Control No. 15092215

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

INEZ CURTIS **Plaintiff**	:	
	:	APRIL TERM, 2015
vs.	:	
	:	NO. 1155
ARBOR TERRACE AT CHESTNUT HILL a/k/a ARBOR TERRACE, THE MANOR AT CHESTNUT HILL, CRP CHESTNUT HILL LESSEE, LP, and THE ARBOR COMPANY	:	RECEIVED MAR 0 4 2016 N. ERICKSON DAY FORWARD
Defendants	:	

ORDER

And Now, this 7th day of March, 2016, after considering the Preliminary Objections filed by the Arbor Defendants, the Responses by Plaintiff, all Memoranda and Supplemental Memoranda, and, for the reasons set forth in Court Exhibit "A", attached hereto, it is hereby **ORDERED** that the Preliminary Objections are **OVERRULED**.

Defendants shall file an Answer to Plaintiff's Complaint within twenty (20) days from the date this Order is filed.

DOCKETED
MAR 0 4 2016
N. ERICKSON
DAY FORWARD

BY THE COURT:

FREDERICA A. MASSIAH-JACKSON, J.

Curtis Vs Arbor Terrace At Chestnut Hill A/K-ORDER

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Court Exhibit "A"

These Arbor Defendants filed Preliminary Objections in September, 2015, pursuant to Rule 1028(a)(6). The Defendants asserted that a Nursing Home Arbitration Agreement required that the litigation be dismissed and the matter removed to ADR Options for resolution. The Plaintiff, Mrs. Inez Curtis, opposed the Preliminary Objections.

Whether intentionally or inadvertently, the Arbor Defendants failed to attach a copy of the Power of Attorney upon which the Defendants based their claim of contractual agreement. On December 14, 2015, this Court overruled the Preliminary Objections because there was no record or evidence that the Plaintiff's daughter, Ms. Catana Montague, had actual or apparent authority to sign an Arbitration Agreement or act as a "Responsible Person" on her mother's behalf.

By Motion for Reconsideration filed on December 23, 2015, the Arbor Defendants submitted a Power of Attorney signed by Inez Curtis. They requested a limited period to expand the factual record pursuant to Rule 1028(c)(2). The Defendants specifically declined the opportunity proffered by the Court on December 14th for a full discovery period to explore the issues raised. On January 7, 2016, this Court vacated the Order dated December 14, 2015. After discovery for the purpose to develop a "fuller exposition" of the facts and circumstances of the nature and extent of Ms. Montague's authority to act, Supplemental Memoranda were submitted by the parties on February 29, 2016.

The Defendants have framed the Court's inquiry as follows:

> "Did Catana Montague possess authority to sign the Arbitration Agreement on Plaintiff Inez Curtis' behalf at the time of Plaintiff's admission to Defendant's facility?"

A more precise description of the challenge for this Court is:

> "Whether the Arbor Defendants who had actual notice of Inez Curtis' dementia when the Power of Attorney was signed, can reasonably rely on the apparent authority of Catana Montague who subsequently signed an Arbitration Agreement."

This Court must conclude that under the particular circumstances of this case the Arbor Defendants knew that the principal (Mrs. Curtis) did not knowingly authorize her daughter (Ms. Montague) to make decisions in the Power of Attorney. Accordingly, when Ms. Montague signed documents entitled Responsible Person Agreement and Resident and Community Arbitration Agreement she did so without authority to bind her mother to relinquish rights to a jury trial.

Ms. Catana Montague, the daughter of Plaintiff Inez Curtis, explained her family's reasons for seeking placement at Arbor Terrace. (January 29, 2016, N.T. 16-19). Mrs. Curtis had been diagnosed with Alzheimer's and was transported each day to an adult day care program for three years prior to March, 2012. When Plaintiff-Curtis' health declined with increasing difficulties to care for herself, to get dressed and attend to personal needs, the family decided a residential facility was appropriate.

The Arbor Defendants presented Ms. Maureen Robertson to explain the nursing home admissions process. She stated that the families meet with the Arbor Terrace representatives several times, they tour the facilities and receive packets of written information. At the point when Defendants determine a person will be admitted, the family is asked to bring in a Power of Attorney when admission documents are processed. (January 29, 2016, N.T. 17-21).

The exhibits submitted by the parties with their Supplemental Memoranda reveal the following chronology of events:

March 1, 2012	-	Durable Power of Attorney from Inez Curtis (Plaintiff) to Catana Montague (daughter)
March 1, 2012	-	Healthcare Power of Attorney from Inez Curtis to Ms. Montague
March 13, 2012	-	Dr. Ropal Patel, Arbor Defendants' Physician – Medical Evaluation and Diagnosis: (2) Dementia; (4) Secured Dementia Care; (7) Medication: three different oral daily dementia medications. Mrs. Curtis not able to self-administer her meds.
March 19, 2012	-	Progress Note from Dr. Patel - "Dementia"
	-	Behavioral or Cognitive Need and Degree "unable to retain information in short term memory due to dementia"
April 4, 2012	-	Responsible Person Agreement signed by Ms. Montague.
April 4, 2012	-	Resident and Community Arbitration Agreement signed by Ms. Montague.
December 18, 2012	-	Responsible Person Agreement signed by Ms. Montague.
December 18, 2012	-	Resident and Community Arbitration Agreement signed by Ms. Montague.

The facts in this record reveal that Plaintiff Curtis had been diagnosed with Alzheimer's disease prior to arriving at Arbor Terrace and then within two weeks of moving in, the facility's physician evaluated and confirmed the diagnosis of dementia. Arbor Terrace cannot reasonable rely on the apparent authority of the agent's Durable Power of Attorney as a basis to compel the Arbitration Agreement in light of Arbor's actual notice of the compromised mental state of the principal. See also, Robertson Deposition, N.T. 21.

The notion that Plaintiff Curtis' daughter is well-educated and understands that a contract is legally binding is not determinative of whether these Defendants purposefully relied on an invalid agency relationship as a basis for the Preliminary Objections. See, Defendants' Supplemental Memorandum, pages 4-9.

In Walton v. Johnson, 66 A.3d 782 (Pa. Superior Ct. 2013), the Appellate Court described an agency relationship at 786:

> "An agency relationship may be created by any of the following: (1) express authority, (2) implied authority, (3) apparent authority, and/or (4) authority by estoppel. Express authority exists where the principal deliberately and specifically grants authority to the agent as to certain matters. *See Bolus v. United Penn Bank,* 363 Pa.Super. 247, 525 A.2d 1215 (1987). Implied authority exists in situations where the agent's actions are 'proper, usual and necessary' to carry out express agency. *See Passarelli v. Shields,* 191 Pa.Super. 194, 156 A.2d 343 (1959). Apparent agency exists where the principal, by word or conduct, causes people with whom the alleged agent deals to believe that the principal has granted the agent authority to act. *See Turner Hydraulics v. Susquehanna Construction Co.,* 414 Pa.Super. 130, 606 A.2d 532 (1992). Authority by estoppel occurs when the

> principal fails to take reasonable steps to disavow the third party of their belief that the purported agent was authorized to act on behalf of the principal. *See Turnway Corp. v. Soffer,* 461 Pa. 447, 336 A.2d 871 (1975)."

The Arbor Defendants have been unable to offer any argument or evidence to mitigate, negate or contradict the undisputed fact that their own physician, Dr. Patel, confirmed the earlier diagnosis of dementia in Inez Curtis. The medical records at Arbor Terrace demonstrate that Plaintiff Curtis was unable to retain information at the time she signed the Power of Attorney.

The party asserting the existence of an agency relationship bears the burden of proving it. Walton v. Johnson, supra. See also, Fierst v. Commonwealth Land Title Insurance Co., 451 A.2d 674 (Pa. 1982); Passarelli v. Shields, 156 A.2d 343 (Pa. Superior Ct. 1959). As the moving party, the Arbor Defendants have the burden of proving their Preliminary Objections.

This Court has earlier noted that there is a two-part test to determine whether arbitration should be compelled, citing Wisler v. Manor Care of Lancaster, PA, LLC, 124 A.3d 317 (Pa. Superior Ct. 2015); MacPherson v. Magee Memorial Hospital; 128 A.3d 1209 (Pa. Superior Ct. 2015); Pisano v. Extendicare Homes, Inc., 77 A.3d 654 (Pa. Superior Ct. 2013).

> "(1) The trial court must determine if a valid agreement to arbitrate exists between the parties; and (2) if the trial court determines that such an agreement does exist, it must then determine if the dispute involved is within the scope of the arbitration provision."

The Arbor Defendants had actual knowledge that the Power of Attorney was not valid, thus the "agreement" to arbitrate cannot withstand scrutiny. Apparent authority must emanate from the principal and not from the agent.

Notwithstanding the clear and liberal Pennsylvania policies favoring arbitration, the expanded factual record establishes physical illnesses, dementia, disorientation and confusion on the part of Plaintiff Curtis prior to 2012 and throughout March, 2012. This Court is unable to conclude on this record that a valid Arbitration Agreement was created on April 4, 2012, where the principal did not knowingly convey authority to an agent on March 1, 2012, and, the Defendants had actual knowledge of the cognitive deficits.