IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

CASE NO. 24-300

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.

Defendants Below, Petitioners

v.

STEPHEN VANDALL, as Administrator of the Estate of KATHRYN SHUMAKER

Plaintiff Below, Respondent

BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

This action arises out of the reckless and negligent care and conduct inflicted upon Kathryn Shumaker while she was a resident of Beckley Healthcare Center ("the Facility"). Ms. Shumaker was admitted to the Facility on August 15, 2022, for rehabilitation following an above-the-knee amputation of her right leg. On August 16, 2022, Mr. Vandall, son of Ms. Shumaker, signed an Alternative Dispute Resolution Agreement ("Arbitration Agreement"). JA_051-55. Ms. Shumaker herself did not sign the Arbitration Agreement. The Arbitration Agreement states that, if the parties are unable to reach an informal settlement, the disputes shall proceed to binding arbitration, such that the parties waive their right to a trial. JA_051. The Arbitration Agreement indicates that signing of the agreement was not a condition of admission. JA_055. The Arbitration Agreement further states that the "Facility relies upon representation of the individual signing this document as having the authorization to sign on behalf of the Resident. JA_055. On or about September 1, 2022, Mr. Vandall was appointed as health care surrogate for Ms. Shumaker. JA_070-74.

While under the direct care and supervision of the Defendants from August 15, 2022 through October 1, 2022, Ms. Shumaker suffered the worsening of pressure ulcers to the sacrum and left buttock, a urinary tract infection, pneumonia, and significant weight loss. Plaintiff initiated this action through the sending of Notices of Claim to all Defendants on or about August 11, 2023. JA_003. Plaintiff then provided Certificates of Merit to all Defendants on or about September 14, 2023. JA_004-018. Plaintiff filed his Complaint on October 24, 2023, including claims for a violation of W. Va. Code § 16-5C-1, *et seq.*, negligence, corporate negligence, respondeat superior, and wrongful death. JA_022-034.

The Facility moved to compel arbitration, noting that Mr. Vandall entered into the Arbitration Agreement on behalf of Ms. Shumaker. JA_036. Mr. Vandall opposed the Motion to Compel Arbitration, contending that there was no valid contract or agreement to arbitrate formed

because he lacked the requisite authority to sign the Arbitration Agreement on behalf of his mother. JA_056-60. After oral argument, the circuit court declined to send the action to arbitration. JA_143. Therein, the court noted that Mr. Vandall had no authority at all to bind Ms. Shumaker to the subject Arbitration Agreement by operation of law and that a valid agreement to arbitrate the Estate's claims was not formed. JA_147. The court further rejected arguments based on the aspect of reliance, noting that it was "entirely unreasonable to simply assume that Mr. Vandall had the requisite authority to sign the Arbitration Agreement on behalf of Ms. Shumaker." JA_148. The court concluded that Mr. Vandall lacked the authority to bind his mother to the Arbitration and was not a competent party to the Arbitration Agreement, noting that "such factors should have been readily apparent to the Admissions Coordinator acting on behalf of the facility." JA_148.

SUMMARY OF ARGUMENT

The district court did not err in declining to send this action to arbitration. Where the making of an arbitration agreement is at issue, the court must decide whether the parties have formed a valid contract pursuant to state law rules of contract formation. Whether a person ostensibly signing as an agent was a competent party to the arbitration agreement is encompassed within the statutory issue of the making of the arbitration agreement as provided by Section 4 of the Federal Arbitration Act. Mr. Vandall lacked the requisite authority to sign the admissions documents, including the Arbitration Agreement, on behalf of Ms. Shumaker. As such, he was not a competent party to the agreement and no contract was formed.

A dispute over the enforceability of a delegation provision leads to a question of whether the parties clearly and unmistakably agreed to arbitrate the issue of arbitrability. The court must decide whether the parties have formed a valid contract even where the contract contains a severable delegation provision, as in the present case, because the non-existence of a container contract necessarily implicates a party's non-assent to the formation of the contract. Because no

container contract was formed here, the delegation clause contained therein is likewise invalid. As the Federal Arbitration Act requires a court to decide whether an agreement to arbitrate exists before it may order arbitration, the circuit court was correct in examining whether a valid arbitration agreement existed and in determining that such an agreement did not exist and could not bind Respondent's claims to arbitration.

Petitioners' reliance on Mr. Vandall's apparent authority to execute the Arbitration Agreement on behalf of Ms. Shumaker is not reasonable. Where a person deals with an agent, it is his duty to ascertain the extent of the agency. Petitioners have offered no evidence to show that Mr. Vandall had authority to sign the Arbitration Agreement beyond a squib below the signature line which states that "the Facility relies upon representation of the individual signing this document as having the authorization to sign on behalf of the Resident." Petitioners have also offered no evidence as to why the admission documents were not presented and executed according to the standard procedures described by the Admissions Coordinator.

Accordingly, this Court should affirm the ruling of the Circuit Court denying Petitioners' Motion to Compel Arbitration.

ORAL ARGUMENT STATEMENT

If the Court determines that oral argument is necessary, this case is appropriate for a Rule 19 argument and disposition by memorandum decision.

ARGUMENT

I. The circuit court correctly resolved the disputed threshold question of material fact over the existence of a valid arbitration agreement in determining that an agreement to arbitrate was not formed.

The crux of Petitioners' argument is that the Arbitration Agreement at issue contains a delegation provision which gives an arbitrator or arbitration panel the power to decide "the validity, revocability or enforceability" of the Arbitration Agreement, and that Mr. Vandall's alleged failure to challenge the delegation provision warrants reversal of the circuit court's decision and entry of an order compelling arbitration "consistent with the parties' agreement." Pet. Brief at 4. However, Petitioners' position rests on the assumption that a valid agreement was formed. As more fully explained herein, the circuit court did not err in declining to compel this matter to arbitration because it alone had jurisdiction to decide the threshold question regarding the existence of a valid Arbitration Agreement—a question which it correctly answered.

a. Arbitration is a matter of contract between parties, and where the making of an arbitration agreement is at issue, the court must decide whether the parties have formed a valid contract.

The Federal Arbitration Act (FAA) rests on the fundamental principle that arbitration is a matter of contract. 9 U.S.C. § 1 *et seq.* The purpose of the FAA is for courts to "treat arbitration agreements like any other contract." Syl. Pt. 7, *Brown v. Genesis Healthcare Corp.*, 228 W. Va. 646, 724 S.E.2d 250 (2011), *overruled on other grounds by Marmet Health Care Center, Inc. v. Brown*, 565 U.S. 530 (2012). An agreement to arbitrate, like other contractual agreements, is subject to the rules of contract formation and interpretation. "[A]rbitration is simply a matter of contract between the parties; it is a way to resolve those disputes - but only those disputes - that the parties have agreed to submit to arbitration." *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 943 (1995).

Before referring a dispute to an arbitrator under the FAA, the court determines whether a valid arbitration agreement was formed. *See Coinbase, Inc. v. Suski*, 144 S.Ct. 1186 (2024). Section 4 of the FAA provides:

> The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement . . . If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. If no jury trial be demanded by the party alleged to be in default, or if the matter in dispute is within admiralty jurisdiction, the court shall hear and determine such issue.

9 U.S.C. § 4. A court should order arbitration to proceed only once it is satisfied that "the making of the agreement for arbitration or the failure to comply (with the arbitration agreement) is not in issue." *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 403 (1967). Where the existence of the agreement to arbitrate is in issue, the statute commands that the court "shall proceed summarily to the trial thereof." *Id*. at 403 n. 11. Thus Section 4 requires that the court – rather than an arbitrator – decide whether the parties have formed an agreement to arbitrate. If there is in fact a dispute as to whether an agreement to arbitrate exists, then that issue must first be determined by the court as a prerequisite to the arbitrator's taking jurisdiction. See *John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543, 547 (1964). *See also Granite Rock Co. v. Int'l Bhd. of Teamsters*, 561 U.S. 287, 296 (2010) (explaining that a dispute over the formation of agreement to arbitrate "is generally for court[] to decide"); *Rowland v. Sandy Morris Financial & Estate Planning Services, LLC*, 993 F.3d 253 (4th Cir. 2021) ("Section 4 of the FAA has made clear that it is up to courts to determine whether a contract has been formed, and the district court properly heeded that call. This respects autonomy and the general principles of contract law.").

b. The instant case presents an issue with the making of the arbitration agreement and was properly decided by the district court.

There is an important distinction between arguments challenging the ***validity*** of an agreement versus those challenging an agreement's ***formation***. *See Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 444 n. 1 (2006) ("The issue of the contract's validity is different from the issue [of] whether any agreement . . . was ever concluded. Our opinion today addresses only the former.") A challenge to formation of a contract can be done by showing that one party never agreed to the terms of the contract, that a signatory did not possess the authority to commit the principal, or that the signor lacked the mental capacity to assent. *Id*. Thus whether a person ostensibly signing as an agent was, in fact, a competent party to the arbitration agreement is encompassed within the statutory issue of "the making of the arbitration agreement" as provided by the Section 4 of the FAA. As such, the circuit court was required to utilize state law contract principles to decide whether the parties have formed an agreement to arbitrate. *See Brown*, 228 W.Va. at 674 ("Whether an arbitration agreement was validly formed is evaluated under state law principles of contract formation.")

Whether an agreement to arbitrate was formed is a question of "ordinary state-law principles that govern the formation of contracts." *First Options*, 514 U.S. at 944. In West Virginia, "an arbitration agreement must conform to the rules governing contracts, generally." *State ex rel. AMFM, LLC v. King*, 230 W. Va. 471, 478, 740 S.E.2d 66, 73 (2013). "The 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." Syl. Pt. 3, *Dan Ryan Builders, Inc. v. Nelson*, 230 W.Va. 281, 737 S.E.2d 550 (2012) (internal citations omitted). *See also State ex rel. AMFM, LLC*, 740 S.E. 2d at 73 ("[T]o be valid, the subject Arbitration Agreement must have (1) competent parties; (2) legal

subject matter; (3) valuable consideration; and (4) mutual assent. Absent any one of these elements, the Arbitration Agreement is invalid."). "To be a competent party, the person or entity signing the Arbitration Agreement must have had the authority to do so." *Id.*

"The contractual concept of 'meeting of the minds' or 'mutual assent' relates to the parties having the same understanding of the terms of the agreement reached." *Messer v. Huntington Anesthesia Grp., Inc.*, 222 W. Va. 410, 418, 664 S.E.2d 751, 759 (W.Va. 2008) (citation omitted). For "mutual assent" to exist, "it is necessary that there be a[n] . . . offer on the part of one party and an acceptance on the part of the other." *Bailey v. Sewell Coal Co.*, 190 W.Va. 138, 437 S.E.2d 448, 450 (W.Va. 1993). "Both the offer and acceptance may be by word, act or conduct that evince the intention of the parties to contract." Id. at 450-51. Mutual assent "may be shown by direct evidence of an actual agreement or by indirect evidence through facts from which an agreement may be implied." *Id*. at 451.

Applying this standard for contract formation, it is clear that the present case involves a disputed question of material fact over the very existence of a contractual arbitration agreement. Respondent maintains that the agreement was never formed because Mr. Vandall at no time had authority to sign the agreement on behalf of his mother, Ms. Shumaker, and as such, he is not a competent party to the agreement as required by the rules governing contracts. The direct evidence here shows that Ms. Shumaker did not sign the agreement on her own behalf, despite being cognitively intact (JA_93) and in possession of decision-making capacity (JA_99). Petitioners contend that they relied on Mr. Vandall's alleged apparent authority in executing the agreement and seeking to enforce the Arbitration Agreement.

Because the FAA requires a court to decide whether an agreement to arbitrate exists before it may order arbitration, the circuit court was correct in examining whether a contractual agreement to arbitrate was formed before it could order arbitration in the instant case. This is a "necessary prerequisite to the court's fulfilling its role of determining whether the dispute is one for an arbitrator to decide under the terms of the arbitration agreement." *Sandvik AB v. Advent Intern. Corp.*, 220 F.3d 99, 107 (3d. Cir. 2000). *See also AT & T Techs. v. Comms. Workers of Am.* 475 U.S. 643, 651 (1986) (holding that it is the court's duty to interpret the agreement and to determine whether the parties intended to arbitrate grievances).

The Fourth Circuit Court of Appeals has held that a party's assent to an arbitration provision is a question for the court. *See Snowden v. CheckPoint Check Cashing*, 290 F.3d 631, 637 (4th Cir. 2002). In making such a decision, the court is obliged to conduct a factual inquiry when a party unequivocally denies "that an arbitration agreement exists," and "show[s] sufficient facts in support" thereof. *See Chorley Enters., Inc. v. Dickey's Barbecue Rests., Inc.*, 807 F.3d 553, 564 (4th Cir. 2015). Numerous courts in other jurisdictions have considered the threshold question of contract existence and determined that it is a question for the court to decide. *See, e.g., I.S. Joseph Co. v. Michigan Sugar Co.*, 803 F.2d 396, 399 (8th Cir. 1986) (If there is in fact a dispute as to whether an agreement to arbitrate exists, then that issue must first be determined by the court as a prerequisite to the arbitrator's taking jurisdiction"); *Camping Constr. Co. v. District Council of Iron Workers, Local 378,* 915 F.2d 1333, 1340 (9th Cir. 1990) ("The court must determine whether a contract *ever* existed; unless that issue is decided in favor of the party seeking arbitration, there is no basis for submitting any question to an arbitrator.") (emphasis in original); *Will-Drill Res., Inc. v. Samson Res. Co.*, 352 F.3d 211 (5th Cir. 2003) (Even though there is signed document

containing arbitration clause which parties do not dispute they signed, court is not required to presume that there is valid contract and send any general attacks on agreement to arbitrator).

Courts in other jurisdictions have also held that the question of whether a particular individual has authority to bind a party must be determined by the court, not by an arbitrator. *See Par–Knit Mills, Inc. v. Stockbridge Fabrics Co.,* 636 F.2d 51 (3d Cir.1980); *N & D Fashions, Inc. v. DHJ Indus., Inc.,* 548 F.2d 722 (8th Cir. 1976); *Smith Wilson Co. v. Trading & Dev. Establishment,* 744 F. Supp.14 (D.D.C. 1990); *Ferreri v. First Options, Inc.,* 623 F.Supp. 427 (E.D.Pa.1985).

II. Because no contract was formed, the delegation clause within is invalid, and the circuit properly decided the issue of enforceability.

Petitioners' reliance on the delegation provision to show error in the circuit court's decision is misplaced as there was no container agreement to arbitrate formed, as explained above, and thus no valid delegation provision.

a. This dispute sits at the intersection of the severability doctrine and Section 4 of the FAA.

As articulated by the Supreme Court, the severability doctrine requires that an unchallenged delegation provision in a disputed contract be enforced as presumptively valid. *Rent-a-Center, West, Inc. v. Jackson*, 561 U.S. 63 (2010). Though delegation and arbitration clauses are generally severable from their larger contracts, the question of whether "the underlying contract contains a valid arbitration clause still precedes all others because 'arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit.'" *Sandvik*, 220 F.3d 99, 107 (3d. Cir. 2000) (quoting *AT & T Techs.,* 475 U.S. 648 (internal citation omitted)). The fact that agreements to delegate or arbitrate are severable "does not mean that they are unassailable." *Rent-a-Center* 561 U.S. at 71.

Under the FAA, courts retain the primary power to decide questions of whether the parties mutually assented to a contract containing or incorporating a delegation provision. *MZM Construction Co., Inc. v. New Jersey Building Laborers Statewide Benefit Funds*, 974 F.3d 386 (3d. Cir. 2020). Lack of assent to the container contract necessarily implies a lack of assent to the arbitration or delegation provisions contained therein. *See China Minmetals Import and Export Co., Ltd. v. Chi Mei Corp.*, 334 F.3d 274, 288 (3d Cir. 2003) ("[A] contract cannot give an arbitral body any power, much less the power to determine its own jurisdiction, if the parties never entered into it.") Just as a court needs to decide questions regarding the parties' mutual assent to the container contract to determine if an arbitration agreement exists, it must do the same when the container contract includes or incorporates a delegation provision. *Id.*

Any reliance on *Prima Paint*, 388 U.S. 395 (1967), in examining the delegation provision and container contract here is misplaced as that opinion did not consider a scenario in which the lack of assent to a container contract was at issue. *Prima Paint* likewise failed to acknowledge the crucial distinction between contracts that are "void" or non-existent, and those that are simply "voidable." In *Prima Paint*, the Supreme Court held that a claim of fraud in the inducement of the entire contract was for the arbitrators to decide. *Id*. An underlying agreement exists, under the *Prima Paint* doctrine, even if one of the parties seeks to rescind or avoid a contract on the basis of fraud, frustration of purpose, duress, or unconscionability. *Id*. at 106. However, the court in *Prima Paint* did not consider a scenario in which the existence and making of an underlying container contract were at issue. As such, *Prima Paint* should be read to apply only to voidable contracts and disputes where a party seeks to avoid or rescind a contract, not situations in which a party is denying the existence of a contract. *See Chastain v. Robinson–Humphrey Co., Inc.,* 957 F.2d 851, 855 (11th Cir. 1992) ("*Prima Paint* has never been extended to require arbitrators to adjudicate a

party's contention, supported by substantial evidence, that a contract never existed at all." (internal citation omitted)).

Courts in other jurisdictions have confronted this same question and have declined to enforce delegation provisions when the formation or existence of the container contract was at issue. *See MZM Construction,* 974 F.3d 386 (3d. Cir. 2020); *In re: Auto. Parts Antitrust Litig.*, 951 F.3d 377, 385-86 (6th Cir. 2020); *Berkeley Cty. Sch. Dist. v. Hub Int'l Ltd.*, 944 F.3d 225, 234 (4th Cir. 2019); *Lloyd's Syndicate 457 v. FloaTEC, L.L.C.*, 921 F.3d 508, 515 (5th Cir. 2019); *Nebraska Mach. Co. v. Cargotec Sols., LLC*, 762 F.3d 737, 741 & n.2 (8th Cir. 2014).

b. The parties did not clearly and unmistakably agree to arbitrate the issue of arbitrability.

A dispute over the enforceability of a delegation provision leads to a question of whether the parties clearly and unmistakably agreed to arbitrate the issue of arbitrability. Because an arbitrator's jurisdiction is based solely on the consent of the parties, a party who contests the making of a contract containing an arbitration provision cannot be compelled to arbitrate the threshold issue of the existence of an agreement to arbitrate. Requiring a party to arbitrate when they allege they failed to enter into the contract would be wholly inconsistent with the basic principle of arbitration that "a party cannot be required to submit [to arbitration] any dispute which he has not agreed so to submit." *AT & T Techs.*, 475 U.S. at 648. To be consistent with the congressional policy of favoring the settlement of disputes through arbitration, judicial inquiry in a suit to compel arbitration must be strictly confined to a question of whether the reluctant party did agree to arbitrate the grievance or agreed to give arbitrator power to make the award he made. *United Steelworkers of America v. Warrior & Gulf Nav. Co.*, 363 U.S. 574 (1960). It follows then, that the question of arbitrability is "undeniably an issue for judicial determination." *AT & T Techs.*, 475 U.S. at 649. Thus, "[u]nless the parties clearly and unmistakably provide otherwise, the

question of whether the parties agreed to arbitrate is to be decided by the court, not the arbitrator." *Id*.; *See also Warrior & Gulf*, 363 U.S. at 582-583.

As Respondent has put the very existence of the Arbitration Agreement in dispute, it cannot be said that the parties clearly and unmistakably agreed to arbitrate the issue of arbitrability in the instant matter. *See Rent-A-Center*, 561 U.S. at 69 n.1 (noting that the "'clear and unmistakable' requirement . . . pertains to the parties' *manifestation of intent*") (citation omitted)). Mr. Vandall signed the agreement but was not a competent party to the agreement and lacked the authority to bind his mother to the Arbitration Agreement, including the delegation provision. Because this is an issue involving the formation of the contract, the circuit court was obligated to interpret the agreement at issue and determine whether the parties intended to refer all disputes, including those over the issue of arbitrability, to an arbitrator. In doing so, the circuit court correctly determined that there was no contract formed between Ms. Shumaker and the Facility and declined to send the matter to arbitration.

III. The circuit court was correct in determining that Mr. Vandall lacked the requisite authority to bind Ms. Shumaker to the Arbitration Agreement.

Petitioners contend that Mr. Vandall "affirmatively and explicitly represented to Beckley Healthcare Center that he has the requisite authority to enter the Arbitration Agreement on behalf of Ms. Shumaker." "In seeking to show apparent agency, a person must also evidence that he or she believed that the alleged agent was acting on the authority of another and this belief was reasonable under the circumstances." *State ex rel. AMFM, LLC*, 740 S.E.2d at 76, n. 10 (internal citations omitted). "Where a person deals with an agent, it is his duty to ascertain the extent of the agency. He deals with him at his own risk. The law presumes him to know the extent of the agent's power; and, if the agent exceeds his authority, the contract will not bind the principal[.]" Syl. Pt. 1, *Rosendorf v. Poling*, 48 W.Va. 621, 37 S.E. 555 (1900).

At the time of Ms. Shumaker's admission to the Facility on August 15, 2022, Mr. Vandall was not her attorney-in-fact or legal guardian. Mr. Vandall possessed no legal authority to act on Ms. Shumaker's behalf, nor to bind her to the Arbitration Agreement. Ms. Shumaker was noted to be competent at the time of her admission and able to make decisions on her own. JA_99. Indeed, Petitioners note that Ms. Shumaker suffered no mental ailments, was of sound and capable mind, and possessed decision-making capacity. Pet. Brief at 1-2. Petitioners further note that Ms. Shumaker was able to receive, understand, and consent to the terms of her admission contracts. Pet. Brief at 2. As such, Ms. Shumaker could have granted legal authority to Mr. Vandall at any time but chose not to do so. Petitioners have failed to offer any evidence that Ms. Shumaker actually chose to involve Mr. Vandall in the process, nor that Ms. Shumaker was aware of the Arbitration Agreement. Petitioners merely cite to the admissions contracts that Mr. Vandall signed as evidence that Ms. Shumaker chose to involve him in the process, despite there being ***nothing*** in the record to support that a choice was actually made. Mr. Vandall's signing of the documents is not sufficient in and of itself to prove agency. *See* Syl. Point 2, *Rosendorf*, 48 W. Va. 621 ("Neither the declarations of a man nor his acts can be given in evidence to prove that he is the agent of another"); *Spangler v. Fisher*, 152 W.Va. 141, 159 S.E.2d 903 (W. Va. 1968) (extrajudicial admissions or declarations of an alleged agent are ordinarily inadmissible to prove that such agency relationship actually existed).

Celesy Daniels, Admission Coordinator, indicated in an Affidavit that her first step in completing a resident's admission documents was to "ascertain whether he or she was deemed to have capacity by a physician." JA_105. If the resident was deemed to have capacity, as Ms. Shumaker was, Ms. Daniels stated that she went "directly to the resident to complete his or her own admission documents." JA_105. Ms. Daniels further stated that it was "not unusual for

residents with capacity to prefer a relative complete the admission documents for them." JA_105. Ms. Daniels concluded her Affidavit by reporting that on August 16, 2022, she signed Ms. Shumaker's admission documents on behalf of Beckley Healthcare Center, and that Mr. Vandall executed the admission documents "on behalf of Ms. Shumaker" that same day. JA_105. Petitioners have failed to offer any explanation as to why standard procedures were not followed to have Ms. Shumaker sign the admissions documents herself, as noted by Judge Kirkpatrick. JA_5. Petitioners have further failed to offer any rationale as to why Ms. Daniels apparently witnessed Mr. Vandall execute the documents "on behalf of Ms. Shumaker" but at no time made any attempt to ascertain the scope of his authority to sign the documents on her behalf.

Petitioners have offered no evidence to show that Mr. Vandall had any authority to sign the Arbitration Agreement, apart from pointing out the "self-serving squib" below the signature line of the Agreement. JA_148. Petitioners' belief that Mr. Vandall had the necessary authority to sign the Arbitration Agreement on behalf of Ms. Shumaker, based solely on the fact that he did sign the agreement, is not reasonable in this circumstance. *See Public Citizen, Inc. v. First Nat. Bank in Fairmont,* 198 W. Va. 329, 480 S.E.2d 538 ("[S]ubjective belief is not enough . . . One who deals with an individual purporting to be an agent of another is bound at his own peril to know the authority of such alleged agency.") (internal citations omitted). The circuit court was correct in determining that it was "entirely unreasonable to simply assume Mr. Vandall had the requisite authority to sign the Arbitration Agreement on behalf of Ms. Shumaker." JA_148.

CONCLUSION

In sum, there was no valid Arbitration Agreement formed between Ms. Shumaker and the Facility. The non-existence of the container Arbitration Agreement, including the delegation provision therein, was properly examined and determined by the circuit court. The circuit court also correctly determined that Mr. Vandall lacked the authority to execute the Arbitration

Agreement on behalf of Ms. Shumaker. Based on the foregoing, Respondent respectfully requests this Court affirm the ruling of the circuit court which denied Petitioners' Motion to Compel Arbitration.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the undersigned has this day, the 3rd day of October, 2024, filed the foregoing ***Brief of Respondent*** via File & ServeXpress electronic filing, which will send a copy and service notification to the following:

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