [Complaint.] All these causes of action are included within the scope of the arbitration provisions. Thus, there can be no dispute from the plain language of the Admission Agreement and incorporated Arbitration Agreement that all the allegations contained in the Respondent's Complaint fall under the types of disputes to be arbitrated.

b. Interstate Commerce is Satisfied.

The FAA applies to written arbitration agreements which evidence a transaction involving interstate commerce. 9 U.S.C. § 2. This requirement is broadly construed so as to be coextensive with congressional power to regulate under the Commerce Clause. Comanche Indian Tribe of Okla. v. 49, LLC, 391 F.3d 1129, 1132 (10th Cir. 2004). The interstate commerce requirement under the FAA includes contracts relating to interstate commerce. Id. The interstate commerce requirement is met if "in the aggregate the economic activity in question would represent 'a general practice...subject to federal control.'" Citizens Bank v. Alafabco, Inc., 539 U.S. 52, 56-57, 123 S.Ct. 2037 (2003) (citation omitted).

The interstate commerce requirement under the FAA is met in the present case on multiple grounds. As noted in Mr. White's Affidavit, at the time of Ms. Ruckart's residency, (1) Mount Pleasant Manor received payments from Medicare, Medicaid, and private insurers from other states; (2) the majority of food served at Mount Pleasant Manor came from Charlotte, North

Carolina; and (3) Mount Pleasant Manor obtained radiology services, medical waste management services, medical forms, specialty beds and pressure relief mattresses, linen and bedding, and other items from out-of-state. [Memo in Support, Ex. C, pp. 2-3.]

In Dean v. Heritage Healthcare of Ridgeway, LLC et al., 408 S.C. 371, 759 S.E.2d 727 (2014), the South Carolina Supreme Court found that a nursing home residency agreement implicated interstate commerce by requiring the facility to provide the resident with food and medical supplies which were instruments of interstate commerce. Id. at 381-82, 759 S.E.2d at 732-733. The Admission Agreement at issue in the case at bar required Mount Pleasant Manor to provide Ms. Ruckart room and board, medical supplies, and many other goods and services, all of which were instruments of interstate commerce. [Memo in Support, Ex. A.]

In accordance with the forgoing, the FAA's interstate commerce requirement is satisfied in the present case.

VI. The trial court improperly denied Appellants' Motion because the Federal Arbitration Act mandates that the judicial proceedings be stayed pending completion of arbitration.

The FAA requires a stay under the following circumstances:

> If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of action until such arbitration has been had in accordance with the terms of the agreement[.]

9 U.S.C. § 3.

Accordingly, the trial court should have stayed all judicial proceedings pending arbitration in accordance with the arbitration clause. See Stokes v. Metropolitan Life Ins. Co., 351 S.C. 606, 612, 571 S.E.2d 711, 715 (Ct. App. 2002) (holding "the FAA clearly requires a court stay 'any suit or proceeding' pending the arbitration of 'any issue referable to arbitration under an agreement in

writing for such arbitration' upon the application of one of the parties" (citation omitted)); 9 U.S.C. § 3.

VII. **<u>The trial court improperly denied Appellants' Motion because discovery requests issued pursuant to the South Carolina Rules of Civil Procedure are not proper in arbitration.</u>**

Respondent served Appellants with discovery requests. Appellants objected to the discovery requests on the basis that this case is subject to arbitration, and thus the discovery requests issued pursuant to the South Carolina Rules of Civil Procedure were improper. Respondents were entitled under Rule 26(c), South Carolina Rules of Civil Procedure, to an order from the trial court that Appellants were not required to respond to Respondent's discovery requests, and the trial court's denial of that request was in error.

CONCLUSION

Respondent is bound to arbitrate her claims against Appellants. The Admission Agreement and Arbitration Agreement are enforceable; the claims asserted by Respondent are within the scope of the arbitration clauses; and the FAA mandates that the claims be arbitrated. For these reasons, this Court should reverse the trial court's order denying Appellants' Motion, and the matter should be stayed pending the arbitration of the dispute.

Respectfully submitted this 8 day of October, 2020

Holcombe Bomar, P.A.

W. McElhaney White
Holcombe Bomar, P.A.
P.O. Drawer 1897
Spartanburg, SC 29304
(864) 594-5300
mwhite@holcombebomar.com

Attorneys for Appellants

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
Oct 08 2020
SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Case No. 2020-CP-10-01205
Appellate Case No. 2020-001117

Teresa Dalton, as Personal Representative of the
Estate of Ethel Ruckart, ...Respondent,

v.

Mount Pleasant Manor, LLC, and
Bruce White, ... Appellants.

PROOF OF SERVICE

The undersigned hereby certifies that on the 8 day of October 2020, he has served counsel for Respondent with a copy of **INITIAL APPELLANTS' BRIEF OF MOUNT PLEASANT MANOR, LLC AND BRUCE WHITE** in this matter by mailing copies of the same by United States mail, postage prepaid, to the following addresses:

D. Nathan Hughey, Esq.
A. Stuart Hudson, Esq.
Bradley H. Banyas, Esq.
Hughey Law Firm, LLC
Post Office Box 348
Mount Pleasant, South Carolina 29465-0348
Attorneys for Respondent

W. McElhaney White
HOLCOMBE BOMAR, P.A.
P.O. Drawer 1897
Spartanburg, SC 29304
(864) 594-5300
mwhite@holcombebomar.com

Attorneys for Appellants

Holcombe Bomar, P.A.

101 W. St. John Street, Suite 200,
Spartanburg, SC 29306

phone (864) 594-5300
fax (864) 585-3844

www.holcombebomar.com

P.O. Box 1897
Spartanburg, SC 29304
mwhite@holcombebomar.com
Direct Dial: (864) 594-5309

William U. Gunn
Koger M. Bradford
William B. Darwin, Jr.
W. McElhaney White
A. Todd Darwin
Todd R. Flippin
Konstantine S. Diamaduros

Neville Holcombe, 1902-1983
Horace L. Bomar, 1912-1994

October 8, 2020

RECEIVED
Oct 08 2020
SC Court of Appeals

(Via Electronic Delivery)
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RE: Teresa Dalton as Personal Representative of the Estate of Ethel Ruckart v. Mount Pleasant Manor and Bruce White
Appellate Case No.: 2020-001117
Case No.: 2020-CP-10-01205
Our File No.: 15725

Dear Ms. Kitchings:

Please find enclosed for electronic filing in the above case, the following:

(1) Initial Appellants' Brief of Mount Pleasant Manor, LLC, and Bruce White;

(2) Proof of Service of the same;

(3) Appellants' Designation of Matter to be Included in the Record on Appeal; and

(4) Proof of Service of the same.

Please do not hesitate to contact me if you have any questions or concerns. Otherwise, please file the enclosures and return clocked copies of the same.

By copy of this letter and the attached enclosures, I am hereby serving other counsel of record with the enclosed filings.

Sincerely,

W. McElhaney White

WMW/lc
Enclosures

C: D. Nathan Hughey, Esq. (via email & U.S. Mail)
A. Stuart Hudson, Esq. (via email & U.S. Mail)
Bradley H. Banyas, Esq. (via email & U.S. Mail)