

EXHIBIT A

RECEIVED

Nov 12 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF HORRY

C/A no. 2020-CP-26-01982

Jessica Bennett, individually and on behalf of those similarly situated,

Plaintiff,

ORDER

v.

RECEIVED

ACS Primary Care Physicians-Southeast P.C.,

Nov 12 2021

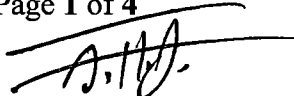
Defendant.

SC Court of Appeals

Defendant, ACS Primary Care Physicians-Southeast P.C. (ACS), filed a Motion to Stay / Dismiss and Compel Arbitration of Plaintiff's Claims. Plaintiff opposes the motion. The parties submitted initial briefs. The court then granted leave for the filing of supplemental briefs in lieu of a hearing. The parties submitted those briefs as well. Having fully reviewed the parties' positions, the court denies ACS's motion.

I. Introduction.

Plaintiff alleges the following facts: Plaintiff was injured in a car crash. Plaintiff alleges that she went to the emergency department at a Spartanburg hospital, staffed with ACS physicians, to receive treatment for those injuries. Plaintiff alleges that she informed ACS that she was an insured member and beneficiary under a Blue Cross Blue Shield of South Carolina (BCBS) health insurance plan. ACS, a Georgia corporation, is an in-network provider for BCBS under the terms of a preferred provider organization (PPO) agreement. Under that agreement, ACS is held out as an in-network or preferred provider for BCBS patients. The Plaintiff alleges that the agreement requires ACS to bill BCBS directly for covered medical services ACS provides to BCBS health plan



members.¹ The Plaintiff alleges that the agreement also provides that ACS will accept a discounted rate (the Fee Allowance amount) for services provided to BCBS's members.² Last, the agreement requires ACS to "[a]ccept payment of [BCBS's] Fee Allowance amount plus any Patient Pay Amounts as payment in full for Covered Services rendered to Members."³

Plaintiff alleges ACS did not bill BCBS for the services that ACS provided her, but instead billed her directly for an amount in excess of the BCBS fee allowance. Plaintiff further alleges that ACS has a common practice of identifying car crash victims and not submitting their bills to insurance in order to get a higher rate directly from the patients. As a result, plaintiff filed this action on behalf of herself and all others similarly situated.

Plaintiff alleges two causes of action. First, she alleges ACS is in breach of its agreement with BCBS to accept her health insurance benefits for services provided to her. Second, plaintiff alleges unjust enrichment and equity as a result of ACS's alleged scheme to circumvent her health insurance. After being served, ACS filed their Motion to Compel Arbitration of Plaintiff's Claims. Plaintiff opposes the motion, arguing that she is not bound by the arbitration provision.

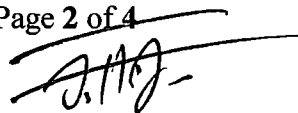
II. Legal analysis.

The PPO agreement between ACS and BCBS provides the framework for how ACS is to administer billing to BCBS's insured members. The PPO agreement between ACS and BCBS contains an arbitration agreement. It provides:

¹ See PPO agreement at p.5, § IV(A)(11) [Ex. A to plaintiff's opposition (Aug. 31, 2020)].

² *Id.* at p.4, § IV(A)(1).

³ *Id.*

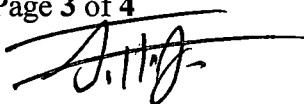


(1) Except for decisions made pursuant to the Utilization Management Program, [BCBS] and Preferred Provider [ACS] agree to meet and confer in good faith to resolve any problems or disputes that may arise under this agreement.

(2) In the event that the parties through mutual negotiation are not able to satisfactorily resolve any problem or dispute . . . [BCBS] and Preferred Provider [ACS] agree to arbitrate such problem or dispute. A single arbitrator shall conduct the arbitration (including conducting pre-hearing matters) under the then current commercial rules of the American Arbitration Association and such rules shall apply in lieu of state or federal rules of civil procedure. The American Arbitration Association shall appoint an arbitrator who is knowledgeable in the healthcare management field. The arbitration shall be held and any award shall be made in South Carolina. Subject to the terms of the Uniform Arbitration Act, the arbitrator's determination shall be final and binding upon the parties. By entering into this Agreement and selecting arbitration as a dispute resolution mechanism the parties waive any right to jury trial.⁴

Although Bennet was not a signatory to the agreement at issue, ACS argues that the mandatory arbitration agreement governs this dispute under the doctrine of equitable estoppel. Defendant claims that "a nonsignatory is estopped from refusing to comply with an arbitration clause 'when it receives a direct benefit from a contract containing an arbitration clause.'" *Pearson v. Hilton Head Hops*, 400 S.C. 281 at 290, 733 S.E. 2d 597 at 601 (Ct. App. 2012). According to Defendant, a nonsignatory seeks a direct-benefit when they assert a claim based upon the contract at issue. As a result, Defendant asserts that "because Plaintiff is relying on [the contract] as the foundation for her breach of contract claim, she is estopped from denying she is not a signatory to that agreement" *Def. Motion to Compel Arbitration and Dismiss or Stay*, at 6.

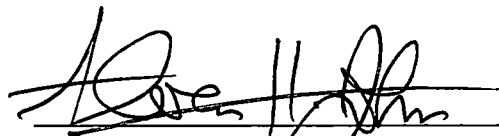
⁴ PPO agreement at p.11, § IX(M) (emphasis added).



However, South Carolina Courts have repeatedly held that "direct benefits estoppel is not implicated simply because a claim relates to or would not have arisen 'but for' a contract's existence". Weaver v. Brookdale Senior Living, 431 S.C. 223 at 231, 847 S.E. 2d 268 at 272 (Ct. App. 2020) (Citing Wilson v. Willis, 426 S.C. 326 at 343, 827 S.E.2d 167 at 176 (Supreme Court 2019)). Instead, equitable estoppel is "a theory designed to prevent injustice, and it should be used sparingly". *Id.* at 233, 274. The doctrine of equitable estoppel is reserved for instances where a beneficiary of a contract "actively exploits" the agreement or "mislead[s] [the other party] to his injury". *Id.*

In this case, the Plaintiff was completely unaware that the PPO contract existed when she received her medical treatment. Plaintiff underwent medical treatment with the understanding that she would not bear the full responsibility of paying her medical bills given her valid health insurance. Plaintiff was not aware of, nor did she actively exploit, the PPO agreement between ACS and BCBS. Therefore, Defendant's Motion to Stay / Dismiss and Compel Arbitration of Plaintiff's Claims is DENIED.

IT IS ORDERED.



The Honorable Steven H. John
Resident Judge
Fifteenth Judicial Circuit

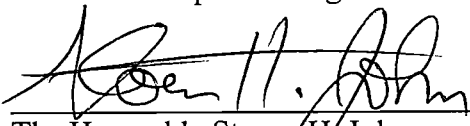
Dated: 6/18/21
Conway, South Carolina.

EXHIBIT B

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF HORRY)	FIFTEENTH JUDICIAL CIRCUIT
)	
)	Civil Action No.: 2020-CP-26-01982
Jessica Bennett, individually and on behalf of those similarly situated,)	
)	
PLAINTIFF)	
)	
V.)	ORDER DENYING DEFENDANT'S MOTION TO RECONSIDER
)	
ACS Primary Care Physicians-South P.C.)	
)	
DEFENDANT.)	

This matter came before the Court on Defendant's Rule 59(e) Motion for Reconsideration of Denial of Motion to Compel Arbitration and Dismiss or Stay. The Court has considered Plaintiff's Motion, the written response of the Defendant, both filed with the Horry County Clerk of Court, and all other matters in the Clerk of Court's file. The Court finds that oral arguments would not assist it in this matter and that any additional arguments would be redundant and unnecessary. It is therefore

ORDERED that Defendant's Rule 59(e) Motion for Reconsideration of Denial of Motion to Compel Arbitration and Dismiss or Stay, is denied and the Court's prior ruling is reaffirmed in toto.



 The Honorable Steven H. John
 Chief Administrative Judge
 Fifteenth Judicial Circuit

November 5, 2021
 Conway, South Carolina