



December 24, 2024

Honorable Justices of the Court of Appeal  
Third Appellate District  
914 Capitol Mall, 4th Floor  
Sacramento, CA 95814

Re: Request for Publication in *Lombardo v. Gramercy Court* (Case Number C098857)

Dear Honorable Justices:

On behalf of the Orange County Trial Lawyers Association (“OCTLA”), pursuant to California Rule of Court, rule 8.1120, we are writing to respectfully request publication of the above-titled case that was filed on December 4, 2024.

While this decision correctly follows the California Supreme Court’s guidance in *Harrod v. Country Oaks Partners, LLC* (2024) 15 Cal.5th 939, 957, the facts are different than those set forth in *Harrod*. (See Cal. Rule of Court, rules 8.1105(c)(2).) In *Harrod*, the nephew had executed a “power of attorney for health care” under California Probate Code section 4671. By contrast, the daughter in this case had a far broader power of attorney, including the power to engage in financial transactions, personal property transactions, and government health benefit issues. However, the daughter did not have the power to engage in “claims and litigation.”

Despite the broader power of attorney, this court aptly explained how this did not extend to “a decision on how [the daughter] can pursue legal action against defendant.” This court thoroughly explained that the power of attorney did not grant the daughter to bind the resident to arbitration.

*Harrod* also did not involve any allegation of ostensible agency. First, this Court aptly explained that the purported agent cannot create agency based on her own conduct. Even more importantly, this Court explained that a principal’s silence does not equate to authority for an agent to bind that principal to agreements. That is particularly true when there was no evidence that the principal was aware that the arbitration agreement was not necessary for admission.

Lastly, this court also aptly explained that the wrongful death claims were not bound to arbitration notwithstanding *Ruiz v. Podolsky* (2010) 50 Cal.4th 838, 847 since: 1) there was no valid underlying agreement to arbitrate by the resident and; 2) the agreement was only between two parties and thus did not bind the heirs.



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While the fact pattern here is relatively simple, it still differs from cases before it in relation to the scope of the agent's healthcare directive. This opinion would provide strong guidance to trial courts and litigants as to arbitration agreements when they are signed by purported agents.

**Statement of Interest:** Pursuant to California Rule of Court, rule 8.1120(a)(2), OCTLA is a non-profit organization that was formed in 1963. OCTLA has over 600 members that represent individuals subject to consumer fraud, unlawful employment practices, personal injuries, and insurance bad faith. OCTLA is also heavily involved in charitable activities, and selects a local non-profit organization to benefit from its annual Top Gun Event.

Very truly yours,

IKUTA HEMESATH, LLP



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BTI/bti

cc: All counsel in the underlying action through Truefiling