

10/26/09

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF THE STATE OF
FLORIDA IN AND FOR PINELLAS COUNTY
CIVIL DIVISION

BRENDA ANN CHRISTENSON, by
and through STEPHEN ARNOLD
CHRISTENSON, attorney-in-fact,

Plaintiff,

v.

Case No.: 09-2538-CI-8

FI-THE ABBEY, LLC d/b/a THE ABBEY
REHABILITATION AND NURSING
CENTER; MARLON DIXON a/k/a
MARLON TREESE DIXON; CHARLOTTE
CARROLL; SENIOR HEALTH
MANAGEMENT-GOLD COAST, LLC;
DANIEL DAVIS a/k/a WKTM-FLORIDA, LLC;
CSE SNF HOLDING, LLC; CAPITAL
SOURCE, INC. and KATHERINE
SHERRILL-HAGER,

Defendants.

**ORDER GRANTING DEFENDANTS' MOTION TO DISMISS AND COMPEL
ARBITRATION**

THIS CAUSE came on to be heard on Defendants' Motion to Dismiss and to Compel Arbitration and/or Stay Proceedings. This Court, having heard oral argument and reviewed written motions and memoranda, enters this order based on the following finds and conclusions.

1. Under Florida's arbitration code, there are three elements that a reviewing court must consider when ruling on a Motion to Compel Arbitration. *Seifert v. U.S. Home Corporation*, 750 So.2d 633 (Fla. 1999).

2. The elements that must be analyzed under *Seifert* are: 1) whether a valid written agreement to arbitrate exists; 2) whether an arbitrable issue exists; and 3) whether the right to arbitration was waived. *Id.* at 636.

3. The only element at issue in this case is whether a valid agreement to arbitrate exists.

4. While this case does not involve the existence of a durable power of attorney, it does involve the execution of an agreement to arbitrate based on general authority granted orally by a wife to her husband. For this reason, cases dealing with powers of attorney are valuable in understanding the requirements that must be met to create a sufficient agency relationship.

5. In *Re Estate of McKibbin*, 977 So.2d 612 (Fla. 2nd DCA); *review denied*, 987 So.2d 79 (Fla. 2008), the court held that powers of attorney are strictly construed to grant only the powers specified. The court found that the deceased's son in that case did not have the legal authority to bind his mother to arbitration when the durable power of attorney presented did not explicitly grant him authority to enter into an arbitration agreement on her behalf.

6. However, when the language set forth in the power of attorney unambiguously makes a broad and all-inclusive general grant of authority to the attorney-in-fact, the representative may enter into "binding contracts" such as those agreeing to the arbitration of claims. *Jaylene, Inc. v. Moots*, 995 So.2d 566 (Fla. 2d DCA 2008); *review denied*, 8 So.3d 1134 (Fla. 2009); *Five Points Health Care Ltd., v. Mallory*, 988 So.2d 1180 (Fla. 1st DCA 2008).

7. Whether a power of attorney contains a provision granting a sufficiently broad and unambiguous grant of authority is a matter requiring the examination of the language of any catch-all provisions contained in it as well as the relationship of that language to the types of interests over which the attorney-in-fact is granted to preside. *Sovereign Health Care of Tampa, LLC v. Estate of Huerta ex rel. Huerta*, 14 So.3d 1033 (Fla. 2d DCA 2009).

8. Power of attorney cases stand for the proposition that if the durable power of attorney provides for an unambiguous and broad general grant of authority then an arbitration agreement entered into by the attorney-in-fact is enforceable.

9. Logically, if a principal otherwise extends an unambiguous and broad general grant of authority and holds the agent out as having such authority, then the agent would possess both real and apparent authority to execute all agreements relating to the nursing home services bestowed on the principal.

10. The authority of an agent to bind the principal can be either real or apparent. *Tompkin Corp. v. Miller*, 24 So.2d 48 (Fla. 1945). Apparent authority is any authority where the principal, by his actions or words holds the agent out as authorized to operate on his behalf. *Stiles v. Gordon Land Co.* 44. So.2d 417 (Fla. 1950). Members of the public acting in good faith may rely on apparent authority unless the circumstances are such that a reasonable person would be put on notice that the agent in question may not have a grant of authority from the principal. *Id.* at 421.

11. The question of whether an agency relationship exists may be shown by substantial evidence, either direct or circumstantial. *Sugarland Real Estate v. Beardsley*, 502 So.2d 44 (Fla. 2d. 1987).

12. The finder of fact may infer the existence of an agency relationship from facts and circumstances that exist even when both the principal and agent deny the existence of an agency relationship. *Id.* at 46.

13. When apparent authority to enter into a contract on the principal's behalf has been found, the contract is enforceable. *Id.* at 45.

14. The wife in this case orally gave the husband an unambiguous all-inclusive general grant of authority and created a situation where the people at the nursing home reasonably believed the husband had such authority.

15. According to testimony available in the record, Brenda Christenson called her husband to The Abbey specifically giving him authority to sign “a bunch of papers” on her behalf. She did not limit the scope of that authority to sign on her behalf in any matter. In fact, in hindsight she articulated regret that she did not do so particularly regarding details of the DNR form. *See e.g. B. Christenson Dep.* at 65:16-19.

16. In *Aguesta v. Industrial Fire and Casualty Co.*, 467 So.2d 284 (Fla. 1985), the husband sent the wife to purchase auto insurance and by signing on a specific line she rejected UM coverage. After the vehicle was in an accident the Aguestas sought to recover under UM coverage. The Florida Supreme Court upheld the appellate court decision disapproving cases to the contrary, and rejected the Aguestas’ argument that the wife had apparent authority to purchase an insurance policy but not to reject specific coverage.

17. As in *Aguesta*, Brenda Christenson did not specify which paperwork her husband could and could not sign and entrusted him to sign all paperwork on her behalf and in her best interest.

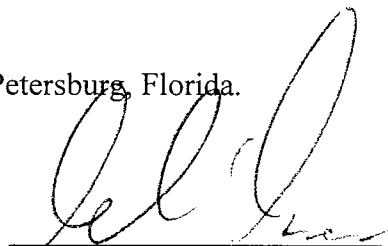
18. Regarding Plaintiff’s argument of unconscionability this Court finds there is no evidence in the record of procedural unconscionability.

ACCORDINGLY, it is hereby,

ORDERED AND ADJUDGED that Defendant's Motion to Compel Arbitration is

GRANTED.

DONE AND ORDERED this 26th day of October, 2009 at St. Petersburg, Florida.



Honorable David A. Demers
CIRCUIT JUDGE

ORIGINAL SIGNED
TRUE COPY

OCT 26 2009

DAVID A. DEMERS
Circuit Judge

Copies furnished to:
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