

# Arbitration Agreements and Powers of Attorney Both Subject To Strict Construction

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Cheryl D. Shoun  
843.720.1762  
cshoun@nexsenpruet.com

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Arbitration emanates from contract, and the enforceability of an arbitration agreement is governed by general concepts of contract law. A power of attorney is a written document by which one, as principal, authorizes another to act on his behalf. When reviewing an action to set aside or interpret a power of attorney, South Carolina's courts have turned to contract law. Whether interpreting an arbitration agreement or a power of attorney, the fundamental rule is to ascertain and support the intention of the parties. To do so, courts look to the language of the contract in question. The South Carolina Court of Appeals recently demonstrated application of strict contract construction to both an arbitration agreement and powers of attorney in *Hilda Stott, individually and as Personal Representative of the Estate of Jolly P. Davis v. White Oak Manor, Inc, et al.* 2019 WL 1926847 (May 1, 2019).

On May 11, 2012, Jolly P. Davis ("Decedent") signed a durable power of attorney for finance and a durable health care power of attorney in favor of Hilda Stott ("Stott"). The power of attorney for finance was recorded on January 8, 2013. The durable health care power of attorney, which was never recorded, was a springing power of attorney; by design, and consistent with applicable law, it became effective only upon Decedent's mental incompetence.

On January 2, 2013, Decedent was admitted to White Oak, pursuant to which Stott signed White Oak's admission documentation that included an arbitration agreement. The agreement provided, among other things, that Stott was advised that beginning 7 days from the date thereof, and for another 10 days thereafter, there was a right to "opt out" of the agreement. Further, if written notice of the opt out was not received within the stated time frame, the agreement *would remain and continue in full force and effect*.

Decedent died on January 16, 2013. In December 2015, Stott, as the personal representative of Decedent's estate, filed a wrongful death and survival action against White Oak. White Oak filed a motion to compel arbitration of those claims based upon the arbitration agreement included

in the admission documents. The circuit court denied White Oak's motion and the matter came before the court on White Oak's appeal.

White Oak first argued that the durable power of attorney for finance was sufficient to convey authority to Stott to sign the arbitration agreement. The court disagreed. A durable power of attorney contains language providing that the agent's authority is exercisable during periods of the principal's physical or mental incapacity and it survives the principal's disability. In South Carolina, a durable power of attorney for finance must be recorded to be effective. Creatively, White Oak argued even though Stott's durable power of attorney for finance was not recorded at the time she executed the admission documents, because it was recorded prior to the expiration of the opt out period for the arbitration agreement, she possessed sufficient authority, and indeed, was bound by the agreement. Turning to the principles of strict contract interpretation, the court found the language of the arbitration agreement plain and capable of legal construction, thereby determining the force and effect thereof. Because the opt out clause provided Stott would 'no longer' be bound by it, the court found the clear interpretation to be that the agreement became effective upon signature. Because Stott's power of attorney for finance was not recorded at the time of her execution of the arbitration agreement, she lacked sufficient authority to sign the agreement on Decedent's behalf.

The court likewise rejected White Oak's argument that Stott's durable health care power of attorney granted authority to sign the arbitration agreement on Decedent's behalf.

Generally, a health care power of attorney authorizes an attorney-in-fact to make health care decisions on behalf of the principal and will be classified as durable if it includes language evidencing the principal's intent that the agent's authority may be exercised in the event of the principal's physical or mental incapacity. While a durable power of attorney is generally effective upon execution, it may provide that it will not be effective until the principal's incapacitation. This type of power of attorney, referred to as a springing durable power of attorney, is authorized under South Carolina law. Here, the durable health care power of attorney granted to Stott provided the Decedent's intention to create a durable power of attorney effective upon, and only during any period of his mental incompetence. The medical evidence before the court, from the Decedent's admission into White Oak, indicated his mental function was intact, being oriented to his location, age, and other significant matters. Again turning to strict contract interpretation, the court found because Decedent was mentally competent upon his admission into White Oak, and the time at which the arbitration agreement was signed by Stott, Stott's durable health care power of attorney did not authorize her to bind the Decedent to the arbitration agreement.

While *Stott* offers no ground breaking new law, it demonstrates the court's commitment to fulfilling its obligation to analyze a contract, or in this case, multiple contracts, in order to ascertain the intention of the parties, and giving effect thereto.

*Cheryl D. Shoun is a trial attorney and certified mediator whose experience includes construction law, insurance defense, personal injury defense, employment litigation and medical malpractice. As a frequent writer, she serves as editor for Nexsen Pruet's TIPS: Torts, Insurance and Products Blog.*