Circuit Court for Montgomery County
Case No. C-15-CV-22-001646

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1144

September Term, 2022

SLOCUMB LAW FIRM, LLC

v.

RAYMOND R. QUICK

Berger,
Reed,
McDonald, Robert N.
(Senior Judge, Specially Assigned),

JJ.

Opinion by McDonald, J.

Filed: September 20, 2023

*Under Maryland Rule 1-104, an unreported opinion may not be cited as precedent within the rule of *stare decisis*, but may be cited for its persuasive value if the citation conforms to Rule 1-104(a)(2)(B).

Appellant Slocumb Law Firm, LLC ("Slocumb") represented Appellee Raymond R. Quick on a contingent fee basis for a period of time with respect to Mr. Quick's tort claim against a third party. At a certain point, Mr. Quick dismissed Slocumb as his counsel and retained another law firm, which later obtained a judgment in Mr. Quick's favor. Slocumb and the successor firm were unable to agree upon how to divide the contingent fee between the two firms. Slocumb proposed that the firms submit the dispute to an arbitrator, proposed the arbitrator for that proceeding, agreed to a date for the proceeding, and submitted its position and supporting materials to the arbitrator. However, on the eve of the proceeding, it declined to participate in that proceeding and, apparently without advising the other law firm, filed a complaint against Mr. Quick in the Circuit Court for Montgomery County for its attorney's fee – a complaint that made no reference to the pending arbitration proceeding. The arbitration proceeding resulted in an award that split the contingent fee between the two firms. Slocumb neither sought a stay of the arbitration proceeding nor asked a court to vacate the award that resulted from that proceeding. Slocumb did not challenge the validity of the award until after Mr. Quick raised it as a defense to Slocumb's action against him and moved for summary judgment.

The Circuit Court rejected Slocumb's challenge and, enforcing the arbitration award, granted summary judgment in favor of Mr. Quick. For the reasons set forth in this opinion, we affirm the judgment of the Circuit Court.

I

Dispute Resolution Through Arbitration

A. The Arbitration Act

Maryland law favors voluntary arbitration as a means of dispute resolution over litigation in the courts. That policy is expressed in the Maryland Uniform Arbitration Act ("Arbitration Act"), which sets forth an orderly process by which parties may voluntarily arbitrate a dispute. Maryland Code, Courts and Judicial Proceedings Article ("CJ"), §§3–201 through 3-234.

The Arbitration Act sets procedures for the arbitration of disputes between parties who agree on that method of dispute resolution. Subject to some specific exceptions, the resulting arbitration award binds the parties and is enforceable in court without further litigation on the merits of the dispute. *See, e.g., Bel Pre Med. Ctr., Inc. v. Frederick Contractors, Inc.*, 21 Md. App. 307, 317-20 (1974) (explaining the history and purposes of the Arbitration Act), *rev'd on other grounds, Frederick Contr. v. Bel Pre Med.*, 274 Md. 307 (1975).

At the same time, Maryland law recognizes that "a party cannot be required to submit any dispute to arbitration that it has not agreed to submit." *Cheek v. United Healthcare of the Mid–Atlantic, Inc.*, 378 Md. 139, 147 (2003) (quotation marks and citation omitted). To implement that principle, the Arbitration Act requires that the arbitrator give notice of the arbitration proceeding to all parties. CJ §3-213. Additionally, a party who wishes to challenge the existence or validity of an agreement to arbitrate may do so in circuit court. The Arbitration Act provides two routes for such a challenge. The

first, set forth in CJ §3-208, is a petition to stay a "threatened or commenced" arbitration. The second, set forth in CJ §3-224, is a petition to vacate the award, which is available after the issuance of an award, but only in limited circumstances. *See Messersmith, Inc. v. Barclay Townhouse*, 313 Md. 652, 663 (1988) (noting that CJ §§3-208 and 3-224 are "mechanisms though which a court … is authorized to either stay an arbitration proceeding … or invalidate it after the fact … .").

1. Petition to Stay Arbitration

CJ §3-208(a) provides: "If a party denies existence of the arbitration agreement, he may petition a court to stay commenced or threatened arbitration proceedings." Then, "[i]f the court determines that existence of the arbitration agreement is in substantial and bona fide dispute, it shall try this issue promptly and order a stay if it finds for the petitioner." CJ §3-208(c). Otherwise, "[i]f the court finds for the adverse party, it shall order the parties to proceed with arbitration." *Id*.

A petition to stay arbitration must be brought as "a separate, self-standing action" unless litigation is already pending between the parties. *Town of Chesapeake Beach v. Pessoa Const. Co*., 330 Md. 744, 751 (1993). The relief sought in such a petition "does not bear on the merits of the underlying claim; it relates solely to the forum to be used for the resolution of that dispute." *Id*.

2. Petition to Vacate an Arbitration Award

In CJ §3-224, the Arbitration Act "restrictively define[s] the grounds upon which and the condition under which a court may vacate an award." *Nick-George Ltd. P'ship v. Ames-Ennis, Inc.*, 279 Md. 385, 389 (1977). Pertinent to this case, a petition to vacate an

award must be filed within 30 days after delivery of a copy of the award to the petitioner. CJ §3-224(a)(1).[1] As grounds for vacating an award, the statute provides:

> (1) An award was procured by corruption, fraud, or other undue means;
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> (2) There was evident partiality by an arbitrator appointed as a neutral, corruption in any arbitrator, or misconduct prejudicing the rights of any party;
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> (3) The arbitrators exceeded their powers;
>
> (4) The arbitrators refused to postpone the hearing upon sufficient cause being shown for the postponement, refused to hear evidence material to the controversy, or otherwise so conducted the hearing, contrary to the provisions of [CJ] §3-213 …, as to prejudice substantially the rights of a party; or
>
> (5) There was no arbitration agreement as described in [CJ] §3-206 …, the issue was not adversely determined in proceedings under [CJ] §3-208 …, and the party did not participate in the arbitration hearing without raising the objection.

CJ §3-224(b). On the other hand, the statute provides that " [t]he court shall not vacate the award or refuse to confirm the award on the ground that a court of law or equity could not or would not grant the same relief." CJ §3-224(c).

The provisions of CJ §3-224 are "mandatory." *Bd. of Ed. of Charles Cnty. v. Educ. Ass'n of Charles Cnty*., 286 Md. 358, 366 (1979). Thus, a disputant who wishes to contest an award in court must do so by filing a timely petition to vacate it. *Schaper & Assocs. v. Soleimanzadeh*, 87 Md. App. 555, 560 (1991); *see also, e.g*., *Sec. Const. Co. v. Maietta*, 25 Md. App. 303, 308 (1975) (stating that an attack on the validity of an arbitration award

[1] If the petition alleges corruption, fraud, "or other undue means," the petition is to be filed within 30 days after those grounds became known to the petitioner. CJ §3-224(a)(2).

must be brought "solely" as specified by CJ §3-224 and concluding that a party that did not file its petition within 30 days of the award "ha[d] simply not followed the statute.").

II

Facts and Proceedings

The dispute at the heart of this case arose when two law firms – Slocumb and Hyatt & Weber ("Hyatt") – could not agree on their respective shares of a contingent fee in a case in which they had each represented Mr. Quick at separate times. That disagreement and the efforts to resolve it are summarized below based on the undisputed facts contained in the summary judgment record.

Mr. Quick Retains Slocumb, but later Replaces Slocumb with Hyatt

In 2017, Mr. Quick retained Slocumb to represent him on a contingent fee basis in an action seeking compensation for injuries he had suffered in an automobile accident. Slocumb filed suit on Mr. Quick's behalf and engaged in settlement discussions with the opposing party. However, Mr. Quick became discontented with Slocumb's advice to accept a defense settlement offer of $1.25 million and, on March 27, 2020, terminated the relationship. Mr. Quick then contacted another law firm, which immediately referred Mr. Quick to Hyatt.

On March 27, 2020, Mr. Quick retained Hyatt on a contingent fee basis. On March 30**,** 2020, Slocumb notified Hyatt by letter that Slocumb was asserting an attorney's lien[2]

[2] *See* Maryland Code, Business Occupations & Professions Article, §10-501; Maryland Rule 2-652.

against Mr. Quick for the costs that it had advanced and the services that it had rendered to him. In its letter, Slocumb instructed Hyatt not to disburse any settlement or judgment proceeds to Mr. Quick until Slocumb and Mr. Quick resolved the lien dispute.

Hyatt Tries the Case and Obtains a Judgment

In September 2021, Hyatt tried the case on Mr. Quick's behalf and secured a judgment of $1,460,000.[3] The question then became how to determine the amount due to Slocumb under its attorney's lien for the work it had done.

Fee Dispute – Slocumb Proposes Arbitration and an Arbitrator; Hyatt Agrees

Slocumb and Hyatt engaged in discussions about the appropriate amount to be paid to Slocumb but, by late November 2021, it became evident that they could not agree on a figure.[4] Slocumb suggested that the dispute be arbitrated and proposed Richard H.

[3] The jury had returned a verdict of $1.8 million, but the judgment was limited to $1.46 million as a result of post-trial motions.

[4] It appears from the record that, at one point, Hyatt offered to pay 10% of the contingent fee to Slocumb, which it characterized as "one half of the 'referral' that we would pay to a firm that actually referred a case that is tried." Whether this offer reflected Hyatt's view of the reasonable value of Slocumb's work on the case is unclear. Given the use of the word "referral," however, the Court reminds the firms of Rule 1.5 of the Maryland Attorney's Rules of Professional Conduct:

> (e) A division of a fee between attorneys who are not in the same firm may be made only if:
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> (1) the division is in proportion to the services performed by each attorney or each attorney assumes joint responsibility for the representation;
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> (2) the client agrees to the joint representation and the agreement is confirmed in writing; and
>
> (3) the total fee is reasonable.

Sothoron, Jr.[5] as the arbitrator. Hyatt agreed to the suggestion and to the selection of Mr. Sothoron as the arbitrator. The two firms also agreed that the arbitration proceeding would take place remotely on April 21, 2022. On April 2, 2022, Slocumb confirmed that the scheduled date was "still good" and agreed to conduct the arbitration proceedings remotely as the case was "perfect for zoom."

The Firms Submit Arbitration Statements and the Arbitrator Attempts Mediation

On April 9, 2022, Mr. Sothoron sent the two firms an email setting April 12, 2022, as the deadline for submitting arbitration statements to him. On April 10, Slocumb responded that it would submit its arbitration statement by the deadline and reiterated that it agreed that the arbitration should be conducted remotely. Both parties submitted their arbitration statements on April 12.

On April 19, Mr. Sothoron sent the lawyers an email in which he "offer[ed] his assessment from [his] position as the chosen arbitrator." He noted that he had offered to act as a mediator, had been attempting to mediate, and had "felt that progress was being made" when, during the preceding week, the Slocumb representative had told him that "Mr. Slocumb did not wish to participate in the upcoming arbitration hearing."[6] Mr.

Maryland Rule 19-301.5(e); *see also Post v. Bregman*, 349 Md. 142, 168 (1998) (noting that "a fee-sharing agreement in violation of [the Rule] may be held unenforceable").

[5] Mr. Sothoron is a former Maryland circuit court judge. Although frequently referred to as "Judge Sothoron" in the record, he neither acted in a judicial capacity in this case nor purported to do so.

[6] Up to that time, another Slocumb attorney – not Mr. Slocumb – had represented Mr. Quick and had participated in the arbitration discussions. According to Slocumb's website, Mr. Slocumb "is the senior partner and founder of Mike Slocumb Law Firm,"

Sothoron stated his view that the parties had agreed to arbitration, asked them to consider his email "as an invitation to all to participate in the April 21 arbitration," and "very much encourage[d] all counsel, including Mr. Slocumb, to participate in this process."

Slocumb Sues Mr. Quick Under the Contingent Fee Agreement

Apparently unbeknownst to Mr. Sothoron, on the same date as he sent his email (April 19), Slocumb filed this lawsuit against Mr. Quick in the Circuit Court. In its three-count complaint, Slocumb sought payment for its services under a termination clause in its contingent fee agreement with Mr. Quick or, alternatively, the value of the services performed under *quantum meruit* and unjust enrichment theories. The complaint cited the statute and Maryland Rule pertaining to the enforcement of attorney's liens[7] and sought relief only in the form of monetary damages. The complaint did not mention the pending arbitration proceeding before Mr. Sothoron. Nor did the complaint (or any other filing by Slocumb) seek a stay of the arbitration proceeding that had been scheduled for two days later.

On April 20, the Circuit Court docketed Slocumb's complaint as a new case and issued a summons. According to MDEC, Mr. Quick was not served with the complaint until April 24, 2022. There is no indication in the record that Slocumb sent a courtesy copy of the complaint to Hyatt or notified Mr. Sothoron that it had filed suit.

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which the website describes as a "national law firm." *See* https://www.slocumblaw.com/attorneys/mike-slocumb/ (last visited September 4, 2023). Mr. Slocumb himself is not admitted to the Maryland Bar.

[7] See footnote 2 above.

Slocumb Declines to Participate in the Arbitration Proceeding

On the afternoon of April 20, a Hyatt assistant emailed the Zoom link for the arbitration to the Hyatt and Slocumb representatives (including Mr. Slocumb), as well as to Mr. Sothoron. Later that afternoon, on the eve of the scheduled arbitration proceeding, Mr. Slocumb responded in an email addressed to her, the Hyatt lawyers who had participated in the arbitration discussions, and Mr. Sothoron. That email read, in its entirety: "Slocumb Law Firm, LLC, will not be participating." Mr. Slocumb did not mention the lawsuit that his firm had filed against Mr. Quick the previous day.

The Arbitration Proceeding

On April 21, Mr. Sothoron held the remote arbitration proceeding in Slocomb's absence. Less than two weeks later, on May 2, 2022, Mr. Sothoron issued an arbitration award on the issue of "[w]hat monies, if any, for legal services rendered Raymond Quick, are due and owing the Slocumb Law Firm, LLC." In a memorandum explaining the award, he found that the firms had entered into an agreement to arbitrate their fee dispute. Mr. Sothoron noted that, although Slocumb had declined to participate in the process, Mr. Sothoron had considered the arbitration statement and exhibits that Slocumb had submitted to him. After discussing the value of the services rendered by Slocumb and assessing that value at 15% of the "total contingency fee," Mr. Sothoron awarded Slocumb $87,500 for those services. He also awarded Slocumb the amount of its costs, which Hyatt had not contested.

The Circuit Court Grants Summary Judgment Against Slocumb

After Mr. Quick was served with Slocumb's complaint, Hyatt moved on his behalf for dismissal, or, in the alternative, for summary judgment. In support of that motion, Hyatt argued that Slocumb had entered into a valid agreement to arbitrate the fee dispute, that Slocumb's refusal to participate in the arbitration had not effectively revoked that agreement, that Slocumb had not filed a motion to stay the arbitration, and that Slocumb was "contractually bound to resolve the issue of its attorney's lien at arbitration." Therefore, Hyatt argued, the arbitration award precluded Slocumb's lawsuit either under the doctrine of *res judicata* or by virtue of the affirmative defense of arbitration and award. Hyatt attached to its motion an affidavit by a Hyatt attorney attesting to the pertinent facts and copies of the email correspondence and arbitration statements described earlier.

In opposition to Hyatt's motion, Slocumb argued, as it does in this Court, that its email correspondence with Hyatt did not constitute a written agreement to arbitrate the matter. Slocumb did not submit any affidavits; its only exhibit was Mr. Sothoron's April 19, 2021 email. Slocumb did not dispute the underlying facts outlined in Hyatt's motion, affidavit, and attachments.

The Circuit Court held a hearing on the motion on August 29, 2022. It granted summary judgment in favor of Mr. Quick and against Slocumb based on the arbitration award. The court noted that Slocumb could have filed a petition to stay the arbitration, but did not do so. The Circuit Court also concurred with the arbitrator's finding that Slocumb had entered into a binding agreement to arbitrate. Referring to the Arbitration Act, the court held that "the way to attack [an] arbitration award is through a petition to vacate

which has not been filed in this case." In the alternative, the court held that the arbitration award had preclusive effect and that the complaint was barred under *res judicata*.

Slocumb filed a timely notice of appeal.

III

Discussion

In its filings in this Court, Slocumb poses two questions concerning the existence of a written agreement to arbitrate the dispute.[8] The threshold question, however, is whether Slocumb raised that issue in the Circuit Court in the way that the Arbitration Act requires for such challenges – that is, by filing either a petition to stay arbitration or, once an arbitration has been held, a petition to vacate an arbitration award.

We need not reach the two questions identified by Slocumb because, in our view, Slocumb failed to satisfy the threshold requirement for raising such issues. As the Circuit Court noted, the complaint that Slocumb filed against Mr. Quick in the Circuit Court neither sought a stay of the arbitration proceeding that Slocumb had initiated, nor

[8] Slocumb presents the following questions:

1. Whether the trial court committed reversible error when it incorrectly found that … an arbitration agreement existed.
2. Whether the trial court committed reversible error when it incorrectly failed to follow proper Maryland law and procedure.

Slocumb's argument regarding the second question is that the Circuit Court erred when it stated that it was within the arbitrator's purview to determine whether there was an agreement to arbitrate the dispute. Thus, both questions posed by Slocumb concern whether an arbitration agreement existed and, therefore, whether the fee dispute was arbitrable.

constituted a petition to vacate the arbitration award that Mr. Sothoron issued. Accordingly, the Circuit Court appropriately granted summary judgment in favor of Mr. Quick and against Slocumb.

A. Standard of Review

In reviewing an order granting summary judgment, the Court first determines whether there is a genuine dispute of material fact. In the absence of such a dispute, the question becomes whether the Circuit Court correctly entered summary judgment as a matter of law. *Koste v. Town of Oxford*, 431 Md. 14, 25 (2013). "Thus, the standard of review of a trial court's grant of a motion for summary judgment on the law is *de novo*, that is, whether the trial court's legal conclusions were legally correct." *Id*. (internal quotation marks and citation omitted); *see also, e.g., Myers v. Kayhoe*, 391 Md. 188, 203 (2006) ("In reviewing a grant of summary judgment under Md. Rule 2–501, we independently review the record to determine whether the parties properly generated a dispute of material fact and, if not, whether the moving party is entitled to judgment as a matter of law.").

B. Whether the Complaint was Effectively a Petition to Stay Arbitration

As pertinent here, the requisites of a petition under CJ §3-208 to stay arbitration can be distilled into what a petition must be and what it cannot be. The petition must be a request for relief in the form of an order that the arbitration be stayed pending the court's determination of the existence or validity of an agreement to arbitrate, and it is not to be a request that the court determine the merits of the underlying dispute. *Chesapeake Beach*, 330 Md. at 751.

Slocumb's complaint in the Circuit Court did not contain a request for a stay (or even mention the upcoming arbitration), but rather sought to litigate the merits of Slocumb's claim in the Circuit Court. It thus was not a petition to stay arbitration under CJ §3-208. The Circuit Court correctly concluded that Slocumb had not filed a petition to stay arbitration.

C. Whether the Complaint was a Petition to Vacate an Arbitration Award

In specifying the route by which a party may seek to vacate an arbitration award, CJ §3-224 presupposes the existence of an award. As noted earlier, a petition to vacate an award is to be filed within 30 days after the award and must allege at least one of the five grounds that the court must find in order to vacate the award. CJ §3-224(a), (b).

Slocumb's complaint did not constitute a petition to vacate an arbitration award. When Slocumb filed its complaint, there was no award. Slocumb filed its complaint on the eve of arbitration proceeding and did not amend it afterwards, much less than within 30 days after it received notice of the award made by Mr. Sothoron. Nor did the complaint allege facts that would establish the lack of an agreement to arbitrate – or any other grounds specified in CJ §3-224 for vacating an arbitration award. As the Circuit Court correctly noted, the way for Slocumb to challenge the arbitrator's authority to issue the award was to file a petition to vacate it, and Slocumb simply had not done so.

D. Summary

In sum, the Circuit Court did not err when it held that Slocumb was bound by the arbitration award as a matter of law. Although Slocumb's challenge to the arbitrator's jurisdiction could have been subject to a court's determination if properly presented,

Slocumb had neither moved for a stay of the arbitration before it occurred nor filed an action afterwards to challenge the arbitrator's jurisdiction.

IV

Conclusion

For the reasons explained above, the Circuit Court did not err when it granted Hyatt's motion for summary judgment on Slocumb's complaint for monetary relief. The Arbitration Act provided Slocumb with two methods of challenging the arbitrator's authority to arbitrate its claim, and Slocumb used neither. For that reason, Slocumb is bound by the award that the arbitrator issued.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.