Circuit Court for Baltimore County
Case No. 03-C-16-001349 OC

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1723

September Term, 2017

PARK PLUS, INC.

v.

PALISADES OF TOWSON, LLC and
ENCORE DEVELOPMENT CORP.

Meredith,*
Berger,
Nazarian,

JJ.

Opinion by Meredith, J.

Filed: February 10, 2021

*Meredith, Timothy E., J., now retired, participated in the hearing of this case while an active member of this Court, and after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the decision and the preparation of this opinion.

In connection with the construction of a luxury apartment building at 212 Washington Avenue in Towson, Maryland, Palisades of Towson, LLC ("Palisades") and Encore Development Corporation ("Encore"), the appellees, entered into a contract with Park Plus, Inc. ("Park Plus"), appellant, for Park Plus to furnish and install an automated parking system in the building's garage. The system was intended to automatically park cars in the 409 spaces in the garage. When a tenant or visitor entered the parking garage of the apartment building, there were four automobile bays which, in conjunction with four elevators, a complex system of sensors, dollies, sledges, and special software, would permit the operator of the vehicle to park the vehicle in one of the four bays, swipe a card, and have the vehicle transported to a designated space. The system was then supposed to automatically retrieve the vehicle upon demand. But the system did not meet the expectations of Palisades and Encore, and that eventually led to a demand for Park Plus to submit to arbitration, which Park Plus contends is barred by the statute of limitations.

Tenants began occupying the apartment building in August 2010, and glitches in the parking system occurred almost immediately. Park Plus repeatedly assured the owner of the building that all kinks would be worked out. But, on July 31, 2014, Palisades sent Park Plus a demand for the owner's grievances and claims for damages to be submitted to arbitration. Although Park Plus initially seemed agreeable to participating in arbitration, the cooperation in that regard stalled, and, on February 10, 2016, Palisades and Encore filed a petition in the Circuit Court for Baltimore County seeking an order to enforce the

provisions in their contract with Park Plus that stated "all disputes between parties shall be resolved by arbitration" and the arbitration award "shall be final and binding on the parties." The contract also stated: "This agreement to arbitrate shall be specifically enforceable."

Park Plus opposed the petition to enforce the arbitration agreement, and asserted, as its primary reason for opposition: "Petitioners have failed to bring this breach of contract action within the three (3) years required by Md. Code, Cts. & Jud. Proc. § 5-101, and have therefore failed to identify an arbitration agreement capable of enforcement."

The circuit court held multiple hearings to consider whether the arbitration agreement should be enforced. After an evidentiary hearing, and extensive briefing by the parties, the court issued a lengthy written opinion in which it concluded that the demand for arbitration was not untimely, and the petition to enforce the arbitration agreement was timely because it was filed within three years after Park Plus failed to arbitrate. The court ordered Park Plus to submit to arbitration

Park Plus noted this appeal.

QUESTION PRESENTED

Park Plus presented five questions on appeal, which we have distilled to one:[1]

[1] Park Plus presented the following five questions in its brief:

I. Did the court below err in holding that the Palisades breach-of-contract claims did not accrue until August 2011, when consequential

continued…

Did the circuit court err in granting the petition to enforce the parties' arbitration agreement?

For the reasons that follow, we answer that question "no," and we shall affirm the circuit court's order to enforce the parties' agreement to arbitrate.

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continued…

> damages reportedly caused loss of tenants, rather than in August 2010, when Palisades reported the first Autopark System reliability issues and ensuing consequential damages?
>
> II. Did the court below err in holding that the "acknowledged debt" doctrine as applied in the *Potterton v. Ryland Group*[, 289 Md. 371 (1981),] case postponed accrual of the Palisades breach-of-contract claims until September 19, 2011 -- when Palisades began incurring monitoring and repair costs after the original the [sic] one-year contractual warranty period ended -- even though no reported case has applied that doctrine to a contractual-warranty scenario?
>
> III. Did the court below err in holding that [Palisades] made a timely "demand" for arbitration on July 31, 2014, for breach-of-contract claims, four years after the Autopark System was delivered for beneficial use, where nothing in the parties' Agreement permits privately demanding arbitration just before limitations expire?
>
> IV. Did the court below err in holding that a petition for arbitration involves a separate cause of action with its own contract-based statutory limitations period, rather than an equitable ancillary proceeding for specific performance of an arbitration agreement?
>
> V. Did the court below err in holding that a right to court assistance for contractual arbitration accrues only after a party has refused a demand for arbitration, where the Act authorizes courts to grant stays to protect their jurisdiction while arbitration proceeds in cases where the parties' arbitration agreement lacks enforceable tolling or other temporal provisions?

FACTS AND PROCEDURAL HISTORY

The evidence in the circuit court revealed the following. On March 4, 2009, Palisades, as the owner, and Encore Development Corporation, as the "Authorized Agent" of the owner, entered into a contract with Park Plus, identified as the "Contractor," for Park Plus to

> well and sufficiently furnish and provide all labor, material and equipment necessary or required to fully perform and complete an Automatic Space Maker 5-Level Parking System for the Palisades of Towson new garage and 18-story apartment building as specified herein. All work shall be performed in accordance with the generally accepted highest standards of this particular industry and shall meet all federal, state, and county building codes specific to this Automated Parking Garage equipment.

The agreement obligated Park Plus to "provide a 12-month warranty from the date of handover as long as the date of handover is no more tha[n] six (6) months after completion of installation." The total contract price for the parking system was $6,391,500.00, to be paid in installments at various stages of completion of the project. The agreement provided in Section 11.4: "No payment shall be deemed or construed to constitute a waiver of any rights of the OWNER nor shall it release the CONTRACTOR from any obligations under this Contract."

In Article 7, the agreement provided that all disputes "shall be resolved by arbitration." Article 7 was captioned "RESOLUTION OF DISPUTES," and stated (in its entirety):

> 7.1 Any disputes between the OWNER and the CONTRACTOR relating to the execution or progress of the WORK or the interpretation of the Contract Documents shall be referred initially to the ARCHITECT or ENGINEER. The ARCHITECT'S or ENGINEER'S decision shall be

> binding upon the parties in 7 matters relating to artistic effect. In all other matters, it shall be binding upon the parties unless a demand for arbitration under Paragraph 7.2, below, is made within 30 days after a decision was rendered.
>
> 7.2 Subject to Paragraph 7.1, above, all disputes between parties shall be resolved by arbitration. This agreement to arbitrate shall be specifically enforceable. The award rendered by the arbitrators shall be final and binding on the parties.

Park Plus contends that it completed the installation work required by the contract and "handed over" the system to Palisades on July 31, 2010. During an evidentiary hearing conducted after Palisades filed its petition to enforce arbitration, the following exchange occurred between counsel for Park Plus, and Gary Astrup, a Vice President of Park Plus:

> [BY COUNSEL]: So, a question of clarification then, the date that you provided was the end of July of 2010 for hand over[;] at that time could the residen[ts] of Palisades of Towson operate the system to park their vehicles without assistance?
>
> [THE WITNESS]: Yes, they could.

In its opinion rendered after evidentiary hearings, the circuit court summarized what happened after Park Plus "handed over" the system to Palisades and tenants began moving into the apartment building in late August 2010: [2]

[2] One chart admitted into evidence represented that: as of the end of September 2010, only 36 of the building's 357 units were occupied; as of the end of October 2010, 57 units were occupied; as of the end of November 2010, 79 units were occupied; by the end of December 2010, 99 units were occupied; by the end of January 2011, 116 units were occupied; and occupancy increased month by month until August 2011, when 323 units were occupied.

> Problems with the automated parking system arose almost immediately. According to . . . [Georgia Glattly, the property manager for the Palisades,] the Palisades experienced problems since the residents began using the automated parking system . . . in late August 2010. The Palisades experienced many different types of mechanical malfunctions which caused difficulties in parking and retrieving vehicles in the garage. As a result of these difficulties, the Palisades had to call cabs to take residents who could not access their vehicles to work. . . . [T]he Palisades had to continue to work with Park Plus to resolve the on-going "glitches" which prevented residents from parking or retrieving their vehicles.
>
> Because of these on-going problems Park Plus personnel remained on site until September 2011, in order to monitor the system and fix problems as they arose. In fact, Park Plus was given a free apartment so that a representative could remain on site until the system was "stable." . . . [A] significant number of defects were discovered over an extended period of time throughout 2011 and extending into 2012.

An e-mail dated January 11, 2011, from Ryan Astrup (a Director of Park Plus, and Gary Astrup's brother) to various representatives of Palisades acknowledged:

> There have been some temporary glitches along the way during this initial activation stage mostly attributed to electronic connections; these glitches rise [sic] sporadically as the system has a chance to settle in with more users using the system, and as they arise we are there to locate and correct these. Some have been more difficult to resolve than others, but we assure you that this period will pass. One of the major causes are the laser and reflector tolerances, and when slightly off-mark, the system enters a safe-mode until a technician can confirm safe-working operation. Heavier or lighter vehicles, longer or shorter vehicles all have a bearing on the fluctuating causes: this is normal and a this [sic] period of resolve is expected.

On August 12, 2011, Gary Astrup sent an e-mail to Ms. Glattly in which he stated: "Let me reassure you that Park Plus is completely and will continue to be committed to resolving all of your concerns with the Auto Park."

But, the circuit court found: "In August of 2011, tenants were moving out of the building because of the problems with the automated parking system, and said they would not renew their leases. . . . Into September of 2011, the problems continued and Park Plus continued its efforts to fix the problems. . . . On September 29, 2011, two shuttles collided while one shuttle was delivering a car to a stall and another shuttle was retrieving a car."

The court noted that, on October 6, 2011, "Gary Astrup sent an email to [representatives of Palisades] that stated: 'As you are aware the warranty period for the Auto Park expired on July 31, 2011.'" Nevertheless, the court found that "Park Plus still did not charge for its work in August and September 2011, but began to charge in October 2011 because the warranty had expired."

The court also found that, on February 13, 2012, "another malfunction caused a tragic accident, killing [an employee of the management company] while he was attempting to retrieve a car from the automated system. . . . Palisades shut the automated parking system down on February 22, 2012, and it remained shut down until June 2012." During that period, Palisades paid for its residents to park at a municipal lot across the street. The auto park system remained closed until June 2012, when Park Plus resumed servicing the system and Palisades re-opened the half of the garage that had not been damaged in the fatal accident.

In the meantime, on March 16, 2012, counsel for Palisades wrote to Ron Astrup (the President and CEO of Park Plus) and Gary Astrup, stating that "the system has been

defective from the outset," and, even though Palisades had fully paid the contract price, its counsel asserted that it "has never accepted the work." Palisades asked that Park Plus "bring the system into compliance without the need for litigation," and requested "another meeting at the site to discuss modifications and possible upgrades to the system that will make it satisfactory to Palisades' tenants."

Ron Astrup replied on April 10, 2012. He stated that it was Park Plus's position that the auto park system had been handed over to Palisades on July 31, 2010, and the one-year warranty had expired on July 31, 2011. In this letter, Mr. Astrup also stated that "an extended warranty period in terms of the contract would have expired on 8/30/11." Mr. Astrup further contended—despite the non-waiver provision in Section 11.4—that Palisades would not have paid the final installment payment "if acceptance and handover was not agreed upon." But Mr. Astrup concluded his letter by stating: "Park Plus in the meantime remains totally committed to maintaining a good working relationship with [the owner's management company] and associated companies and is confident this matter can easily be resolved in a manner acceptable to both parties."

In August 2012, another safety concern arose when a shuttle and dolly in the system miscommunicated. Although Park Plus did not alert Palisades to the safety concern, the chief engineer for Park Plus wrote to its supplier (Sotefin SA) on August 20, 2012, and stated: "The situation we had last week with the shuttle not knowing where the dolly was situated was a wakeup call to the fact that the system is not inherently safe."

On July 30, 2013, Palisades (as well as its affiliates Encore and Southern Management) entered into a "Tolling Agreement" with Park Plus, agreeing that "[t]he running of all limitations periods applicable to any Claim(s) that were not barred as of the Effective Date by any defense based on any statutes of limitations or repose, . . . laches, and any other rule, defense, or doctrine, at law or in equity, relating to the timeliness of claims" would be suspended until July 20, 2014.

On July 31, 2014, counsel for Palisades sent a demand for arbitration to Park Plus's counsel, and also sent a copy to Park Plus directly "so that there will be no dispute that an arbitration demand has been made." The letter enclosed an arbitration claim that asserted "Park Plus breached the agreement by supplying and installing an automated parking system that has never worked reliably or as represented." The claim described numerous defects and malfunctions, and concluded: "As a result of Park Plus's breaches of the agreement, Claimants have been damaged and the building has been substantially diminished in value. Claimants demand damages in an amount exceeding $5 million."

On August 4, 2014, the attorney whom Palisades had been dealing with as representing Park Plus replied that he longer represented that client, and he suggested that communications be sent directly to Ron Astrup at Park Plus.

On August 21, 2014, counsel for Palisades sent a copy of the arbitration claim to the project architect, asking for the architect's participation in resolving the dispute pursuant to Article 7.1 of the agreement. The architect responded by letter dated

September 3, 2014, declining to "offer any opinion or decision regarding the referenced dispute."

On September 26, 2014—*i.e.*, within thirty days after the architect's response—counsel for Palisades sent a letter to Ron Astrup, President/CEO of Park Plus, attaching and enclosing another copy of the claim which had been sent to Park Plus (and its former attorney) on July 31, a copy of the architect's letter dated September 3, 2014, and a copy of a Petition for Order to Enforce Arbitration Agreement, which counsel's letter advised Mr. Astrup was to be filed that day.[3]

On the afternoon of September 26, 2014, Ron Astrup responded to counsel for Palisades by sending an e-mail in which he stated: "Thank you for the arbitration notice and accordingly I wish to confirm our willingness to move forward with arbitration proceedings." The e-mail also advised that the company's previous attorney no longer represented Park Plus, but Mr. Astrup promised: "I will inform you of our new legal representative in due course."

On October 8, 2014, counsel for Palisades again e-mailed Ron Astrup, noting that he had not heard from Mr. Astrup since September 26, and wanted to get the arbitration process started. Counsel asked that Mr. Astrup or his counsel contact him by October 10 to discuss the process.

[3] Although that petition was filed in September 2014, it was never served, and that case was voluntarily dismissed in April 2015 pursuant to Maryland Rule 2-507.

On October 12, 2014, an attorney e-mailed counsel for Palisades, identifying herself as Park Place's new attorney, and asking for a time to speak to Palisades' counsel about arbitration. There were some communications between counsel, but no arbitration was ever scheduled.

On December 21, 2014, the president of Park Plus sent an e-mail to the principal owner of the management company, stating: "The arbitration process seem [sic] to be going slowly as I have not heard from my attorney handling this matter for ages."

Despite the exchange of some communications between counsel for Palisades and the new attorney for Park Plus, as well as subsequent attorneys who succeeded her in representing Park Plus, Palisades was unable to make progress with respect to scheduling an arbitration, even though counsel for Park Plus expressed agreement on the selection of an arbitrator on July 31, 3015.

On February 10, 2016, Palisades again filed a Petition for Order to Enforce Arbitration Agreement, and it is that document that initiated the present litigation. Exhibits attached to the petition included the agreement and documents reflecting the extensive efforts Palisades had made to persuade Park Plus to proceed to arbitration as required by the agreement.

On April 15, 2016, Park Plus filed an opposition to the petition, as well as its counter petition asking the court to stay arbitration, and a request for hearing. Park Plus argued that there was no longer an arbitration agreement capable of enforcement because Palisades "ha[s] failed to bring this breach of contract action within the three (3) years

required by Md. Code, Cts. & Jud. Proc. § 5-101[.]" In its opposition, Park Plus argued that the breach of contract action accrued on July 31, 2010, "and at the latest in March of 2011."

The circuit court conducted four days of hearings on the parties' opposing petitions, including evidentiary hearings on July 25 and 26, 2017.

On September 26, 2017, the court filed its written opinion and an order granting Palisades' petition to enforce arbitration, denying Park Plus's petition to stay arbitration, and ordering that the parties "engage in arbitration pursuant to the terms of their Agreement[.]"

The circuit court concluded that, *if* Palisades was pursuing an action at law for breach of contract, the three-year general statute of limitations applicable to civil actions would have expired on September 9, 2015—*i.e.*, after Palisades communicated its demand for arbitration, but several months before Palisades filed its petition asking the circuit court to enforce the arbitration agreement.

But the court also concluded that the statute of limitations for filing suit for a breach of contract does not establish the time limit to seek an order of court compelling compliance with an agreement to arbitrate disputes arising out of a contract. The court explained:

> The present action before this Court is a petition to order binding arbitration under Md. Code Ann., Cts. & Jud. Proc. § 3-207; it is not a suit on the underlying claim for breach of contract. *Kumar v. Dhanda*[, 426 Md. 185 (2012)] is not factually or procedurally on point. The Court of Appeals' holding [in *Kumar*] as to the effect of engaging in non-binding arbitration on the tolling of limitations for the underlying claim is not

> instructive as to when the statute of limitations accrues on a petition to compel binding arbitration under § 3-207. The Court finds persuasive those cases holding that the cause of action to compel arbitration does not accrue until one party has refused to arbitrate. Therefore, the 3-year statute of limitations for an action under Md. Code Ann., Cts. & Jud. Proc. § 3-207 does not begin to run until one party has made a timely demand to arbitrate and the other party has refused to arbitrate.
>
> * * *
>
> Although it is not in evidence when exactly Park Plus eventually refused to arbitrate after agreeing to an arbitrator on July 31, 2015, it did not proceed to arbitration as it had agreed to do. After waiting a reasonable time, the Palisades filed its second Petition for Order to Enforce Arbitration Agreement on February 10, 2016, well within 3 years of [Park Plus's] failure to proceed to arbitration after agreeing to do so as late as July 31, 2015. The Petition was therefore filed within the statute of limitations for an action under Md. Code Ann., Cts. & Jud. Proc. § 3-207.

Park Plus then noted this appeal.

STANDARD OF REVIEW

"Our role in reviewing the trial court's order to compel arbitration 'extends only to a determination of the existence of an arbitration agreement.'" *Allstate Ins. Co. v. Stinebaugh*, 374 Md. 631, 645 (2003) (quoting *Holmes v. Coverall North America, Inc.*, 336 Md. 534, 546 (1994)).

Similarly, in *RTKL Assocs. Inc. v. Baltimore Cty.*, 147 Md. App. 647, 656–57 (2002), we made the point that the limited function of the circuit court, when considering a petition to compel arbitration, is to determine whether there is an agreement to arbitrate the parties' dispute:

> Arbitration provides "an informal, expeditious, and inexpensive alternative to conventional litigation," and is, consequently, favored and encouraged. *Birkey Design Group, Inc. v. Egle Nursing Home, Inc.*, 113 Md. App. 261,

> 265, 687 A.2d 256 (1997). A dispute is resolved through arbitration only if the parties have "*voluntarily agree[d]* to substitute a private tribunal for the public tribunal otherwise available to them." *Hartford Accident & Indem. Co. v. Scarlett Harbor Assocs. Ltd. Partnership*, 346 Md. 122, 127, 695 A.2d 153 (1997) (alteration in original) (quoting *Curtis G. Testerman Co. v. Buck*, 340 Md. 569, 579, 667 A.2d 649 (1995)). Consequently, **the Maryland Uniform Arbitration Act "strictly confines the function of the [trial] court in suits to compel arbitration to the resolution of a single issue: is there an agreement to arbitrate the subject matter of the dispute[?]**" *Bel Pre Med. Ctr., Inc. v. Frederick Contractors, Inc.*, 21 Md. App. 307, 320, 320 A.2d 558 (1974).
>
> Whether an arbitration agreement exists is a legal question of contract interpretation. *NRT Mid–Atlantic, Inc.*, 144 Md. App. at 279, 797 A.2d 824; *Soc'y of Am. Foresters v. Renewable Natural Res. Found.*, 114 Md. App. 224, 234, 689 A.2d 662 (1997).

(Bold emphasis added; footnote omitted.)

In *Gannett Fleming, Inc. v. Corman Construction, Inc*., 243 Md. App. 376, 391-92 (2019), we described appellate review of a circuit court's order compelling arbitration:

> The role of appellate courts in these cases is well-settled. Generally, a trial court's finding that a dispute is subject to arbitration is a conclusion of law, subject to review *de novo* by this court. However, a trial court's finding that a party has waived his right to arbitrate a dispute can be more fact-bound. When the determination of waiver turns on a factual analysis, the trial court's findings will not be disturbed on appeal unless it is clearly erroneous. When the waiver determination is instead based on conclusions of law, however, it is reviewed afresh by the appellate court.

(Citations omitted.)

DISCUSSION

Park Plus contends that the circuit court erred in concluding that the statute of limitations for filing a civil action for breach of contract is different from the time limit for filing a petition to enforce an agreement to arbitrate any disputes arising out of that

contract. Relying heavily upon *Shailendra Kumar, P.A. v. Dhanda*, 426 Md. 185 (2012), Park Plus insists that, pursuant to Maryland Code (1973, 2013 Repl. Vol.), Courts & Judicial Proceedings Article ("CJP") § 5-101, a petition to compel arbitration arising from a breach of contract must be filed within three years after the action for the breach of contract accrues. Consequently, because the circuit court concluded that the action for breach of contract accrued in this case no later than September 19, 2011, and the operative petition to enforce arbitration was not filed until February 10, 2016, Park Plus maintains that arbitration in this case is time-barred, and that it follows therefore that there is no longer a valid agreement to arbitrate.

For the reasons set forth in our opinion in *Gannett Fleming*, we reject Park Plus's contention that the circuit court erred in concluding that the statute of limitations for filing a civil action for breach of contract is different from the time limit for filing a petition to enforce an agreement to arbitrate disputes arising out of that contract. In this case, Palisades' petition to enforce the arbitration agreement was filed within a reasonable time after it became clear that Park Plus was not cooperating in proceeding with arbitration.

In *Gannett Fleming*, we considered whether "a party forfeits the right to demand arbitration if the demand is not made within the limitations period which would apply if the claim were brought in an action at law." 243 Md. App. at 383. In that case, an engineering firm and construction firm had entered into a contract in August 2012 that required them to attempt to resolve disputes by mediation, but, if a mediated resolution

could not be achieved within 60 days of the request for mediation, the agreement provided: "Any disputes not resolved by mediation shall be decided by arbitration under the Construction Industry Arbitration Rules of the American Arbitration Association." *Id.* at 386. In March 2015, the construction firm initiated the dispute resolution process. On August 15, 2017, the construction firm filed a demand for arbitration with the American Arbitration Association. The engineering firm, Gannett Fleming, filed a petition in the circuit court pursuant to CJP § 3-208 seeking an order to stay the arbitration. The circuit court denied the petition to stay, and we affirmed that ruling, observing: the construction firm's "right to arbitration was not time-barred by the statute of limitations set forth in CJP § 5-101, even if its demand for arbitration was made more than three years after discovering Gannett Fleming's alleged negligence." 243 Md. App. at 389.

We explained in *Gannett Fleming*:

> In keeping with the public policy favoring arbitration, the Maryland Uniform Arbitration Act, codified at CJP §§ 3-201–3-234, limits the role of the courts in dispute resolution when a valid arbitration agreement controls. *Holmes v. Coverall North America, Inc.*, 336 Md. 534, 546, 649 A.2d 365 (1994). Until an arbitration is concluded, the jurisdiction of Maryland courts generally may be invoked only to determine, as a threshold matter, whether a dispute is in fact arbitrable. *Id*. This arbitrability issue is brought before the courts through petitions to compel arbitration (when a party to an arbitration agreement refuses to arbitrate), *see* CJP § 3-207(a) ("If a party to an arbitration agreement . . . refuses to arbitrate, the other party may file a petition with a court to order arbitration."), or by petitions to stay commenced or threatened arbitration proceedings, *see* CJP § 3-208(a) ("If a party denies existence of the arbitration agreement, he may petition a court to stay commenced or threatened arbitration proceedings.").
>
> When confronted with a petition to compel or to stay arbitration, trial courts are to consider "but one thing—is there in existence an agreement to arbitrate the dispute sought to be arbitrated?" *Stauffer*

> *Construction Co. v. Board of Education of Montgomery County*, 54 Md. App. 658, 665, 460 A.2d 609 (1983); *cf.* CJP § 3-207(c) ("If the court determines that the agreement exists, it shall order arbitration. Otherwise it shall deny the petition."); CJP § 3-208(c) ("If the court determines that the 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. If the court finds for the adverse party, it shall order the parties to proceed with arbitration."). In granting or denying petitions to stay or compel arbitration, courts should not delve into the merits, bona fides or factual basis of the claim to be arbitrated. CJP § 3-210.
>
> Writing for this Court in *Stauffer Construction*, Judge Wilner observed that the "seeming simplicity" of these statutory directives is "deceptive." 54 Md. App. at 665, 460 A.2d 609. Depending upon the facts in a specific case, a court's inquiry can be multifaceted. A dispute is not arbitrable, and arbitration proceedings should be stayed, "where no arbitration agreement exists, either *in fact* or because the controversy sought to be arbitrated is *not within the scope* of the arbitration clause of the contract." *Gold Coast Mall*,[*Inc. v. Larmar Corp.*] 298 Md. [96,] at 106, 468 A.2d 91 [(1983)] (quoting *Layne-Minnesota Co. v. Regents of the University of Minnesota*, 266 Minn. 284, 123 N.W.2d 371, 376 (1963)) (emphasis added).

Id. at 389-91 (footnotes omitted).

We noted in *Gannett Fleming* that a court might grant a petition to stay (or deny a petition to compel arbitration) if it concludes that there is no agreement to arbitrate. *Id*. at 392 (citing *Gold Coast Mall*, 298 Md. at 106). And, we observed that, even if the court found that a valid agreement to arbitrate had existed at one point, the court could find that the party seeking arbitration had waived its right to arbitration by some act or omission. *Id*. (citing *Stauffer Construction*, 54 Md. App. at 666). We explained:

> Maryland appellate decisions have identified two ways in which a court may find a right to arbitration is waived for "inappropriate delay" in asserting the right. First, a party may fail to make a demand for arbitration within the time limits spelled out in the text of the agreement itself. For

> example, in *Frederick Contractors v. Bel-Pre Medical Center*, [274 Md. 307 (1975),] the arbitration agreement provided:
>
> > The demand for arbitration shall be made . . . within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall it be made after institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.
>
> 274 Md. at 311, 334 A.2d 526. Considering the issue "in the light of the language of the particular contract and the equities as they appear to the court," the Court of Appeals decided it was satisfied that Bel Pre's demand was made within the reasonable time stipulated by the agreement. *Id*. at 314–15, 334 A.2d 526 (quoting *Sanford Construction Co. v. Rosenblatt*, 25 Ohio Misc. 99, 266 N.E.2d 267, 268 (1970)).

Id. at 393-94.

In *Gannett Fleming*, we identified the second basis for finding waiver of an agreement to arbitrate as follows:

> Second, even when the arbitration agreement sets no demand deadlines, a right to arbitration may be waived if the party waits too long to assert the right to arbitration and instead "engage[s] itself substantially in the judicial forum." *The Redemptorists*[*v. Coulthard Services, Inc.*], 145 Md. App. [116,] at 141, 801 A.2d 1104 [(2002)]. Because "a resort to litigation is inconsistent with an intent to arbitrate, . . . one who litigates an issue that otherwise would be subject to arbitration waives his right subsequently to arbitrate that issue." *Stauffer Construction*, 54 Md. App. at 667, 460 A.2d 609. The question in these cases is essentially how long a defendant may let litigation go on before attempting to shove the dispute out of the judicial forum.

Id. at 394-95 (footnote omitted).

Neither of these two circumstances precluded enforcement of the demand for arbitration in *Gannett Fleming*, and the situation is the same in Palisades' case. We explained in *Gannett Fleming*:

> In the case before us, the agreement between Gannett Fleming and Corman does not contain a term that imposes any time limitation on the parties' ability to seek arbitration to resolve their disputes. This is also not a case in which [the party demanding arbitration] let litigation drag on only to assert, months or years later, a right to handle the dispute outside of court. Instead, Gannett Fleming simply argues that Corman's demand to arbitrate was untimely—that the company's right to arbitration was waived—because the same claims, pursuant to Maryland's statute of limitations, could not be brought before a court in a legal action. Gannett Fleming's argument is not persuasive.

Id. at 396-97.

We held that, in the absence of a provision in the arbitration agreement that requires a demand for arbitration to be filed within the time limit imposed upon civil actions by CJP § 5-101, that statutory limit does not apply to petitions filed pursuant to CJP § 3-207:

> In our view, **the expiration of a statutory limitations period does not render a demand for arbitration untimely—and, thus, the right to arbitration waived—unless the parties provide for this in their arbitration agreement.** This accords with the text of CJP § 5-101 when given its ordinary meaning, *see Town of Oxford v. Koste*, 204 Md. App. 578, 585, 42 A.3d 637 (2012) (citing *Breslin v. Powell*, 421 Md. 266, 286, 26 A.3d 878 (2011)), and read to be consistent with the Maryland Rules, *see Schlick v. State*, 238 Md. App. 681, 691, 194 A.3d 49 (2018) (holding that, where possible, the Court "prefer[s] to harmonize rather than find inconsistency" between enactments of the judicial and legislative branches). On its face, CJP § 5-101 applies only to "civil action[s] at law." And arbitration proceedings are not civil actions at law. *See* Md. Rule 1-202(a) (defining "action" to mean "collectively all the steps by which a party seeks to enforce any right *in a court*" (emphasis added)); *see also* Bryan A. Garner, *Garner's Dictionary of Legal Usage* 862 (3d ed. 2011) ("*[A]ction* denotes a mode of proceeding *in court* . . . ." (emphasis added)). Additionally, no other Maryland statute makes CJP § 5-101 applicable to demands for arbitration.

Id. at 397 (bold emphasis added; footnote omitted).

As noted above, Park Plus places great reliance upon *Shailendra Kumar, P.A. v. Dhanda*, 426 Md. 185 (2012), a case in which the Court of Appeals held that the circuit court did not err in dismissing a *suit* for breach of contract that was filed more than three years after the action accrued. The contract obligated the parties to participate in *non-binding* arbitration before filing suit. The Court of Appeals held that, "while non-binding arbitration, mandated by the contract, may have constituted a condition precedent to litigation, pursuing arbitration neither postponed the accrual of the underlying breach of contract claims, nor otherwise tolled the statute of limitations applicable to maintaining an action in court." *Id*. at 192-93.

Park Plus asserts that the holding in *Kumar* mandates dismissal of Palisades' petition to enforce arbitration. Park Plus argues:

> The fact that this dispute involves binding arbitration—rather than non-binding arbitration—does not justify creating any exception to the principles of *Kumar*. As *Kumar* explains, when the right to arbitrate a dispute arises under a contract with an arbitration agreement, judicial intervention is limited to enforcement of that agreement as written.

(Citing *Kumar*, 426 Md. at 200.)

Palisades, however, maintains that *Kumar* is not on point with a case in which the arbitration agreement requires *binding* arbitration and imposes no specific time limit for either the demand for arbitration or the filing of a petition to compel arbitration.

We agree with Palisades that the fact that the agreement in *Kumar* required non-binding arbitration as a condition to filing suit makes that case inapplicable to a case such as this, where a contract requires that "all disputes shall be resolved by arbitration" and

the arbitration award "shall be final and binding on the parties." As the Court of Appeals observed in *Kumar*, 426 Md. at 200: "In its non-binding form, arbitration is a condition precedent to litigation[;] however, the parties are not bound by the decision of the arbitrator and afterwards are free to pursue independent legal claims concerning the same issues pursued in arbitration." The parties in *Kumar* agreed that either of them would need to resort to the courts for a judicial resolution of the merits of any disputes that could not be resolved by non-binding arbitration. The Court of Appeals recognized in *Kumar*: "[I]f the parties agree to non-binding arbitration, what they pursue afterwards in court is not modification, confirmation, or vacation of an award, but an entirely independent legal determination on the merits. " *Id*. at 203.

In contrast, the agreement between Palisades and Park Plus provided that the merits of their disputes would be resolved by binding arbitration instead of resort to the courts. Consequently, there is nothing in *Kumar* that persuades us we should reach a result different from the conclusion this Court reached in *Gannett Fleming* regarding the timeliness of the demand for arbitration.

At the conclusion of our opinion in *Gannett Fleming*, we reemphasized the limited role of the courts in the arbitration process. In view of the extensive litigation that has already occurred between Palisades and Park Plus, we deem it appropriate to remind the parties (and any arbitrators who may become involved with this dispute) of the limited effect of the legal rulings to date. We said in *Gannett Fleming*:

> When parties contract to resolve their disputes by arbitration, they severely limit the role of the courts. The arbitral forum is, within certain

limits, "created, controlled and administered according to the parties' agreement to arbitrate." *Bel Pre Medical Center, Inc. v. Frederick Contractors, Inc.*, 21 Md. App. 307, 320, 320 A.2d 558 (1974), *modified on other grounds*, 274 Md. 307, 334 A.2d 526 (1975). The parties may draw their arbitration provisions broadly or narrowly. They may impose greater or fewer procedural hurdles and, if they wish, place time limits on bringing a demand for arbitration.

Here, the parties, working together to secure and then complete a highway-construction project, opted for a broad arbitration clause and imposed no hard deadlines on bringing claims. Because the parties' agreement did not limit the period in which arbitration can be demanded, [each party's] right to arbitrate the dispute was not barred by the statute of limitations. And because the scope of the arbitration agreement extends to all disputes relating to [their contract] or its breach, and because "any doubt over arbitrability should be resolved in favor of arbitration," *Commonwealth Equity Services v. Messick*, 152 Md. App. 381, 394, 831 A.2d 1144 (2003) (cleaned up), we cannot say the dispute is not arbitrable on substantive grounds. For those reasons, the trial court correctly denied Gannett Fleming's petition to stay arbitration.

We note that our opinion does not definitively decide that this dispute is arbitrable. We leave this determination to the arbitrator's "skilled judgment." *Gold Coast Mall*, 298 Md. at 107, 468 A.2d 91. Additionally, the arbitrator may still decide that [the construction firm's] substantive claim is untimely, even if the demand for arbitration was not. As this Court explained in *Rosecroft Trotting & Pacing Ass'n* [*v. Electronic Race Patrol, Inc.*], 69 Md. App. [405,] at 413, 518 A.2d 137 [(1986)]:

> [T]imeliness of a claim to arbitrate is not equivalent to timeliness of the substantive claim to be arbitrated. The former requires a determination of whether an agreement to arbitrate still exists based on possible waiver and is a proper issue for the court. The latter requires factual determinations as to . . . when these specific incidents occurred, and whether, based on the time of the occurrences, they may be the subject of arbitration. The resolution of such matters falls within the province of the arbitrator, and not the court.

Finally, the arbitrator may also decide, in its application and interpretation of the parties' agreement to arbitrate, that [the construction firm's] claim lies beyond the scope of the arbitration provision. In agreeing

> to a broad arbitration provision, the parties left the interpretation of any ambiguity in the provision's scope in the arbitrator's hands.

Id. at 404-05.

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