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STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF MARLBORO)	
	C.A. No.: 2020-CP-34-00111
Clifton Hicks as Personal Representative of the Estate of Mary Hicks,)	ORDER GRANTING DEFENDANTS' MOTION TO COMPEL ARBITRATION, STAY OF ACTION, AND FOR A PROTECTIVE ORDER
Plaintiff,)	
v.)	
Dundee Manor, LLC and Sheila Raby,)	
Defendants.)	

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SC Court of Appeals

This matter was before the Court on November 9, 2020 upon Defendants Dundee Manor, LLC and Sheila Raby's ("Defendants") Motion to Compel Arbitration, Stay of Action, and for a Protective Order. Counsel for record for the parties were present including W. McElhaney White for Defendants, and Bradley H. Banyas for Plaintiff. Having reviewed the submissions by counsel and heard all arguments advanced, the Court hereby **GRANTS** Defendants' Motion and orders that this matter be stayed, compelled to arbitration, and that Defendants' shall not be required to respond to the discovery requests served upon them in this matter.

FACTUAL BACKGROUND

Mary Hicks ("Ms. Hicks") was admitted to Dundee Manor, LLC ("Dundee Manor") on February 7, 2018. Ms. Hicks, through her son Clifton Hicks ("Mr. Hicks"), entered into an Admission Agreement, an Arbitration Agreement which was incorporated into and merged with the Admission Agreement, and other admission documents. Jerry Powell, as Admissions Director of Dundee Manor, executed the Admission Agreement and the incorporated Arbitration Agreement on behalf of Dundee Manor.

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Based on the Admission Agreement and the agreements set forth therein, Ms. Hicks was admitted to Dundee Manor. During her stay at Dundee Manor, Ms. Hicks received the benefits of the contracts entered into on her behalf. Such benefits included, but were not limited to, the skilled nursing care provided therein. No one challenged any agreement's validity during her lifetime, and instead, it was only after Defendants' filed the within Motion that the Arbitration Agreement was challenged by Plaintiff.

LAW/ANALYSIS

I. POLICY IN FAVOR OF ARBITRATION

At the outset, this Court is mindful of the strong presumption in favor of the validity of arbitration agreements because of the strong policy favoring arbitration. O'Neil v. Hilton Head Hosp., 115 F.3d 272, 273 (4th Cir.1997). "This preference for arbitration has manifested itself in legislation and judicial decisions supporting the expeditious appeal of decisions denying an application to compel arbitration." Towles v. United HealthCare Corp., 338 S.C. 29, 34, 524 S.E.2d 839, 842 (Ct.App.1999). Therefore, "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or the like defense to arbitrability." *Id.*, 338 S.C. at 41, 524 S.E.2d at 846 (internal quotations and citations omitted).

II. THERE IS AN ENFORCEABLE ARBITRATION AGREEMENT

a. The Plain Language of the Agreements Bind Plaintiff to Arbitrate

The Arbitration Agreement provides:

> 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

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> 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).

As part of the admission, Mr. Hicks executed the Admission Agreement. Section 22(e) of that agreement expressly incorporated and merged the Arbitration Agreement with and into the Admission Agreement. It provides in part:

> Entire Agreement. This Agreement[1] 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.

[1] The term "Agreement" was used as the defined term for the Admission Agreement.

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The "Packet" identified in that section refers to the Admission Packet Checklist. The Admission Packet Checklist also indicates the Arbitration Agreement is part of the Admission Agreement.

b. Plaintiff is Equitably Estopped from Denying the Existence of an Enforceable Admission Agreement and incorporated Arbitration Agreement.

The Arbitration Agreement was expressly incorporated into and merged with the Admission Agreement pursuant to Section 22(e) of the Admission Agreement. Furthermore, 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). This court finds the Admission Agreement and Arbitration Agreement merged upon their execution.

The Admission Agreement served as the foundation for Ms. Hicks's admission to Dundee Manor and the duties and obligations which Ms. Hicks and Dundee Manor had to one another. Dundee Manor agreed to provide Ms. Hicks with care and treatment, and Ms. Hicks agreed to pay for the care and treatment. Without the Admission Agreement, there would have been no relationship between the parties.

For instance, Section 3(a) of the Admission Agreement required Dundee Manor to provide Ms. Hicks with nursing services, accommodations, meals and snacks, laundry, housekeeping services, activities, and social services. Sections 9 and 10 of the Admission Agreement required Ms. Hicks to pay for such services.

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All the Plaintiff's claims are dependent on duties which arise from the Admission Agreement. Plaintiff cannot disclaim the integrated arbitration terms while at the same time assert claims arising under other terms of the Admission Agreement, and Plaintiff is 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.

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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.

Plaintiff in the instant case brought claims arising from services rendered to Ms. Hicks under the Admission Agreement between the parties. The Plaintiff's allegations fall within the scope of the integrated arbitration terms in the Admission Agreement. In accordance with the foregoing law, Plaintiff cannot assert claims against Defendants arising under the Admission Agreement while repudiating the integrated arbitration terms. This court holew Plaintiff is estopped from doing so.[2]

[2] This court is aware 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

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c. Ms. Hicks is a Third-Party Beneficiary of the Admission Agreement and is bound to its terms.

Ms. Hicks, while not a signatory to the Admission Agreement, is a third-party beneficiary of the Admission Agreement (which includes the merged arbitration terms). It is clear from the plain language of the Admission Agreement that Ms. Hicks was an intended beneficiary, and the purpose of the Admission Agreement was to ensure that Dundee Manor provide the services laid out therein. Ms. Hicks did, in fact, receive those services.

Ms. Hicks 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,

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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. Hicks 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.

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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.

This court holds that Ms. Hicks and her estate are bound to arbitrate all claims against Defendants as a result of her status as a third-party beneficiary under the Admission Agreement.

d. Plaintiff Possessed Statutory Authority to Bind Ms. Hicks to the Admission Agreement and the merged Arbitration Agreement under the South Carolina Adult Health Care Consent Act.

The South Carolina Adult Health Care Consent Act ("AHCCA"), defines "health care" as including intermediate or skilled nursing care. S.C. Code Ann. § 44-66-20(1). It also specifically includes "the placement in or removal from a facility that provides these forms of care." Id. A party may consent to health care on behalf of a patient if the patient is deemed unable to consent to treatment. S.C. Code Ann. § 44-66-20(8).

Mr. Hicks, as her adult son, was entitled to consent to health care on behalf of Ms. Hicks pursuant to the AHCCA. S.C. Code Ann. § 44-66-30(A)(4).

Ms. Hicks was unable to make health care decisions on her own behalf as evidenced by her medical records. On November 18, 2017, only two and one-half months prior to her admission to Dundee Manor, Ms. Hicks was seen by her physician, Dr. Patel, at Clio Medical Center. He noted she suffered from dementia and schizophrenia. Other records from Dundee Manor also confirmed she suffered from dementia and paranoid schizophrenia.

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Pursuant to Section 44-66-30 of the South Carolina Code, Mr. Hicks had statutory authority to act as an agent on Ms. Hick's behalf in making "health care" decisions, which included placing her at Dundee Manor and executing all paperwork on Ms. Hick's behalf associated with her placement in Dundee Manor. Accordingly, the Admission Agreement, including the incorporated Arbitration Agreement, is binding on Plaintiff and Ms. Hicks.

The AHCCA was addressed by the South Carolina Supreme Court in Anne Coleman v. Mariner Health Care et al., 407 S.C. 346, 755 S.E.2d 450 (2014). The Court in Coleman considered whether a sister of a nursing home resident could bind the resident to an arbitration agreement at the time of admission. Under the facts of Coleman, the Court held she could not. Nevertheless, the facts of Coleman differ from those before this court, such that if the Coleman court had been faced with the arguments addressed herein, the result would likely have been different.

Ann Coleman signed a number of documents relating to the admission of her sister, Mary Brinson, to a nursing home in Florence, South Carolina. Ms. Brinson was unable to consent within the meaning of the AHCCA. Included within these documents was a separate arbitration agreement. The Court said the question of whether the sister had the authority to execute and bind Ms. Brinson to an arbitration agreement was governed by the statutory interpretation of the nature and scope of authority granted by the AHCCA. Id. at 350, 755 S.E.2d at 452-53.

The Court noted that the sister was authorized under the AHCCA to make decisions concerning Ms. Brinson's "heath care", which under Section 44-66-20(1) of the South Carolina Code includes "a procedure to diagnose or treat a human disease, ailment, defect, abnormality, or complaint, whether of physical or mental origin...also includes the provision of intermediate or skilled nursing care; services for the rehabilitation of injured, disabled, or sick persons; and the

placement in or removal from a facility that provides these forms of care." Id. at 351-52, 755 S.E.2d at 453 (emphasis added).

The Court then went on to state that the AHCCA gave the sister two types of authority: (1) she could consent on Ms. Brinson's behalf to the provision or withholding of medical care including placement in a facility which provided such care, and (2) she could make certain financial decisions on behalf of her sister. Id.

In Coleman, the sister was presented with two separate documents. One was a "Residential Admission and Financial Agreement", and the other an "Agreement for Arbitration". The admission and financial agreement set forth the terms under which the nursing home facility would provide long term care health services to Ms. Brinson and how these services would be paid for. Assent to this agreement was required for Ms. Brinson's admission to the nursing home facility. The arbitration agreement, on the other hand, did not contain any provisions regarding medical, nursing, or health care services, and did not require any financial commitment to pay for such services.

The Court found that the sister's authority to consent to decisions concerning Ms. Brinson's health care extended to the admission and financial agreement which was the basis upon which the nursing home agreed to provide health care, and under which the sister agreed to pay the nursing home. Id. at 353-54, 755 S.E.2d at 454. The Court stated the separate arbitration agreement did not concern health care or payment, but simply provided a method for dispute resolution between the nursing home and Ms. Brinson or her sister should issues arise in the future. Id.

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The Court then held the AHCCA did not grant authority to the sister to execute a document that did not involve health care or financial terms for payment of such care, and thus the sister did not have the legal capacity to bind Ms. Brinson to the separate arbitration agreement. Id. at 454.

The Court in Coleman did not address how the result may have been different if the "Residential Admission and Financial Agreement" and the "Agreement for Arbitration" had merged. Thus, the Coleman court did not decide whether Ms. Brinson would have been bound to arbitrate her claims under the AHCCA if there had been a merger of the admission and arbitration agreements.

In the case at bar, the Admission Agreement and Arbitration Agreement merged, and when that happened, the terms of the Arbitration Agreement became part of the Admission Agreement, rendering them enforceable.

The Court of Appeal's decision in Thompson v. Pruitt Corporation, 416 S.C. 43, 784 S.E.2d 679 (Ct.App.2016) is instructive as well. Andrew Phillip Davis ("son") executed an admission agreement and an arbitration agreement for the admission of Eula Mae Davis ("mother") to UniHealth Post-Acute Care-Rock Hill ("UniHealth"). After mother suffered injury at UniHealth, a lawsuit was filed. UniHealth moved to compel arbitration, and the trial court denied the motion. An appeal followed. Id. at 48-49, 784 S.E.2d at 682.

UniHealth argued that the admission agreement and the arbitration agreement merged, and as a result, son had the power to bind his mother to the agreements under the Adult Health Care Consent Act. The Court of Appeals disagreed on the basis that the agreements did not merge. It held the admission agreement was ambiguous on the issue of whether the arbitration agreement was incorporated as an exhibit to the admission agreement, and such ambiguity should be construed against the drafter of the contract – UniHealth. Id. at 49-54, 784 S.E.2d at 683-685.

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As noted above, the Admission Agreement clearly incorporates and merges the Arbitration Agreement, and the case at bar is distinguishable from the facts in Coleman and Thompson. As a result, when Mr. Hicks executed the Admission Agreement and merged Arbitration Agreement, he bound Ms. Hicks to arbitrate any claims that she, or anyone claiming through her, have against Defendants, and this court so holds.

e. Defendant Sheila Raby is entitled to compel arbitration as a non-signatory.

Though Defendant Sheila Raby ("Ms. Raby") is not a signatory to the Admission Agreement and the incorporated Arbitration Agreement, Plaintiff alleges that Ms. Raby was involved in and responsible for Ms. Hicks's care provided at Dundee Manor as its administrator, and Plaintiff alleges causes of action against Ms. Raby based on the care provided to Ms. Hicks at Dundee Manor. Likewise, as evident through Ms. Raby joining in the Motion to Stay and Compel Arbitration, Ms. Raby agrees to participate in binding arbitration as envisioned by the Admission Agreement and incorporated Arbitration Agreement. In such circumstances, South Carolina law recognizes that Ms. Raby has the right to seek arbitration notwithstanding the fact that she 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.

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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.

Just like Great Western Coal's president, Ms. Raby is not a signatory to the Admission Agreement and incorporated Arbitration Agreement in question, but the claims against Ms. Raby arise out of and relate to the relationship between Ms. Hicks and Dundee Manor. Also, like Great Western Coal's president, Ms. Raby joins in the Motion to Stay and Compel Arbitration and thus agrees to submit to binding arbitration.

Plaintiff cannot avoid the Admission Agreement and incorporated Arbitration Agreement provisions by naming a non-signatory. Likewise, Plaintiff cannot rely on the relationship created between Ms. Hicks and Dundee Manor when the Admission Agreement and incorporated Arbitration Agreement were executed and repudiate those agreements when they work to Plaintiff's alleged disadvantage. This court holds Ms. Raby is therefore entitled to enforcement of the Admission Agreement and incorporated Arbitration Agreement.

III. FEDERAL ARBITRATION ACT MANDATES ENFORCEMENT OF THESE AGREEMENTS

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

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> 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. 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

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clauses in place for the reasons discussed above. Secondly, as will be discussed immediately below, Plaintiff's claims are within the scope of the arbitration clauses.

a. Scope of the Arbitration Clause

Plaintiff's claims are clearly within the scope of the arbitration clause incorporated in the Admission Agreement, as noted above. Plaintiff'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. Hicks under the Admission Agreement. All these causes of action are included within the scope of the arbitration clause. 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 Plaintiff'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 the affidavit submitted by Kelly Pruitt, the current Administrator for Dundee Manor, at the time of Ms. Hicks's residency, (1) Dundee Manor received payments from Medicare,

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Medicaid, and private insurers from other states; (2) the majority of food served at Dundee Manor came from Charlotte, North Carolina; and (3) Dundee Manor obtained radiology services, oxygen supplies and materials, medical forms, laundry supplies, business office supplies and furniture, and other items from out-of-state. Dundee Manor also provided care and services to some residents who came from other states.

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 Dundee Manor to provide Ms. Hicks room and board, medical supplies, and many other goods and services, all of which were instruments of interstate commerce.

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

IV. THE PROCEEDINGS MUST BE STAYED

Defendants requests that these 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, all judicial proceedings should be stayed 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.

V. PROTECTIVE ORDER

On May 19, 2020, Plaintiff served Defendants with Plaintiff's First Set of Discovery Requests. Because this matter is subject to arbitration, the discovery requests are improper and Defendants are entitled under Rule 26(c), South Carolina Rules of Civil Procedure, to a protective order from this Court that Defendants are not required to respond to Plaintiff's discovery requests.

CONCLUSION

For the reasons set forth herein, this court hereby GRANTS Defendants' Motion to Compel Arbitration, Stay of Action, and for a Protective Order.

IT IS SO ORDERED.

The Honorable Roger E. Henderson's signature is electronically applied

_____, 2020
Bennettsville, South Carolina

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Marlboro Common Pleas

Case Caption: Clifton Hicks , plaintiff, et al VS Dundee Manor, Llc , defendant, et al

Case Number: 2020CP3400111

Type: Order/Compel

So Ordered

s/Roger E. Henderson 2754