

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

SAMUEL McLEAN, as Independent Executor of the Estate of Jane King McLean, Deceased,
Plaintiff-Appellee,

v.

CARY SENIOR LIVING, LLC, d/b/a Three Oaks Assisted Living and Memory Care, a/k/a
Three Oaks Assisted Living; LENA EPPLEY; K&B LIFECARE, INC., d/b/a Brightstar of
Barrington and McHenry County; PRITCHARD KUSASIRA, Defendants

(Cary Senior Living, LLC, d/b/a Three Oaks Assisted Living and Memory Care, a/k/a Three
Oaks Assisted Living and Lena Eppley, Defendants-Appellants).

Appeal from the Circuit Court of McHenry County.
Honorable Kevin G. Costello, Judge, Presiding.
No. 25-LA-116

JUSTICE JORGENSEN delivered the judgment of the court, with opinion.
Justices Hutchinson and Mullen concurred in the judgment and opinion.

OPINION

¶ 1 Plaintiff, Samuel McLean, as independent executor of the estate of his mother, Jane King McLean, sued multiple defendants in connection with Jane's care and death. As to the claims pending against them, defendants Cary Senior Living, LLC, (d/b/a Three Oaks Assisted Living and Memory Care a/k/a Three Oaks Assisted Living) and Lena Eppley (a nurse) moved to dismiss the complaint on the basis that the parties agreed to arbitration. The court denied the motion, and defendants appealed. For the following reasons, we reverse and remand.

¶ 2

I. BACKGROUND

¶ 3 Jane was allegedly admitted to Cary Senior Living, LLC, “during and before July 2023.” Relevant here, on September 28, 2021, plaintiff executed the facility’s establishment contract and arbitration agreement on Jane’s behalf, as her healthcare power of attorney. For context, we are compelled to lay out various provisions of the establishment contract, arbitration agreement, and various addenda, as they are the basis of defendants’ arguments on appeal. We then summarize the trial court proceedings.

¶ 4 A. Establishment Contract and Arbitration Agreement

¶ 5 The establishment contract has a four-page table of contents. There are six primary sections within the table of contents. The fifth section, “V. General Provisions,” notes that subsection R (the only subsection denoted in all caps) is a “BINDING ARBITRATION AGREEMENT.” The sixth section, “Addenda,” lists 23 addenda, the first of which is “Addendum A to Establishment Contract—Arbitration agreement.”

¶ 6 In the substantive document, the first paragraph declares that, by signing, the parties agreed to honor and be bound by the terms and conditions contained in the establishment contract “*and the attached Addenda*” described below. Unless otherwise specified, the term ‘Establishment Contract’ shall include this Establishment Contract *and all Addenda* listed in Section VI below.” (Emphases added.)

¶ 7 Section I(B), titled “Your Apartment,” provides: “In *exchange* for Your *agreeing to* and complying with *all of the terms and conditions* of this Establishment Contract *** the Community agrees to allow You to reside in the apartment ***.” (Emphases added.)

¶ 8 Section V(R), titled “Binding Arbitration Agreement,” provides:

“Any and all claims or controversies involving the Community, You and/or Your Legal Representative arising out of or in any way relating to this Establishment Contract or Your stay at the Community (other than claims brought by any such parties in small claims court, collection actions resulting from Your failure to pay fees required under the Establishment Contract, termination of the Establishment Contract by either party, and/or eviction or involuntary discharge of You by the Community), including all disputes raised by the Community, You and/or Your Legal Representative regarding enforcement or interpretation of this Establishment Contract, and including but not limited to all disputes involving questions of waiver, unconscionability, voidability or arbitrability, whether arising out of state or Federal law, whether existing now or in the future, whether sounding in breach of contract, tort or breach of statutory duties (including, without limitation, claims based on personal injury or death), regardless of the basis for any duty or of the legal theories upon which the claim is asserted, *shall be submitted to and resolved by binding arbitration in accordance with the Arbitration Agreement attached as Addendum A and incorporated herein.* This includes claims against the Community, its employees, agents, officers, directors, any parent, subsidiary or affiliate of the Community.” (Emphasis added.)

¶ 9 Section VI, titled “Addenda,” states in an introduction:

“The Addenda described below are a part of and hereby incorporated into this Agreement. In cases where the terms contained in Addenda to this Agreement vary with the terms of this Agreement, the terms of the Addenda control, unless the relevant term of this Agreement relates to a requirement of applicable state or federal law. *By signing this Establishment Contract, You and/or Your Legal Representative acknowledge that You and/or Your Legal Representative have received a copy of the corresponding Addenda, that*

You and/or Your Legal Representative agree to be bound to the terms and conditions contained therein, and that You and/or Your Legal Representative have had an opportunity to read and ask questions about the terms and conditions therein prior to signing this Establishment Contract.” (Emphasis in original.)

¶ 10 Addendum A, the arbitration agreement itself, is four pages long (one page being the signature page). At the outset, in bold and capitalized letters, it reads that “***THIS AGREEMENT GOVERNS IMPORTANT LEGAL RIGHTS. PLEASE READ IT CAREFULLY AND IN ITS ENTIRETY BEFORE SIGNING IT.***” In relevant part, in describing disputes that “shall be submitted to and resolved by binding arbitration,” the agreement includes (1) disputes raised by the resident’s legal representative, “sounding in breach of contract, tort or breach of statutory duties (including, without limitation, claims based on personal injury or death),” (2) claims of substantive or procedural unconscionability, and (3) arbitrability.

¶ 11 Finally, Addendum D, “Admission Criteria,” first provides in section A certain criteria used for assessing whether an individual is suitable for admission (age, capabilities, health levels, etc.). Then, section B(2) provides that, once an individual has been accepted for residency, “the resident will be admitted *upon execution of the Establishment Contract and receipt of all other documents required* by the Community.” (Emphasis added.)

¶ 12 B. Initial Complaint and Motion to Dismiss Proceedings

¶ 13 On July 26, 2023, Jane died. On July 17, 2025, plaintiff filed a complaint against multiple parties, alleging wrongful death and negligence related to Jane’s care. On August 27, 2025, pursuant to sections 2-615 and 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615,

2-619(a)(9) (West 2024)), defendants moved to dismiss four counts of the complaint.¹ Namely, defendants alleged, pursuant to section 2-619(a)(9), that plaintiff's claims were defeated by affirmative matter because plaintiff had executed—on Jane's behalf and as her legal representative—an arbitration provision. Specifically, the arbitration provision was part of the "Establishment Contract" required prior to residency in the care community. Defendants attached to the motion the short form power of attorney for healthcare, signed by Jane, plaintiff, and a witness. A written order in the record reflects that, on August 9, 2025, the court ordered defendants to produce any relevant power-of-attorney forms and the admissions contract and to set the matter for status on the production of documents and a briefing schedule on the motion. In his response to the motion to dismiss, plaintiff argued that the arbitration agreement was invalid because, as healthcare power of attorney, he was not authorized to sign the arbitration agreement on Jane's behalf. In support of this position, plaintiff asserted that the arbitration agreement was not required for facility admission but was instead, as defendants conceded, a "voluntary" arbitration provision. Thus, plaintiff argued that Jane's power of attorney for healthcare authorized him to have Jane admitted to the assisted living facility for personal and medical care, but it did not give him authority to waive her right to a jury trial in a potential future lawsuit, which is a legal, not medical, decision. In addition, plaintiff argued that the arbitration agreement was one-sided and substantively unconscionable.

¶ 14 On December 16, 2025, the court heard argument. Plaintiff noted that he was willing to amend the complaint to cure certain deficiencies. Further, he noted that (1) defendants had not

¹Defendants asked that the court stay the wrongful death counts against them but dismiss plaintiff's survival claims and those pertaining to medical, burial, and funeral expenses, in order for plaintiff to pursue those in arbitration.

attached to their motion the entire establishment contract, (2) the date on the healthcare power-of-attorney form was illegible, and (3) because defendants did not prove it was executed before plaintiff signed the establishment contract and arbitration agreement, there existed a question of fact. Plaintiff reiterated that the healthcare power of attorney, even if executed before he signed the establishment contract, allowed him to make only healthcare decisions, not legal ones. As defendants had referred to the arbitration agreement as “voluntary,” plaintiff argued there existed questions of fact. Defendants noted, in part, that they believed plaintiff had implied or apparent authority to act on Jane’s behalf.

¶ 15 Ultimately, the court denied the motion to dismiss. It commented that it was not presented with the entire establishment contract to assess how the arbitration agreement related thereto and that there appeared to be fact issues regarding plaintiff’s authority to act on Jane’s behalf. Further, “defendant seems to acknowledge that he wasn’t acting as actual authority under the power of attorney for healthcare when he signed that [arbitration agreement addendum].” However, the court allowed plaintiff’s voluntary request to amend the complaint to cure certain identified deficiencies.

¶ 16 C. Amended Complaint and Motion to Dismiss Proceedings

¶ 17 On December 30, 2025, plaintiff amended the complaint. On January 21, 2026, defendants filed a new motion to dismiss, again premised on plaintiff’s execution of the arbitration agreement incorporated into the establishment contract for Jane’s residency. Defendants noted that the establishment contract that plaintiff signed contained an “Acknowledgement of Agency & Indemnification” provision, in which plaintiff acknowledged his authority to bind Jane to every term of the contract and provided that “[t]his authorization expressly includes but is not limited to the authority to bind the Resident to the Binding Arbitration Agreement.” Moreover, defendants

attached to the motion the signed establishment contract and all addenda thereto, signed by plaintiff on September 28, 2021, as Jane's representative. Defendants argued that the arbitration agreement plaintiff signed mandated dismissal of the survival claims and, further, that "the Arbitration provision must be litigated before an arbitrator pursuant to the contract." In sum, they requested that the complaint against them be dismissed in its entirety or, alternatively, that four counts be dismissed and the wrongful-death proceedings stayed.

¶ 18 On April 2, 2026, the court heard oral argument on the motion. As to the issue of whether there existed a question of fact regarding plaintiff's authority to sign the arbitration addendum on Jane's behalf, the court queried, "[H]e signed the document purportedly as an agent. And is there any dispute he had a short-term power of attorney for healthcare?" The court further noted that plaintiff signed a document representing to the nursing home that he had authority to act on Jane's behalf and, further, that he signed both the establishment contract and the arbitration agreement on the same day. The court explained that it was not of the understanding that there was an issue as to whether plaintiff had power of attorney for Jane's healthcare at the time that the contract was executed. Rather, the issue, the court stated, was whether the arbitration agreement was integral to the establishment contract. The court explained that requiring defendants to demonstrate the power of attorney was in effect when the arbitration agreement was signed was "flipping the burden of proof," as defendants put forth a *prima facie* case that plaintiff had authority to both sign and bind. It continued that caselaw reflected that, when an arbitration clause is signed by virtue of a healthcare power of attorney, it is binding only if the clause was integral or required for admission to the healthcare facility. It noted that, in some of those cases, the agreements expressly stated that a signature was not required as a condition of admission but that the contract here did *not* contain similar language.

¶ 19 Plaintiff responded, however, that defendants bore the burden of establishing that signing the agreement was necessary for admission and that all supporting materials should be viewed in the nonmovant’s favor. Plaintiff argued that there was a complete absence of evidence on whether that arbitration agreement was necessary for admission to the facility, which raised a question of fact on the issue, such that the motion should be denied. Moreover, plaintiff argued, defendants produced an arbitration agreement that they conceded was a “voluntary” one. The court interrupted:

“Yeah, but I think you’re misconstruing the word voluntary there because right before the word voluntary is the word finding. So I mean voluntary—it’s voluntary in the sense that it didn’t literally put a gun to his head and say sign it or we’ll blow your brains out. I mean it’s—that doesn’t mean that it necessarily is completely at the option of the—of the signer to sign it or not.

I mean you go out and purchase a car, and I’ve done that recently, and there’s an arbitration clause. They don’t, you know, force me to sign it, but the understanding is if you don’t sign it, we’re not selling you the car.

Now, I’m not—you raise a legitimate question about whether there’s issues of fact here as to whether signing the arbitration clause was necessary for admission. But to say that well, because Counsel uses the word voluntary in their brief, that somehow that translates into it’s completely at the option of the signer as to whether to sign it, and it really has no effect one way or the other on admission.”

¶ 20 The court also commented that plaintiff’s argument—that the arbitration agreement was unconscionable—was a “reach,” instructing counsel not to focus on that argument. In the end, the court denied the motion to dismiss, noting:

“In this case I have reviewed the establishment contract and the arbitration agreement. There are some differences between this case and *Parker [v. Symphony of Evanston Healthcare, LLC, 2023 IL App (1st) 220391]*. Number one, [here,] the establishment contract actually has a provision that specifically references the arbitration addendum, and it is—also the arbitration addendum references the establishment contract itself.

Further, there does not appear to be any language that states that signing the arbitration provision or addendum is required to receive treatment, it’s silent on it, versus in the *Parker* case where it specifically said it’s not required.

So the problem with the motion to dismiss here is I think the moving party, the defendant, is suggesting that the Court just construe that as meaning that it is required. The problem is there’s a number of issues of fact as to that.

I don’t—first of all, there’s no language in either the establishment contract or the addendum to the—the arbitration addendum that says unequivocally or specifically says that signing the arbitration agreement is required for admission.

That might be the policy there at the nursing home. There’s no evidence of that. I don’t know if actually their procedure is that they allow people in without signing the arbitration agreement. Those are all issues of fact that are not resolved through this motion to dismiss.

It is a part of the contract. I think that’s pretty clear. But there’s no unequivocal evidence that admission—admittance is contingent upon signing it.

And so given those issues of fact, I don’t see a basis to dismiss here and send it to arbitration, so the motion is denied.” (Emphasis added.)

¶ 21 On April 16, 2026, defendants appealed.

¶ 22 II. ANALYSIS

¶ 23 A. Standard of Review

¶ 24 Defendants appeal pursuant to Illinois Supreme Court Rule 307(a)(1) (eff. Nov. 1, 2017). Rule 307(a)(1) applies to interlocutory appeals as of right and allows an appeal from an order granting or refusing an injunction. *Id.* Generally, where an interlocutory appeal is brought under Rule 307(a)(1) from a decision on a motion to compel arbitration, the only issue is whether there was a showing sufficient to sustain the circuit court’s order granting or denying the motion to compel. *Gaines v. Ciox Health, LLC*, 2024 IL App (5th) 230565, ¶ 24. However, a section 2-619(a)(9) motion to dismiss arguing that a complaint should be dismissed because the parties agreed to arbitrate is viewed substantively as a motion to compel arbitration, whereby the right to arbitration is considered the affirmative matter that defeats the claim. *Id.* ¶ 25 (“[a] motion to compel arbitration and stay the proceedings is essentially a section 2-619(a)(9) motion to stay an action in the trial court based on an affirmative matter—the exclusive remedy of arbitration”); see *In re Haley D.*, 2011 IL 110886, ¶ 67 (the character of a pleading is determined by its content, not its label); *Travis v. American Manufacturers Mutual Insurance Co.*, 335 Ill. App. 3d 1171, 1174 (2002) (motions to dismiss a lawsuit and compel arbitration may be brought pursuant to section 2-619(a)(9)).

¶ 25 In ruling on a motion to compel arbitration pursuant to section 2-619 of the Code, the trial court must construe all pleadings and supporting documents in a light most favorable to the nonmoving party. In addition, the moving party bears the initial burden to establish that the parties have a valid agreement to arbitrate and that the controversy falls within the scope of the arbitration provision. *Gaines*, 2024 IL App (5th) 230565, ¶ 25. However, once a defendant satisfies the initial

burden of establishing affirmative matter that defeats the plaintiff's claim, the burden then *shifts* to the plaintiff to demonstrate that the proffered defense is unfounded or requires the resolution of a material fact. *Andrews v. At World Properties, LLC*, 2023 IL App (1st) 220950, ¶ 13. A plaintiff may not simply rely on the complaint to rebut evidence and affidavits establishing the section 2-619(a)(9) affirmative matter; rather, the plaintiff must refute the motion by presenting "affidavits or other proof." 735 ILCS 5/2-619(c) (West 2024); *Piser v. State Farm Mutual Automobile Insurance Co.*, 405 Ill. App. 3d 341, 352-53 (2010). If the plaintiff fails to carry the shifted burden, the complaint will be dismissed. *Piser*, 405 Ill. App. 3d at 353.

¶ 26 Agreements to resolve disputes through arbitration, rather than litigation, are favored under Illinois law. *Brown v. Delfre*, 2012 IL App (2d) 111086, ¶¶ 14-15. Where an arbitration agreement is valid and the parties' dispute falls within the scope of it, arbitration is mandatory, and the trial court must compel it. *Dick-Ipsen v. Humphrey, Farrington & McClain, P.C.*, 2024 IL App (1st) 241043, ¶ 17. Finally, where the court's decision is rendered without an evidentiary hearing and denies the motion to compel arbitration based upon the pleadings, exhibits, declarations, and the presentations by counsel, our review is *de novo*. *Gaines*, 2024 IL App (5th) 230565, ¶ 24; see *Travis*, 335 Ill. App. 3d at 1174 ("[o]n appeal from a ruling on a section 2-619(a)(9) motion, the standard of review is *de novo*").

¶ 27 B. Arguments on Appeal

¶ 28 On appeal, defendants argue that the arbitration clause incorporated into the establishment contract and executed by plaintiff on Jane's behalf is valid and enforceable. They contend that, under the contract, the parties agreed to resolve by arbitration any claim arising in connection with Jane's stay at the facility, and that plaintiff's complaint claims fall squarely within the scope of the arbitration agreement. Defendants note that plaintiff signed the agreement along with numerous

other admission documents on Jane's behalf, including a release of information under the Health Insurance Portability and Accountability Act (HIPAA), in which he explicitly represented himself as having power of attorney for Jane. Defendants note that the court found it not unequivocally clear that acceptance of the arbitration provision was integral to the establishment contract and a prerequisite to admission to the facility, but they disagree and urge that the structure and terms of the entire establishment contract reflect that execution of the contract, along with the incorporated arbitration agreement, was a prerequisite to admission. For example, defendants cite the admission provision, section B(2) of addendum D, which they argue directly tied residency to execution of the contract as a whole, including the incorporated arbitration clause. In sum, defendants argue that the plain language of the establishment contract reflects that execution of the *entire* contract, including the arbitration provision, was a condition precedent to admission and, thus, integral to the admission process. As such, execution of the arbitration agreement was part of the healthcare decision itself and fell within the authority of an agent acting on a resident's behalf. Defendants argue that the court erred in failing to evaluate the substance and effect of the contractual provisions as written, focusing instead on the absence of specific terminology.

¶ 29 In response, plaintiff argues that defendants forfeited the argument regarding section B(2) of addendum D, as it was not raised in the trial court. Even if not forfeited, plaintiff argues, addendum D does not establish his authority to bind Jane (or her estate) to the arbitration agreement because plaintiff was unauthorized to sign it on her behalf. Plaintiff notes that basic contract and agency principles establish that he was only authorized under the power of attorney to make decisions for Jane concerning her personal care, medical treatment, hospitalization, and healthcare. Therefore, while plaintiff concedes the power of attorney authorized him to have Jane admitted to the assisted living facility, he claims it did not give him authority to waive her right to a jury trial,

which is a legal decision. Plaintiff reiterates that whether someone with healthcare power of attorney has authority to agree to an arbitration provision in a care facility contract turns on whether the provision is an integral part of the admission contract and necessary for admission to the facility. Here, plaintiff argues, the arbitration agreement is unenforceable because there is a threshold issue of fact, *i.e.*, whether the power of attorney was operative at the time he signed the arbitration agreement, since the date on the power-of-attorney form is illegible and, “despite plaintiff raising this issue multiple times, defendants have presented no evidence that it was executed before September 28, 2021, when [plaintiff] signed the arbitration agreement.” Plaintiff argues that defendants are putting the cart before the horse because the question of whether the arbitration agreement was required for admission is pertinent only if there was a valid healthcare power of attorney in place, but “defendants have not even proven that,” as they presented no evidence that Jane was present and directed him to sign the agreement as her representative or knew about his signature and agreed to it. Even if he possessed authority to bind Jane to the arbitration agreement, plaintiff contends, it could not be more clear that it was optional for admission because defendants have admitted that it was a “voluntary arbitration agreement.” Plaintiff notes it was signed separately from the establishment contract and, therefore, this case is “nearly identical” to the facts presented in *Parker v. Symphony of Evanston Healthcare, LLC*, 2023 IL App (1st) 220391. Plaintiff asserts that defendants’ addendum D argument hinges on the execution of the establishment contract, including execution of the separately signed arbitration agreement. Plaintiff argues that the documents are at the very least ambiguous and should be construed against the drafter. Finally, plaintiff argues that the arbitration agreement is unenforceable because it is substantively unconscionable in that it (1) is inordinately one-sided in the facility’s favor, as it compels arbitration in all major instances except three actions that would

be ones brought by the facility against a resident, not vice versa; (2) contains a confidentiality clause that is effectively entirely one-sided; and (3) waives plaintiff's right to exemplary and/or punitive damages, if an award is justified. Plaintiff argues that the entire arbitration agreement should be invalidated, based on its multiple unconscionable provisions.

¶ 30 C. Arbitration Agreement is Required

¶ 31 We first conclude that the arbitration agreement was an integral part of the establishment contract and a prerequisite to admission. Preliminarily, there is no dispute that plaintiff signed the establishment contract and all incorporated addenda on September 28, 2021. Therefore, as there is no question of fact on that point, there is no question that he agreed to section V(R)'s binding arbitration agreement *within the body of the establishment contract*. Section V(R) not only essentially reads as a short form version of the arbitration addendum, it also incorporates the addendum therein. Thus, we reject plaintiff's attempt to assign import to the arbitration addendum being signed "separate" from the establishment contract. Here, an arbitration agreement was also signed within the establishment contract, and in any event, all addenda were signed at the same time as the contract, and all addenda were incorporated into the contract.

¶ 32 As to the arbitration addendum, the trial court found that it was "pretty clearly" part of the contract. We agree. As the aforementioned provisions establish, in the contract's first paragraph, the phrase "establishment contract" is expressly defined as *including* all addenda. The arbitration addendum is also referenced repeatedly within the contract. Further, the plain language of the contract clearly establishes that agreement to arbitration was, in fact, integral to admission to the facility. For example, section I(B) explicitly states that residence in the apartment will be allowed *in exchange* for "[y]our agreeing to and complying with *all of the terms and conditions* of this Establishment Contract." (Emphasis added.) Moreover, the contract stated that, by signing,

plaintiff agreed to the terms of all provisions, including the addenda. Addendum D again reiterated that “the resident will be admitted *upon execution of the Establishment Contract and receipt of all other documents required by the community.*”²

¶ 33 Therefore, this case is unlike *Parker*, upon which plaintiff relies. In *Parker*, a healthcare provider filed a section 2-619 motion to dismiss a complaint on the basis that, like here, the resident’s daughter had signed, as healthcare power of attorney, a separately paginated arbitration agreement that had been incorporated into a contract for long-term care residency. *Id.* ¶¶ 13, 18. The plaintiff responded that the arbitration agreement was unconscionable, but also attached to the response (1) an affidavit from the resident’s daughter, attesting that she did not have power of attorney over property, her mother did not direct her to sign the arbitration agreement, she did not understand that she was waiving her mother’s right to trial by jury and attorney fees, and that, if anyone had explained the arbitration agreement to her, she would not have agreed to sign away those rights, and (2) deposition testimony from the defendant’s business manager, who explained that representatives or residents were always given the option to refuse the arbitration agreement and, in fact, about 85% refused to sign it. *Id.* ¶¶ 14-17. The trial court granted the motion to compel arbitration, but the appellate court reversed and remanded, explaining “[m]ost significantly” that “the arbitration agreement states that signing the agreement is not required to receive treatment” and that the deposition testimony reflected “the arbitration agreement is optional, and about 85%

²We reject plaintiff’s argument that defendants forfeited reliance on addendum D, as they did not raise this specific argument before the trial court. Preliminarily, forfeiture is a limitation on the parties, not this court. See *Jill Knowles Enterprises, Inc. v. Dunkin*, 2017 IL App (2d) 160811, ¶ 22. And, where the entire contract was before the trial court, it stated that it had read the entire contract, and our review of the contract and the court’s order are *de novo*, we will not find defendants’ argument forfeited.

of residents refuse to sign it.” *Id.* ¶ 32. Further, the court in *Parker* noted that the admissions contract stated that the parties were signing a “separate” arbitration agreement. (Emphasis omitted.) *Id.* ¶ 33.

¶ 34 Here, the establishment contract did not refer to the arbitration agreement as being “separate” and, instead, repeatedly referred to it as attached and incorporated therein. The trial court also referenced *Parker* but expressly noted the key distinction between *Parker* and this case; namely, the arbitration agreement in *Parker* stated “ ‘[t]his health care arbitration agreement is *not* a condition to the rendering of health care services by any party’ ” (emphasis added) (*id.* ¶ 7). In contrast, as we noted in *Fiala v. Bickford Senior Living Group, LLC*, 2015 IL App (2d) 141160, ¶ 45, when an arbitration provision is integral to the entire contract and required for admission to residential health care, a person authorized by a healthcare power of attorney may bind a principal thereto. Indeed, in *Fiala*, a case also challenging a healthcare power of attorney’s authority to bind an assisted-living resident to an arbitration provision, the “ ‘Binding Arbitration Provision’ ” was included in an “establishment contract,” the provision was an integral part of the establishment contract, and a prospective resident’s agreement thereto, along with the other establishment contract provisions, was required to secure admission into the facility. *Id.* ¶ 8. We recognized that a healthcare power of attorney does not ordinarily grant the agent authority over the principal’s property or financial matters, but we explained that “health-care decisions, such as placement in an assisted-living facility, are not so cut and dried” and that, “if an arbitration provision is required for admission to a care facility[,] then it becomes part and parcel of the health-care decision to admit the patient to the facility.” *Id.* ¶¶ 40, 45. Ultimately, we concluded that the signed establishment contract, including the arbitration agreement, was properly signed within the scope and authority of the healthcare power of attorney. *Id.* ¶¶ 47, 50.

¶ 35 Here, given the foregoing, we disagree that there was not “unequivocal evidence” that the arbitration agreement was necessary for admission. The unequivocal evidence was, as described above, the contract itself. The burden then shifted to plaintiff to rebut that *prima facie* evidence. To the extent that defendants do not *actually* enforce the provisions of the contract and arbitration agreement, such that custom and practice allows admission even when the arbitration provision and addendum are rejected, it was plaintiff’s burden to produce that in response to the motion. See, e.g., *Parker*, 2023 IL App (1st) 220391, ¶¶ 15-16 (where the plaintiff responded to the section 2-619 motion with deposition testimony from the healthcare facility’s administrator reflecting the arbitration agreement was not required for admission, as 85% of residents or representatives rejected it). Here, without any evidence, the pattern and practice of the facility remained pure speculation, not a question of fact. Further, we agree with the trial court that the expression “voluntary” agreement means only that a resident or representative was free to accept or reject the agreement, not that the agreement was not required for admission.

¶ 36 Similarly, we disagree that other questions of fact, particularly regarding the power of attorney form, precluded the court from granting defendants’ motion. In support of their motion to dismiss the amended complaint, defendants presented the entire establishment contract with all addenda, undisputedly signed by plaintiff. In support of their initial motion to dismiss, defendants presented an executed and witnessed short form power-of-attorney designation, whereby Jane gave plaintiff the right to make decisions on her behalf. Again, plaintiff does not dispute that he signed the form or that he was Jane’s power of attorney for healthcare. As noted, it is clear that both the arbitration provision and the addendum were integral to the establishment contract. At that point, therefore, defendants presented a *prima facie* case that affirmative matter barred plaintiff’s claims and the burden shifted to *plaintiff* to present evidence in rebuttal. Plaintiff argues that defendants

failed to establish that he had authority to execute the arbitration addendum because the *date* on the power of attorney form is illegible. Preliminarily, plaintiff's position would suggest that he might not have had authority to sign *any* part of the establishment contract, even though he represented therein that he possessed such authority. Again, plaintiff focuses on the addendum, but even the establishment contract contained an arbitration provision. Notably, once defendants presented the power-of-attorney form and the signed contract, plaintiff failed to rebut the validity of those documents with his own affidavit or other evidence. Presumably, plaintiff knows when the power-of-attorney designation was executed, and he could attest that it was not in effect when he signed the establishment contract and addenda on Jane's behalf (if that was the case). Or, perhaps, he could have presented an affidavit from the witness to the form's execution. In any event, plaintiff's supposition that he might not have had the power-of-attorney authority when he signed the establishment contract and arbitration agreement was unsupported. And, as the court noted, his position improperly "flipped" the burden on the motion. See, *e.g.*, *Parker*, 2023 IL App (1st) 220391, ¶ 17 (where the plaintiff responded to the section 2-619 motion with an affidavit from the resident's daughter, rebutting her authority to bind her mother to the arbitration agreement). In short, defendants satisfied their burden of showing affirmative matter barred the claim, and plaintiff failed to rebut that showing.

¶ 37 D. Unconscionability

¶ 38 Our inquiry is not finished, as plaintiff argues that the arbitration provision is unconscionable and, therefore, unenforceable. We note that the arbitration provision here delegates questions of unconscionability to the arbitrator. However, despite such a delegation provision, courts must nevertheless decide the unconscionability question because, if the agreement is unconscionable, the delegation provision within that agreement cannot be enforced. See *Turner v.*

Concord Nursing & Rehabilitation Center, LLC, 2023 IL App (1st) 221721, ¶ 20; *Geller v. Uber Technologies, Inc.*, 2025 IL App (1st) 241458-U, ¶¶ 20-21. As such, we remand the issue of unconscionability to the trial court. Indeed, even *de novo* review presumes there is a decision to review. Here, we would be determining unconscionability in the first instance, as the trial court denied the motion on another basis and never reached or ruled on the question (although it stated the unconscionability argument was a “reach” and discouraged plaintiff’s reliance upon it, it never elaborated on its rationale or made a finding on the question). Further, where a trial court notes a legal issue of concern involving an arbitration agreement but fails to make a substantive determination of the issue, there is an insufficient showing to sustain the order denying the motion to compel arbitration. See *Herns v. Symphony Jackson Square LLC*, 2021 IL App (1st) 201064, ¶¶ 31, 34 (reversing the order denying the defendants’ section 2-619(a)(9) motion to compel arbitration and remanding for the court to render substantive dispositions with explanation resolving raised, but unanswered, factual and legal issues about the validity of a healthcare arbitration agreement).

¶ 39 Accordingly, we reverse the court’s judgment denying defendants’ motion to dismiss, but remand for it to rule on whether the arbitration provision is unconscionable.

¶ 40 III. CONCLUSION

¶ 41 For the reasons stated, we reverse the judgment of the circuit court of McHenry County and remand for further proceedings.

¶ 42 Reversed and remanded.

McLean v. Cary Senior Living, LLC, 2026 IL App (2d) 260174

Decision Under Review: Appeal from the Circuit Court of McHenry County, No. 25-LA-116; the Hon. Kevin G. Costello, Judge, presiding.

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