

1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 **BARRY GREEN, ESQ., as Personal**  
3 **Representative of the WRONGFUL DEATH**  
4 **ESTATE URAH LEE HODGE, Deceased,**

Court of Appeals of New Mexico  
Filed 8/1/2023 9:37 AM



Mark Reynolds

5 Plaintiff-Appellee,

6 v.

**No. A-1-CA-40145**

7 **CLOVIS HEALTHCARE AND REHABILITATION**  
8 **CENTER, LLC d/b/a CLOVIS HEALTHCARE AND**  
9 **REHABILITATION CENTER a/k/a CLOVIS**  
10 **HEALTHCARE AND REHABILITATION CENTER**  
11 **LLC and CLOVIS HC AND REHAB CENTER;**  
12 **SUMMIT CARE, LLC; SUMMIT CARE PARENT,**  
13 **LLC; FC-GEN OPERATIONS INVESTMENT, LLC;**  
14 **GEN OPERATIONS I, LLC; GEN OPERATIONS, II,**  
15 **LLC; GENESIS HEALTHCARE, INC.; GENESIS**  
16 **HEALTHCARE LLC; SKILLED HEALTHCARE, LLC;**  
17 **SUN HEALTHCARE GROUP, INC.; SUNDANCE**  
18 **REHABILITATION HOLDCO, INC.; and GENESIS**  
19 **ADMINISTRATIVE SERVICES LLC,**

20 Defendants-Appellants.

21 **APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY**

22 **Kathleen McGarry Ellenwood, District Court Judge**

23 Pitman, Kalkhoff, Sricula & Dentice, SC  
24 Jeffrey A. Pitman  
25 Benjamin E. Reyes  
26 Santa Fe, NM

27 for Appellee

1 Rodey, Dickason, Sloan, Akin & Robb, P.A.  
2 Jocelyn Drennan  
3 Denise Chanez  
4 Patrick Coronel  
5 Albuquerque, NM

6 for Appellants

7 **DECISION**

8 **HANISEE, Judge.**

9 {1} This matter is on appeal from the district court’s order denying Defendants’  
10 motion to compel arbitration in favor of Plaintiff, the personal representative of the  
11 wrongful death estate of Urah Hodge. Defendants argue that the district court erred  
12 in denying the motion to compel arbitration on grounds of substantive  
13 unconscionability because the court lacked the authority to make threshold  
14 arbitrability determinations.

15 {2} We have carefully reviewed the briefs, applicable law, and arguments made  
16 by the parties. We have reviewed the entire record, including the district court’s  
17 order denying the motion to compel arbitration. This case presents nearly identical  
18 underlying claims, arbitration agreements, and arguments as our recently decided  
19 case *Green v. Peak Medical Farmington, LLC*, A-1-CA-40157, mem. op. (N.M. Ct.

1 App. July 13, 2023) (nonprecedential).<sup>1</sup> Accordingly, we find that this case may be  
2 resolved under the same authority and rationale as *Green*.

3 {3} “Arbitration agreements are a species of contract, subject to the principles of  
4 New Mexico contract law.” *L.D. Miller Constr., Inc. v. Kirschenbaum*, 2017-  
5 NMCA-030, ¶ 18, 392 P.3d 194. “Contract interpretation is a matter of law that we  
6 review de novo.” *Rivera v. Am. Gen. Fin. Servs., Inc.*, 2011-NMSC-033, ¶ 27, 150  
7 N.M. 398, 259 P.3d 803.

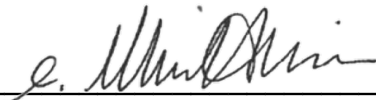
8 {4} We conclude that the district court erred in denying the motion to compel  
9 under the same precedent, authority, and rationale explained in *Green*. As in *Green*,  
10 this case presents an arbitration agreement that evidences a clear and unmistakable  
11 intent to arbitrate threshold issues, and the Hodge estate failed to raise a specific  
12 challenge to the delegation clause that renders the clause unenforceable. *See Juarez*  
13 *v. THI of N.M. at Sunset Villa, LLC*, 2022-NMCA-056, ¶ 22, 517 P.3d 918 (“Our  
14 inquiry, then, turns on two questions: (1) [W]as there a clear and unmistakable  
15 agreement to arbitrate arbitrability? and (2) [D]id the challenger mount a ‘specific  
16 challenge’ to that agreement?” (alteration, internal quotation marks, and citation  
17 omitted)). Answering only the first question affirmatively, we reverse and remand  
18 with instructions to submit the case to arbitration.

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<sup>1</sup>*Green* was consolidated with *Bustamante v. St. Theresa Healthcare and Rehabilitation Center, LLC*, A-1-CA-39868, mem. op. (N.M. Ct. App. July 13, 2023) (nonprecedential).


1 {5} IT IS SO ORDERED.

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J. MILES HANISEE, Judge

4 WE CONCUR:

5   
6 JACQUELINE R. MEDINA, Judge

7   
8 KATHERINE A. WRAY, Judge