

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

Trina Dawkins, as Personal Representative of
the Estate of William Dawkins,

CASE NO. 2020-CP-42-03593

Plaintiff,

**ORDER REGARDING DEFENDANTS' MOTIONS TO
STAY AND MOTION TO COMPEL ARBITRATION**

vs.

Fundamental Clinical and Operational
Services, LLC; Fundamental Administrative
Services, LLC; THI of South Carolina, LLC; THI
of South Carolina at Spartanburg, LLC; THI of
South Carolina at Magnolia Manor-
Spartanburg, LLC d/b/a Magnolia Manor-
Spartanburg,

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SC Court of Appeals

Defendant(s).

Hearing Date:
Hearing Judge:
Counsel for Plaintiff:
Counsel for Defendants:
Court Reporter:

March 16th, 2021, at 2:30 p.m.
Grace Gilchrist Knie
William A. Jordan, III
Russell G. Hines
Linda D. Moffitt

This matter was before the Court on March 16th, 2021, upon Defendants' Four Motions to Stay and Defendant THI of South Carolina at Spartanburg LLC's Motion to Compel Arbitration filed with the Court on February 12th, 2021. Attorney William A. Jordan, III, was present representing the Plaintiff, and Attorney Russell G. Hines was present representing all Defendants. The Court Reporter was Linda D. Moffitt. The hearing was conducted via Judge Knie's Virtual Courtroom. Plaintiff's counsel filed a Reply Memorandum on March 18th, 2021, and requested sanctions pursuant to Rule 11, SCRPC.

OVERVIEW AND PROCEDURAL BACKGROUND

This is a professional negligence case involving William Dawkins, who was admitted into the Defendants' facility on April 25th, 2017, for rehabilitation purposes following surgery and hospitalization. It is uncontested in the record that Mr. Dawkins signed no paperwork at the time of his admission and that he had never signed a Power of Attorney, nor had a guardian appointed for him. Present at the time of his admission was his daughter, Melissa Dawkins, who met with an admissions officer of the Defendant facility, Kris Milner. During the course of this meeting, Ms. Dawkins signed a 12 page Admission Agreement, a 5 page document titled "Authorizations, Consents, & Acknowledgements," and a one page Arbitration Agreement. Ms. Dawkins also signed 3 other single page consent forms. Defendants have asserted that the Arbitration Agreement is enforceable because Ms. Dawkins held herself out as her father's agent, represented that she had the authority to sign these documents on his behalf, and that the Dawkins' estate should be bound by the Arbitration Agreement, which has merged with the Admission Agreement. Plaintiff has argued that the Arbitration Agreement is not enforceable because there was no such agreement that Mr. Dawkins had with any of the Defendants, that Ms. Dawkins did not have the authority to sign the agreement on her father's behalf, and that the Dawkins' estate cannot be estopped from bringing this action in tort where no enforceable Arbitration Agreement exists.

The only evidence in the record concerning the circumstances of the meeting has been presented by the Plaintiff. Ms. Dawkins, in her affidavit, has stated that she repeatedly represented to Ms. Milner that she did not have legal authority to sign the documents on her father's behalf, and only signed when she was told that her father would not be admitted to the

facility without signatures on the paperwork. She further stated that she was not given an opportunity to review the documents in full and that the Arbitration Agreement was not explained to her. Defendants have presented no factual evidence that Melissa Dawkins had the authority to bind her father to an Arbitration Agreement, and Defendants agree that Melissa Dawkins was not her father's Power of Attorney and that Mr. Dawkins was competent at the time of his admission. Despite this, Defendants filed this motion.

To address a final procedural matter, the parties have been engaged in this case for over one year. The Plaintiff has presented evidence that copies of any agreements between the parties, including Arbitration Agreements or admission documents, were requested as early as February 18th, 2020, but that these documents were not provided in response to an initial record request. The Plaintiff filed the Notice of Intent on April 24th, 2020, and asked the Defendants to immediately disclose any Arbitration Agreements or move to compel arbitration if the Defendants believed an arbitration defense existed. The Defendants did not, and instead engaged in NOI-phase mediation on October 12th, 2020, again without raising an arbitration defense. After the Plaintiff filed suit, the Defendant refused to produce any of the aforementioned documents upon which it bases its motion, objecting and stating for the first time its intent to compel arbitration in January of 2021. The Plaintiff was granted access to the one page Arbitration Agreement for the first time on February 12th, 2021, when these motions were filed, but the remainder of the supporting documents were not produced until the day prior to the hearing, when the Defendants filed their memorandum in support of their motions.

LEGAL ANALYSIS

The parties agree the Arbitration Agreement is governed by the Federal Arbitration Act (hereinafter "FAA"). While there is a presumption in favor of Arbitration Agreements, this presumption only applies where there is a valid Arbitration Agreement. *EEOC v. Waffle House*, 534 U.S. 279 (2002); *Toler's Cove Homeowners Ass'n, Inc. v. Trident Constr. Co., Inc.*, 355 S.C. 605, 612, 586 S.E. 2d 581 (2003). However, not all Arbitration Agreements are enforceable. Where the FAA does apply, the Arbitration Agreement is subject to the same defenses applicable to all other contracts as discussed below. *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, (2010). Whether the parties agreed to arbitrate is a question of substantive state law. In *Chassereau v. Global Sun Pools, Inc.*, the Supreme Court stated:

Although we are constrained to resolve all doubts in favor of arbitration, this is not an absolute truism intended to replace careful judicial analysis. While actions taken in an arrangement such as the one entered into by these parties might have the potential to generate several legal claims and causes of action, we have no doubt that Chassereau did not intend to agree to arbitrate the claims she asserts in the instant case. Accordingly, we hold that these claims are not covered by the Arbitration Agreement at issue in the instant case.

373 S.C. 168 (2007).

While the FAA includes a presumption favoring arbitration, it only applies after the court finds there is a valid, enforceable Arbitration Agreement. 9 U.S.C. § 4 ("The court shall make an order directing the parties to proceed to arbitration" but only "upon being satisfied that the making of the agreement...is not in issue"). The FAA looks to state law to decide the threshold questions of contract formation. Therefore, Arbitration Agreements guided by the FAA are subject to the same defenses applicable to all other contracts. The judicial inquiry may include

an examination of authority, such as apparent or authority, whether a valid power of attorney exists, as well as other grounds existing at law or equity, including competency.

In determining whether a particular dispute can be compelled into arbitration, this Court must first determine whether a valid agreement to arbitrate exists between the parties. The party seeking to enforce an agreement to arbitrate has the burden of establishing the existence of a valid Arbitration Agreement. *See Aiken v. World Finance Corp. of S.C.*, 373 S.C. 144, 149, 644 S.E.2d 705, 708 (2007); *MBNA America Bank, N.A. v. Christianson*, 377 S.C. 210, 659 S.E.2d 209 (S.C. Ct. App. 2008). In determining whether an agreement to arbitrate exists, “the court should apply ‘ordinary state-law principles that govern the formation of contracts.’” *Towles v. United Healthcare Corp.*, 338 S.C. 29, 37, 524 S.E. 2d 839, 844 (Ct. App.1999). Arbitration is available only when the parties involved contractually agree to arbitrate. *Id.* South Carolina common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement. *Player v. Chandler*, 299 S.C. 101, 382 S.E. 2d 891(1989). Arbitration will be denied if a court determines no agreement to arbitrate existed. S.C. Code Ann. § 15-48-20(a).

In this case, there is no valid and enforceable contract. William Dawkins signed no Arbitration Agreement nor did he sign any other document giving Melissa the express authority to sign for him. The Defendants have made what is essentially an apparent agency argument, arguing that because Melissa Dawkins signed the agreement, she must have held herself out as her father’s agent. Defendants have no specific evidence to support this claim and have not presented an affidavit from any individual concerning the circumstances of the meeting in question. The evidence of the record does not support their argument. Ms. Dawkins has stated

that she repeatedly informed Defendants' employee that she did not have the legal authority to sign for her father, but only signed the paperwork upon being informed that her father would not be admitted to the facility without a signature. Out of concerns of her father's health and safety, she signed the paperwork, but not without the aforementioned caveats.

The facts of this case are very similar to several recent holdings in South Carolina. In the *Coleman* case, decedent's sister did not have power of attorney – she was authorized by the Adult Health Care Consent Act to make medical decisions only for the patient – and when placing decedent in health care facility, executed both an Admission Agreement and Arbitration Agreement on behalf of decedent. *Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 755 S.E.2d 450 (2014). The court held that the scope of the Act is to ensure that the patient's wishes concerning her medical treatment are honored whenever possible, and that it does not confer authority to execute a document which involves neither health care nor financial terms for payment of such care. *Id.* at 454. Further, the court noted the importance of the “separatedness” of the Arbitration Agreement and Admission Agreement; specifically, there was a “Residential Admission and Financial Agreement” and an “Agreement for Arbitration.” *Id.* at 454-55. “The scope of Sister's authority to consent to ‘decisions concerning Decedent's health care’ extended to the Admission Agreement, which was the basis upon which Facility agreed to provide health care and Sister agreed to pay for it. The separate Arbitration Agreement concerned neither health care nor payment, but instead provided an optional method for dispute resolution between Facility and Decedent or Sister should issues arise in the future.” *Id.* at 454. Because admission to the facility for health-related needs was not contingent upon execution of the

Arbitration Agreement, it could not be said that the signatory had any authority to bind the patient as to the separate, voluntary Arbitration Agreement. *Id.*

Our Supreme Court has held that a surrogate without proper legal authority cannot bind a person to arbitration.

The scope of Sister's authority to consent to "decisions concerning Decedent's health care" extended to the Admission Agreement, which was the basis upon which Facility agreed to provide health care and Sister agreed to pay for it. The separate Arbitration Agreement concerned neither health care nor payment, but instead provided an optional method for dispute resolution between Facility and Decedent or Sister should issues arise in the future. Under the Act, Sister did not have the capacity to bind Decedent to this voluntary Arbitration Agreement. We therefore affirm the circuit court's holding that the Act did not confer authority on Sister to execute a document which involved neither health care nor financial terms for payment of such care.

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

The Court of Appeals addressed these issues in the *Hodge* case, where the Resident was admitted to a nursing facility while competent and without any Power of Attorney. *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 550, 813 S.E.2d 292, 295 (Ct. App. 2018). In *Hodge*, the decedent's husband signed all paperwork on her behalf, including an Arbitration Agreement. *Id.* at 550, 813 S.E.2d at 296. The Court of Appeals affirmed the Circuit Court's finding that "Husband's signing of the Arbitration Agreement, Admission Agreement, and other forms does not make him [wife]'s agent. [Wife] did not have a health care power of attorney. Additionally, the Facility knew she was competent at the time of admission as indicated by the doctor's examination and allowed her to sign other forms. The record contains no evidence from the Facility that [Wife], as the principal, represented Husband was her agent." *Hodge* at 573-74, 813 S.E.2d at 308.

The Court found that even if the Husband did have the authority to make some decisions on her behalf, this did not extend to waiving the Constitutional right to a jury trial: “Moreover, even if Husband had authority to handle finances or make health care decisions, as Appellants contend is evidenced by Husband signing past healthcare documents, this court has held ‘the authority conveyed by a principal to an agent to handle finances or make health care decisions does not encompass executing an agreement to resolve legal claims by arbitration, thereby waiving the principal's right of access to the courts and to a jury trial.’” *Id.* at 547, 813 S.E.2d at 308 (citing *Thompson v. Pruitt Corp.*, 416 S.C. 43, 784 S.E.2d 679 (Ct. App.2016)).

This Court finds the authority from *Coleman* and *Hodge* are persuasive in this case. This precedent clearly stands for the proposition that when a healthcare facility attempts to bind a patient to an Arbitration Agreement signed by a family member, the facility must make a clear showing that the family member was a legal agent of the patient. Our Courts have indicated that without a Power of Attorney, or some other express delegation of authority by the principal, there is no actual legal authority for an alleged agent to bind the principal to any agreement, or to do anything beyond making healthcare decisions for an incompetent patient. In this case, the Defendants have presented no evidence to show that Ms. Dawkins held herself out as her father’s agent in any way, and the only evidence of record shows that she did the opposite.

As a final legal matter, the Defendants have asserted Ms. Dawkins signed the Admission Agreement based upon apparent authority, and that this agreement ultimately merged with the Arbitration Agreement. As a threshold matter, this argument fails for the aforementioned reasons: the Admission Agreement is not binding on Mr. Dawkins or his estate because Melissa Dawkins did not have the authority to sign it on his behalf. Even if this were true, the evidence

of the record does not support the Defendants' merger argument. As discussed at length in *Coleman*, merger does not occur where the documents recognize the "separatedness" of the Arbitration Agreement, which is indicative of an intent that the common law doctrine of merger not apply. *See Coleman*, 407 S.C. at 355, 755 S.E.2d at 455. In *Coleman*, 407 S.C. at 350, 755 S.E.2d at 452, Ann Coleman signed several documents, including Arbitration Agreements, when admitting her sister to a health care facility. Coleman brought suit after her sister's death, and the facility sought to compel arbitration. *Id.* The circuit court denied the motion to compel. *Id.* On appeal, the *Coleman* court found the language in the section titled "Entirety of Agreement" "recognizes the 'separatedness' of the [Arbitration Agreement] and the Admission Agreement, not a merger of the two contracts." *Coleman*, 407 S.C. at 355, 755 S.E.2d at 455. Furthermore, the court noted that the "Entirety of Agreement" clause creates an ambiguity as to merger, and "the law is clear that any ambiguity...is construed against the drafter...." *Id.* at 355-56, 755 S.E.2d at 455. The *Coleman* court ruled the circuit court properly denied [the health care facility's] equitable estoppel arguments because no merger occurred. *Id.* at 356, 755 S.E.2d at 455.

Additionally, merger does not occur where an Arbitration Agreement and Admission Agreement are governed by different law, reference each other separately, provide different mechanisms by which they can be revoked, are separately paginated, and have their own signature page. *See Hodge*, 422 S.C. at 562-563, 813 S.E.2d at 302. In *Hodge*, 422 S.C. at 550, 813 S.E.2d at 295, Mable Hodge entered a rehabilitation facility. *Id.* Mable's husband executed various documents related to her admission, including an Arbitration Agreement and an Admission Agreement. *Id.* Mable was not present at the time her husband signed these documents on the day before her admission because she was still in the hospital. *Id.* However,

Mable was competent at the time of her admission. *Id.* 422 S.C. at 550, 813 S.E.2d at 296. The circuit court denied [the facility's] motion to dismiss or compel arbitration. *Id.* The facility appealed arguing the circuit court erred in finding the Arbitration Agreement was separate from the Admission Agreement because the two documents were merged. *Id.* 422 S.C. at 556, 813 S.E.2d at 299. The Court of Appeals upheld the circuit court, finding the Admission Agreement and Arbitration Agreement did not merge. *Id.* 422 S.C. at 563, 813 S.E.2d at 302.

The Court based its rulings on the fact that the "Admission Agreement indicated it was governed by South Carolina law, whereas the Arbitration Agreement stated it was governed by federal law." *Id.* 422 S.C. at 562, 813 S.E.2d at 302. Additionally, similar to Coleman, the Arbitration Agreement recognized separatedness because it referenced the two documents separately, "stating '[a]ny and all claims or controversies arising out of or in any way relating to this Agreement or the Patient/Resident's Admission Agreement.'" *Id.* Furthermore, the Arbitration Agreement stated it could be revoked within thirty days, while the Admission Agreement did not contain such an indication; rather, it provided the Admission Agreement could only be amended by the patient with written agreement executed by the facility and the patient. The Court noted that each document was separately paginated and had its own signature page. Finally, signing the Arbitration Agreement was not a precondition to admission. *Id.* 422 S.C. at 562-63, 813 S.E.2d at 302. Based on this, the Court of Appeals found the Admission Agreement and Arbitration Agreement did not merge. *Id.* 422 S.C. at 563, 813 S.E.2d at 302. Therefore, because Mable received no benefit from the Arbitration Agreement, equitable estoppel did not bar Mable's claims. *Id.*

This case has many similarities to *Coleman and Hodge*: the Admission Agreement and the Arbitration Agreement are two separate documents; the Admission Agreement contemplates interpretation under state law while the Arbitration Agreement states that it is solely to be interpreted under federal law; the documents are separately paginated; the documents are titled separately; the documents have separate filenames; and, the documents have separate signature and date blocks.

Sanctions

During the March 16th, 2021, hearing Plaintiff's counsel requested leave of the Court to file a responsive Memorandum and to supplement the record, on the basis that the Defendants had withheld critical documents and had produced them upon the eve of the hearing. The Court granted this request. Plaintiff's counsel filed a Reply Memorandum on March 18th, 2021, and requested Sanctions pursuant to SCRPC Rule 11, on the basis that the Defendants had withheld documents, and also on the basis that the Defendants motions were frivolous.

Rule 11 of the SCRPC allows a Court to impose an appropriate sanction upon motion or upon its own initiative, if no good ground exists to support a motion. Rule 11, SCRPC. Such sanctions may include reasonable expenses incurred by the defending party. Rule 11, SCRPC. Plaintiff contends, as outlined in the procedural history of this case, that Defendants gave no indication that they were pursuing an arbitration defense, despite repeated requests from the Plaintiff. Plaintiff further contends that the Defendants also refused to produce critical arbitration documents when requested and did not produce the documents or provide that this conduct continued for over a year and did not end until less than 24 hours prior to the hearing. At the time the Defendants filed their motion, their position was that a one page Arbitration Agreement

should be enforced pursuant to the FAA. Further that Defendants failed to disclose that they intended to pursue merger and estoppel arguments based on the Admission Agreement or apparent or inherent authority agreements based on the Admission Agreement and healthcare consents. Plaintiff contends that Defendants were in possession of the aforementioned documents for approximately four years, but had repeatedly refused to disclose them. Plaintiff further contends that Defendants waited until the evening before the hearing to file a lengthy Memorandum of Law that included the supporting documents. Plaintiff alleges that the Defendants' conduct has caused Plaintiff to incur additional expenses and that the Defendants have prejudiced Plaintiff by causing considerable delay, refusing to participate in discovery, and concealing the grounds for their motions.

CONCLUSION:

The Court acknowledges and appreciates the amount of research and preparation for the hearing by Counsel, as well as, the professionalism of Counsel in their presentations to the Court. After careful consideration of the record, memoranda, arguments presented, and the applicable law, the Court finds, and it is Ordered:

That Defendants' Four Motions to Stay and Defendant THI of South Carolina at Spartanburg LLC's Motion to Compel Arbitration filed with the Court on February 12th, 2021, are respectfully denied; is further ordered,

That Plaintiff's Motion for Sanctions made pursuant to Rule 11 of the SCRPC is respectfully denied at this time, however said motion may be renewed by Plaintiff and heard by the trial judge in this action.

IT IS SO ORDERED:

/s/Grace Gilchrist Knie

The Honorable Grace Gilchrist Knie
Seventh Judicial Circuit

April 8th, 2021



Spartanburg Common Pleas

Case Caption: Trina Dawkins, As Pr Of The Estate Of William Dawkins VS
Fundamental Clinical And Operational Services, Llc , defendant, et al
Case Number: 2020CP4203593
Type: Order/Stay

IT IS SO ORDERED.

S/GRACE GILCHRIST KNIE - 2760