IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

FRANCIS LUCIA, III, INDIVIDUALLY and as PERSONAL REPRESENTATIVE of the ESTATE OF CAROLYN LUCIA, Plaintiff,	)	C.A. No. N22C-08-118 DJB
v.	)	
BRIDGE SENIOR LIVING, LLC, Defendant.	)	

MEMORANDUM OPINION

Defendant's Motion to Dismiss* – GRANTED *in part,* DENIED *in part

Joshua J. Inkell, Esquire, and Daniel P. Hagelberg, Esquire, Hudson, Castle & Inkell, LLC, Wilmington, Delaware; *for Plaintiffs*.

Louis J. Rizzo, Esquire, Reger Rizzo & Darnall LLP, Wilmington, Delaware; Francis J. Deasey, Esquire, and Matthew J. Junk, Esquire, Deasey Mahoney & Valentini, Ltd., Philadelphia, PA (admitted *pro hac vice)*; *for Defendants.*

BRENNAN, J.

This is a medical negligence and wrongful death action, in which Francis Lucia, III, individually and as personal representative of the Estate of Carolyn Lucia, filed a Complaint against Bridge Senior Living, LLC (hereinafter "Defendant").[1] Carolyn Lucia was a resident of State Street Assisted Living (hereinafter "State Street") in Dover, DE, at the time of the alleged negligence. Bridge Senior Living is the owner of State Street Assisted Living.[2] Defendant moved to dismiss the Complaint for lack of subject matter jurisdiction.[3] For the reasons explained, Defendant's Motion to Dismiss is **GRANTED, in part,** and **DENIED, in part**.

I. BACKGROUND

Carolyn Lucia (hereinafter "Lucia") was admitted to Defendant's facility on May 30, 2020, following treatment at Christiana Care Hospital for hip replacement after having fallen at her home.[4] While in Defendant's care, Lucia fell twice.[5] State Street failed to report each fall to either Lucia's family or authorities, but eventually took Lucia to Kent General Hospital for injuries sustained in each State Street fall.[6] As a result of her State Street falls, Lucia broke her femur and was required to

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[1] *Lucia, et. al. v, Bridge Senior Living, LLC.*, C.A. No. N22C-08-118, D.I. 1, 8.
[2] D.I. 8.
[3] D.I. 16.
[4] Pl.'s Resp. to Mot. to Dismiss at ¶1, Aug. 21, 2023 (D.I. 18).
[5] *Id*.
[6] *Id*. at 1

undergo surgery.[7] Lucia was eventually transferred from Kent General back to Christiana Care Hospital for treatment.[8] It is alleged that as a result of her injuries sustained while at Defendant's facility, Lucia's health declined and she died on June 28, 2020.[9]

Prior to Lucia's admission to State Street, she signed a health care power of attorney which authorized her daughter, Sharon M. McCauley ("McCauley"), and her son, Plaintiff Francis Lucia, to make any necessary health care decisions on her behalf.[10] McCauley and Francis Lucia were authorized to act individually or jointly to make health and personal care decisions on Lucia's behalf.[11] On May 29, 2020, McCauley signed admission documents required for her mother's admission to Defendant's facility, State Street.[12] Among those admission documents was a Dispute Resolution Agreement (the "Arbitration Agreement" or "Agreement"), mandating certain claims stemming from Defendant's care of Lucia to binding arbitration.[13] The Arbitration Agreement covers any and all claims or disputes brought by the Resident or the Resident's estate, successors, assigns, heirs, personal

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[7] D.I. 18 at 1–2.
[8] *Id*.
[9] *Id*. at 2
[10] *Id*.
[11] *Id*.; *see*, "Durable Health Care Power of Attorney of Carolyn A. Lucia" (D.I. 18, Ex. A).
[12] *Id*.; *see*, Def.'s Mot. to Dismiss at 3, Jul. 28, 2023 (D.I. 16).
[13] *Id*.

representatives, executors, and administrators arising out of or relating in any way to the Resident's stay at Defendant's facility.[14]

Following Lucia's death, Plaintiff filed the instant three-count Complaint. Plaintiffs assert survival causes of action in Negligence, Negligence *Per Se* and Wrongful Death.[15] In lieu of an Answer, Defendant filed this Motion to Dismiss, claiming this court lacks jurisdiction over the subject matter of the suit pursuant to the arbitration agreement.[16] Oral argument was held November 8, 2023.[17] This is the Court's decision.

I. STANDARD OF REVIEW

Pursuant to Superior Court Rule 12(b)(1), this Court may dismiss a claim where it lacks jurisdiction over the subject matter.[18] Under Delaware law, a court "lacks subject matter jurisdiction over a claim that is 'properly committed to arbitration.'"[19] While the Court cannot compel arbitration, it can determine "whether an enforceable arbitration agreement exists for purposes of subject matter

[14] D.I. 16, Ex. B, at ¶¶ 8.
[15] Am. Compl. at 5–11 (D.I. 8).
[16] D.I. 16
[17] D.I. 22
[18] Super. Ct. Civil R. 12(b)(1); *see, W. IP Commc'ns, Inc. v. Xactly Corp.*, 2014 WL 3032270 at *5 (Del. Super. Ct. June 25, 2014).
[19] *Id*. (quoting *Aquila of Del., Inc. v. Wilm. Trust Co.,* 2011 WL 4908406, *1 (Del. Super. Oct. 10, 2011)).

jurisdiction."[20] In making this determination, the Court should consider "whether a valid binding arbitration agreement exists" and "whether the scope of the agreement covers the pending claims."[21]

The burden of establishing subject matter jurisdiction rests with the moving party.[22] "On a Motion to Dismiss under Rule 12(b)(1), the Court must accept every well-pled allegation as true and draw all reasonable inferences in the non-movant's favor."[23] Such a motion will be denied unless it appears to a "reasonable certainty" that the plaintiff would not be entitled to relief under any set of facts.[24]

II. DISCUSSION

Moving Defendant argues that this court lacks subject matter jurisdiction over all of Plaintiff's claims due to the Arbitration Agreement. Accordingly, Defendant asserts that these claims should be resolved through binding arbitration. Plaintiffs oppose and argue the Arbitration Agreement is unenforceable against Francis Lucia individually and as the representative of Lucia's estate. Plaintiffs advance two

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[20] *Donofrio v. Peninsula Healthcare Servs., LLC*, 2022 WL 1054969 at *2 (Del. Super. Ct. Apr. 8, 2022) (citing *Jones v. 810 Broom St. Operations*, 2014 WL 1347746, at *1 (Del. Super. June 25, 2014)).
[21] *Jones v. 810 Broom St. Operations LLC*, 2014 WL 1347746 at *1 (Del. Super. Ct. Apr. 7, 2014) (citing *Elia v. Hertrich Family of Automobile Dealerships*, Inc., 2014 WL 843839 (Del.Super. Mar. 4, 2014)).
[22] *Donofrio*, 2022 WL 1054969 at *2.
[23] Skinner *v. Peninsula Healthcare Servs., LLC*, 2021 WL 778324 at *1 (Del. Super. Ct. Mar. 1, 2021).
[24] *Id*.

theories as to why the Arbitration Agreement is invalid: (1) McCauley did not have the authority to sign the Arbitration Agreement, as it is outside the scope of the healthcare power of attorney, and (2) Francis Lucia did not sign the Arbitration Agreement, and therefore cannot be bound by its terms.

A. THE ARBITRATION AGREEMENT IS ENFORCEABLE AGAINST THE ESTATE.

Delaware law mandates a strong presumption favoring the enforcement of arbitration agreements.[25] This is congruous with the federal policy favoring arbitration indicated by the Federal Arbitration Act ("FAA").[26] Delaware arbitration law mirrors the FAA.[27]

> The FAA states that "[a] written provision ... to settle by arbitration a controversy ... shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." Under the FAA, courts apply ordinary state-law principles governing contract formation when determining whether a valid arbitration agreement exists. Arbitration is a "creature of contract" and a party "cannot be forced to arbitrate a claim absent a contractual or equitable duty to do so."[28]

Under Delaware law, the formation of a valid contract requires mutual assent to the definite terms of an agreement. Whether a party mutually assented to the

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[25] *Id*.
[26] *Id*.
[27] *Dewey v. Amazon.com, Inc.*, 2019 WL 3384769 at *3 (Del. Super. Ct. July 25, 2019) (quoting *James Jackson, LLC v. Willie Gary*, LLC, 906 A.2d 76, 79 (Del. 2006)).
[28] *Donofrio*, 2022 WL 1054969 at *4.

contract is an objective determination based solely on overt manifestations of assent rather than subjective intent.[29] Unless there is a clear expression of such intent, a party cannot be forced to arbitrate the merits of a dispute and there exists no agreement for arbitration.[30] Furthermore, "[w]here the putative contract is in the form of a signed writing, that document generally offers the most powerful and persuasive evidence of the parties' intent to be bound."[31]

The Arbitration Agreement itself was signed twice by McCauley; first on behalf of Lucia and second as the person responsible for the resident. The Arbitration Agreement was part of a larger admission agreement to Defendant's facility,[32] which was again signed by McCauley in numerous places, and which contained an integration clause with the admission agreement.

Plaintiffs first point to the Durable Healthcare Power of Attorney executed by Lucia.[33] Citing 16 *Del. C.* § 25,[34] Plaintiffs contend that the power of attorney only

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[29] *See Eagle Force Holdings, LLC v. Campbell*, 187 A.3d 1209, 1230 (Del. 2018).
[30] *See*, DMS Properties-First, Inc. v. P.W. Scott Assocs., Inc., 748 A.2d 389, 391 (Del. 2000) (citing *Pettinaro Constr. Co., Inc. v. Harry C. Partridge Jr. & Sons, Inc.*, Del. Ch., 408 A.2d 957, 963 (1979)).
[31] *Donofrio*, 2022 WL 1054969 at *4.
[32] *See*, (D.I. 16, Ex. B).
[33] *See*, (D.I. 18, Ex. A).
[34] Under 16 Del. C. § 25, power of attorney for health-care designates an agent to make healthcare decisions for the individual granting the power. These decisions may include, but are not limited to: (1) Selection and discharge of health-care providers and institutions; (2) Acceptance or refusal of diagnostic tests, surgical procedures, programs of medication and orders not to resuscitate; (3) Directions to provide, withhold, or withdraw artificial nutrition and hydration and all other forms

authorized McCauley and Francis Lucia to make healthcare decisions for Lucia. Plaintiffs argue that as a result, McCauley had no authority to agree to arbitrate any of Lucia's claims, nor could she meaningfully assent to the Arbitration Agreement.

The Durable Healthcare Power of Attorney executed by Lucia is not as limited as Plaintiffs suggest. Plaintiffs point to this Court's decision in *Skinner v. Peninsula Healthcare Services, LLC,* for the proposition that a "Durable Healthcare Power of Attorney" is distinguishable from "General Power of Attorney" in terms of contracting powers. However, the *Skinner* Court did not specifically address any limitations on the power to contract under a "Durable Healthcare Power of Attorney."[35] Moreover, the text of Lucia's Durable Healthcare Power of Attorney provided, in pertinent part, that Francis Lucia and McCauley had authority "[t]o contract on [her] behalf for any health care related service or facility…"[36] and "[t]o take any other action necessary to do what I authorize here, including (but not limited to) granting any waiver or release from liability required by any hospital, physician, or other health care provider…".[37] This document expressly authorized McCauley to enter into contracts of the same nature as the Arbitration Agreement on Lucia's behalf.

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of health care; and (4) Execution of a DMOST form pursuant to Chapter 25 of this title.

[35] *See generally, Skinner*, 2021 WL 778324 at *3.

[36] D.I. 16, Ex. B, at ¶¶ 4.

[37] *Id*. at ¶¶ 8.

Looking at the facts presented in the light most favorable to the non-moving party, Plaintiffs, the record is clear that the Arbitration Agreement was part and parcel to the greater health care contract signed by McCauley pursuant to the healthcare power of attorney. McCauley, on behalf of Lucia, contracted for health care. The Arbitration Agreement – from the record before the Court – was a requirement agreement to having received that care. The fact that the Arbitration Agreement contained an integration clause to the admission documents illustrates that the documents are intertwined.

The Arbitration Agreement between the parties covers any and all claims or disputes brought by the Resident or the Resident's estate, successors, assigns, heirs, personal representatives, executors, and administrators arising out of or relating in any way to the Resident's stay at Defendant's facility.[38] The scope of the Arbitration Agreement is clearly defined to cover all of Lucia's claims arising out of or relating to her stay at Defendant's facility. The Estate's claims arise directly out of her stay at Defendant's facility and are therefore subject to binding arbitration. Signing the Agreement was a necessary action to admit Lucia into a health care facility, one which the health care power of attorney granted McCauley the authority to sign. As a result, the Estate is bound by the Arbitration Agreement and this Court lacks jurisdiction to hear its claims.

[38] D.I. 16, Ex. B, at ¶¶ 8.

B. FRANCIS LUCIA, INDIVIDUALLY, IS NOT BOUND BY THE ARBITRATION AGREEMENT.

Plaintiff Francis Lucia, individually, further argues that he is not bound by the Arbitration Agreement because he never signed the Agreement in any capacity, nor did he ever have any intention of entering such an agreement. Defendant argues that not only is the record devoid of evidence that Francis Lucia was not aware of and did not consent to the Arbitration Agreement, but the Agreement itself binds both Lucia and her "estate, successors, assigns, heirs, personal representatives, executors, and administrators."[39]

While the Estate is bound by the Agreement, the same is not true of Plaintiff Francis Lucia's wrongful death claims. Again, the *Skinner v. Peninsula Healthcare Services, LLC*, is instructive. In addition to the above issues, *Skinner* considered whether survival and wrongful death claims brought by a plaintiff, individually and on behalf of her deceased father, were subject to an arbitration agreement and whether the plaintiff's siblings, who never signed the agreement, were subject to binding arbitration.[40] The arbitration agreement was contained within an admission agreement to a healthcare facility, was signed by the plaintiff, and extensively covered all of her father's claims.[41] As to the survival claims, *Skinner* held it had no

[39] Def.'s Reply Brf. Mot. to Dismiss at p. 9 (D.I. 19).
[40] *See generally, Skinner*, 2021 WL 778324 at *1.
[41] *Id*. at *3.

jurisdiction over such claims because they were subject to binding arbitration.[42] However, as to the wrongful death claim, *Skinner* found Delaware's Wrongful Death Statute "provides a separate cause of action for the decedent's spouse, parent, child, and siblings in some cases."[43] In support of its ruling, *Skinner* relied upon significant precedent which all stands for the proposition that a survival wrongful death claim is a separate and distinct claim, albeit derivative in nature of the original tortious conduct.

Skinner relied upon several cases in so ruling that are instructive. In *Cynthia Parlin, et al. v. Dynocorp In'l Inc., et al.*, this Court held that "although a wife's wrongful death claim was derivative in the sense that her claim derived from the tortious conduct leading to her husband's death, her husband could not unilaterally release her wrongful death claim because it was a cause of action that she held separate and distinct from her husband."[44] In *Margaret Spadaro, et al. v. Abex Corporation, et. al.*, this Court explained that in Delaware, "although a wrongful death claim is a derivative claim, this does not mean that a release of the underlying claim automatically releases the tortfeasor from wrongful death and loss of

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[42] *Id*.
[43] *Id*.
[44] *Id*. at *4 (citing *Cynthia Parlin, et al. v. Dynocorp In'l Inc., et al.*, 2009 WL 3636756 (Del. Super. 2009).

consortium claims."[45] And finally, *Skinner* considered *Jones v. 810 Broom St. Operations*, which held that "an Arbitration Agreement signed only by a decedent does not bind independent wrongful death claims that others may have as a result of the decedent's death."[46]

Wrongful death claims are statutorily based and are separate and distinct from a survivor claim.[47] As Plaintiff Francis Lucia's wrongful death claim is independent from the Estate's claims, he is not bound by the arbitration agreement simply because it was signed on behalf of Lucia.[48] Francis Lucia never himself signed the Arbitration Agreement nor the admission documents under his authority pursuant to the health care power of attorney. Arbitration will not be forced upon a non-consenting party.[49] Both the decisional case law, as well as public policy, dictates that the Arbitration Agreement binding not only Lucia and her Estate, but her "successors, assigns, [and] heirs…" is not enforceable against Francis Lucia, individually as a Plaintiff under the wrongful death statute. As a result, the Court has jurisdiction over Plaintiff Francis Lucia's individual claim and the motion to dismiss his wrongful death claim is **DENIED**.

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[45] *Id*. (citing *Margaret Spadaro v. Abex Corporation, et al*., 1993 WL 603378, at *1 (Del. Super. 1993)).
[46] *Id.* (citing *Jones v. 810 Broom St. Operations*, 2014 WL 1347746, at *1 (Del. Super. June 25, 2014)).
[47] *Id*. at *5.
[48] *Id*.
[49] *Id*.

III. CONCLUSION

For the foregoing reasons, with respect to Counts I and II, Defendant's Motion to Dismiss is **GRANTED.** The motion, however, is **DENIED** as to Count III.

IT IS SO ORDERED, this 16th day of February, 2024.

Danielle J. Brennan