

STATE OF SOUTH CAROLINA )  
 COUNTY OF CALHOUN )  
 )  
 Jeffery White, individually and as )  
 Personal Representative of the Estate of )  
 Lizzie White, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 St. Matthews Healthcare, LLC, d/b/a )  
 Calhoun Convalescent Center, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

COURT OF COMMON PLEAS  
 FOR THE NINTH JUDICIAL CIRCUIT  
 Civil Action No.: 2019-CP-09-00220

**ORDER GRANTING  
 PLAINTIFF’S MOTION TO  
 RECONSIDER**

**RECEIVED**  
**Jul 01 2021**  
 SC Court of Appeals

This matter comes before the Court on Plaintiff Jeffrey White’s (“Plaintiff”) motion to reconsider the order compelling arbitration of this case, which was entered on November 24, 2020. For the reasons set forth herein, this Court hereby grants Plaintiff’s motion to reconsider and reverses the prior order compelling arbitration.

**BACKGROUND**

This case arises out of the death of Lizzie White, which occurred on March 3, 2018. Prior to her death, Ms. White was a resident and patient of Defendant Calhoun Convalescent Center (“Defendant”) from June of 2017 until her emergency discharge to Regional Medical Center on January 29, 2018. According to the operative complaint, at the time of her discharge from Defendant’s facility, she was suffering from a dinner-plate size, infected sacral pressure ulcer. (*See Jeffrey White v. Calhoun Convalescent Center*, C/A No. 2019-CP-09-00220 Complaint at ¶¶ 36, 39 (filed Dec. 16, 2019)). She had no skin ulcerations, lacerations, or other integumentary issues at the time of her admission to Defendant’s facility in June of 2017. (*Id.* at ¶¶ 34-37).

At issue before this court are three documents: Defendant’s facility admission agreement, and arbitration agreement, and a healthcare power of attorney (“HCPOA”) signed by decedent

Lizzie White in April of 2017. During arguments on Defendant's motion to compel arbitration, Defendant conceded that the facility admission agreement in this case was a condition precedent to admission, whereas the arbitration agreement was not. Defendant nevertheless argued that a merger existed between the two documents. Neither document was signed by Ms. White, nor by her son, Jeffrey White, the personal representative of her estate and the Plaintiff in this case. Instead, the facility admission agreement and arbitration agreement were signed by Ms. White's daughter, Darlene Nunnelly.

The third document, the HCPOA, was executed several months prior to Ms. White's admission to Defendant's facility. This document, which designated Darlene Nunnelly as Ms. White's healthcare agent, allowed the authorized representative limited authority to make healthcare decisions on behalf of Ms. White. The HCPOA was not, however, a durable power of attorney and did not confer broad or general rights upon Ms. White's representative.

Defendant's motion to compel arbitration came before this Court on August 22, 2020. On November 24, 2020, this Court issued its order granting Defendant's motion. Plaintiff timely moved, filed, and served his motion to reconsider the order compelling arbitration. Now, following a February 10, 2021 hearing on Plaintiff's motion, and the Court's review of the parties' memoranda both in the underlying motion to compel arbitration and Plaintiff's motion for reconsideration, as well as the record in this case, the Court hereby grants Plaintiff's motion to reconsider, and reverses its earlier order compelling arbitration.

### ANALYSIS

#### **I. THE HEALTHCARE POWER OF ATTORNEY EXECUTED BY DARLENE NUNNELLY ON BEHALF OF LIZZIE WHITE DID NOT CONFER THE POWERS OF A GENERAL AGENT**

In April of 2017, and prior to her admission to Defendant's facility, Lizzie White executed the HCPOA in this case, which conferred upon Ms. White's authorized representative only the authority to make healthcare decisions in the event of Ms. White's incompetence.

"The existence of an agency relationship is...determined by the relation, the situation, the conduct, and the declarations of the party sought to be charged as principal." *Langdale v. Carpets*, 395 S.C. 194, 201, 717 S.E.2d 80, 83 (Ct.App. 2011). Where an agency relationship exists, the principal will only be bound by the acts of his agent acting within the agent's scope. *Bankers Trust of South Carolina v. Bruce*, 283 S.C. 408, 323 S.E.2d 523 (Ct.App. 1984). See *Moore v. Pilot Life Insurance Company*, 205 S.C. 474, 32 S.E.2d 757, 762 (1945) (the principal is bound only by those acts within the agent's actual or apparent authority). South Carolina courts have found that a healthcare power of attorney authorizes an agent to make only those decisions related to the principal's healthcare, and have further found that a healthcare power of attorney does not confer broader authority allowing the agent to enter into legal obligations to waive other rights. *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 567, 813 S.E.2d 292, 304 (Ct.App. 2018) (citing approvingly the decision of the Court of Appeals of Maryland in *Dickerson v. Longoria*<sup>1</sup>, 414 Md. 419, 444, 995 A.2d 721, 736 (Md. 2010) ("Quite obviously, the decision to

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<sup>1</sup> In *Dickerson*, the Maryland Court of Appeals noted:

Although we have never addressed this issue, other courts have drawn a distinction between a health care decision and a decision to sign an arbitration agreement, even where the arbitration agreement is related to a health care decision. In several cases involving health care facilities, the intermediate appellate courts in Colorado, Florida, Georgia, and Texas have concluded that the authority to make health care decisions on another's behalf does not constitute authority to sign an arbitration agreement on that person's behalf.

*Id.* 995 A.2d at 739 (citing *Lujan v. Life Care Ctrs. of Am.*, 222 P.3d 970, 973-76) (Colo.Ct.App. 2009)).

sign an arbitration agreement is not, in and of itself, a health care decision”). *See Thompson v. Pruitt Corporation*, 416 S.C. 43, 784 S.E.2d 679, 686 (Ct.App. 2016) (“[T]he authority conveyed by a principal to an agent to handle finances or make health care decision does not encompass executing an agreement to resolve legal claims by arbitration”); *see also Arredondo v. SNH SE Ashley River, LLC*, Appellate Case No. 2019-001767, Opinion No. 28011, 2021 WL 908508 (Mar. 10, 2021) (finding a healthcare power of attorney did not confer the agent with requisite authority to sign an arbitration agreement that was not a condition precedent to facility care)).

As the South Carolina Supreme Court has recognized, a distinct difference exists between legal decisions, such as the decision to waive the right to a jury trial, and health care decisions, such as entrance into a skilled nursing facility. The HCPOA in this case does not evidence that Ms. White intended her healthcare agent to obtain general powers over her affairs. Instead, the HCPOA allows the healthcare agent to make health care decisions only. Beyond the plain language of the HCPOA, there is no evidence in this case to indicate Ms. White granted a broader scope of authority to her healthcare agent. In addition, there is no evidence to suggest that the HCPOA sprung into a durable power of attorney that would have conferred broader authority. Accordingly, this Court finds that the HCPOA provided the healthcare agent only the limited authority to make healthcare decisions on behalf of Ms. White, which did not include the authority to enter into legal obligations such as waiver of a jury trial.

## **II. THE ARBITRATION AGREEMENT AND FACILITY ADMISSIONS AGREEMENT IN THIS CASE ARE SEPARATE DOCUMENTS, AND THERE IS NO EVIDENCE OF MERGER BETWEEN THESE DOCUMENTS**

In support of its motion to compel arbitration, Defendant argued that a merger existed between the facility admissions agreement in this case, which was a prerequisite to Ms. White’s admission to Defendant’s facility, and the arbitration agreement, which was not mandatory for

admission. A review of the record, however, as well as the four corners of the documents themselves, demonstrates that the documents were separate and distinct instruments, which did not merge.

In *Coleman v. Mariner*, 407 S.C. 346, 755 S.E.2d 450 (2014), the South Carolina Supreme Court found that a facility admissions agreement and arbitration agreement did not merge, and therefore the plaintiff could not be equitably estopped from filing suit against the facility in circuit court. *Id.*, 407 S.C. at 355, 755 S.C. at 455. The Court noted the general rule that, in the absence of anything to the contrary, documents executed at the same time, by the same parties, for the same transaction and purpose will ordinarily be construed as one. *Id.* The Court recognized, however, that certain factors support the separateness of documents, even to the extent the instruments were signed at roughly the same time. *Id.*

Of particular importance to the Supreme Court in *Coleman* was a clause in the admissions agreement, the “Entire Agreement” clause, which the Court found on its face recognized the “separateness” of the admissions agreement and arbitration agreement. *Id.*, 407 S.C. at 355-56, 755 S.E.2d at 455. Since *Coleman*, South Carolina courts have enunciated other factors that weigh against merger. For example, in *Thompson v. Pruitt Corp.*, 416 S.C. 43, 784 S.E.2d 679 (Ct.App. 2016) the Court of Appeals, considering an argument by the defendant nursing facility that an admissions agreement and arbitration agreement had merged, found that the documents referred to one another separately, and otherwise indicated the intention of the parties for the instruments to remain separate. *Id.*, 416 S.C. at 53, 784 S.E.2d at 684-85. Since *Thompson*, courts have considered a number of factors in assessing the doctrine of merger in the context of arbitration agreements and agreements related to facility admissions, including whether the documents contain separate page numbers, exclusivity clauses, jurisdictional distinctions, etc. *See Hodge*, 422

S.C. at 561, 813 S.E.2d at 301 (finding no merger existed between two instruments governed by different laws, recognizing the distinctness of each instrument, and where one instrument was a condition precedent to admission whereas the other was not).

Here, this Court finds that the plain language of the facility admissions agreement and the arbitration agreement indicates that the agreements were to be construed independent of one another. The instruments are separately paginated, the facility admissions agreement contains an Entire Agreement clause, and the arbitration agreement was not a condition precedent to entry into Defendant's facility, whereas the facility admission agreement was a prerequisite to admission. This Court therefore finds no merger occurred between these two distinct instruments.

### **III. THE RECORD IN THIS CASE DOES NOT SUPPORT A FINDING OF EQUITABLE ESOPTEL AGAINST MS. WHITE OR HER PERSONAL REPRESENTATIVE**

“Equitable estoppel is, ultimately, a theory designed to prevent injustice, and should be used sparingly.” *Wilson*, 426 S.C. at 345, 827 S.E.2d at 177 (citing *Hirsh v. Amper Fin. Servs., LLC*, 215 N.J. 174, 71 A.3d 849, 852 (2013) (noting equitable estoppel “is more properly viewed as a shield to prevent injustice rather than a sword to compel arbitration”). “In the arbitration context, the doctrine [of direct benefits estoppel] recognizes that a party may be estopped from asserting that the lack of his signature on a written contract precludes enforcement of the contract's arbitration clause when he has *consistently maintained that other provisions of the same contract should be enforced to benefit him.*” *Wilson*, 426 S.C. at 340, 827 S.E.2d at 175 (quoting *International Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411, 418 (4<sup>th</sup> Cir. 2000)) (emphasis in original).

In general, the party asserting equitable estoppel must demonstrate that the party to be estopped (1) acted in a way amounting to a false representation; (2) intended that such conduct be

acted on by the other party; and (3) that the party against whom estoppel is sought had actual knowledge of the facts. *Strickland v. Strickland*, 375 S.C. 76, 650 S.E.2d 465 (2007). The party asserting estoppel must also demonstrate that they (1) lacked knowledge and the means of knowledge of the truth of the facts in question; (2) relied on the conduct of the party estopped; and (3) made a prejudicial change of position in reliance on the conduct of the party estopped. *Id.*, 376 S.C. at 84, 650 S.E.2d at 470.

In this case, Jeffrey White, as the personal representative of his mother's estate, was not a signatory to the arbitration agreement Defendant has sought to enforce. While this does not end the inquiry, Defendant has also failed to establish any of the necessary elements in support of equitable estoppel. Defendant has provided no information about Mr. White's conduct in the context of his mother's admission to the Defendant's facility, and therefore has failed to demonstrate how Plaintiff's action asserting his mother's legal rights is somehow contrary to equity. This Court therefore finds that Defendant has not met its burden of demonstrating that equitable estoppel should apply to Mr. White, and thus the doctrine is inapplicable in this case.

### **CONCLUSION**

As set forth herein, this Court now finds that the HCPOA in this case did not confer general powers of attorney on the decedent's designated representative, but authorized the representative to make only those decisions related to healthcare, which exclude decisions to enter into additional legal obligations. In addition, no merger occurred between the facility admission agreement in this case and the separate arbitration agreement. Finally, there is no evidence in the record to demonstrate that Plaintiff's claims are contrary to equity, or otherwise precluded by equitable estoppel. As such, this Court grants Plaintiff's motion to reconsider and reverses its prior order compelling arbitration of this matter.



Calhoun Common Pleas

**Case Caption:** Jeffery White VS St. Matthews Healthcare, Llc

**Case Number:** 2019CP0900220

**Type:** Order/Other

So Ordered

s/ Maite Murphy 2166