

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF HORRY

C/A no. 2020-CP-26-03169

Thuy N. Gasser, individually and on behalf of those similarly situated,

Plaintiff,

**ORDER**

v.

**RECEIVED**

ACS Primary Care Physicians-Southeast P.C.,

**Dec 03 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 briefs and agreed to a ruling on the briefs without a hearing. 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 went to the emergency department at Grand Strand Regional Medical Center, a 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.<sup>1</sup> 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.<sup>2</sup> 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."<sup>3</sup>

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:

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<sup>1</sup> See PPO agreement at p.5, § IV(A)(11) [Ex. 1 to Defendant's Motion to Stay/Dismiss and Compel Arbitration of Plaintiff's claims (Aug. 31, 2020)].

<sup>2</sup> *Id.* at p.4, § IV(A)(1).

<sup>3</sup> *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.<sup>4</sup>

Although Gasser 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. ACS 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 the agreement.” *Def. Motion to Compel Arbitration and Dismiss or Stay*, at 6.

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

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<sup>4</sup> PPO agreement at p.10, § IX(M) (emphasis added)

'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.**

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The Honorable Steven H. John  
Resident Judge  
Fifteenth Judicial Circuit

Dated: \_\_\_\_\_  
Conway, South Carolina



## Horry Common Pleas

**Case Caption:** Thuy N Gasser VS ACS Primary Care Physicians Southeast PC

**Case Number:** 2020CP2603169

**Type:** Order/Other

So Ordered

s/ Steven H. John, Resident Circuit Judge, #129