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S.C. Supreme Court finds Arbitration Agreement Executed by POA Unenforceable

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Last week the South Carolina Supreme Court emphasized the importance of the plain language of powers of attorney when determining the authority they grant. See *Arrendondo v. SNH SE Ashley River Tenant, LLC*, Op. No. 28011 (S.C. filed March 10, 2021).

This case involved the enforceability of an arbitration agreement executed between an assisted-living facility and the attorney-in-fact/agent of a resident of the facility.

At the time of admission into the facility, the agent, who held both a General Durable Power of Attorney (GDPOA) and a Health Care Power of Attorney (HCPOA), met with facility representatives and signed various documents in connection with the new resident's admission. Later that day, after the resident was admitted, the agent met with a different facility representative who provided additional documents that needed to be signed, including the arbitration agreement at issue here.

By signing the arbitration agreement, the agent waived the resident's right to a jury trial, waived any claim to punitive damages, agreed to limit discovery, and waived the right to appeal the arbitration decision.

Less than two years later, the resident died, and the agent, as the personal representative of the resident, brought a wrongful death and survival action against the facility. The facility filed a motion to compel arbitration based on the arbitration agreement signed by the agent.

The circuit court denied the facility's motion to compel, finding that neither power of attorney gave the agent the authority to sign the arbitration agreement and the arbitration agreement was unconscionable. The court of appeals reversed, holding

that the agent had authority to execute the agreement and the agreement was not unconscionable. Last week, the court reversed the court of appeals' decision finding neither the GDPOA nor the HCPOA authorized the agent to sign the pre-dispute arbitrations agreement.

General Durable Power of Attorney

The court held the plain language of the GDPOA did not authorize the agent to sign an arbitration agreement because it did not concern a cause of action or any other property right that the principal possessed at the time the agent signed the GDPOA.

Dismissing the argument that by its nature a GDPOA grants broad authority, the Supreme Court held the mere title of the document does not increase the agent's authority beyond the plain meaning of the provisions contained in the document.

The court reasoned, if the principal had intended to authorize the agent to sign all documents he could sign himself or otherwise do anything he could do himself, then it would have given that authority in the actual language of the GDPOA. For example, other jurisdictions have found clauses granting the agent the power "to transact, handle, and dispose of all matters affecting me and/or my estate in any possible way" and "generally to do and perform for me and in my name all that I might do if present" were broad enough to authorize the execution of a pre-dispute arbitration agreement.

In this case, the court held the plain language of the GDPOA did not authorize the agent to sign a pre-dispute arbitration agreement.

Health Care Power of Attorney

The HCPOA at issue here authorized the agent "to take any other action necessary to making, documenting, and assuring implementation of decision concerning my health care, including but not limited to, granting any waiver or release for liability required by any hospital, physician, nursing care provider, or other health care provider; signing any documents relating to refusals of treatment or the leaving of facility against medical advise, and pursuing any legal action in my name, and at the expense of my estate to force compliance with my wishes as determined by my agent, or to seek actual or punitive damages for the failure to comply."

The court focused on whether signing the arbitration agreement was "necessary to making, documenting, and assuring implementation" of a decision concerning the principal's health care. The characterization of an arbitration agreement as either a mandatory condition of admission or an optional, collateral agreement often determines the authority issue when the agent holds a power of attorney empowering her to make necessary health care decisions. After reviewing the record, the court found that the arbitration agreement was presented to the agent as a voluntary standalone agreement that was not a prerequisite to the principal's admission into the facility.

The court reversed the court of appeals decision that the HCPOA granted the agent authority to sign the arbitration agreement because it authorized the agent "to pursue legal action and to grant any waiver required by health care providers." As reasoned above, the court determined the agent was not required to sign the arbitration agreement for the principal to be admitted to the facility.

Under the facts of the case, the court found neither the GDPOA nor the HCPOA granted the agent authority to execute the arbitration agreement and therefore the arbitration agreement was unenforceable. Because the arbitration agreement was unenforceable, the court did address the unconscionable issue.

The court ruling is a practical reminder that it is the explicit language of the power of attorney that controls the authority granted to attorneys-in-fact.

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