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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2017-CP-26-01351
Appellate Case No. 2018-000188
Unpublished Opinion No. 2021-UP-105 (S.C. Ct. App. filed March 31, 2021)

Orveletta Alston as Personal Representative of the
Estate of Willie Earl Alston, Sr.,.....Respondent,

v.

Conway Manor, LLC, Raymond Tiller, and
John and Jane Does 1-10,..... Appellants.

PETITION FOR WRIT OF CERTIORARI

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

Attorneys for Appellants

D. Nathan Hughey
A. Stuart Hudson
Bradley H. Banyas
HUGHEY LAW FIRM, LLC
Post Office Box 348
Mt. Pleasant, South Carolina 29465
(843) 881-8644
nate@hugheylawfirm.com
stuart@hugheylawfirm.com
brad@hugheylawfirm.com

Earnest LaTony Dessausure
DESSAUSURE LAW FIRM
1928 Barnwell Street
Columbia, SC 292
(803) 771-0042

dessausurelaw@yahoo.com

Attorneys for Respondent

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CERTIFICATE OF COUNSEL

Pursuant to Rule 242(d)(1), SCACR, Petitioners' counsel certifies that a Petition for Rehearing was made on April 8, 2021, and denied on June 11, 2021.

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

QUESTIONS PRESENTED FOR REVIEW

I. Whether the Court of Appeals erred in failing to find Ms. Alston-Wood had capacity to enter into the Admission Agreement under South Carolina's Adult Health Care Consent Act, S.C. Code Ann. § 44-66-10, et seq., and to bind Mr. Alston to the arbitration provision contained therein.

II. Whether the Court of Appeals erred in finding Respondent was not equitably estopped from denying the validity of the arbitration provision found in the Admission Agreement.

III. Whether the Court of Appeals erred in finding Mr. Alston was not a third-party beneficiary to the Admission Agreement and the arbitration provision contained therein.

IV. Whether the Court of Appeals erred in finding this case is not subject to arbitration under the Federal Arbitration Act, 9 U.S.C. § 2.

STATEMENT OF THE CASE

This petition for writ of certiorari is made under Rule 242, SCACR, and seeks a review of the Court of Appeals' decision finding Respondent is not bound to arbitrate her claims against Appellants. On December 17, 2015, Kimberly Alston-Wood ("Ms. Alston-Wood"), as Willie Earl Alston's ("Mr. Alston") daughter and responsible party, executed an Admission Agreement on behalf of Mr. Alston for his admission to Conway Manor, LLC ("Conway Manor"). [R. p. 43 – 53.] Within the Admission Agreement, Ms. Alston-Wood expressly acknowledged and represented that she was "authorized to bind the Resident to all terms in this [Admission] Agreement." [R. p. 49.] The Admission Agreement contained an arbitration clause which required the arbitration of any action, dispute, claim or controversy of any kind. [R. p. 53.] The arbitration clause provided:

> **Optional Arbitration Clause:** Any action, dispute, claim or controversy of any kind (tort, contract, equitable or statutory, including but not limited to claims or violations of Resident's Rights) now existing or hereafter arising between the parties, in anyway arising from or relating to this 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 South Carolina Arbitration Code. As appropriate and in the event that the South Carolina Arbitration Code is deemed to not apply, binding arbitration shall be governed by the Federal Arbitration Act. **OPTIONAL: If the parties do not agree to this Arbitration Clause, please mark with an X to void this clause only. I have X this clause ___ initial.** (emphasis in the original).

[R. p. 53.]

Wendy Lynch, as Admissions Coordinator, executed the Admission Agreement on behalf of Conway Manor. [R. p. 79, ¶ 6.] Pursuant to the arbitration clause in the Admission Agreement, the parties agreed to arbitrate any disputes arising out of Mr. Alston's care and treatment at Conway Manor. [R. p. 53.]

On March 2, 2017, Orveletta Alston as Personal Representative of the Estate of Willie Earl Alston, Jr. ("Respondent") filed a Summons and Complaint against Conway Manor, Raymond Tiller, and John and Jane Does 1-10 (collectively, "Appellants"). [R. p. 11 – 27.] Respondent alleged Appellants provided care to Mr. Alston, Jr. which fell below the standard of care in 2015 – 2016. Appellants timely answered on April 12, 2017, denying liability. [R. p. 31 – 39.]

On June 21, 2017, Appellants filed a Notice of and Motion to Stay Action and Compel Arbitration and for a Protective Order ("Motion") [R. p. 40 - 57.] On November 1, 2017, The Honorable Larry B. Hyman, Jr. (the "trial court") heard the Motion to Compel Arbitration. [R. p. 203 – 226.] By order dated January 11, 2018 and filed January 17, 2018, the trial court denied the Motion to Compel Arbitration. [R. p. 2 – 10.] On February 8, 2018, Appellants filed their Notice of Appeal. [R. p. 190 – 202.]

After briefing, the Court of Appeals heard oral arguments on October 13, 2020. On March 31, 2021, the Court of Appeals issued an opinion affirming the circuit court's order. Appellants filed a Petition for Rehearing, which was denied on June 11, 2021.

ARGUMENTS

I. The Court of Appeals erred in failing to find Ms. Alston-Wood had capacity to enter into the Admission Agreement under South Carolina's Adult Health Care Consent Act, S.C. Code Ann. § 44-66-10, et seq., and to bind Mr. Alston to the arbitration provision contained therein.

The Court of Appeals erred in finding Ms. Alston-Wood did not have authority under South Carolina's Adult Health Care Consent Act, S.C. Code Ann. § 44-66-10, et seq. ("AHCCA") to bind her father (or his beneficiaries) to the arbitration provision of the Admission Agreement. Alston v. Conway Manor, LLC at el., Unpublished Opinion No. 2021-UP-105, 2021 WL 1227786 *2 (S.C.Ct. App. dated March 31, 2021).

In support of its holding, the Court of Appeals relied on Coleman v. Mariner Health Care,

Inc., 407 S.C. 346, 755, S.E.2d 450 (2014). The Court of Appeals cited to Coleman for the proposition that the AHCCA allows a representative to make medical decisions for a patient, but it does not address the authority of a representative to bind a patient to an arbitration agreement. See 2021 WL 1227786 at *2 (citing Coleman, 407 S.C. at 354, 755 S.E.2d at 454).

The South Carolina Supreme Court's reasoning in Coleman supports Appellants' position in this case. The Coleman Court considered whether a sister of a nursing home resident could bind the resident to an arbitration agreement at the time of admission. The sister signed several 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 signed by the sister was an arbitration agreement that was separate from the admission agreement.

Examining the impact of the AHCCA, the Court noted that the sister was authorized to make decisions concerning Ms. Brinson's "heath care", which under Section 44-66-20(1) of the South Carolina Code included "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. Based upon this statutory grant of authority, the Court reasoned 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.

The Court found that the sister's authority to consent to decisions concerning the resident's health care extended to all terms contained within 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. Importantly, because the arbitration agreement was a separate document from the admission and financial agreement, 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 reasoned that the sister did not have authority pursuant to the AHCCA to bind the resident to the arbitration agreement.

Unlike Coleman, the arbitration provision which Appellants seek to enforce is contained within the Admission Agreement and is not separate agreement. The Admission Agreement, pursuant to which Mr. Alston was admitted to Conway Manor, contained the terms under which Conway Manor would provide long term care health services to Mr. Alston and how those services would be paid for. For instance, it was agreed that Conway Manor would provide care and treatment according to practice, policy and physician orders; a physician would be chosen to provide care to Mr. Alston in the facility; and Mr. Alston would be responsible to ensure payment was made to the facility for his care under such clauses as Basic Charges, Supplemental Charges, Medical Supplies and others. [R. p. 45 – 47.]

Thus, unlike the situation in Coleman in which there were separate contracts involving (1) the health care services to be provided to the resident and how those services were to be paid for, and (2) the agreement to arbitrate any disputes, all those provisions are contained within the Admission Agreement signed by Ms. Alston-Wood in the case at bar. Therefore, applying the reasoning set forth in Coleman, the AHCCA empowered Ms. Alston-Wood to sign the Admission Agreement on behalf of Mr. Alston and bind him all the provisions of that contract, including the arbitration provision.

The Court of Appeals also found Mr. Alston's wife, rather than his daughter, had priority

to act under the AHCCA. See 2021 WL 1227786 at *2. The Court of Appeals noted that the AHCCA has been amended since the time of Mr. Alston's admission to Conway Manor, but the amendments did not change the priority of persons authorized to make heath care decisions for a person unable to give consent. See 2021 WL 1227786 at *4, n. 2.

The Court of Appeals is correct in that regard, but the amendments are important for another reason. In the version of S.C. Code Ann. § 44-66-30 in effect at the time of Mr. Alston's admission to Conway Manor, there was no requirement that "[d]ocumentation of efforts to locate a decision maker who is a person identified in subsection (A) must be recorded in the patient's medical record". That particular requirement became effective on June 3, 2016, over six months after Mr. Alston's admission, through 2016 Act No. 226 (H.3999), §1, eff. June 3, 2016.

Thus, at the time of Mr. Alston's admission, there was no requirement that a nursing home investigate to determine who had the highest priority. In fact, Ms. Alston-Wood represented in the Admission Agreement that she was "authorized to bind the Resident to all terms in this [Admission] Agreement." [R. p. 49.] Furthermore, if Mr. Alston's wife had disagreed with his admission to Conway Manor, she could have removed him from the facility at any time.

Appellants also note that contracts in South Carolina can be enforced despite the lack of an enforceable signature by one of the parties to an agreement. South Carolina case law supports the enforcement of contracts in certain circumstances where not all parties execute the contract.

In The Peddler, Inc. v. James Rikard, et al., 266 S.C. 28, 221 S.E.2d 115 (1975), the Supreme Court of South Carolina held the defendant was bound to a franchise contract, even though he had not signed it. In so holding, the court held that "it is not always necessary, in order to give validity to a contract, that it should be signed by both parties; it may be sufficient if it be signed by one party and accepted, held, and acted upon by the other". Id. at 32, 221 S.E.2d at 117

(quoting from Gladden v. Keistler, 141 S.C. 524, 140 S.E. 161 (1927)).

The South Carolina Court of Appeals cited to Peddler in Jaffe v. Gibbons et al., 290 S.C. 468, 473, 351 S.E.2d 343, 346 (Ct.App.1986) ("[m]oreover, it has long been a paradigm of South Carolina law that when a contract signed by one party only is accepted by the other party, it becomes binding upon both just as if it were signed by both), and to Bishop Realty and Rentals, Inc. v. Perk, Inc., 292 S.C. 182, 185, 355 S.E.2d 298, 300 (Ct.App.1987) ("[a] written contract is valid if one party signs it and the other acquiesces).

Thus, assuming *arguendo* that Ms. Alston-Wood did not derive authority under the AHCCA to execute the Admission Agreement, it was nevertheless enforceable as a result of the parties accepting, holding, and acting under the Admission Agreement (through Mr. Alton's admission, care, and payment for services). [R. p. 43 – 53.]

Finally, the Court of Appeals held the arbitration clause in the Admission Agreement is not a traditional health care decision contemplated by the AHCCA, but rather an optional method for dispute resolution. See 2021 WL 1227786 at *3. In support of this holding, the Court relies on other decisions involving arbitration agreements in nursing homes, namely Coleman, Thompson v. Pruitt Corp., 416 S.C. 43, 784 S.E.2d 679 (Ct. App. 2016), and Stott v. White Oak Manor, Inc., 426 S.C. 568, 828 S.E.2d 82 (Ct. App. 2019).

It is critically important to note that in all of those cases, the courts were considering standalone arbitration agreements, not an arbitration clause within an otherwise enforceable Admission Agreement. It was for the Court of Appeals to single out the arbitration clause in the Admission Agreement and treat it differently than other provisions of the agreement (the Federal Arbitration Act'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)).

II. The Court of Appeals erred in finding Respondent was not equitably estopped from denying the validity of the arbitration provision in the Admission Agreement.

The Court of Appeals erred in finding Respondent was not equitably estopped from denying the validity of the arbitration provision. In support of its ruling, the Court relies on Hodge v. UniHealth Post-Acute Care of Bamberg, LLC, 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018), and Weaver v. Brookdale Senior Living, Inc., 431 S.C. 223, 847 S.E.2d 268 (Ct. App. 2020). See 2021 WL 1227786 at *3.

These cases are distinguishable from the case at bar. Hodge involved a separate admission agreement and arbitration agreement. The Hodge court found those agreements did not merge. The court went on to state that even if the admission agreement and arbitration agreement had merged, because there was no claim for breach of the admission agreement, the plaintiff in that case was not seeking to enforce that agreement. Id. at 562-563, 813 S.E.2d at 302. This statement in the opinion was dicta and not binding precedent.

The Court of Appeals then addressed direct benefits estoppel as described in Weaver. Under the court's holding in that matter, the three elements of direct benefits estoppel include "(1) the nonsigner's claim arises from the contractual relationship; (2) the nonsigner has 'exploited' other parts of the contract by reaping its benefits, and (3) the claim relies solely on the contract terms to impose liability". Id. at 230, 847 S.E.2d at 272.

Here, there was clearly a relationship between Conway Manor and Mr. Alston. This relationship sprang directly from the Admission Agreement. Without the Admission Agreement, Mr. Alston would not have become a resident of the nursing home, and he would not have received the care about which Respondent now complains. Mr. Alston utilized the Admission Agreement

to receive care, and while no breach of contract cause of action has been asserted, his claims rely on the duties arising from the Admission Agreement.

Additionally, the Court of Appeals erred by overlooking Appellants' equitable estoppel argument arising under the holding of THI of South Carolina at Columbia, LLC v. Wiggins, 2011 WL 4089435 (D.S.C. 2011).

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." U.S. 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 citation 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, a plaintiff cannot "have it both ways" by relying upon certain terms of the Admission Agreement when it works to her advantage and repudiating others when it works to her disadvantage. Id.

In 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. In that case, Deborah Wiggins executed an admissions contract containing an arbitration clause for the admission of her father, Earl Hall, into a 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 further held that because 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.

The above authorities are directly on point. The Admission Agreement served as the foundation for Mr. Alston's admission to Conway Manor and the duties and obligations which Mr. Alston and Conway Manor had to one another. Conway Manor agreed to provide Mr. Alston with care and treatment, and Mr. Alston agreed to pay for the care and treatment. Without the Admission Agreement, there would have been no relationship between the parties.

All the Respondent's claims in the instant case are dependent on the duties which arise

from the terms of the Admission Agreement. Respondent cannot disclaim the arbitration provision which is a part of the Admission Agreement, while at the same time assert claims arising under other terms of the Admission Agreement, and Respondent should be equitably estopped from doing so.

III. The Court of Appeals erred in finding Mr. Alston was not a third-party beneficiary to the Admission Agreement and the arbitration provision contained therein.

The Court of Appeals erred in holding Mr. Alston was not a third-party beneficiary to the Admission Agreement. The sole basis upon which this finding was made was that one cannot be a third-party beneficiary to an invalid contract. See 2021 WL 1227786 at *3. As argued in Section I above, there was a valid, enforceable, Admission Agreement. Mr. Alston was a third-party beneficiary of that agreement.

It is clear from the plain language of the Admission Agreement that Mr. Alston was an intended beneficiary, and the purpose of the Admission Agreement was to ensure Conway Manor would provide the services laid out therein. Mr. Alston did, in fact, receive those services. The trial court agreed, finding "Mr. Alston did benefit from the Admissions Agreement to the facility...." [R. p. 7.] Mr. Alston, therefore, is obligated to arbitrate any claims within its scope, regardless of whether those claims are brought by a legal representative.

Appellants' position is supported by the South Carolina federal district court opinion in Wiggins applying South Carolina law. See 2011 WL 4089435. As set forth above, in Wiggins, Deborah Wiggins executed an admissions contract containing an arbitration clause for the admission of her father, Earl Hall, into the Magnolia Manor nursing home. The Wiggins Court noted that the third-party beneficiary doctrine is well-accepted in South Carolina and that pursuant to that doctrine, a third party may be bound to a contract when it is shown that she was the intended and direct beneficiary of the contract. Id. at *6, quoting Helms Realty, Inc. v. Gibson-Wall, Co.,

363 S.C. 334, 611 S.E.2d 485 (2005), Touchberry v. Florence, 295 S.C. 47, 367 S.E.2d 149 (1988). Applying the third-party beneficiary doctrine, the Wiggins Court correctly reasoned that because the resident's care was the essential purpose of the admissions contract, the arbitration provision within the contract remained binding on Hall's Estate. Id.[1]

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

IV. The Court of Appeals erred in finding this case is not subject to arbitration under the Federal Arbitration Act, 9 U.S.C. § 2.

The Court of Appeals then held the Federal Arbitration Act was not triggered because there was no valid arbitration provision to enforce under that Act. For the reasons argued above, this was error.

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.

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[1] See also Cook v. GGNSC Ripley, LLC, 786 F. Supp. 2d 1166, 1171 (N.D. Miss. 2011) (resident's Estate and beneficiaries bound by terms of arbitration clause contained in admission agreement which daughter signed because resident's care was the essential purpose of the admission agreement); Trinity Mission Health & Rehabilitation of Clinton v. Estate of Scott, 19 So.3d 735 (Miss. Ct. App. 2008) (resident was third party beneficiary of admission agreement containing arbitration provision because she received care pursuant to the admission agreement and, therefore, her Estate was abound to arbitrate it claims against provider).

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 Constr. Corp., 460 U.S. 1, 24-25 (1983). The FAA enforces arbitration agreements as written to prevent a party from avoiding their contractual obligations to arbitrate. See Stokes v. Metropolitan Life Ins. Co., 351 S.C. 606, 612, 571 S.E.2d 711, 715 (Ct. App. 2002); Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213 (1985). Additionally, the FAA's purpose is to "overrule the judiciary's longstanding refusal to enforce agreements to arbitrate and place them on the same footing as other contracts." Volt Info. Serv., Inc. v. Bd. of Trs. of Leland Stanford Jr. Univ., 489 U.S. 468, 474 (1989) (internal citation 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 arbitration provision of the Admission Agreement, both prongs are satisfied. First, there is a valid Admission Agreement in place for the reasons presented above and incorporated herein. Second, as will be discussed immediately below, Respondent's claims are within the scope of the arbitration provision.

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

Respondent's claims are clearly within the scope of the Arbitration provision. The Arbitration provision provides in part:

> Any action, dispute, claim or controversy of any kind (tort, contract, equitable or statutory, including but not limited to claims or violations of Resident's Rights) now existing or hereafter arising between the parties, in anyway arising from or relating to this [Admission] Agreement governing the Resident's stay at the Facility, shall be resolved by binding arbitration.

[R. p. 53.]

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 Mr. Alston under the Admission Agreement. [R. p. 19 - 26.] All these causes of action are included within the scope of the arbitration provision quoted above. Thus, there can be no dispute from the plain language of the arbitration provision that all the allegations contained in the Respondent's Complaint fall under the types of disputes to be arbitrated under the arbitration provision.

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 (2003) (citation omitted).

The interstate commerce requirement under the FAA is met in the present case on multiple grounds. As noted in Conway Manor Administrator Raymond Tiller's Affidavit, at the time of Mr. Alston's residency, (1) Conway Manor received payments from Medicare, Medicaid, and private insurers from other states; (2) the majority of food served at Conway Manor came from Charlotte, North Carolina; (3) Conway Manor obtained lab and radiology services, oxygen rental and supplies, medical forms, specialty beds and mattresses, laundry supplies and other items from out-of-state; and (4) Conway Manor treated residents who came from other states. [R. p. 58 – 61.]

In Dean v. Heritage Healthcare of Ridgeway, LLC, et al., 408 S.C. 371, 759 S.E.2d 727

(2014), this 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 required Conway Manor to provide Mr. Alston room and board, medical supplies, and many other goods and services, all of which were instruments of interstate commerce. [R. p. 45 – 47.]

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

CONCLUSION

For the reasons stated above, Petitioners respectfully ask this Court to grant the petition for writ of certiorari.

Respectfully submitted this 6 day of July, 2021.

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