

## Recent California Court of Appeal Decisions Highlight Importance of Process and Need for Signature of Authorized Individual to Secure Binding Arbitration Agreement

by Lori C. Ferguson & Natalie M. Smith



Two recent opinions of the California Court of Appeal address the enforcement of arbitration agreements in the senior care setting when executed by someone other than the resident. The Court of Appeal's decisions in *Valentine v. Plum Healthcare Group, LLC* (2019) 37 Cal.App.5th 1076 (*Valentine*) and *Lopez v. Bartlett Care Center LLC* (2019) \_\_\_\_ Cal.App.5th \_\_\_\_ [2019 WL 3422610] (*Lopez*) serve as a reminder—to skilled nursing facilities, assisted living communities, and other residential communities alike—that an arbitration agreement that is not signed by the resident may not be enforceable as to the resident and may not even be enforceable against the individual who signed purportedly on the resident's behalf. Care must be taken to ensure the person signing the agreement on behalf of the resident is authorized to do so and that the agreement is clear about who is bound.

In *Valentine*, a husband executed two arbitration agreements in connection with his wife's admission to a skilled nursing facility. One agreement was specific to medical malpractice claims and the other for all other claims, including wrongful death and elder abuse. After the resident's death, her husband and adult children filed a lawsuit asserting claims of wrongful death. Her husband also claimed elder abuse on behalf of his wife's estate. The facility sought to enforce the arbitration agreements as to all claimants. The trial court denied the facility's petition to compel arbitration, and on appeal the Third District Court of Appeal agreed.

The appellate court ruled that although a skilled nursing facility resident or the resident's *authorized* agent can sign an arbitration agreement that binds the resident's heirs as to their wrongful death claims, here Plum Healthcare Group, LLC did not establish that Mr. Valentine was his wife's *authorized* agent for this purpose. Agency is a fact-specific inquiry, and in this case, the court considered:

(1) that spouses are not automatically authorized to bind each other to arbitration agreements;

(2) the resident was capable of making her own health care decisions, was present when her husband signed the documents, but she did not know he was signing them or what he was

signing;

(3) facility staff did not ask the resident if her husband had authority to sign the arbitration agreements as her agent;

(4) there was no history with the facility to allow the facility to conclude the resident authorized her husband to bind her to arbitration; and

(5) the daughter, who was the "responsible party" and directed facility staff to have her father sign the admission documents, was not herself authorized to sign an arbitration agreement on behalf of her mother.

Because Mr. Valentine lacked authority to sign the arbitration agreements on behalf of his wife, the arbitration agreements were unenforceable as to the children's wrongful death claims. The appellate court also ruled that Mr. Valentine's decision to execute the arbitration agreements himself meant his claims – both for himself and as his wife's successor in interest – were subject to the provisions of those agreements. Nonetheless, under a provision of state law that allows the trial court, in its discretion, to deny arbitration when a party to the arbitration agreement is also a party to a pending court action arising out of the same transaction or series of transactions, in order to prevent conflicting rulings on common issues of law and fact, the Court of Appeal upheld the trial court's decision to deny arbitration in order to avoid inconsistent results.

In the *Lopez* case, Jasmine Lopez filed suit against Bartlett Care Center for (1) negligence, willful misconduct, elder abuse, and violation of the patient's bill of rights as her mother's successor in interest; and (2) wrongful death in her individual capacity. Bartlett filed a petition to compel arbitration pursuant to a two-page arbitration agreement Ms. Lopez signed as her mother's representative (not as her mother's *authorized* agent). The trial court denied Bartlett's petition on two grounds. First, it held that Ms. Lopez's claims as her mother's successor in interest were not arbitrable because Bartlett failed to prove Ms. Lopez had *authority* to sign the arbitration agreement on her mother's behalf. Second, the trial court ruled that the arbitration agreement was unenforceable against Ms. Lopez in her individual capacity because the agreement was unconscionable. Bartlett appealed.

Like *Valentine*, the Court of Appeal affirmed the trial court's ruling in *Lopez*. In doing so, the appellate court held that the process by which Ms. Lopez executed the subject agreement was inherently unfair (i.e., procedurally unconscionable) since (1) the agreement, on its face, was between a "resident" and Bartlett; and (2) did not provide a warning to Ms. Lopez that the agreement was binding on her in her individual capacity. The Court of Appeal also held that the provisions of the agreement were one-sided in favor of the facility (i.e., substantively unconscionable) because the agreement lacked mutuality, excluding claims the facility was likely to pursue against the resident, namely, evictions and collections actions, while including claims the resident was likely to pursue against the facility. Notably as to this issue, the Court of Appeal rejected the facility's argument that the exclusion clause could be severed from the arbitration agreement because the facility failed to raise the issue in the trial court.

The *Valentine* and *Lopez* decisions serve as a reminder to residential communities where it is common for family members to be involved in signing admission paperwork to ensure that arbitration agreements are either signed by the resident or someone with *express* authority (preferably in writing) to execute the agreement on the resident's behalf. Moreover, if the terms of an arbitration agreement also bind the resident's authorized agent in an individual capacity, facilities should take care to educate the authorized agent of this fact.

For more information, please contact:

**Lori C. Ferguson**, Partner  
916-551-2813  
lferguson@hansonbridgett.com

**Natalie M. Smith**, Associate  
916-491-3045  
NMSmith@hansonbridgett.com