IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

Kenneth Evans, individually and as the Personal representative of the Estate of Francis Moore Evans, Estate of Francis Moore Evans,	)	
Plaintiffs,	)	C/A No. 8:17-cv-950-TMC
v.	)	**ORDER**
North Pointe Assisted Living, CSL North Pointe SC, LLC, and Capital Senior Living Corporation,	)	
Defendants.	)	

This is a wrongful death action.[1] Before the court is Defendants' motion to dismiss and compel arbitration pursuant to Fed.R.Civ.P. 12(b)(1) and 12(b)(6), and the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1-16. (ECF No. 6). Plaintiffs filed a response opposing the motion (ECF No. 14), and Defendants filed a reply (ECF No. 17). A hearing was held on October 24, 2017, and the court took the matter under advisement.

I. Background/Procedural History

Decedent Frances Moore Evans and her husband became residents at Defendant North Point Assisted Living Center ("North Pointe") on February 4, 2016.[2] In their Complaint,. Plaintiffs allege that Mrs. Evans sustained several falls while a resident at North Pointe. (ECF No. 1-1 ¶¶ 18-19). On March 20, 2016, Mrs. Evans was found on the floor and taken by

[1]Plaintiffs have also filed a separate survival action, *Evans v. North Pointe Assisted Living*, No. 17-951 (D.S.C. Apr. 12, 2017).

[2]Defendant North Pointe Assisted Living contends that it has been improperly named in the Complaint, and states "it should have been identified as CSL North Pointe SC, LLC d/b/a North Pointe Assisted Living." (ECF No. 6-2 at 1, n.1).

ambulance to AnMed. *Id.* at ¶ 20. She was returned to North Pointe that same day at 12:22am. *Id.* at ¶ 25. Plaintiffs allege that she fell again at 3:00am, and she was taken back to AnMed by ambulance. *Id.* at ¶ 27. She was hospitalized at AnMed until March 26th when she was transported to a hospice where she remained until her death on March 30, 2016. *Id.* at ¶¶ 29-30. Thereafter, Plaintiff filed this wrongful death action alleging claims of negligence and gross negligence.[3]

On June 23, 2010, Mrs. Evans had granted her son, Ken Evans, Power of Attorney. (ECF No. 14-2). However, her daughter, Linda Holland, signed the admissions documents to North Pointe including a Residence and Service Agreement ("Residence Agreement"), which included an arbitration provision by reference, and an Arbitration Agreement set out as an attachment. (ECF No. 6-3 at 30-33). The Residence Agreement states: "All disputes arising out of or relating *in any way* to this Agreement or to any of the Resident's stay at the Community SHALL BE RESOLVED BY BINDING ARBITRATION AND NOT BY A JUDGE OR JURY as more fully detailed in Attachment I." (emphasis in original). (ECF No. 6-3 at 18-19). In Attachment I, the Arbitration Agreement provides that:

> the Parties agree that any action, dispute, claim, or controversy of any kind, whether in contract or in tort, statutory or common law, legal or equitable or otherwise, arising out of the provision of goods, services, or items provided under the terms of this or any other agreement between the Parties, or any other dispute involving acts or omissions that cause damage or injury to either Party shall be resolved exclusively by binding arbitration (the "**Arbitration**") in accordance with the Federal Arbitration Act and not by lawsuit or resort to the judicial process. To the fullest extent permitted by law, this Section shall apply to third parties who are not signatories to this Arbitration Agreement, including any spouse, heirs, or persons claiming through the Resident. Any claims or grievances against the Community's direct or indirect corporate parent, subsidiaries, affiliates, employees, officers, or directors shall also be subject to and resolved by arbitration in accordance with this Section.

[3]The action was originally filed in state court and Defendants removed it to this court on the basis of diversity jurisdiction. (ECF No. 1).

(ECF No. 6-3 at 1)(emphasis in original).

II. Applicable Law

"A party can compel arbitration under the FAA if it establishes: (1) the existence of a dispute between the parties; (2) a written agreement that includes an arbitration provision purporting to cover the dispute that is enforceable under general principles of contract law; (3) the relationship of the transaction, as evidenced by the agreement, to interstate or foreign commerce; and (4) the failure, neglect or refusal of a party to arbitrate the dispute." *Am. Gen. Life & Accident Ins. Co. v. Wood,* 429 F.3d 83, 87 (4th Cir. 2005); *Whiteside v. Teltech Corp.*, 940 F.2d 99, 102 (4th Cir. 1991). The FAA reflects "a liberal federal policy favoring arbitration agreements. . . . " *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983). "Pursuant to the liberal policy, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability." *Id.*

"If a party challenges the validity under [9 U.S.C.] § 2 of the precise agreement to arbitrate at issue, the federal court must consider the challenge before ordering compliance with that agreement under [9 U.S.C.] § 4." *See Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 71 (2010). Moreover, "as a matter of substantive federal arbitration law, an arbitration provision is severable from the remainder of the contract . . . unless the challenge is to the arbitration clause itself, the issue of the contract's validity is considered by the arbitrator in the first instance." *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 445-46 (2006).

III. Discussion

Initially, the court must determine whether the FAA is applicable. The FAA applies when a transaction involves interstate commerce. *See Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 538 (2001) (holding that unless the parties have contracted to the contrary, the FAA

applies in federal or state court to any arbitration agreement regarding a transaction that in fact involves interstate commerce). "[N]ursing home residency contracts usually entail providing residents with meals and medical supplies that are inevitably shipped across state lines from out-of-state vendors." *Dean v. Heritage Healthcare of Ridgeway, LLC*, 759 S.E.2d 727, 732 & n.7 (S.C. 2014) (citing cases). *See also McCutcheon v. THI of S.C. at Charleston, L.L.C.*, No. 2:11-CV-02861, 2011 WL 6318575, at *5 (D.S.C. Dec. 15, 2011) (holding that the contracted-for care involved providing food and medical services from out-of-state vendors and thus involved interstate commerce). Because the underlying transaction involves interstate commerce, the FAA applies.[4]

Second, the court must determine if it or an arbitrator is to address Plaintiffs' challenge to the AA. In *Rent-A-Center*, the Supreme Court addressed a claim that an arbitration agreement was unconscionable. *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63 (2010). In prior cases, the Supreme Court has made clear that "[t]he question 'who has the primary power to decide arbitrability' turns upon what the parties agreed about that matter. Did the parties agree to submit the arbitrability question itself to arbitration?" *First Options of Chicago, Inc. v. Kaplan*,, 514 U.S. 938, 943 (1995) (quoting *AT & T Techs., Inc. v. Commc'ns Workers*, 475 U.S. 643, 649 (1986)). The Court distinguished between a challenge to the overall arbitration agreement (the "contract"), and a challenge to the agreement to arbitrate arbitrability (the "delegation clause"). *Rent-A-Center*, 561 U.S. at 71-72. There, the plaintiff "challenged only the validity of the contract as a whole" rather than the validity of the delegation clause. *Id.* at 72. The Court held that the plaintiff's challenge that the arbitration agreement was unconscionable - that the

[4]While parties can agree that the FAA will provide the basis for interpreting the contract, the parties cannot by agreement make an act not in interstate commerce into one that is in interstate commerce. The FAA applies here not because the parties say so, but because the transaction involves interstate commerce. *See Ping v. Beverly Enterprises, Inc.*, 376 S.W .3d 581, 590 n.3 (Ky. 2012); *Miller v. Cotter*, 863 N.E.2d 537, 544 n.13 (Mass. 2007).

plaintiff had been required to sign as a condition of his employment - had to be arbitrated because the delegation clause "clearly and unmistakably" gave the arbitrator exclusive authority over the enforceability of the agreement to arbitrate. *Id.* at 2775, 72. The Court held that, in accordance with a valid delegation clause, questions of arbitrability, including the arbitrability of the overall agreement to arbitrate, must go to an arbitrator. *Id.* at 72.

However, the Supreme Court also recognized that the issue of a contract's validity is different from the issue of whether a contract was ever concluded in the first place, and it has explicitly cautioned that its holdings in this line of cases should not be read as applying to disputes over the latter. *Rent-A-Center*, 561 U.S. at 70 n.2 ("The issue of the agreement's 'validity' is different from the issue whether any agreement between the parties 'was ever concluded,' and . . . we address only the former."). See also *Buckeye Check Cashing*, 546 U.S. at 444 n.1 ("The issue of the contract's validity is different from the issue whether any agreement between the alleged obligor and obligee was ever concluded. Our opinion today addresses only the former, and does not speak to the issue . . . [whether] it is for courts to decide whether the alleged obligor ever signed the contract.").

"Challenges to contract formation - including whether the plaintiff signed the contract or, if not, can nonetheless be bound under principles of contract or agency law, or whether the signor lacked authority to commit the alleged principal are different from the challenges to contract validity addressed in *Buckeye* and *Rent-A-Center*." *Vallejo v. Garda CL Soutwest, Inc.,* 948 F.supp.2d 720, 726 (S.D. Tex. 2013). *See also In re Global Tel*63Link Corp., ICS Litigation*, No. 5:14-CV-5275, 2017 WL 831101, *2 (W.D. Ark. Mar. 2013) (holding "the Supreme Court has repeatedly recognized that the issue of a contract's validity is different from the issue of whether a contract was ever concluded in the first place, and it has explicitly and repeatedly cautioned that its holdings in this line of cases should not be read as applying to

disputes over the latter."); *Vulcan Coal & Min., LLC v. Bulk Trading S.A.,* No. CV-11-BE-2700-S, 2013 WL 1346604, *6 (N.D. Ala. Apr. 1, 2013) (holding that "the initial question of whether any contract existed at all is one for this court and not the arbitrator."). Accordingly, the court finds it is to determine whether a contract to arbitrate was ever concluded in this case.

Generally, "arbitration is a matter of contract [interpretation] and a party cannot be required to submit to arbitration any dispute which she has not agreed so to submit." *Int'l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH,* 206 F.3d 411, 416 (4th Cir. 2000). That said, "[i]t does not follow . . . that under the [FAA] an obligation to arbitrate attaches only to one who has personally signed the written arbitration provision." *Id.* at 417 (internal quotation marks and citation omitted). Theories "arising out of common law principles of contract and agency law" can provide a basis for binding non-signatories to arbitration agreements. *Int'l Paper*, *Co.*, 206 F.3d at 417 (citing *Thomson-CSF v. Am. Arbitration Ass'n*, 64 F.3d 773, 776 (2d Cir. 1995)); *see also Am. Bankers Ins. Group, Inc. v. Long*, 453 F.3d 623, 627 (4th Cir. 2006). These principles include "1) incorporation by references; 2) assumption; 3) agency; 4) veil piercing/alter ego; and 5) estoppel." *Int'l Paper Co.*, 206 F.3d at 417 (citation omitted). *See also Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 631 (2009) (noting that traditional principles of state law, such as estoppel, may support arbitration by a nonparty to the written arbitration agreement). Moreover, the Supreme Court has repeatedly emphasized that arbitration agreements must be placed on the same footing as all other contracts. *AT & T Mobility, L.L.C. v. Concepcion*, ____ U.S. ____, 131 S.Ct. 1740, 1745-46 (2011) (explaining that placing arbitration agreements on equal footing with other contracts is consistent with the liberal judicial policy favoring arbitration).

In an attempt to bind Plaintiffs to arbitration, Defendants have specifically limited their

argument to equitable estoppel.[5] Defendants do not argue that Holland signed the Residence Agreement or Arbitration Agreement as an agent for good reason. There is nothing in the record which supports an agency relationship between Holland and her mother. An agency relationship may be shown by evidence of actual or apparent authority. *Charleston, S.C. Registry for Golf & Tourism, Inc. v. Young Clement Rivers & Tisdale, LLP*, 598 S.E.2d 717 (S.C. Ct. App. 2004). To establish apparent authority, a party must show (1) the principal consciously or impliedly represented another to be his agent; (2) reliance on this representation; and (3) a detrimental change of position." *Froneberger v. Smith,* 748 S.E.2d 625, 630 (S.C. Ct.App. 2013). Actual authority is expressly conferred upon the agent by the principal, while apparent authority is that which a principal knowingly permits the agent to exercise, or which the principal holds the agent out as possessing. *Moore v. North Am. Van Lines*, 423 S.E.2d 116, 118 (S.C. 1992).

> The doctrine of apparent authority focuses on the principal's manifestation to a third party that the agent has certain authority. Concomitantly, the principal is bound by the acts of its agent when it has placed the agent in such a position that persons of ordinary prudence, reasonably knowledgeable with business usages and customs, are led to believe the agent has certain authority and they in turn deal with the agent based on that assumption. Thus, the concept of apparent authority depends upon manifestations by the principal to a third party and the reasonable belief by the third party that the agent is authorized to bind the principal.

Charleston, S.C. Registry for Golf & Tourism, Inc., 598 S.E.2d at 721 (citing *R & G Const., Inc. v. Lowcountry Reg'l Transp. Auth.*, 540 S.E.2d 113, 117-18 (S.C. Ct.App. 2000) (citations omitted). Furthermore, "[I]t is the duty of one dealing with an agent to use due care to ascertain the scope of the agent's authority." *McCall v. Finley*, 62 S.E.2d 26, 29 (S.C. Ct. App. 1987) (citing *Justus v. Universal Credit Co.*, 1 S.E.2d 508, 511 (1939)). "Moreover, an agency may not be established solely by the declarations and conduct of an alleged agent." *Charleston, S.C.*

[5]The court inquired at the hearing if Defendants were seeking to apply third party beneficiary, and Defendants repeatedly stated they were relying on equitable estoppel and not third party beneficiary.

Registry for Golf & Tourism, Inc., 598 S.E.2d at 721 (citing *Frasier v. Palmetto Homes of Florence, Inc.*, 473 S.E.2d 865, 868 (S.C. Ct.App. 1996).

Defendants contend that Holland signed the Residence Agreement and Arbitration Agreement in her individual capacity. However, the language in these contracts does not support that contention. And neither do the affidavits submitted by Defendants. In fact, reviewing the affidavits, the court is perplexed as to how Defendants can argue that Holland signed the contracts in her individual capacity. In the affidavits, the affiants allege that they believed Holland had been given power of attorney and they relied upon Holland's representations and those of her brother that Holland was authorized to sign the admission paperwork for her mother. (ECF No. 36-1 at 3-4 ¶¶ 8, 13, 14; ECF No. 36-1 at 10 ¶¶ 8, 9). While counsel now contends that Holland signed in her individual capacity, the allegations of Defendants' counsel alone do not qualify as competent evidence. See *United States v. White*, 366 F.3d 291, 300 (4th Cir. 2004) ("The Government's claimed entitlement to summary judgment rests largely on its repeated contention in court submissions that it did not orally agree to a conditional plea. But an attorney's unsworn argument does not constitute evidence, and the Government has offered no affidavit, deposition, sworn statement, or other direct evidence that a Government agent did not make the oral promise.").

The Arbitration Agreement specifically addresses when it is signed by someone other that the resident:

> **SIGNING BY OTHER THAN RESIDENT**. If this Arbitration Agreement is signed by an individual holding him or herself out as a legal representative of the Resident, by signing below he or she warrants that he or she holds the appropriate legal authority that meets all requirements under law or equity to enter into this Binding Arbitration Agreement on behalf of the Resident. Community is relying on this representation as its basis for entering into this Residence and Service Agreement and Arbitration Agreement.

(ECF No. 6-1 at 4). Holland signed her name directly underneath this paragraph. *Id.* Pursuant

to this paragraph and her signature, Holland entered the Arbitration Agreement on behalf of her mother and as her legal representative. Further, following the above, the Arbitration Agreement states that "THE UNDERSIGNED EACH FURTHER CERTIFIES THAT HE/SHE IS THE RESIDENT OR A PERSON AU'T'HORIZED BY THE RESIDENT OR OTHERWISE AUTHORIZED TO EXECUTE THIS ARBITRATION AGREEMENT AND ACCEPT ITS TERMS." *Id*. at 5. Beneath this provision, Holland signed on the line beside the "Resident's Responsible Party Signature." *Id.*

Reviewing the Residence Agreement, Holland did not sign the Residence Agreement in any capacity. (ECF No. 6-3 at 23). She printed her name in the space provided for the Responsible Party, but she did not sign the Residence Agreement as the Responsible Party. *Id.* The second page of the Residence Agreement lists Holland's brother, Ken Evans, as the "Responsible Party" and Holland as the Second Emergency Contact. (ECF No. 6-3 at 2). In defining "responsible parties," the Residence Agreement states:

> If a person signing this Residence and Service Agreement is not the Resident or Second Resident, or a representative of the Resident, the Community both requires and relies upon the representation by the person that signs this agreement, as the Responsible Party, and that he or she has been authorized by the Resident, or designated by law, to enter to and bind the Resident to each and every term and condition of this Agreement and its Attachments, both financial and non-financial, without any restriction whatsoever. This authorization expressly includes, but is not limited to, the authority to bind the Resident to the terms and conditions found in **Attachment H** and **Attachment I**.

(ECF No. 6-3 at 5-6). Reading this provision, the Residence Agreement refers to the Resident signing or representative of the Resident or a Responsible Party who has been authorized by the Resident or designated by law to bind the Resident.

Then, there is Attachment G, "Responsible Party Agreement," which Holland did sign. (ECF No. 6-3 at 25-26). Attachment G further provides, in part:

> A. The Community prefers that Resident appoint a Power of Attorney to serve as

> Responsible Party to handle Resident's funds and execute Resident's documents. However, by signing the Residence and Service Agreement and/or this Responsible Party Agreement, Responsible Party agrees that he/she has been authorized by the Resident, or designated by law, to enter into and bind the Resident to the Residence and Service Agreement. Responsible Party acknowledges and agrees that he/she is executing the Residence and Service Agreement and Responsible Party Agreement **in individual** and representative capacities.
>
> B. Responsible Party represents that he/she has control and/or access to the Resident's funds and/or assets. Responsible Party agrees to provide an accounting of the resident's funds and/or assets upon request by the Community to include documentation to verify Resident's financial status and accounts.
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> C. A Responsible Party who uses due care in executing his/her duties will not be held personally liable for the payment of the Resident's financial obligations. Failure to pay financial obligations incurred by or on behalf of the Resident from the Resident's funds or assets shall constitute a failure to exercise due care and will subject Responsible Party to personal liability for the charges incurred by Resident. Failure to appropriately use Resident's funds and assets for Resident's care at the Community may constitute abuse and/or financial exploitation of the Resident in violation of state law. Inappropriate use of the Resident's funds and assets will be reported to the state and may result in criminal liability. The Community is not responsible for the improper use of the Resident's funds by the Responsible Party or others. . . .

(ECF No. 6-3 at 25) (emphasis added). In all of the documents which span over thirty pages, this is the only reference to individual capacity. And it appears to be limited to financial obligations. However, the documents were clearly designed to be signed by the patient or a "Responsible Party," and a "Responsible Party" is defined as someone who is signing as the Resident's agent. There simply is nothing addressing a scenario where a person is signing these agreements solely in his individual capacity. More importantly, as discussed above, there is nothing in the Arbitration Agreement which evidences an intent that Holland was signing in her individual capacity and agreeing to arbitrate any disputes. And, in fact, Holland specifically signed the Arbitration Agreement as someone holding "the appropriate legal authority that meets all requirements under law or equity to enter into this Binding Arbitration Agreement *on behalf*

of the Resident." (ECF No. 6-1 at 4) (emphasis added).[6]

The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language. *Schulmeyer v. State Farm Fire & Cas. Co.*, 579 S.E.2d 132, 134 (S.C. 2003). When the contract's language is clear and unambiguous, the language alone determines its force and effect. *Id.* Moreover, a contract must be read as a whole document and litigants may not create an ambiguity by pointing to a single sentence or clause. *Id.* In the present case, no contract was formed because no one with authority to do so signed the arbitration agreement. Holland did not sign the Residence Agreement at all in any capacity. Moreover, she only purported to sign the Arbitration Agreement as her mother's representative or as a Responsible Party - not in her individual capacity - and she did not have the authority to sign as an agent. Based on the foregoing, because Holland lacked the authority to bind her mother, and because she did not bind herself individually, the court finds an agreement to arbitrate was never concluded. There simply was no enforceable Arbitration Agreement. Despite national policy favoring arbitration, a party cannot be compelled to arbitrate in the absence of a valid agreement to do so under the FAA. *See Prima Paint Corp. v. Conklin Mfg. Co.*, 388 U.S. 395, 404 n.12 (1967) (construing the FAA as designed "to make arbitration agreements as enforceable as other contracts, but not more so"); *Concepcion*, ___ U.S. ___, 131 S.Ct. 1740, 1745-46.

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[6] Moreover, "[t]he most obvious indicator of intent is the form of the signature. . . . [W]here individual responsibility is demanded the nearly universal practice is that the officer signs twice - once as an officer and again as an individual." *Israel v. Chabra*, 537 F.3d 86, 97 (2d Cir. 2008) (citation omitted). Here, as noted above, no such intent to bind Holland in her individual capacity is evidenced. Both the Residence Agreement and the Arbitration Agreement contain a single signature block for the signature of a Responsible Party. Holland executed the Arbitration Agreement solely on behalf of her mother, and she did not sign the Arbitration Agreement in her personal capacity - she signed only as a Responsible Party who is defined as an agent of the Resident.

Even if the court were to find that there was an agreement to arbitrate and that Holland had signed in her individual capacity, the court would not apply equitable estoppel to bind a non-signatory in this case. In *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624 (2009), the Supreme Court held that, under the FAA, traditional principles of state law may allow an arbitration contract to be enforced by or against nonparties to the contract through a number of state contract law theories, including equitable estoppel. 556 U.S. at 631 (quoting 21 R. Lord, Williston on Contracts § 57:19 (4th ed. 2001)). Post-*Arthur Andersen* it is incontrovertible that state law governs the equitable estoppel determinations. Consequently, several Courts of Appeals have recognized the holding in *Arthur Andersen* that state law governs the equitable estoppel analysis, and have applied state law to determine whether equitable estoppel mandates arbitration. See *Donaldson Co., Inc. v. Burroughs Diesel, Inc.*, 581 F.3d 726, 732 (8th Cir. 2009); *Lawson v. Lifewof the South Ins. Co.*, 648 F.3d 1166 (11th Cir. 2011); *Lenox MacLaren Surgical Corp. v. Medtronic, Inc.*, 449 Fed.App'x 704, 708 n. 2 (10th Cir. 2011); *Kramer v. Toyota Motor Corp*., 705 F.3d 1122, 1128 (9th Cir. 2013); *Crawford Prof'l Drugs, Inc. v. CVS Caremark Corp.*, 748 F.3d 249, 261-62 n. 9 (5th Cir. 2014); *Scheurer v. Fromm Family Foods, LLC*, 863 F.3d 748130 (7th Cir. 2017)*; White v. Sunoco, Inc.*, 870 F.3d 257, 262 (3rd Cir. 2017). Accordingly, the court will look to South Carolina law on equitable estoppel.

Under South Carolina law, the elements of equitable estoppel as to the party to be estopped are:

> (1) conduct which amounts to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intention, or at least expectation, that such conduct shall be acted upon by the other party; and (3) knowledge, actual or constructive, of the real facts. As related to the party claiming the estoppel, they are: (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question; (2) reliance upon the conduct of the party estopped; and (3) action based thereon of such a character as to change his position prejudicially.

Boyd v. Bellsouth Tel. Tel. Co., 633 S.E.2d 136, 142 (S.C. Ct. App. 2006). In *Thompson v. Pruitt Corp.*, 784 S.E.2d 679 (S.C. Ct. App. 2016), in rejecting the application of equitable estoppel under South Carolina state law, the court held that it would not hold the actions of a son taken in his individual capacity against an estate. *Id.* at 689-690.[7] Likewise, here, the actions of Holland and any possible misrepresentations should not be used against her mother's estate.

III. Conclusion

Accordingly, based on the foregoing, Defendants' Motion to Dismiss and Compel Arbitration (ECF No. 6) is **DENIED.**

IT IS SO ORDERED.

s/Timothy M. Cain
Honorable Timothy M. Cain
United States District Judge

December 8, 2017
Anderson, South Carolina

[7]In analyzing the application of equitable estoppel, the court must assume that there is a contract, and that Holland signed in her individual capacity, as argued by the Defendants.