/s/ H. L. Kirkpatrick III
Circuit Court Judge
Ref. Code: 24DANAB8X

E-FILED | 4/18/2024 3:40 PM
CC-41-2023-C-349
Raleigh County Circuit Clerk
Angelia Price

IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

STEPHEN VANDALL, as Administrator for the Estate of KATHRYN SHUMAKER,

Plaintiff,

v. **Civil Action No. 23-C-349-K**

HEARTLAND LEASING CO., LLC, d/b/a BECKLEY HEALTHCARE CENTER; WV LT CARE OP CO., LLC; HEALTH CARE FACILITY MANAGEMENT, LLC; COMMUNICARE HEALTH SERVICES, INC.,; ABC BUSINESS ENTITIES 1-10; JOHN DOE NURSING CARE PROVIDERS 1-10; JOHN DOE CONTROLLING OFFICERS, MANAGING MEMBERS AND GENERAL PARTNERS 1-10,

Defendants.

ORDER DENYING DEFENDANTS' MOTION TO COMPEL ARBITRATION

On the 28th day of March, 2024, came the plaintiff by counsel, Catherine E. George, Esquire, and the defendants, Heartland Leasing Co., LLC, d/b/a Beckley Healthcare Center; WV LT Care OP Co., LLC; Health Care Facility Management, LLC; and Communicare Health Services, Inc., by counsel, Andrew P. Smith, Esquire and Mattie F. Shuler, Esquire, pursuant to proper Notice of Hearing. Thereupon, counsel argued the Defendants' Motion to Compel Arbitration, which has been thoroughly briefed. The court took the matter under advisement, and now has had the full opportunity to reflect upon counsel's briefs and arguments

and to consult legal authorities pertaining to the matter at bar. As a result of the court's deliberations, the court is compelled to **DENY** the defense motion for the reasons set forth in this opinion order.

The underlying facts of this case, for the purpose of this motion, are straightforward and not disputed by the parties. This action is grounded in allegations of reckless and negligent care and conduct inflicted upon the decedent, Kathryn Shumaker, while she was a resident of Beckley Healthcare Center.[1] Ms. Shumaker was admitted to Beckley Healthcare Center on August 15, 2022, for rehabilitation following an above-the-knee amputation of her right leg. On August 16, 2022, the plaintiff, Stephen Vandall, son of Ms. Shumaker, signed an arbitration agreement with Beckley Healthcare Center[2], which contained the following clause.

> **All Other Disputes.** Any dispute disagreement, or claim of any kind arising out of, or related to the Agreement, or the breach thereof where the amount in controversy exceeds $25,000, shall be settled exclusively by binding arbitration as set forth in Section C below. (This arbitration clause is meant to apply to all disputes, disagreements or claims including, but not limited to, all breach of contract claims, non-payment claims, all negligence and malpractice claims, wrongful death claims, all tort claims, and all allegations of fraud in the inducement or requests for rescission of the contract.) The parties to this Agreement acknowledge and understand that the applicable statute of limitations for any claim subject to the ADR Agreement is the

[1] Plaintiff claims that the negligent care which Ms. Shumaker received, while a resident at Beckley Healthcare Center, caused her to suffer injuries and ultimately, death. He also alleges negligence in the provision of health care and statutory violations of the Nursing Home Act, corporate negligence, respondeat superior, and wrongful death, as they relate to Ms. Shumaker.

[2] The parties to the Arbitration Agreement are the plaintiff, Stephen Vandall, and Stonerise Beckley, which is a tradename of the defendant, Heartland Leasing Co., LLC.

> statute of limitations provided for by the forum state. "Forum state" means the state in which this Agreement was executed. The limitation of actions governing the claims subject to this ADR Agreement are governed by the nature of the claim and cannot be extended or enlarged other than by written agreement of the parties to this Agreement. Tort claim are governed and restricted by the forum state's statutes of limitations, statutes of repose, jurisdictional limitations, and limitations on the type or maximum amount of monetary charges.

The Arbitration Agreement further informed Mr. Vandall of the right to consult with counsel and gave him the right to revoke within 30 days:

> The Resident acknowledges that he or she has the right to seek legal counsel regarding this Alternative Dispute Resolution Agreement. The Resident has the right to cancel this by notifying the Facility, in writing, within thirty (30) days after the Resident's signing of this ADR Agreement. The Resident may cancel this ADR Agreement by merely writing "cancelled" on the face of one of the Resident's copies of the ADR Agreement, signing the Resident's name under such word, and mailing, by certified mail, return receipt requested otherwise, this ADR Agreement will remain in effect for resolution of all disputes.

Further, the Arbitration Agreement contained a clause that the individual signing on behalf of the resident had the authority to do so by legal status or agreement, by operation of law:

> The individual signing on behalf of the Resident acknowledges that the Facility relies upon representation of the individual signing this document as having the authorization to sign one behalf of the Resident either by virtue of guardianship, power of attorney, some other legal status or informal agreement between the Resident and the signing party, or is otherwise designated the responsible party by operation of law.

These defendants move this court for an order compelling the plaintiff to submit his claims to arbitration pursuant to the terms of the aforesaid Arbitration Agreement.

When faced with a motion to compel arbitration, a trial court does not address the merits of the case. Instead,

> [w]hen a trial court is required to rule upon a motion to compel arbitration pursuant to the Federal Arbitration Act, 9 U.S.C. §§ 1-307 (2006), the authority of the trial court is limited to determining the threshold issues of (1) whether a valid arbitration agreement exists between the parties; and (2) whether the claims averred by the plaintiff fall within the substantive scope of that arbitration agreement.[13]

This case turns on the issue of validity. Because "[a]rbitration agreements are 'to be treated by courts like any other contract, nothing more, and nothing less,'" "[w]hether an arbitration agreement was validly formed is evaluated under state law principles of contract formation." Chancellor Senior Mgmt., Ltd. v. McGraw by and though Reuschel, 246 W.Va. 280, 287, 873 S.E.2d 811, 818 (2022); Brown *ex rel.* Brown, 228 W.Va. 646, 674, 724 S.E.2d 250, 278 (2011). *See specifically,* Beckley Health Partners, LTD D/B/A the Villages at Greystone v. Hoover, 247, W.Va. 199, 204, 875 S.E.2d 337, 342 (2022). The issue as to whether an arbitration agreement is valid and enforceable is a matter of state contract law. *See*, State *ex rel.* Clites v. Clawges, 224 W.Va. 299, 305, 685 S.E.2d 693, 699 (2009).

Under West Virginia law,

> "[t]he fundamentals of a legal contract are competent parties, legal subject matter, valuable consideration and mutual assent. There can be no contract if there is one of these essential elements upon which the minds of the parties are not in agreement." Syllabus Point 5, *Virginian Export Coal Co. v. Rowland Land Co.*, 100 W.Va. 559, 131 S.E. 253 (1926).

To be valid, the Arbitration Agreement at issue requires the assent of competent parties. To be a competent party, the persons or entities must have had the authority to do so. State ex rel. AMFM, LLC v. King, 230 W.Va. 471, 740 S.E.2d 66 (2013). At the time of Ms. Shumaker's admission to Beckley Healthcare Center on August 15, 2022, Mr. Vandall was not her attorney-in-fact. Likewise, Mr. Vandall was not Ms. Shumaker's legal guardian, nor did he possess the legal status to act in her stead as a signing party. In summary, Mr. Vandall had no authority at all to bind Ms. Shumaker to the subject Arbitration Agreement by operation of law.

Furthermore, Ms. Shumaker was competent at the time of her admission to Beckley Healthcare Center and at the time Mr. Vandall signed the Arbitration Agreement. She did possess the mental faculties and legal ability to make Mr. Vandall her attorney-in-fact or to name him as her guardian, but she chose not to do so. Thus, Ms. Shumaker was the singular proper party to sign the Arbitration Agreement, in her own right.[3] Accordingly, a valid agreement to arbitrate the Estate's claims was simply not formed in this instance.

[3] According to Celesy Daniels, the Admissions Coordinator who completed the admission, her standard practice was to ascertain whether the resident had capacity. If capacitated, Ms. Daniels presented the admissions documents directly to the resident for completion and explained the documents to the resident. *See*, "Affidavit of Celesy Daniels", attached to Defendants Reply In Support of Defendants' Motion to Compel Arbitration as Exhibit G. The question remains: Why didn't the Admissions Coordinator follow standard procedure, and have the resident, Kathryn Shumaker, sign the admissions documents herself?

Lastly, the court is constrained to reject the defendants' argument based on the aspect of reliance, *i.e.*, that Beckley Healthcare Center reasonably relied on plaintiff's apparent authority to sign the Arbitration Agreement. Defendants have offered no evidence to show that Mr. Vandall had any authority to sign the Arbitration Agreement on behalf of Ms. Shumaker, other than the self-serving squib below the signature line of the Agreement, which recites that the facility relies upon the representation of the individual signing the document as having the authorization to do so on behalf of the resident. Such recitation in the contract is not enough. The onus is squarely upon the facility to make the proper determination that the signing party has the appropriate authority to act on behalf of the resident through guardianship, power of attorney, other legal status or operation of law. One who deals with an individual purporting to be the agent of another is bound at his own peril to know the authority of such alleged agency. *See*, Public Citizens, Inc. v. First Nat. Bank, 198 W.Va. 329, 480 S.E.2d 538 (1996). Here, under the circumstances presented, it was entirety unreasonable to simply assume that Mr. Vandall had the requisite authority to sign the Arbitration Agreement on behalf of Ms. Shumaker. He lacked the authority to bind his mother to the Arbitration Agreement and was not a competent party to that Arbitration Agreement, and such factors should have been readily apparent to the Admissions Coordinator acting on behalf of the facility.

WHEREFORE, based on the foregoing findings of fact and conclusions of law, the court does **ORDER, ADJUDGE** and **DECREE** that the Defendants' Motion to Compel Arbitration be, and it is, hereby **DENIED**.

The objections and exceptions of these defendants are fully preserved for the express possibility of review upon appeal.

ENTER this **ORDER** this the 18th day of April, 2024.

JUDGE