Filed 11/20/17 Pegula v. La Mirada Healthcare CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

ANNE PEGULA, by and through her Guardian ad Litem, RONALD PEGULA, Plaintiff and Respondent, v. LA MIRADA HEALTHCARE, LLC, Defendant and Appellant.	B278981 (Los Angeles County Super. Ct. No. BC620591)

APPEAL from an order of the Superior Court of Los Angeles County. Lori Ann Fournier, Judge. Affirmed.

Lewis Brisbois Bisgaard & Smith, Lann G. McIntyre, Brittany Bartold Sutton, Kathleen Walker, and Jeffrey S. Healey for Defendant and Appellant.

Lanzone Morgan, James M. Morgan, Anthony C. Lanzone, Amber M. Tham, Andrew Micaraset and Kyle Schneberg for Plaintiff and Respondent.

Anne Pegula through her guardian ad litem, her son Ronald Pegula, sued La Mirada Healthcare, LLC dba Imperial Healthcare Center for elder abuse, negligence and violation of the Patient's Bill of Rights. La Mirada petitioned to compel arbitration of the dispute based on an agreement to arbitrate claims involving medical malpractice Ronald had signed shortly after Anne was admitted to the skilled nursing facility owned by La Mirada's predecessor-in-interest, Life Care Centers of America.[1] The trial court denied the petition, finding La Mirada had not established that Ronald had authority as Anne's agent or ostensible agent to bind her to arbitrate her claims against the facility and its owner. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Anne entered the 24-hour skilled nursing facility known as Imperial Healthcare Center in January 2014 following surgery to repair her fractured hip, which had been broken when she fell at home. At the time Anne was 94 years old and had Alzheimer's dementia.

1. *The Arbitration Agreement*

On February 1, 2014, some days after Anne was admitted to the facility, her son Ronald signed a voluntary agreement for arbitration of claims involving medical malpractice on the line designated for "Signature of Legal Representative." The agreement also included a signature by the "Facility Representative." The line for "Signature of Resident" was blank. A footnote to the signature line for the legal representative stated, "NOTE: If Resident is unable to sign, you must add:

---

[1] We refer to Ronald Pegula and his mother Anne Pegula by their first names for clarity.

_____ (Person Signing) signs this Arbitration Agreement on behalf of Resident as Resident's agent and Legal Representative." That additional language was not included in the agreement signed by Ronald.

The body of the document stated it was an agreement to arbitrate any medical malpractice dispute that might arise between "the 'Resident,'" defined as Anne Pegula, and the "'Facility,'" defined to include the particular facility where the Resident resided (here, Imperial Healthcare Center, identified in the agreement as "ICH"), Life Care Centers of America, Inc. and Life Care Physicians LLC. The agreement provided it was binding on the Facility and its "agents, partners, officers, directors, . . . employees, . . . predecessors, successors and assigns, or any of them . . . ," as well as the Resident and his/her successors, assigns, agents and heirs, among others.

Pursuant to Health and Safety Code section 1599.81, the top of the first page of the agreement contained the following notice: "Residents shall not be required to sign this arbitration agreement as a condition of admission to this facility, and cannot waive the ability to sue for violation of Resident Bill of Rights."[2] This statement was repeated in the Acknowledgements portion of the document in substantially the same form, "The execution of this Arbitration Agreement is voluntary and is not a precondition

---

[2] Health and Safety Code section 1599.81 provides in part, "(a) All contracts of admission that contain an arbitration clause shall clearly indicate that agreement to arbitration is not a precondition for medical treatment or for admission to the facility. [¶] (b) All arbitration clauses shall be included on a form separate from the rest of the admission contract. . . ."

to receiving medical treatment at or for admission to the Facility."

2. *Anne's Complaint for Damages for Elder Abuse and Neglect, Negligence and Violation of Patient's Bill of Rights*

According to Anne's complaint, filed May 17, 2016, at the time she was admitted to the facility, she was totally dependent on others for all activities of daily living, "including bed mobility, toileting, dressing, ambulating, and transferring" and was at a high risk for falls, a risk known to La Mirada. Anne further alleged La Mirada knew she was incontinent and had a high risk for urinary tract infections. Nonetheless, La Mirada failed to take necessary preventative measures, for example leaving Anne in soiled diapers for extended periods of time, substantially increasing her risk of contracting a urinary tract infection. During her residence at the facility Anne exhibited fits of yelling and screaming, "classic signs and symptoms of a urinary tract infection in the elderly." These episodes persisted even after antibiotics were administered, suggesting the antibiotics were ineffective. La Mirada also gave her Ativan, a drug that can commonly cause "drowsiness, dizziness, muscle weakness, loss of balance and loss of coordination," thereby increasing Anne's risk of falls.

As a result of La Mirada's inattention, Anne fell from her bed. She was taken to a hospital where she was diagnosed with a left hip fracture and a hematoma on her forehead from the fall, as well as an improperly treated urinary tract infection. Even after she suffered these injuries, La Mirada repeatedly failed to provide preventative measures or prescribed therapies.

Anne was discharged from the La Mirada facility in August 2015. Nine months later Ronald, as Anne's guardian ad litem,[3] sued La Mirada alleging causes of action for elder abuse and neglect, negligence and violation of the Patient's Bill of Rights. The complaint alleged La Mirada and its officers and employees had breached their duty of care to Anne and, by their actions and inactions, violated statutory and regulatory duties imposed by federal and state law to protect elderly adult residents of care facilities during Anne's residency at the La Mirada facility. The complaint sought general damages according to proof, punitive damages and attorney fees and costs of suit.

3. *The Petition To Compel Arbitration*

In response to Anne's complaint La Mirada petitioned to compel arbitration, based on the agreement Ronald signed after Anne had been admitted to the facility. A copy of the voluntary arbitration agreement was attached as Exhibit A to the notice of petition and petition. In its memorandum of points and authorities in support of the petition, La Mirada argued Ronald, by executing the arbitration agreement, "acted in a manner consistent with the Civil Code § 2295's definition of agent," explaining that "[a]gency may be inferred from circumstances and conduct of the parties."

In her opposition Anne emphasized that La Mirada, as the petitioner, bore the burden of establishing the existence of a valid agreement to arbitrate. La Mirada failed to carry its burden,

---

[3] The Register of Actions included in La Mirada's Appellant's Appendix indicates Ronald filed an ex parte application for appointment as Anne's guardian ad litem on May 17, 2016. The order of appointment was filed May 26, 2017.

Anne argued, because it failed to present evidence that Ronald had the authority to sign the arbitration agreement as Anne's agent. In addition, Anne continued, La Mirada failed to prove that it was a party to the arbitration agreement, which had been executed in February 2014 by a representative of Life Care Centers, not La Mirada. Anne also argued that certain of the causes of action alleged in her complaint were outside the scope of the arbitration agreement and others (the third cause of action alleging violation of Health and Safety Code provisions known as the Patient's or Resident's Bill of Rights) were not arbitrable as a matter of law.

With its reply brief in support of the petition to compel arbitration, La Mirada provided the declaration of the current administrator of the Imperial Healthcare Center, who stated La Mirada Healthcare, LLC took ownership of the facility, formerly known as Life Care Centers of America, on October 1, 2014. The administrator further declared, "La Mirada Healthcare, LLC is an assignee and owner of the facility formerly known as Life Care Centers of America and it is the assignee of all agreements including the arbitration agreement signed by Ron Pegula."

The court noted La Mirada's moving papers failed to establish it was a party to the agreement. Although the reply papers contained evidence La Mirada was the assignee of the arbitration agreement, the court ruled "[c]onsideration of that late evidence does not solve the problem" because there was no evidence Ronald had the authority to bind Anne to arbitration in February 2014. Citing *Flores v. Evergreen at San Diego, LLC* (2007) 148 Cal.App.4th 581, the court explained, although an agency can be proved through inference, the inference must be

based on conduct by both parties (principal and agent). "Defendant has not shown plaintiff agreed to allow Mr. Pegula to act on her behalf, or that her conduct established an agency."

CONTENTIONS

La Mirada contends the trial court erred in ruling it had failed to establish Ronald's authority to sign the agreement as Anne's agent, arguing it met its initial burden of demonstrating the existence of a valid arbitration agreement and the issue of Ronald's authority was a defense to the enforcement of the agreement as to which Anne bore the burden of proof. Because Anne failed to present any evidence indicating Ronald lacked authority to sign the agreement, La Mirada contends, the petition to compel should have been granted.[4]

DISCUSSION

1. *Governing Law and Standard of Review*

Code of Civil Procedure section 1281.2 requires the trial court to order arbitration of a controversy "[o]n petition of a party to an arbitration agreement alleging the existence of a written

---

[4] In its opening brief La Mirada also contends the trial court erred in determining La Mirada was not a party to the arbitration agreement, arguing the declaration of its current administrator was timely filed and established it was an assignee of the former owner of Imperial Healthcare Center. However, as Anne argues, La Mirada misread the trial court's ruling. The court considered the evidence filed with La Mirada's reply papers but concluded, even though La Mirada was an assignee entitled to enforce the arbitration agreement, the failure to establish Ronald's authority to bind Anne required the court to deny the petition to compel arbitration. In its reply brief La Mirada appears to acknowledge this is the correct interpretation of the trial court's ruling.

agreement to arbitrate a controversy and that a party thereto refuses to arbitrate such controversy . . . if it determines that an agreement to arbitrate the controversy exists." As the language of this section makes plain, the threshold question presented by every petition to compel arbitration is whether an agreement to arbitrate exists. (See *American Express Co. v. Italian Colors Restaurant* (June 20, 2013, No. 12-133) 570 U.S. 228 [133 S.Ct. 2304, 2306, 186 L.Ed.2d 417] [it is an "overarching principle that arbitration is a matter of contract"]; *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.* (1985) 473 U.S. 614, 627 [105 S.Ct. 3346, 87 L.Ed.2d 444] ["the first task of a court asked to compel arbitration of a dispute is to determine whether the parties agreed to arbitrate that dispute"]; *Pinnacle Museum Tower Assn. v. Pinnacle Market Development* (*US*)*, LLC* (2012) 55 Cal.4th 223, 236 (*Pinnacle*) [""a party cannot be required to submit to arbitration any dispute which he has not agreed to so submit""]; *Esparza v. Sand & Sea, Inc.* (2016) 2 Cal.App.5th 781, 787 ["[t]here is a strong public policy favoring contractual arbitration, but that policy does not extend to parties who have not agreed to arbitrate"]; *Molecular Analytical Systems v. Ciphergen Biosystems, Inc.* (2010) 186 Cal.App.4th 696, 704 [same].)

Because arbitration is a matter of contract, generally ""one must be a party to an arbitration agreement to be bound by it or invoke it."" (*Marenco v. DirecTV LLC* (2015) 233 Cal.App.4th 1409, 1416; accord, *Molecular Analytical Systems v. Ciphergen Biosystems, Inc., supra,* 186 Cal.App.4th at p. 705; *Matthau v. Superior Court* (2007) 151 Cal.App.4th 593, 598 ["right to arbitration depends on a contract, and a party can be compelled to submit a dispute to arbitration only if the party has agreed in writing to do so"].) However, there are limited exceptions to this

rule, allowing nonsignatories to an agreement containing an arbitration clause to compel arbitration of, or be compelled to arbitrate, a dispute arising within the scope of that agreement. (See *Pinnacle*, *supra*, 55 Cal.4th at p. 240 ["common law principles such as fiduciary duty and agency permit enforcement of arbitration agreements against nonsignatory third parties"]; *Marenco,* at p. 1417 ["[e]nforcement is permitted where the nonsignatory is the agent for a party to the arbitration agreement"]; *DMS Services, LLC v. Superior* Court (2012) 205 Cal.App.4th 1346, 1353 [agent's agreement to arbitrate on behalf of nonsignatory principal is an exception to the general rule that one must be a party to an arbitration agreement to invoke it or be bound by it].)

The party seeking to compel arbitration bears the burden of proving by a preponderance of the evidence the existence of an agreement to arbitrate. (*Pinnacle*, *supra*, 55 Cal.4th at p. 236; *Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 413; *Tiri v. Lucky Chances, Inc.* (2014) 226 Cal.App.4th 231, 240.) Only if an agreement has been proved does the burden shift to the party opposing arbitration to demonstrate a defense to the enforcement of the agreement. (*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 972; *Rosenthal,* at pp. 409-410.)

2. *La Mirada Failed To Establish Ronald's Authority To Bind Anne to Arbitration*

a. *It was La Miranda's burden to establish Ronald's authority, not Anne's burden to disprove it*

La Mirada's challenge to the trial court's decision to deny its petition to compel arbitration proceeds on the fundamentally mistaken premise that, by producing and authenticating the

arbitration agreement signed by Ronald on the line designated for the patient's "legal representative," it established the existence of a valid agreement to arbitrate binding on Anne and, as a consequence, it was Anne's burden to prove any defense to enforcement of that agreement, including Ronald's lack of authority to act as Anne's agent. To the contrary, as this court held in *Pagarigan v. Libby Care Center, Inc.* (2002) 99 Cal.App.4th 298, to show a valid arbitration contract exists that is binding on an individual who did not sign it, the party seeking enforcement has the burden of establishing the authority of the person who purportedly signed the agreement as an agent on behalf of the nonsignatory party. (*Id.* at p. 301 [skilled nursing facility failed to produce required evidence that children of deceased mother had authority to enter into an arbitration agreement on her behalf]; accord, *Flores v. Evergreen at San Diego, LLC*, *supra*, 148 Cal.App.4th at pp. 587-588 [burden on party seeking to enforce arbitration agreement to prove agency authority]; *Goliger v. AMS Properties, Inc.* (2004) 123 Cal.App.4th 374, 376-377 [same]; see *Young v. Horizon West, Inc.* (2013) 220 Cal.App.4th 1122, 1128-1134 [reviewing cases and agreeing that burden on party seeking to enforce arbitration agreement includes proof of authority to bind nonsignatory]; see also *Ermoian v. Desert Hospital* (2007) 152 Cal.App.4th 475, 506 ["burden of proving ostensible agency is upon the party asserting that relationship"]; *Oswald Machine & Equipment, Inc. v. Yip* (1992) 10 Cal.App.4th 1238, 1247 ["[u]nless the evidence is undisputed, the scope of an agency relationship is a question of fact, and the burden of proof rests on the party asserting the relationship"].)[5] La Mirada failed to carry its burden.

---

[5] La Mirada acknowledges this case law in a footnote, but

b. *Ronald was not Anne's actual or ostensible agent*

"An agent is one who represents another, called the principal, in dealings with third persons. Such representation is called agency." (Civ. Code, § 2295.) "An agency is either actual or ostensible." (Civ. Code, § 2298.) "An agency is actual when the agent is really employed by the principal." (Civ. Code, § 2299.) "An agency is ostensible when the principal intentionally, or by want of ordinary care, causes a third person to believe another to be his agent who is not really employed by him." (Civ. Code, § 2300.) "Ostensible authority is such as a principal, intentionally or by want of ordinary care, causes or allows a third person to believe the agent to possess." (Civ. Code, § 2317.)

Whether actual or ostensible, creation of an agency relationship requires conduct by both the agent and the principal: "'[A]gency cannot be created by the conduct of the agent alone; rather, *conduct by the principal* is essential to create the agency. Agency "can be established either by agreement between the agent and the principal, that is, a true agency [citation], or it can be founded on ostensible authority, that is, some intentional conduct or neglect on the part of the alleged principal creating a belief in the minds of third persons that an agency exits, and a reasonable reliance thereon by such third persons." [Citations.] '"'The principal must in some manner indicate that the agent is to act for him [or her], and the agent must act or agree to act on

---

"respectfully disagrees with these authorities." La Mirada cites no case that supports its contention a purported agent's authority to bind a nonsignatory principal is a matter of a defense to enforceability rather than a necessary part of the moving party's proof of the existence of a valid arbitration agreement.

his [or her] behalf and subject to his [or her] control.". . .' [Citations.] Thus, the 'formation of an agency relationship is a bilateral matter. Words or conduct by *both principal and agent* are necessary to create the relationship."'" (*Goldman v. Sunbridge Healthcare, LLC* (2013) 220 Cal.App.4th 1160, 1173; accord, *Young v. Horizon West, Inc.*, *supra*, 220 Cal.App.4th at p. 1132 ["ostensible authority cannot be created merely by a purported agent's representations"]; see *Boren v. State Personnel Board* (1951) 37 Cal.2d 634, 643 ["the doctrines of ostensible agency or agency by estoppel are not based upon the representations of the agent but upon the representations of the principal"].)

Here, La Mirada produced no evidence Ronald was Anne's conservator, had a power of attorney or was otherwise expressly authorized to act as her agent when she was admitted to Imperial Healthcare Center in early 2014.[6] Similarly, La Mirada failed to offer evidence of any conduct by Anne that would create an ostensible agency.

La Mirada's reliance on Ronald's implied representation that he had authority to act on Anne's behalf when he signed the arbitration agreement and Anne's purported acquiescence to Ronald's execution of the arbitration agreement notwithstanding her Alzheimer's dementia, whether considered singly or together, are insufficient to establish Ronald's ostensible authority to bind Anne to the arbitration agreement. As the trial court indicated by its citation in its ruling to *Flores v. Evergreen at San Diego, LLC*, *supra*, 148 Cal.App.4th 581, the court of appeal in that case,

---

[6] As noted, Ronald did not apply to become Anne's guardian ad litem until May 2016. (See fn. 3, above.)

based on well-established authority including our decision in *Pagarigan v. Libby Care Center, Inc.*, *supra*, 99 Cal.App.4th 298, rejected a virtually identical argument a decade ago.

The trial court in *Flores*, like the trial court in our case, denied a skilled nursing facility's petition to compel arbitration of a lawsuit for negligence and other causes of action relating to the facility's treatment of a patient suffering from dementia and other ailments. When Josephina Flores was admitted to the facility, her husband Luis Flores had signed a separate arbitration agreement on the line designated "Legal Rep/Responsible Party/Agent." (*Flores v. Evergreen at San Diego, LLC*, *supra*, 148 Cal.App.4th at p. 585.) However, at the time he signed the arbitration agreement, as well as other admissions documents, Luis did not have a power of attorney to act for Josephina and had not been declared her conservator or guardian. (*Ibid*.) The court of appeal affirmed the order denying the facility's petition to compel arbitration, holding Luis was not Josephina's actual or ostensible agent when he signed the arbitration agreement. (*Id*. at pp. 588-589, 594.) The court explained that, while Luis may have held himself out as Josephina's agent and she "allowed [the facility] to believe her husband had authority to act for her" (*id*. at p. 588), without evidence of conduct by Josephina other than her residence in the facility, the facts were insufficient to demonstrate ostensible agency: "Even though Evergreen presented evidence showing that Luis acted as if he were Josephina's agent, the establishment of agency also requires conduct on the part of Josephina conferring that status. It was Evergreen's burden to show the validity of the arbitration agreement based on Josephina's express or implied consent to have her husband act

as her agent. As in *Pagarigan*, the record is devoid of any such evidence." (*Id.* at p. 589.) The record here is similarly devoid of evidence of Anne's express or implied consent to have Ronald act as her agent.

A similar result was reached in *Warfield v. Summerville Senior Living, Inc.* (2007) 158 Cal.App.4th 443. Yvonne Warfield, through her daughter as attorney-in-fact, sued Summerville Senior Living, the owner of a residential care facility for the elderly, for elder abuse and related claims. Yvonne was 86 years old and suffering from dementia when she was admitted to Summerville's facility in 2004. (*Id.* at p. 445.) Yvonne's husband, John Warfield, was also a resident at the Summerville facility. In 2005 John signed an arbitration agreement with Summerville on behalf of himself and Yvonne; Yvonne did not sign the agreement. (*Id.* at pp. 445-446.) Summerville responded to Yvonne's complaint by petitioning to compel arbitration based on the 2005 agreement, which Summerville argued was binding on Yvonne because John was her ostensible agent. (*Id.* at p. 446.) According to Summerville, Yvonne had "acquiesced to her husband's representation as her agent" because "'at the time of her admission, as well as throughout her residency, [she] never once voiced disagreement to the living arrangement elected by her husband. Rather, she willingly accepted the services elected by her husband to be provided by the facility.'" (*Id.* at p. 448.) The *Warfield* court rejected Summerville's agency argument, reasoning "the failure of a resident suffering from dementia to object to the living arrangements her husband had made would hardly constitute evidence that she had authorized him to act as her agent in waiving her right to a jury trial." (*Id.* at p. 448.)

Here, as in *Warfield*, La Mirada proved no conduct by the party to be bound through ostensible agency other than the patient's acquiescence to her living conditions. Anne's tacit assent to her admission to Imperial Healthcare Center, like Yvonne's implied agreement to live at Summerville, is insufficient because of her dementia. Ostensible agency requires "some intentional conduct or neglect" by the principal; silence or acquiescence by someone suffering from Alzheimer's dementia does not establish "lack of ordinary care."[7]

In addition, "when the third party is dealing with an assumed agent, the third party is bound at his peril . . . to ascertain not only the fact of the agency but the nature and

---

[7] Without more, silent acquiescence by a fully competent patient to admission to a skilled nursing facility and execution of a related arbitration agreement by a relative will also be insufficient to bind the patient to arbitration. For example, in *Goliger v. AMS Properties, Inc.*, *supra*, 123 Cal.App.4th 374, Mary Golinger's daughter signed the nursing facility's admission form as a "responsible party" for her mother and executed an arbitration agreement on the line for responsible party. The signature lines for resident and agent were left blank. With her mother's consent, the daughter also made various medical decisions for her while she resided at the nursing facility. (*Id.* at pp. 375-376.) After the mother died, the daughter sued the facility for negligence as her mother's successor-in-interest. The facility's petition to compel arbitration was denied. Affirming that order, the court of appeal held the daughter's authority to act for her mother in protecting her health "do[es] not equate with being an agent empowered to waive the constitutional right of trial by jury." (*Id.* at p. 377; see *ibid.* ["AMS's argument does not, however, justify expanding [the daughter's] powers beyond what the evidence shows her mother permitted"]; see also *Young v. Horizon West, Inc.*, *supra*, 220 Cal.App.4th at pp. 1132-1133].)

extent of the authority." (*Associated Creditors' Agency v. Davis* (1975) 13 Cal.3d 374, 401.) La Mirada's predecessor-in-interest apparently recognized this need to confirm the authority of third parties signing an arbitration agreement on behalf of a resident. As discussed, its form agreement instructed that, if the resident did not sign the agreement, the individual signing on his or her behalf had to confirm the agreement was being signed "as Resident's agent and Legal Representative." Yet Ronald was not required to include that additional language; and, as far as the record reflects, the facility did nothing to confirm his authority, let alone ascertain its nature and extent. Under the circumstances of this case, the failure to do so precludes a finding that Anne was bound to arbitrate her claims based on Ronald's signature.

3. *Anne Is Not Estopped To Deny the Enforceability of the Arbitration Agreement*

As an alternative basis for enforcing the arbitration agreement, La Mirada invokes the estoppel theory discussed in *NORCAL Mutual Ins. Co. v. Newton* (2000) 84 Cal.App.4th 64, and similar cases, arguing Anne should not be permitted to rely on Ronald's authority to admit her into the skilled nursing facility while asserting that he lacked authority to enter into the arbitration agreement. (*NORCAL*, at p. 84 ["[t]he fundamental point is that respondent was not entitled to make use of the [insurance] policy as long as it worked to her advantage, then attempt to avoid its application in defining the forum in which her dispute with NORCAL should be removed"]; see *JSM Tuscany, LLC v. Superior Court* (2011) 193 Cal.App.4th 1222, 1238-1240 [nonsignatory plaintiff may be equitably estopped from repudiating arbitration clause in contract when asserting

claims that rely on contract terms, particularly when signatory and nonsignatory plaintiffs are related entities]; *Metalclad Corp. v. Ventana Environmental Organizational Partnership* (2003) 109 Cal.App.4th 1705, 1713 ["[i]n the arbitration context, a party who has *not* signed a contract containing an arbitration clause may nonetheless be compelled to arbitrate when he seeks enforcement of other provisions of the same contract that benefit him"]; see also *Goldman v. KPMG, LLP* (2009) 173 Cal.App.4th 209, 220, fn. 5 ["'[i]n the arbitration context, the doctrine [of equitable estoppel] recognizes that a party may be estopped from asserting that the lack of his signature on a written contract precludes enforcement of the contract's arbitration clause when [the party] has consistently maintained that other provisions of the same contract should be enforced to benefit him'"].)

In *NORCAL* the court of appeal reversed the trial court's denial of a petition to compel arbitration filed by an insurance company that had issued a medical malpractice insurance policy to a psychiatrist who, together with his wife, had provided couples therapy to the plaintiff and her husband. The therapy sessions allegedly included sexual relations between the psychiatrist and the plaintiff, who subsequently sued both the psychiatrist and his wife. The psychiatrist and his wife tendered defense of the case to NORCAL because the medical malpractice policy covered any of the psychiatrist's "health care extenders" or employees. (*Id.* at p. 77.) Although the psychiatrist's wife was not a named insured, an employee or a health care extender for the psychiatrist, she alleged she was an additional insured under the policy and "sought the benefits of the insurance policy by tendering defense of [a] complaint [against her and her husband] to NORCAL and accepted those benefits by allowing NORCAL to

assume the cost of her defense and, together with [her husband], requesting and participating in NORCAL's settlement of the complaint." (*Id.* at pp. 66, 78.) The trial court denied the petition to compel arbitration on the ground there was insufficient evidence that the wife was a party to the malpractice insurance policy, which contained the disputed arbitration provision, or had accepted its benefits. (*Id.* at p. 71.) The court of appeal reversed, holding that, because the wife had accepted the benefits of the insurance policy, even though she was not a party to it, she was equitably bound by the arbitration agreement that was part of the policy. (*Id.* at pp. 81, 84.)

NORCAL and the other equitable estoppel cases are of no assistance to La Mirada. The Legislature has prohibited skilled nursing facilities from conditioning admission or medical treatment on an agreement by patients to arbitrate disputes (Health & Saf. Code, § 1599.81, subd. (a)) and has mandated that those facilities present any proposed, voluntary arbitration agreement in a form that is separate from the admission contract (Health & Saf. Code, § 1599.81, subd. (b)). Imperial Healthcare Center complied with those statutory directives. Accordingly, unlike the psychiatrist's wife in *NORCAL* or the plaintiffs in the other cases cited, Anne did not accept the benefits of a contract containing an arbitration clause while rejecting other portions of the parties' agreement. To be sure, Anne relied on the services provided at La Mirada's skilled nursing facility, but her reliance was authorized by her admission documents alone. Because Anne did not seek any benefit from the agreement containing the arbitration provision, she is not estopped to assert that agreement is unenforceable against her. (See *Warfield v. Summerville Senior Living, Inc.*, *supra*, 158 Cal.App.4th at

pp. 449-450 [distinguishing *NORCAL Mutual Ins. Co. v. Newton, supra*, 84 Cal.App.4th 64 on identical grounds].)

DISPOSITION

The order denying the petition to compel arbitration is affirmed. Anne Pegula is to recover her costs on appeal.

PERLUSS, P. J.

We concur:

SEGAL, J. BENSINGER, J.*

---

* Judge of the Los Angeles County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.