

Fifth Circuit Court of Appeal
State of Louisiana

No. 26-C-149

KIMBERLY DWYER-SUTTON, ET AL.

versus

COLONIAL CLUB LEGACY, LLC, ET AL.

ON APPLICATION FOR SUPERVISORY REVIEW FROM THE TWENTY-FOURTH JUDICIAL
DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 867-511, DIVISION "C"
HONORABLE JUNE B. DARENSBURG, JUDGE PRESIDING

July 29, 2026

FREDERICKA HOMBERG WICKER
JUDGE

Panel composed of Judges Fredericka Homberg Wicker,
Stephen J. Windhorst, and John J. Molaison, Jr.

WRIT GRANTED

FHW
SJW
JJM



COUNSEL FOR DEFENDANT/RELATOR,
COLONIAL CLUB LEGACY, LLC D/B/A THE BLAKE AT
COLONIAL CLUB, LLC, COLONIAL CLUB SERVICES LEGACY,
LLC D/B/A THE BLAKE AT COLONIAL CLUB SERVICES, LLC
AND WT TENANT OPKO, LLC

Chad A. Sullivan

Sydnee D. Menou

WICKER, J.,

Relators-Defendants, Colonial Club Legacy, LLC d/b/a The Blake at Colonial Club, LLC; Colonial Club Services Legacy, LLC d/b/a The Blake at Colonial Club Services, LLC; and WT Tenant OPCO, LLC, seek supervisory review of the district court's March 17, 2026 judgment denying their motion to compel arbitration. For the following reasons, we grant the writ application, reverse the judgment, and remand the matter with instructions.

PROCEDURAL AND FACTUAL BACKGROUND

On July 31, 2025, Plaintiff-Respondent Kimberly Dwyer Sutton, on behalf of Janice Dwyer, individually and on behalf of all others similarly situated, filed a class action petition for damages against Defendants arising from the care and treatment Ms. Dwyer received while residing at Defendants' assisted living and memory care facility from September 5, 2024 through June 18, 2025.

Resident Admission Agreement and Arbitration Provision

On September 5, 2024, Plaintiff executed a Resident Admission Agreement as the "Responsible Party" for Ms. Dwyer upon her admission at Defendants' assisted living and memory care facility. The Resident Agreement contains an arbitration provision broadly requiring arbitration of claims arising between the parties, as follows:

Any legal controversy, dispute, disagreement or claim . . . arising out of or relating to (1) this Admission Agreement; (2) any service or health care provided by the Community to the Resident; and/or (3) any matter related to the Resident's stay shall be resolved exclusively by binding arbitration in the County in which the Facility is located, pursuant to the Federal Arbitration Act, in accordance with the procedural rules of the American Arbitration Association ("AAA") under its Commercial Arbitration Rules, which are hereby incorporated into this arbitration agreement, and not by a lawsuit or by resort to court process . . . This arbitration agreement includes, but is not limited to, any claim for payment, nonpayment or refund for services rendered to the Resident by the Community; violations of any rights granted to the Resident by law or by this Admission Agreement; breach of contract; fraud or misrepresentation; negligence; gross negligence; malpractice; or any

other claim based on any departure from accepted standards of medical or health care or safety whether sounding in tort or in contract.

...

Any dispute regarding whether a particular claim is subject to arbitration, including any claim over the enforceability, scope or validity of this arbitration agreement, shall be decided by the arbitrator.”

The Resident Agreement further advises the resident and responsible party that they are waiving their right to have claims decided in a court of law before a judge or jury, that execution of the arbitration provision is voluntary, that they may consult legal counsel, and that the agreement may be rescinded within thirty days, as follows:

THE PARTIES UNDERSTAND AND AGREE THAT BY ENTERING INTO THIS ARBITRATION AGREEMENT, WHICH BINDS BOTH THE COMMUNITY AND THE RESIDENT AND/OR RESPONSIBLE PARTY, THEY ARE GIVING UP AND WAIVING THE CONSTITUTIONAL RIGHT TO HAVE ANY CLAIM DECIDED IN A COURT OF LAW BEFORE A JUDGE OR A JURY.

The Resident and/or Responsible Party understands that (1) he/she has the right to seek legal counsel concerning this Admission Agreement, including, but not limited to, the arbitration agreement; (2) the execution of this arbitration agreement is not a precondition to the furnishing of services to the Resident by the Community; (3) if this arbitration agreement is signed, it is signed voluntarily; and (4) this arbitration agreement may be rescinded by written notice to the Community from the Resident and/or Responsible Party within thirty (30) days of signature. The arbitration agreement shall survive termination of this Admission Agreement.

(Emphasis in the original). Plaintiff initialed each page of the Resident Agreement, including the pages containing the arbitration provision. She also signed the agreement and acknowledged that she had read and received a copy of the agreement, including the arbitration provision, and agreed to its terms.

Plaintiff's Petition for Damages

In her petition, Plaintiff alleges that Defendants failed to provide adequate staffing and care during Ms. Dwyer's residency, resulting in Ms. Dwyer sustaining

various injuries. Plaintiff claims that Defendants intentionally maintained inadequate staffing levels, misrepresented the services and care they would provide, and implemented cost-saving measures that compromised resident care. According to the petition, Defendants were obligated under the Resident Agreement to provide “healthcare, custodial, and professional services to Plaintiff with sufficient budget and sufficient staffing to meet her needs,” but instead “intentionally enacted, established, and implemented a financial plan” that left the facility understaffed.

Plaintiff alleges that Defendants “intentionally maintained staffing at [the facility] for licensed nurses and healthcare workers and assistants below the national average” and, as a result, “Defendants failed to meet [their] duty to Plaintiff causing her injuries.” Plaintiff further alleges that Ms. Dwyer was left unattended for more than twelve hours at a time without food, water, or assistance using the bathroom, and that she was not given her prescribed medications and was “often overdosed to avoid [the] need to attend to her care.” According to Plaintiff, Ms. Dwyer received inadequate care throughout her nine-month residency, including being left “in her bed for long hours while she had soiled herself with urine and feces.”

Plaintiff asserts that Defendants intentionally failed to fulfill their duties to Ms. Dwyer because they “intentionally reduced the costs of care to maximize profits,” which directly caused Ms. Dwyer’s injuries. All alleged damages arise from Ms. Dwyer’s residency at the facility and the services Defendants provided.

In addition to her individual claims, Plaintiff purports to assert claims on behalf of a putative class, which the petition defines as: “All Louisiana residents who are or were residents of the [facility].”

Defendants’ Motion to Compel Arbitration

Although Plaintiff filed the matter as a class action, she neither sought nor obtained class certification within the ninety-day period required by La. C.C.P. art. 592. Defendants subsequently moved to compel arbitration pursuant to the

arbitration provision contained in the Resident Agreement. In support of their motion, Defendants submitted the Resident Agreement and Plaintiff's petition for damages, both of which were admitted into evidence without objection at the hearing on the matter.

Plaintiff opposed the motion, arguing that ambiguity existed regarding which Defendant entities were parties to the agreement and that the matter had been filed as a class action. She further argued that, even if the arbitration provision is enforceable against her individually, it is not enforceable against the putative class members under *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 131 S.Ct. 1740, 179 L.Ed.2d 742 (2011). Plaintiff did not challenge the validity of the Resident Agreement or the arbitration provision, nor did she raise any traditional contract defense such as fraud, duress, mistake, or unconscionability.

In reply, Defendants submitted additional evidence concerning the relationships among the entities allegedly bound by the arbitration provision, including the affidavit of Russ Myles, General Counsel for QSL Management, LLC, and an attached Department of Health license. Defendants argued that the evidence established the applicability of the arbitration provision to all claims asserted against all Defendants. Specifically, Defendants contended that the parties to the Resident Agreement are QSL Management, LLC, Janice Dwyer, and Kimberly Dwyer Sutton, and that the agreement defines "the Community" as the entity licensed by the Department of Health to operate the facility. Defendants maintained that WT Tenant OPCO, LLC is "the Community" because it holds the Department of Health license for the facility identified in the Resident Agreement. Defendants further argued that the arbitration provision extends to the Community's agents, employees, servants, and entities in privity with the Community and, therefore, encompasses all Defendants through their lessor-lessee relationship.

Hearing and Judgment On Motion to Compel Arbitration

On March 17, 2026, the district court held a hearing on Defendants' motion to compel arbitration. During the hearing, the arguments of counsel focused almost entirely on Plaintiff's argument that the matter being filed as a class action precluded arbitration. Plaintiff presented no substantive argument supporting her theory regarding the perceived ambiguity of the Resident Agreement regarding which Defendant entities were parties to the agreement. At the conclusion of the hearing, the district court denied the motion, reasoning that Plaintiff should be afforded an opportunity to pursue class certification notwithstanding her failure to file a motion for class certification before the hearing. The district court acknowledged the general enforceability of arbitration agreements and stated that, if the matter involved only individual claims, the arbitration provision would apply. The district court concluded, however, that the Supreme Court decision cited by Plaintiff controlled because the action had been filed as a class action and that arbitration therefore could not be compelled while the matter proceeded in that posture.

The district court signed a written judgment the same day. This writ application followed.

ASSIGNMENTS OF ERROR

Defendants assign five errors in their writ application, including:

1. The district court erred by declining to enforce the arbitration provision despite the strong state and federal law favoring arbitration.
2. The district court erred by declining to enforce the arbitration provision where its validity was not disputed.
3. The district court erred by declining to enforce the arbitration provision, which specifically delegates arbitrability to the arbitrator.
4. The district court erred by declining to enforce the arbitration provision where no evidence established any contractual basis for invalidating it.
5. The district court erred by declining to enforce the arbitration provision based on the matter being filed as a class action and on the *Concepcion* case, because state and federal law provide that class procedures may

not frustrate the purposes and objectives of the relevant arbitration statutes.

Because the assignments of error are interrelated, we will address them together below.

LAW AND ANALYSIS

Arbitration is a dispute resolution process in which a neutral third party renders a decision after a hearing at which the parties have an opportunity to be heard. *Prasad v. Bullard*, 10-291 (La. App. 5 Cir. 10/12/10), 51 So.3d 35, 38–40. The purpose of arbitration is to allow parties to achieve speedy settlement of their differences out of court. *In re Arbitration Between Rathborne Land Co., LLC & St. Charles Par.*, 25-537, 2026 WL 1157107, at *3 (La. App. 5 Cir. 4/29/26) (citing *Prasad*, 51 So.3d at 38). Whether a court should compel arbitration is a question of law subject to *de novo* review by an appellate court, which in turn determines whether the trial court was legally correct or incorrect. *Prasad*, 51 So.3d at 39.

Defendants contend that the district court erred as a matter of law in denying their motion to compel arbitration because both Louisiana and federal law strongly favor enforcement of arbitration agreements. *See Duhon v. Activelaf, LLC*, 16-0818, (La. 10/19/16), 411 So.3d 605, 609. The right to arbitration arises from contract and is enforceable under both the Louisiana Binding Arbitration Law (“LAL”), La. R.S. 9:4201 *et seq.*, and the Federal Arbitration Act (“FAA”), 9 U.S.C. § 1 *et seq.* Louisiana courts routinely look to federal jurisprudence in interpreting the LAL because the two statutory schemes are virtually identical. *Prasad*, 51 So.3d at 39 (citing *Aguillard v. Auction Mgmt. Corp.*, 04-2804 (La. 6/29/05), 908 So.2d 1, 24–25).

Here, Plaintiff filed suit before arbitration was invoked; therefore, La. R.S. 9:4202 governs, as follows:

If any suit or proceedings be brought upon any issue referable to arbitration under an agreement in writing for arbitration, the court in

which suit is pending, upon being satisfied that the issue involved in the suit or proceedings is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until an arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with the arbitration.

See Nelson v. H2O Hair, Inc., 19-193 (La. App. 5 Cir. 5/22/19), 274 So.3d 747, 748–49. According to the plain language of the statute, the district court “shall” stay the trial of the action until arbitration is had unless the applicant is in default¹ in proceeding with the arbitration. *Id.* at 749. As this Court explained in *Nelson*, the district court’s inquiry is limited. *Id.* The court must determine whether a valid arbitration agreement exists and whether the applicant is in default in proceeding with arbitration. *Id.* If neither issue is genuinely disputed, La. R.S. 9:4203 mandates an order compelling arbitration. *Id.*

The record contains no genuine challenge to the validity of the arbitration provision. The provision was reduced to writing, expressly incorporated into the Resident Agreement, separately identified within that agreement, and executed by Plaintiff.² Plaintiff initialed each page of the Resident Agreement, including the pages containing the arbitration provision, and acknowledged that she had read and

¹ The term “default” is not explicitly defined in the LAL; however, La. R.S. 9:4203 reads, in pertinent part:

A. The party aggrieved by the alleged failure or refusal of another to perform under a written agreement for arbitration, may petition any court of record having jurisdiction of the parties, or of the property, for an order directing that the arbitration proceed in the manner provided for in the agreement. Five days’ written notice of the application shall be served upon the party in default[.]

B. The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not an issue, the court shall issue an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. If the making of the arbitration agreement or the failure or refusal to perform is an issue, the court shall proceed summarily to the trial thereof.

² It is well established that a party who signs a written agreement is presumed to know and understand its contents and may not avoid its obligations by claiming that the document was not read, understood, or explained. *Tweedle v. Brasseaux*, 433 So.2d 133, 137 (La. 1983). “If a party can read, it behooves him to examine an instrument before signing it; and if he cannot read, it behooves him to have the instrument read to him and listen attentively whilst this is being done.” *Id.*

agreed to its terms. The agreement further advised that arbitration was voluntary, was not a condition of admission, could be reviewed with legal counsel, and could be rescinded within thirty days. Plaintiff has not asserted fraud, duress, mistake, unconscionability, or any other generally applicable contract defense. Nor did the district court find the agreement invalid under ordinary principles of contract law. Accordingly, the arbitration provision is valid and enforceable.

Moreover, the claims asserted in Plaintiff's petition fall squarely within the scope of the arbitration provision. The provision applies to any claim arising out of or relating to the Resident Agreement, healthcare or other services provided to the resident, or any matter related to the resident's stay at the facility. It expressly encompasses claims for negligence, gross negligence, malpractice, fraud, misrepresentation, breach of contract, and violations of resident rights. Under both Louisiana and federal jurisprudence, arbitration clauses employing similar broad language are construed expansively to also include tort claims that have their roots in the contract. *See Hornbeck Offshore Corp. v. Coastal Carriers Corp.*, 981 F.2d 752 (5th Cir. 1993); *Snyder v. Belmont Homes, Inc.*, 899 So.2d 57 (La. App. 1 Cir. 2005). Additionally, Louisiana courts routinely recognize that doubts concerning arbitrability must be resolved in favor of arbitration. Arbitration should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation covering the dispute. *Aguillard*, 908 So.2d at 18. No such assurance exists here. Plaintiff's claims arise exclusively from the care and treatment Ms. Dwyer received while residing at Defendants' facility. The petition alleges inadequate staffing, inadequate care, medication-related failures, misrepresentations concerning services, and resulting injuries. Each claim arises directly from the services allegedly provided under the Resident Agreement and from Ms. Dwyer's residency at the facility. Therefore, Plaintiff's claims fall within the broad language of the arbitration provision.

Furthermore, the arbitration provision also contains an express delegation clause whereby the parties specifically agreed that “[a]ny dispute regarding whether a particular claim is subject to arbitration, including any claim over the enforceability, scope or validity of this arbitration agreement, shall be decided by the arbitrator.” The parties also incorporated the AAA Commercial Arbitration Rules into the agreement, which Louisiana courts have recognized as evidence of the parties’ intent to delegate threshold arbitrability issues to the arbitrator. *See e.g., Jasper Contractors, Inc. v. E-Claim.com, LLC*, 11-978 (La. App. 1 Cir. 5/4/12), 94 So.3d 123, 133. Thus, once the district court determined that a valid arbitration agreement existed, disputes concerning the scope of the agreement, its enforcement by particular defendants, and other questions of arbitrability were required to be submitted to the arbitrator pursuant to the delegation clause within the arbitration provision. Nevertheless, the district court nevertheless denied arbitration because Plaintiff had filed the matter as a class action. In doing so, it erred.

While Plaintiff filed her petition for damages as a class action in July 2025, the record reflects that by December 2025 she had still not filed a motion for class certification. At the time of the hearing on Defendants’ motion to compel arbitration in March 2026, Plaintiff still had not moved to certify the putative class. The mere inclusion of class allegations in a petition, however, does not negate an otherwise valid arbitration agreement, nor does it create an independent basis for refusing to enforce such an agreement. Neither the FAA nor the LAL creates an exception permitting a party to avoid a contractual obligation to arbitrate by styling the matter as a class action. And Plaintiff’s reliance on *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 131 S.Ct. 1740, 179 L.Ed.2d 742 (2011), to argue otherwise is misplaced.

In *Concepcion*, although the Supreme Court observed that class arbitration lacks many of the advantages associated with bilateral arbitration, those observations

were made in support of the Court’s holding that the FAA requires enforcement of arbitration agreements according to their terms and preempts state-law rules requiring class wide procedures. 563 U.S. at 348–52. But *Concepcion* does not stand for the proposition that a plaintiff may avoid an otherwise enforceable arbitration agreement merely by filing a putative class action. *Id.* at 336–40, 352. On the contrary, the Court enforced the parties’ bilateral arbitration agreement notwithstanding the plaintiffs’ attempt to proceed on a class wide basis. Thus, the district court erred as a matter of law in relying on the class nature of the allegations and the *Concepcion* case to deny Defendants’ motion.

Plaintiff’s styling of the matter as a class action did not alter the district court’s limited inquiry under La. R.S. 9:4202 and 9:4203, nor did it relieve Plaintiff of her contractual obligation to arbitrate. In the absence of a genuine challenge to the validity of the arbitration provision, the district court was required to enforce the parties’ agreement. Any remaining questions concerning the scope or applicability of the arbitration provision were subject to the parties’ express delegation clause and therefore were required to be resolved by the arbitrator, not the district court. Accordingly, given that the validity of the arbitration agreement is not genuinely disputed, and that Plaintiff’s claims fall within the arbitration provision’s broad scope, and that the provision expressly delegates arbitrability questions to the arbitrator, the district court was required under La. R.S. 9:4202 and 9:4203 to compel arbitration and stay the proceedings.

DECREE

For the foregoing reasons, we grant the writ application, reverse the district court’s March 17, 2026 judgment, and remand the matter with instructions to compel arbitration and stay further proceedings consistent with the parties’ agreement and this opinion.

WRIT GRANTED

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISSON, JR.
SCOTT U. SCHLEGEL
TIMOTHY S. MARCEL

JUDGES



FIFTH CIRCUIT
101 DERBIGNY STREET (70053)
POST OFFICE BOX 489
GRETNA, LOUISIANA 70054
www.fifthcircuit.org

CURTIS B. PURSELL
CLERK OF COURT

SUSAN S. BUCHHOLZ
CHIEF DEPUTY CLERK

LINDA M. TRAN
FIRST DEPUTY CLERK

MELISSA C. LEDET
DIRECTOR OF CENTRAL STAFF

(504) 376-1400
(504) 376-1498 FAX

NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED
IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY
JULY 29, 2026 TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT
REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

26-C-149

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)
HONORABLE JUNE B. DARENSBURG (DISTRICT JUDGE)
CHAD A. SULLIVAN (RELATOR) JIM S. HALL (RESPONDENT)
SYDNEE D. MENOUE (RELATOR)

MATTHEW B. MORELAND
(RESPONDENT)

MAILED

NO ATTORNEYS WERE MAILED