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Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

BARBARA LONG, as Independent Administrator of the Estate of Chester Thurman, Deceased, Plaintiff-Appellee, v. THE LOFT REHABILITATION & NURSING OF CANTON, LLC, d/b/a Loft Rehabilitation & Nursing of Canton and HEARTLAND OF CANTON, IL, LLC, d/b/a Heartland of Canton, Defendants-Appellants.	)	Appeal from the Circuit Court of Fulton County No. 20LL0011 Honorable Thomas B. Ewing, Judge Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices DeArmond and Turner concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court reversed the trial court's judgment denying the defendants' motions to compel arbitration where a contract to arbitrate existed and the delegation clause of the contract required the arbitrator to determine issues relating to the validity, scope, and enforceability of the arbitration agreement.

¶ 2 This is an interlocutory appeal pursuant to Illinois Supreme Court Rule 307(a)(1) (eff. Nov. 1, 2017). Defendants, The Loft Rehabilitation & Nursing of Canton, LLC (Loft) and Heartland of Canton IL, LLC d/b/a Heartland of Canton (Heartland) (collectively "nursing home"), appeal the order of the circuit court of Fulton County denying their respective motions to compel arbitration. Plaintiff, Barbara Long, as independent administrator of the Estate of Chester Thurman, deceased, filed a complaint against defendants arising out of injuries Chester sustained while he was a resident of the nursing home. Heartland owned the nursing home when

Chester was admitted there, but during Chester's residency, Heartland sold the nursing home to Loft and then assigned all of its "right, title, and interest" in the nursing home operations to Loft. Defendants contend the lawsuit was subject to a voluntary arbitration agreement (arbitration agreement) signed by Chester's wife, as his legal power of attorney. The court found that no contract to arbitrate existed because the parties lacked "mutual assent." We reverse.

¶ 3 I. BACKGROUND

¶ 4 A. The Arbitration Agreement

¶ 5 Chester was married to Shirley Thurman. On August 31, 2018, Shirley, acting as Chester's power of attorney both for health care and property, signed certain documents admitting Chester to the nursing home. Those documents consisted of an "admission agreement," "authorization and agreement to manage resident's funds," a Medicare questionnaire, and the arbitration agreement. The cover sheet to the admissions packet stated:

> "Here's What We Will Discuss.
>
> 1) Admission Agreement (signatures)
>
> 2) Patient Information Handbook–including Center Supplement (no signature)
>
> 3) Voluntary Arbitration Agreement (signature, if elected)"

¶ 6 The first page of the arbitration agreement was a cover sheet bearing the words "*VOLUNTARY ARBITRATION AGREEMENT*" in all capital, bolded letters, centered on the page in a large font. The first section in the body of the arbitration agreement was titled "Introduction to our Voluntary Arbitration Program." In 10 bullet points, this section summarized in layman's terms the purpose and function of arbitration. The seventh and eighth bullet points were bolded and stated as follows:

"*By agreeing to arbitrate, both sides forego the right to have a judge or jury decide any dispute.*

The Arbitration Agreement does not need to be signed in order for the Patient to be admitted to the facility." (Emphasis in original.)

The last bullet point on the page advised in non-bolded type: "Please read the attached Arbitration Agreement, and *if you agree*, please sign where indicated." (Emphasis added.)

¶ 7 The next section of the arbitration agreement contained a paragraph titled "Parties." This section referred to the nursing home as the "Center" and stated as follows:

"This agreement and the definitions in this Section will be interpreted as broadly as possible *** to bind and benefit any person who asserts any claim or against whom a claim is asserted by or on behalf of the Center or the Patient. *The parties intend to allow any person alleged to be liable for any actions or inactions of the Center or the Patient or related to any care provided to the Patient to demand arbitration pursuant to this Agreement.*" (Emphasis added.)

"Center" was defined to include "the Center's licensed operator, governing body, officers, directors, members, shareholders, administrator, employees, managers, agents, and any parent company, subsidiary, or affiliates, including but not limited to *** any person or entity alleged to be responsible for the Center's activities." The arbitration agreement also provided that it was "governed by the Federal Arbitration Act (FAA) (9 U.S.C. §§ 1-16)."

¶ 8 Paragraph 13 of the arbitration agreement provided that, upon execution, it merged with the admission agreement. Paragraph 15 advised in bold font that signing the arbitration agreement was not required for the patient to be admitted to the nursing home and that

the "same level of care" would be given the patient "whether or not" the arbitration agreement was signed.

¶ 9 Paragraph 6 of the arbitration agreement contained what the parties refer to as the "delegation clause." It was titled "Arbitrator's Authority" and provided in pertinent part as follows:

> "The arbitrator has the sole jurisdiction to resolve all disputes among the parties, including wrongful death claims and *any disputes about the signing, validity, enforceability, scope, applicability, interpretation, severability, and waiver of this Agreement or competency of the parties*. (Emphasis added.)

¶ 10 Immediately above the patient's signature line, in bolded font, the signer was advised to read the entire document before signing and that "each party" was waiving the right to trial by jury. On the line provided for the signature of the patient's representative, Shirley's signature appeared. The document indicated that she represented that she had authority to sign on the patient's behalf. Below Shirley's signature appeared the signature of Mary Andrews on behalf of the nursing home.

¶ 11 B. The Litigation

¶ 12 1. *The Complaint*

¶ 13 On July 22, 2020, plaintiff filed a six-count complaint in the circuit court against the nursing home. Count I alleged a violation of the Nursing Home Care Act (210 ILCS 45/1-101 *et seq.* (West 2020)); count II was brought pursuant to the Survival Act (755 ILCS 5/27-6 (West 2020)); count III alleged wrongful death; count IV was directed against Heartland only and alleged a violation of the Nursing Home Care Act; count V was directed against Heartland only and was brought pursuant to the Survival Act; and count VI, which was directed

solely against Heartland, was brought pursuant to the Survival Act. The gist of the complaint was that the nursing home was liable for damages Chester sustained in multiple falls while he was a resident.

¶ 14 2. *The Motions to Compel Arbitration*

¶ 15 On April 13, 2021, Heartland filed a motion to dismiss the complaint and to compel arbitration. On May 11, 2021, Loft filed a motion to stay the trial court proceedings and to compel arbitration. Loft specifically relied on paragraph 6 of the arbitration agreement, the delegation clause. Attached to plaintiff's response was Shirley's affidavit attesting that Andrews, the nursing home representative, did not explain the arbitration agreement to her or tell her she had a choice not to sign it. The court granted the parties leave to depose Shirley and Andrews.

¶ 16 3. *The Deposition Testimony*

¶ 17 a. Shirley

¶ 18 Shirley testified at her deposition as follows. She was 82 years old, and her highest level of education was a GED. She was retired, but, before retirement, she worked in a department store. When Chester entered the nursing home, Shirley made Chester's health care and financial decisions for him because of Chester's dementia. Shirley was Chester's power of attorney for both health care and property. Although Shirley did not recall signing the power of attorney for property approximately a year before Chester's admission to the nursing home, she acknowledged that the signature appearing thereon was hers. She also acknowledged Chester's signature on the document. Based on those signatures, Shirley admitted that she was Chester's power of attorney for property.

¶ 19 Shirley remembered Andrews by her first name, "Mary." Shirley recalled that Andrews "rushed through everything because I was worried about my husband, and she just kept

having me sign stuff and sign stuff." Shirley said, "I didn't even know what I was signing half the time because I was so upset" about having to admit Chester to the nursing home. When shown the admission documents, Shirley did not remember the specific documents she went through with Andrews. When asked if she recalled "the circumstances" around "whether or not" she reviewed the arbitration agreement, Shirley answered, "I have no idea." When asked about the sections of the arbitration agreement, Shirley variously stated, "I don't remember," "I don't understand it," "I don't know; I don't get it," or "I see what it says but I don't understand it." At one point, Shirley stated that she would never have signed the arbitration agreement without her children being there. Shirley recognized her signature on the arbitration agreement and stated that, by signing, she indicated she had authority to sign on Chester's behalf. Regarding signing the admission documents, Shirley stated: "They didn't give me a chance to even look at stuff. I remember that. I signed so many papers I don't even know what I signed. Even though my signature is there, I don't even know—They just kept giving me paper after paper after paper." However, Shirley stated that she had a choice not to sign the arbitration agreement. Shirley stated that she was crying when she drove Chester to the nursing home. Shirley did not remember if Andrews was the only person she dealt with, as she was "so confused."

¶ 20 b. Andrews

¶ 21 At her deposition, Andrews testified as follows. Andrews was the social services coordinator at the nursing home. Andrews specifically recalled Shirley signing Chester's admission papers. The signing took place in Andrews's office, and Chester was not present. Andrews customarily takes at least 30 minutes to go through the admissions process. Andrews did not recall how long she spent going over the admission documents with Shirley, or whether she explained the arbitration agreement to Shirley paragraph by paragraph, although she would

not have varied her usual practice of spending 30 minutes on the admissions process. Andrews would have explained the terms of the arbitration agreement to Shirley and explained to her that arbitration means giving up some legal rights. Andrews explains documents paragraph by paragraph if someone asks her to, but she did not remember whether Shirley asked her to do so. Andrews customarily reads the introductory bullet points of the arbitration agreement to the person signing the admission papers and explains that the person signing can cancel within 30 days. Andrews did not recall that Shirley was upset that day. Andrews testified: "I don't know what her state of mind was," but then Andrews agreed that Shirley was "upset" at putting Chester in a nursing home. Andrews was not aware when Shirley signed the papers if she had any impaired judgment. Andrews asked Shirley if she understood the arbitration agreement, and Shirley said "yes." Andrews did not "rush" Shirley through the paperwork.

¶ 22 4. *The Court's Ruling*

¶ 23 After hearing extensive arguments, the court filed its written decision on June 30, 2022. The court found that the following were the "essential facts": (1) Chester was admitted to the nursing home on August 31, 2018; (2) Chester did not sign any admitting documents; (3) the admitting documents were signed by Shirley and Andrews; (4) Shirley was Chester's agent for health care under a power of attorney for health care and his agent for other matters under a power of attorney for property; Chester signed both powers of attorney on August 2, 2017; (5) the nursing home was purchased by Loft in 2018, and an assignment of operations to Loft occurred on November 29, 2018; (6) Chester died on August 24, 2019; and (7) the complaint, filed on July 22, 2020, included claims under the Nursing Home and Survival Acts.

¶ 24 The court framed the single issue it decided as follows.

> "The principal issue before this court is whether there was mutual assent between [Shirley], on behalf of [Chester], and [the nursing home] in signing the arbitration agreement. If there was mutual assent, then the issues brought in the complaint under the Nursing Home Act and the Survivor Act [*sic*] should be sent to arbitration. If there was not mutual assent, then those issues should be decided in court. To be clear, mutual assent is not determined by whether the parties executed the [arbitration] agreement. An agreement which is coerced, required, or mandatory cannot be one entered into with the mutual assent of both parties."

¶ 25 The court found that "there was not the mutual assent or meeting of minds" between Shirley and the nursing home regarding the arbitration agreement. The court concluded, "under the totality of the circumstances, it is clear that Shirley was not able to comprehend that signing the arbitration agreement was voluntary." The court opined that Shirley thought "she was required to sign every document in order to have her husband admitted to the nursing home." Specifically, the court relied on the first page of the admission packet, which stated, "Other Documents that require your signature" and included "Voluntary Arbitration Agreement, if elected." The court then elaborated on its finding of no mutual assent:

> "It no doubt appeared to the unsophisticated Shirley with only a GED education while in the emotional turmoil of admitting her husband to a nursing facility, after driving him alone to the nursing home crying, and making what is a horrible gut wrenching decision to have to make for any spouse, and who was clearly in an emotional state, that she was required to sign everything put in front of her, one paper after another, in order to have her husband put in a nursing home. That is not mutual assent to a voluntary agreement."

In finding that Shirley was in an "emotional state," the court relied on Andrews's deposition testimony where Andrews asked the definition of the word "distressed." The court noted: "[Andrews] attempt[ed] to avoid acknowledging Shirley's emotional state," which "is revealing. The meaning of the word distressed is unambiguous and need not be defined. The statement seems to parry to avoid answering the questions straightforwardly." Consequently, the court denied both motions to compel arbitration.

¶ 26 This timely appeal followed.

¶ 27 II. ANALYSIS

¶ 28 Loft contends that the court erred in (1) failing to enforce the arbitration agreement's delegation clause and (2) finding that there was no mutual assent to the arbitration agreement. Heartland contends that (1) there was mutual assent between Shirley and the nursing home, (2) the arbitration agreement was voluntary, (3) the arbitration agreement was procedurally and substantively conscionable, and (4) Shirley had actual and apparent authority to execute the arbitration agreement.

¶ 29 Contractual agreements to submit disputes to arbitration are favored as a matter of law. *Zuniga v. Major League Baseball*, 2021 IL App (1st) 201264, ¶ 13. When the court is presented with a motion to dismiss or stay an action and compel arbitration, the trial court's inquiry is limited to "gateway" issues, such as whether there is a valid arbitration clause, and, if so, whether the dispute falls within the scope of that clause. *Hartz v. Brehm Preparatory School, Inc.*, 2021 IL App (5th) 190327, ¶ 42. The instant arbitration agreement is governed by the FAA, which reflects the "fundamental principle" that arbitration is a matter of contract. *Arbogast v. Chicago Cubs Baseball Club, LLC*, 2021 IL App (1st) 210526, ¶ 18. When a party opposing arbitration contests that he or she has entered into a contract with the party seeking to compel

arbitration, this presents a threshold question to be resolved by the court. *Arbogast*, 2021 IL App (1st) 210526, ¶ 18. Whether a contract exists is decided according to state law contract formation principles. *Arbogast*, 2021 IL App (1st) 210526, ¶ 18. Contract formation issues center on the elements of offer, a strictly conforming acceptance of the offer, and consideration. *Martin v. Government Employees Insurance Co.*, 206 Ill. App. 3d 1031, 1035 (1990). An arbitration agreement can be invalidated by contract defenses such as fraud, duress, or unconscionability. *Zuniga*, 2021 IL App (1st) 201264, ¶ 13. An arbitration agreement is treated like any other contract. *Midland Funding, LLC v. Raney*, 2018 IL App (5th) 160479, ¶ 20.

¶ 30 A. Standard of Review

¶ 31 The parties disagree on the standard of review. A motion to compel arbitration is treated like a motion for injunctive relief. *Menard County Housing Authority v. Johnco Construction, Inc.*, 341 Ill. App. 3d 460, 463 (2003). We review a denial of such motion pursuant to Illinois Supreme Court Rule 307(a)(1) (eff. Nov. 1, 2017). *Johnco*, 341 Ill. App. 3d at 463. The sole issue before us on an interlocutory appeal is whether a sufficient showing was made to sustain the court's order denying the motion to compel arbitration. *Johnco*, 341 Ill. App. 3d at 463. Thus, the standard of review on an interlocutory appeal is abuse of discretion. *Johnco*, 341 Ill. App. 3d at 463.

¶ 32 Loft urges that because the instant arbitration agreement is governed by the FAA, the standard of review is *de novo*, citing *Melena v. Anheuser-Busch, Inc.*, 219 Ill. 2d 135, 141 (2006). However, *Melena* articulated the *de novo* standard of review where the court reviewed a ruling on a section 2-619 (735 ILCS 5/2-619 (West 2000)) motion to dismiss. *Melena*, 219 Ill. 2d at 141. Heartland urges a *de novo* standard of review, arguing that the court's order was entered

without an evidentiary hearing. Plaintiff argues that the correct standard of review is abuse of discretion because the facts are in dispute and the court made factual findings.

¶ 33 One of the issues raised in this appeal is the unconscionability of the arbitration agreement. That issue is one of contract construction, which is reviewed *de novo*. *Mason v. St. Vincent's Home, Inc.*, 2022 IL App (4th) 210458, ¶ 18. Regarding the issue of mutual assent, the court made factual findings, including that Shirley (1) was not able to comprehend that the arbitration agreement was voluntary, (2) thought she was required to sign every document to be able to admit Chester to the nursing home, and (3) was so "distressed" as to be incapable of rendering assent. Because the court made factual findings, we apply the abuse-of-discretion standard of review to the decision whether to compel arbitration. *Mason*, 2022 IL App (4th) 210458, ¶ 19. However, under either the *de novo* or the abuse-of-discretion standard of review, our outcome would be the same.

¶ 34 B. Loft's Right to Compel Arbitration

¶ 35 Preliminarily, we address plaintiff's argument that Loft was not a party to the arbitration agreement and did not acquire the right to arbitrate in the assignment of operations from Heartland. The parties named in the arbitration agreement were Heartland, Chester, and Shirley, as Chester's agent. Arbitration is a "creature of contract," and under basic tenets of contract law, only parties to the arbitration agreement can compel arbitration or be compelled to arbitrate. *Carter v. SSC Odin Operating Co., LLC*, 2012 IL 113204, ¶ 55.

¶ 36 Loft contends that it is a third-party beneficiary of the arbitration agreement. Loft cites *Board of Education of Meridian Community Unit School District 101 v. Meridian Education Ass'n*, 112 Ill. App. 3d 558, 563 (1983), for the proposition that we must read the entire contract to determine who is covered for purposes of arbitration. Loft directs our attention

to the definition of "parties" in the arbitration agreement. "Parties" includes any person "against whom" a claim is asserted by or on behalf of a patient. The arbitration agreement also states that "any person" alleged to be liable for acts or omissions of the nursing home or acts or omissions related to patient care can demand arbitration. "Parties" is to be "interpreted as broadly as possible." In her complaint, plaintiff alleged that Chester remained a resident of the nursing home until August 15, 2019. According to the court's findings of fact, Loft purchased the nursing home in 2018, and the assignment of operations to Loft occurred on November 29, 2018. Plaintiff named Loft as a party defendant in her complaint, and she alleged that "at all times relevant to this complaint," Loft was the "licensee, owner and/or operator" of the nursing home. Plaintiff further alleged in the complaint that Loft owed Chester a duty of care, breached that duty in numerous ways, and proximately caused Chester's injuries. Under the terms of the arbitration agreement, Loft is therefore a person "against whom a claim is asserted by or on behalf of a patient" and a person "alleged to be liable for any actions or inactions" of the nursing home. Loft relies on *Hoffman v. Deloitte & Touche, LLP*, 143 F. Supp. 2d 995, 1004 (N.D. Ill. 2001), where the court held that a non-signatory to an arbitration agreement can nonetheless compel arbitration when the parties to the contract agree to confer certain benefits thereunder to a third party. Here, the arbitration agreement conferred a benefit on Loft by providing for arbitration for any claim against it related to Chester's care.

¶ 37 Nevertheless, plaintiff argues that Loft cannot claim third-party beneficiary status under the arbitration agreement. Plaintiff argues that Loft must produce the actual operations transfer agreement pursuant to which it assumed operations from Heartland for the court to determine whether the assignment of operations included the arbitration agreement. Plaintiff relies on *Daley v. Alden-Town Manor Rehabilitation & Health Care Center, Inc.*, 2022 IL App

(1st) 211619-U. *Daley* is inapposite. In *Daley*, the issue was whether the arbitration agreement was valid on its face and whether a son had specific authority to bind his father to the arbitration agreement. *Daley*, 2022 IL App (1st) 211619-U, ¶ 36. The court held that the defendants did not sustain their burden to establish a valid arbitration agreement where they did not show the contents of the power of attorney giving the son the authority to sign the arbitration agreement. *Daley*, 2022 IL App (1st) 211619-U, ¶ 36. Here, Heartland's assignment to Loft of its "right, title and interest" in the nursing home's operations necessarily includes the arbitration agreement because the assignee of all "right, title, or interest" in the thing assigned stands in the shoes of the assignor. *In re Estate of Martinek*, 140 Ill. App. 3d 621, 629-30 (1986). Accordingly, we hold that Loft has the right to enforce the arbitration agreement.

¶ 38 C. The Delegation Clause

¶ 39 Loft argues that the court erred in failing to enforce the arbitration agreement's delegation clause, which provided as follows:

> "The arbitrator has the sole jurisdiction to resolve all disputes among the parties, including wrongful death claims and *any disputes about the signing, validity, enforceability, scope, applicability, interpretation, severability, and waiver of this Agreement or competency of the parties*." (Emphasis added.)

Loft contends that the court's function is limited to determining the formation of an arbitration agreement, whereas the arbitrator determines challenges to the enforceability or validity of the agreement. In *K.F.C. v. Snap, Inc.*, 29 F.4th 835, 837 (7th Cir. 2022), the court noted that "until the court rules that a contract exists, there is simply no agreement to arbitrate." However, if a contract exists, then "an arbitration clause may delegate all other issues, including defenses, to the arbitrator." *K.F.C.*, 29 F.4th at 837.

¶ 40 Loft argues that the instant delegation clause is clear, plaintiff does not challenge it, and the court should have enforced it. Plaintiff argues that the court had no occasion to consider the delegation clause because it ruled that no contract existed. The court found that Shirley signed the arbitration agreement, and she had the authority to do so. However, the court also found that there was no meeting of the minds—no mutual assent—between Shirley and the nursing home. As this court noted in *Quinlan v. Stouffe*, 355 Ill. App. 3d 830, 838 (2005), " '[a]n enforceable contract must include a meeting of the minds or mutual assent as to the terms of the contract.' " *Quinlan*, 355 Ill. App. 3d at 838 (quoting *Academy Chicago Publishers v. Cheever*, 144 Ill. 2d 24, 30 (1991)). Consequently, we agree with plaintiff that the court found that no contract existed.

¶ 41 Loft argues that a contract existed because there was an offer, acceptance, and consideration. An offer, an acceptance, and consideration are the basic ingredients of a contract. *Steinberg v. Chicago Medical School*, 69 Ill. 2d 320, 329 (1977). Additionally, Loft argues that the agreement to arbitrate was mutual, as both Chester (through Shirley) and the nursing home agreed to arbitrate. Plaintiff argues that there was no mutual assent because (1) Shirley was presented with conflicting documents to sign and (2) the court correctly found that Shirley was under "duress" when she signed the documents.

¶ 42 Plaintiff acknowledges that the arbitration agreement was voluntary. Plaintiff also acknowledges that Shirley was not required to sign it. However, plaintiff argues that Shirley was given other documents, which she was required to sign. This, plaintiff argues, was "confusing." Further, plaintiff asserts that the court found the nursing home exerted "undue influence" over Shirley. Plaintiff also asserts that the court found Andrews took "undue advantage" of Shirley to the point that Shirley's free will was overborne. Plaintiff maintains that the record supports these

"findings," where Shirley was (1) alone, (2) unsophisticated in business and legal transactions, (3) upset about putting Chester in a nursing home, and (4) rushed through the paperwork.

¶ 43 Plaintiff is inventive in her interpretation of the court's findings. The court found that "under the totality of the circumstances, it is clear that Shirley was not able to comprehend that signing the arbitration agreement was voluntary." The court found that Shirley was in an "emotional state." The court did not find "duress" or that Andrews overbore Shirley's free will. The court did not find that Andrews exerted "undue influence" or took "undue advantage." Nor would the record support such findings. At her deposition, Shirley acknowledged that she had the choice not to sign the arbitration agreement.

¶ 44 The court found that Chester gave Shirley his power of attorney for health care and for property approximately a year before he entered the nursing home. The court found that Shirley signed the arbitration agreement with the legal authority to do so. The most common way to demonstrate mutual assent is through a signature on a contract. *Arbogast*, 2021 IL App (1st) 210526, ¶ 21. "A party who has signed a contract is charged with knowledge of and assent to its terms." *Arbogast*, 2021 IL App (1st) 210526, ¶ 21. The salient principle of contract formation at work here is that mutual assent is determined by an objective standard. *Arbogast*, 2021 IL App (1st) 210526, ¶ 20.

¶ 45 Contrary to this rule, and without citing any authority, the court here used a subjective standard. However, the "subjective understanding of the parties is not required *** for there to be a meeting of the minds." *Urban Sites of Chicago, LLC v. Crown Castle USA*, 2012 IL App (1st) 111880, ¶ 51. Under the trial court's interpretation, no one with a high school education, without business and legal acumen, and who is "upset" would have capacity to contract.

¶ 46 Also, the court used a "knowing and voluntary standard" by which it examined Shirley's education, experience, and her opportunity for deliberation to determine whether she entered into an agreement waiving her right to a judicial forum. The "knowing and voluntary" standard was applied to *mandatory* arbitration agreements in some federal circuits, particularly the Ninth Circuit. *Melena*, 219 Ill. 2d at 145-46. Other federal circuits, including our own Seventh Circuit, rejected the knowing and voluntary standard in favor of an analysis based on the principles of fundamental contract law. *Melena*, 219 Ill. 2d at 149. As Loft argues, our supreme court also rejected the knowing-and-voluntary approach and held that an approach based on contract law was "more faithful to the FAA." *Melena*, 219 Ill. 2d at 149. Our supreme court held that mandatory arbitration agreements are to be evaluated according to the same standards as any other contract. *Melena*, 219 Ill. 2d at 149. Here, of course, the arbitration agreement was not mandatory but voluntary. For this reason alone, the "knowing and voluntary" standard did not apply.

¶ 47 Nor was the voluntary nature of the arbitration agreement obscured or confused by the other admission documents presented to Shirley. The "admission agreement" stated at the top that a signature was "required." At the bottom of that document appeared the words: "Other Documents that require your signature." Below those words four document were listed, the last being "Voluntary Arbitration Agreement, if elected." At her deposition, Shirley testified that she knew what the word "elected" means, and that a "fair" way to read the words "if elected" is if "chosen to do so." Another document presented to Shirley that gave her a choice was the "Authorization and Agreement to Manage Resident's Funds." In this document, Shirley could have chosen to check either the option to decline to allow the nursing home to keep and manage Chester's personal funds or to allow the nursing home to do so. Shirley checked the option

declining, demonstrating her capacity to understand the documents and exercise her own judgment. Additionally, we note that Andrews told Shirley she could cancel the admissions documents within 30 days of their signing. In those 30 days Shirley had time to calm down, mull her decision, and consult with her children and an attorney. Yet, Shirley did not cancel. Accordingly, we hold that a contract of arbitration existed. Pursuant to the delegation clause, all remaining issues relating to the validity, enforceability, and scope of the agreement, including unconscionability, are subject to arbitration.

¶ 48 III. CONCLUSION

¶ 49 For the reasons stated, we reverse the trial court's judgment.

¶ 50 Reversed.