UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0536

September Term, 2015

PATRICIA J. WILLIAMS

v.

CORNERSTONE EQUITY PARTNERS, LLC

Eyler, Deborah S.,
Kehoe,
Shaw Geter, Melanie M.,*

JJ.

Opinion by Kehoe, J.

Filed: September 7, 2016

*Shaw Geter, Melanie M., J., participated in the oral argument and conference of this case as a specially assigned member of this Court, and thereafter as an active member of this Court in the adoption of this opinion.

**This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Appellant, Patricia J. Williams, appeals from a judgment of the Circuit Court for Baltimore City, dismissing her action against Cornerstone Equity Partners, LLC, in favor of arbitration. Ms. Williams raises the following issues, which we have consolidated and reworded:

1. Did Cornerstone waive its right to arbitration, under the Cardmember Agreement, by filing its debt collection action against Ms. Williams in the District Court of Maryland for Baltimore City?

2. Did the Cardmember Agreement merge into Cornerstone's district court judgment against Ms. Williams?

3. Did the circuit court err in dismissing this action on the basis of information obtained in violation of the Maryland Confidential Records Act, Md. Code Ann., Fin. Inst. § 1-301, et seq.?

For the reasons set forth herein, we affirm the judgment of the circuit court.

Background

Cornerstone Equity Partners, LLC, is a debt purchaser and collector. Ms. Williams is a debtor, representing a class of plaintiffs against whom Cornerstone obtained judgments in the courts of this State between October 30, 2007, and December 15, 2010.

Ms. Williams maintained a credit card account with Chase Bank USA, N.A. in 2007 and 2008. After the account went into default, Chase sold its rights under the credit card agreement to the National Loan Exchange, Inc., who transferred them to Cornerstone. Cornerstone filed a debt collection action against Ms. Williams on August 27, 2009, in the District Court of Maryland for Baltimore City, and, on

December 29, 2009, obtained a judgment against her in the amount of $3,329.86. The court also awarded pre-judgment interest, in the amount of $416.76, post-judgment interest, and costs, in the amount of $20. Cornerstone collected these sums by garnishing Ms. Williams's wages. The judgment was paid and satisfied as of June 3, 2011.

On October 9, 2013, Ms. Williams filed the present action, filing a five count complaint, against Cornerstone, in the Circuit Court for Baltimore City. At its heart, the complaint asserted that the judgment against Ms. Williams was void because Cornerstone had failed to obtain a license to do business as a collection agency, as required by Md. Code Ann., Bus. Reg. § 7-301(a). Among other relief, the complaint sought class action certification declaratory and injunctive relief, disgorgement of the amounts Cornerstone collected in judgments, along with pre- and post-judgment interest, and costs (including attorney's fees) associated with the collection action.

As a result of an error in the initial service of process, Cornerstone was not properly served until November 14, 2014. In the time between Ms. Williams's initial attempt to serve process and actual service of process, Cornerstone issued a subpoena to Chase, requesting all documents related to her account, including her Cardmember Agreement. Cornerstone did not notify Ms. Williams that it had filed the subpoena. On November 17, 2014, Cornerstone filed a Petition to Dismiss or Stay Proceedings and Order for Arbitration. Cornerstone directed the court to the Cardmember Agreement,

which contained an arbitration agreement. Cornerstone also asserted that Ms. Williams had waived her right to participate in a class action in the Cardmember Agreement.

Ms. Williams opposed the petition. She asserted that Cornerstone failed to adequately prove the existence of the arbitration agreement, that Cornerstone waived its right to arbitration by pursuing its debt collection action in the district court, and that Cornerstone could not rely on the provisions of the contract, prior to the judgment, because the contract merged into the judgment. Because Ms. Williams's contentions on appeal are substantially the same as the arguments she made before the circuit court, we shall discuss them in more detail below.

A hearing was held before the circuit court on January 23, 2015. And, on April 21, 2015, the court entered an order dismissing the case, in favor of arbitration. This timely appeal followed.

Standard of Review

As this Court explained in *Monarc v. Aris*, 188 Md. App. 377, 384 (2009), "[w]e review *de novo* a trial court's granting of a motion to dismiss." This review requires that "we . . . assume the truth of the well-pleaded factual allegations of the complaint, including the reasonable inferences that may be drawn from those allegations." *Id*. (quoting *Adamson v. Corr. Med. Serv., Inc.*, 359 Md. 238, 246 (2000)). When the

complaint's factual allegations, together with reasonable inferences, fail to establish a basis for the relief sought, dismissal is warranted. *Id*.

Analysis

I. Waiver

Ms. Williams's first contention on appeal is that, through its "extensive use of the judicial system," Cornerstone waived its right to invoke arbitration, under the Cardmember Agreement. Ms. Williams raises several arguments in support of this contention. First, Ms. Williams asserts that Cornerstone waived its right to arbitrate when it filed the debt collection action in the district court, pursued it through judgment, and collected the amounts due through garnishment proceedings. Second, Ms. Williams takes issue with the fact that Cornerstone did not seek arbitration when it was initially served with process in October 2013, but waited until November 2014, and, in the meantime, used the court's subpoena power to obtain documents from Chase related to her account. Third, Ms. Williams contends that, because her action against Cornerstone arises from the litigation in which it obtained a judgment against her, her claims are sufficiently related to the initial litigation for Cornerstone's waiver of the right to arbitrate to extend to the present case. Moreover, Ms. Williams asserts that Cornerstone's action in invoking arbitration is prejudicial, in light of the fact that it pursued an action against her to judgment.

Cornerstone counters that it did not waive its right to arbitration. Cornerstone asserts that Ms. Williams's contention, that it waived its right to arbitration by pursuing its action against her in the district court, is not supported by the terms of the Cardmember Agreement. Cornerstone points to two provisions of the Agreement:

> Enforcement, finality, appeals. Failure or any delay in enforcing this Arbitration Agreement at any time, or in connection with any particular Claims, will not constitute a waiver of any rights to require arbitration at a later time or in connection with any other Claims.
>
> Enforcing this Agreement. We can delay enforcing or not enforce any of our rights under this agreement without losing our right to enforce them in the future.

Further, Cornerstone directs us to *Charles J. Frank, Inc. v. Associated Jewish Charities of Balt., Inc.*, 294 Md. 443, 454 (1982), for the proposition that, under Maryland law, where a party waives its right to arbitration by pursuing litigation, the waiver is limited to those issues addressed in the litigation and not all issues that may subsequently arise under the contract. Cornerstone contends that "the issues presented in this case are not related to the issues raised in the [previous litigation]," and that "[it] did not waive its right to arbitrate Williams'[s] claims" by filing the earlier action. In the alternative, Cornerstone argues that, "if this Court determines that [its] conduct was inconsistent with an intention to enforce the arbitration provision [of the Agreement], Williams has failed to demonstrate that she [was] prejudiced," and for that reason it should not be found to have waived its right to arbitration.

"[T]he right to arbitrate is a matter of contract law and . . . is governed by contract law principles." *Brendsel v. Winchester*, 162 Md. App. 558, 573 (2005). And, because "[a] party to a contract may waive a right under the contract; . . . [a] party to a contract that confers a right to arbitrate may waive that right." *Id*.

The Court of Appeals addressed waiver at length in *Frank*, 294 Md. at 448–49. The Court explained waiver as follows:

> "A waiver is the intentional relinquishment of a known right, or such conduct as warrants an inference of the relinquishment of such right, and may result from an express agreement or be inferred from circumstances. '[A]cts relied upon as constituting a waiver of the provisions' of a contract must be inconsistent with an intention to insist upon enforcing such provisions."

Id. at 449 (quoting *Bargale Indus., Inc. v. Robert Realty Co.*, 275 Md. 638, 643 (1975)). The Court added that "[t]he intention to waive must be clearly established and will not be inferred from equivocal acts or language." *Id*.

The Court of Appeals also addressed the effect of adjudicating arbitrable issues in *Frank*. The Court adopted the principle that "participating in a judicial proceeding involving arbitrable issues arising under a contract constitutes waiver of the right to arbitrate those issues raised and/or decided in the judicial proceeding." *Id*. at 454. The Court explained that "such conduct is not necessarily inconsistent with an intention to enforce the right to arbitrate unrelated issues arising under the same contract." *Id*. Accordingly, the Court concluded that "when a party waives the right to arbitrate an

issue by participation in a judicial proceeding, the waiver is limited to those issues raised and/or decided in the judicial proceeding and, absent additional evidence of intent, the waiver does not extend to any unrelated issues arising under the contract." *Id*.

Since *Frank*, this Court has had several occasions to consider the implications of participating in litigation on a subsequent attempt to invoke the right to arbitration. The determination is "highly factual." *Abramson v. Wildman*, 184 Md. App. 189, 200 (2009). We summarized the factors relevant to the waiver determination in *Abramson*:

> Participation in a judicial proceeding that results in a final judgment may, in certain circumstances, waive the right to arbitrate. Some "limited participation" in judicial proceedings does not constitute a waiver. Whether an answer directed to the merits is filed is a factor. Participation in "extensive" discovery is a factor in determining waiver. However, also relevant is whether a party utilized discovery devices that would not have been available in arbitration. Delay in attempting to compel arbitration, by itself, may not be conclusive, although coupled with prejudice to the other party can support a finding of waiver. The filing of a suit can be a "significant act in a waiver calculus, and in some instances it perhaps could be depositive." Nevertheless, if there is a legitimate reason for participating in litigation, it will not be deemed a waiver.

Id. at 200–01 (citations omitted).

Turning to the parties' specific contentions, we begin with appellant's assertions arising from the district court collection action. As the Court of Appeals' decision in *Frank* makes clear, that Cornerstone pursued its debt collection action against Ms. Williams through litigation, rather than arbitration, is not sufficient to support the conclusion that it intended to waive its right to arbitrate other issues that might arise

under the Cardmember Agreement. Rather, Cornerstone's waiver is limited to its right to invoke arbitration as to the debt collection. Ms. Williams's assertion that the issues presented in this case are sufficiently related to the issues raised in the district court case that Cornerstone's waiver of the right to arbitrate is applicable to the present case is unpersuasive. The causes of action are distinguishable. Cornerstone filed a collection action against Ms. Williams, in effect, a claim for breach of contract. The present action is not based on breach of contract, but rather upon Cornerstone's alleged violations of Maryland licensing laws.

We are also unpersuaded by Ms. Williams's contention that Cornerstone waived its right to arbitration because it "did not seek arbitration right away" and "used the circuit court's subpoena power" to obtain the Cardmember Agreement. This argument ignores the fact that Ms. Williams's October 17, 2013, service of process was quashed and that Cornerstone was not properly served until November 14, 2014, over a year later. Cornerstone proceeded to file its Petition to Dismiss or Stay Proceedings and Order for Arbitration on November 17, 2014 – only three days after it was served. We are not sure what more Ms. Williams would have Cornerstone do in terms of timeliness. Cornerstone used the court's subpoena power to obtain the Cardmember Agreement but this is not enough for us to conclude that Cornerstone waived its right to arbitration. The documents that Cornerstone sought through the subpoena were relevant to its attempt to

invoke arbitration. Cornerstorne did not embark upon a wide-ranging course of discovery as to the merits of Ms. Williams's claim.

II. Merger

Ms. Williams's second contention on appeal is that the circuit court's judgment should be reversed "because the contract between Ms. Williams and Chase, including its arbitration provisions and other substantive rights merged into the [d]istrict [c]ourt judgment Cornerstone obtained against Ms. Williams in 2009 and ceased to exist at that time." Moreover, Ms. Williams contends that the language of the Cardmember Agreement is not sufficiently clear to preserve Cornerstone's right to invoke arbitration post merger. And, further, Ms. Williams argues that "Cornerstone could have requested that its other 'rights' under the contract be preserved post judgment, but apparently it did not do so since there is no such reference on the judgment entered in its favor by the [d]istrict [c]ourt."

Cornerstone counters that the doctrine of merger is inapplicable. First, in light of Ms. Williams's contention that the district court judgment against her is void because Cornerstone was not a licensed debt collector at the time the judgment was entered, a point that Cornerstone does not concede, Cornerstone argues that "the doctrine of merger is inapplicable because it does not apply to void judgments." Second, Cornerstone asserts that "[m]erger is . . . inapplicable where a party is not attempting to relitigate

issues or claims previously reduced to judgment, but is instead exercising its contractual right to arbitration in its defense to different claims." In support, Cornerstone notes that its action against Ms. Williams in district court was a debt collection action arising from a breach of contract, whereas the action before us arises under the Maryland Consumer Debt Collection Act and the Maryland Consumer Protection Act.

Cornerstone also argues that, even if the Cardmember Agreement did merge into the judgment, the merger did not extinguish its right to arbitration. Cornerstone distinguishes its right to invoke arbitration under the Cardmember Agreement from the contractual right to attorneys' fees, which this Court found to have merged into the judgment, in *SunTrust Bank v. Goldman*, 201 Md. App. 390 (2011). Cornerstone contends that its contractual right to arbitrate, unlike the "contract-based right to post-judgment attorneys' fees," "had no bearing on its claim for damages in the [s]mall [c]laims action." Finally, Cornerstone argues that "the language of the Cardmember Agreement demonstrates that the arbitration provision is to be binding and conclusive upon the parties for all claims arising in the past, present or future."

Under the doctrine of merger, "[w]hen [a] plaintiff recovers a valid and final personal judgment, his original claim is extinguished and rights upon the judgment are substituted for it. The plaintiff's original claim is said to be 'merged' in the judgment."

RESTATEMENT (SECOND) OF JUDGMENTS § 18 cmt. a (1982). Pursuant to the rule of merger, then:

> When a valid and final personal judgment is rendered in favor of the plaintiff:
>
> (1) The plaintiff cannot thereafter maintain an action on the original claim or any part thereof, although he may be able to maintain an action upon the judgment; and
>
> (2) In an action upon the judgment, the defendant cannot avail himself of defenses he might have interposed, or did interpose, in the first action.

RESTATEMENT (SECOND) OF JUDGMENTS § 18 (1982).

Moreover, CORBIN ON CONTRACTS explains:

> If the existence or extent of a primary or secondary contractual duty is the focus of a cause of action in a court having jurisdiction over the matter, a final judgment on that cause of action extinguishes the duty.
>
> * * *
>
> If the antecedent duty is confirmed by a judgment for the plaintiff and the performance of the duty is either decreed or damages are ordered or restitution for the breach of the duty is granted, the duty is said to be discharged by merger. The primary contractual duty and the secondary duty to make reparation for breach are merged in the confirming judgment. As long as the judgment has not been set aside on some sufficient ground, the legal relations of the parties are now determined by the judgment.

13 JOSEPH M. PERILLO, CORBIN ON CONTRACTS § 73.3 at 492-93 (Rev. ed. 2003) (footnotes omitted).

We addressed merger by judgment in *United Book Press, Inc. v. Maryland Composition Co.*, 141 Md. App. 460, 474 (2001). That case arose after appellant

obtained a judgment against a third party for breach of contract, subsequently entered into a settlement agreement with the third party, and then filed suit against appellee for the difference in the initial judgment and the amount for which appellant settled. Appellee argued that appellant did not have a claim against it because the judgment entered against the third party was a final judgment, appellant's claim merged into the judgment, and was thus extinguished. *Id*. at 474. Merger was inapplicable, however. This Court explained that, "[t]he cause of action on the contract between appellant and [the third party] merged into the judgment against [the third party]," but that "[t]he cause of action against appellee [wa]s a separate cause of action on a separate contract between appellant and appellee," and thus "[a]ppellant's claim against appellee did not merge into its judgment against [the third party]." *Id*.

We acknowledge that Cornerstone's claim against Ms. Williams for breach of contract and the damages resulting therefrom merged into the judgment Cornerstone obtained against her. But that is not dispositive as to whether the doctrine of merger precludes Cornerstone from invoking its right to arbitration under the Cardmember Agreement.

In the end, Ms. Williams's merger contentions are unpersuasive. The judgment Cornerstone obtained against Ms. Williams in the district court was based on the claim that Ms. Williams breached her contractual duty, under the Cardmember Agreement, to

make payments on her account. And, the relief Cornerstone sought, and received, was the amount due under the contract, together with pre- and post-judgment interest and costs. Ms. Williams's action against Cornerstone arises neither out of her duty to make payments nor any other duty imposed on either party under the Cardmember Agreement. Ms. Williams's claims arise from Cornerstone's alleged violation of a regulatory statute.

We cannot conclude that the totality of the parties' rights with regard to the arbitration provision of the Cardmember Agreement merged into Cornerstone's judgment against Ms. Williams. The language of the arbitration provision makes this clear. The "claims covered" provision provides, in pertinent part:

> Either you or we may, without the other's consent, elect mandatory, binding arbitration of any claim, dispute or controversy by either you or us against the other . . . arising from or relating in any way to the Cardmember Agreement, any prior Cardmember Agreement, your credit card Account or the advertising, application or approval of your Account ("Claim"). This Arbitration Agreement governs all Claims . . . . This Arbitration Agreement includes Claims that arose in the past, or arise in the present or future. As used in this Arbitration Agreement, the term Claim is to be given the broadest possible meaning.

Accordingly, we hold that Cornerstone's right to invoke arbitration did not merge into the district court judgment.

III. Confidential Records

Ms. Williams's final contention on appeal is that the court erred in dismissing this action in favor of arbitration because the Cardmember Agreement was obtained in

violation of §§ 1-301–306 of the Financial Institutions Article. Ms. Williams argues Cornerstone violated Fin. Inst. § 1-304(b)(1) because it neither notified her that it was subpoenaing Chase for her financial records nor provided Chase with a certification that she had been served with a copy of the subpoena. Ms. Williams notes that violating Fin. Inst. § 1-304(b) is a criminal offense, pursuant Fin. Inst. § 1-305(b). Accordingly, Ms. Williams contends that the court erred in permitting Cornerstone to introduce into evidence the illegally obtained Cardmember Agreement.

Cornerstone counters that it did not violate the Confidential Financial Records Act. In support, Cornerstone asserts that: (1) the Cardmember Agreement is not a "financial record," as defined by Fin. Inst. § 1-301[1]; (2) pursuant to the terms of the Cardmember Agreement, Ms. Williams authorized the disclosure of her financial records; (3) because the Cardmember Agreement did not contain information personally identifying Ms. Williams, disclosure was permitted pursuant to Fin. Inst. § 1-303(4); and (4) "[e]ven if the subpoena was defective . . . no prejudice resulted to [Ms. Williams]."

We assume for purposes of analysis that the Cardmember Agreement is a "financial record," as defined by Fin. Inst. § 1-301(c). Pursuant to Fin. Inst. § 1-304(b):

> A fiduciary institution may disclose or produce financial records or information derived from financial records in compliance with a subpoena served on the fiduciary institution, if:

[1]We will assume for purposes of analysis that Cornerstone is wrong on this point.

> (1) The subpoena contains a certification that a copy of the subpoena has been served on the person whose records are sought by the party seeking the disclosure or production of the records; or
>
> (2) Contains a certification that service has been waived by the court for good cause.

Cornerstone does not assert that it served Ms. Williams with a copy of the subpoena, that its subpoena contained a certification that it had served a copy on Ms. Williams, or that service on Ms. Williams had been waived by the court. Nonetheless, Chase provided the Cardmember Agreement to Cornerstone.

Fin. Inst. § 1-305(b) provides the penalty for persons who induce fiduciary institutions to produce financial records in violation of the Confidential Financial Records Act. Pursuant to § 1-305(b):

> Any person who knowingly and willfully induces or attempts to induce an officer, employer, agent, or director of a fiduciary institution to disclose financial records in violation of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine of not more than $1,000.

There is nothing in Fin. Inst. § 1-305 that suggests that exclusion of evidence is a sanction for violating the statute. Where the General Assembly wishes to render evidence inadmissible, it generally does so explicitly. *See, e.g.*, Md. Code Ann., Courts and Judicial Proceedings § 10-405(a) ("[W]henever any wire, oral, or electronic communication has been intercepted, no part of the contents of the communication and no evidence derived therefrom may be received in evidence . . . if the disclosure of that information would be in violation of this subtitle."). What Ms. Williams is asking us to

do is read into Fin. Inst. § 1-305 a provision that is not there – namely, that financial records obtained in violation of the statute are inadmissible in evidence. This, we cannot do. *See, e.g.*, *Taylor v. NationsBank, N.A.*, 356 Md. 166, 181 (2001) ("We neither add nor delete words to a clear and unambiguous statute to give it a meaning not reflected by the words the Legislature used or engage in forced or subtle interpretation in an attempt to extend or limit the statute's meaning.").

THE JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY IS AFFIRMED. APPELLANT TO PAY COSTS.