UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 715

September Term, 2015

WBCM, LLC

v.

BCC PROPERTIES, LLC

Eyler, Deborah S.,
Nazarian,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: November 30, 2016

In this appeal we consider whether a non-signatory to a contract containing an arbitration clause can be compelled to arbitrate a claim brought against it by a signatory to the contract, under the doctrine of "direct benefits estoppel," despite contractual language excluding the non-signatory from arbitration. BCC Properties, LLC ("BCC"), the appellee, served WBCM, LLC ("WBCM"), the appellant, with a demand for arbitration under a "design-build" contract between BCC and WBCM Constructions Services, LLC ("WBCM-CS"), to which WBCM was not a signatory. In the Circuit Court for Carroll County, WBCM filed a petition to enjoin, terminate, or stay arbitration. The circuit court entered an order denying WBCM's petition.

WBCM challenges that order on appeal, presenting three questions for review, which we have rephrased and combined as two:

> I. Did the circuit court err by ruling that WBCM was compelled to arbitrate under the doctrine of direct benefits estoppel?
>
> II. If WBCM could be compelled to arbitrate, did the circuit err by denying its petition to enjoin, terminate, or stay arbitration on the alternate ground that BCC's claim is barred by the economic loss rule?

We answer the first question in the affirmative and shall reverse the judgment of the circuit court and remand with instructions to the court to enter an order granting WBCM's petition to enjoin arbitration. Our disposition obviates the necessity to address the second question.

FACTS AND PROCEEDINGS

WBCM is an architectural design firm. WBCM-CS is a construction firm. The two firms operate under the brand Whitney, Bailey, Cox & Magnani, LLC, but they are separate legal entities.

On June 26, 2008, BCC contracted with WBCM-CS to design and build an office and maintenance facility for its company on land it owned in Sykesville. The building project was known as the "Bradshaw Office and Shop Complex" ("the Project"). BCC and WBCM-CS executed a modified American Institute of Architects ("AIA") form A131CMc-2003 "Standard Form of Agreement Between Owner and Construction Manager" ("A131 Document") for the design and construction of the Project.[1] The A131 Document incorporated an unmodified AIA form A201-1997 titled "General Conditions of the Contract for Construction" ("A201 Document"). Collectively, the A131 Document and the A201 Document comprise the contract between BCC and WBCM-CS ("the Contract").

On its title page, the A131 Document states that it is an agreement between BCC as "Owner" and WBCM-CS as "Construction Manager." It gives the name of the Project and identifies WBCM as the "Architect." It is signed by Lester Bradshaw, a partner in BCC, as the "Owner," and by Lyle K. Aaby, President of WBCM-CS, as the Construction Manager. Mr. Aaby also is an officer in WBCM, but he is not its president.

[1] An "Additions and Deletions Report" is attached to the contract and reflects all of the modifications to the standard A131 Document language.

The Contract requires WBCM-CS to provide all the construction management services and hire all the subcontractors for the Project. In modification of the standard language, it also requires WBCM-CS to retain the Architect.[2] Articles 4 and 5 of the A131 Document govern compensation and provide that BCC shall pay WBCM-CS in phases for all the pre-construction and construction services. The agreed lump sum amounts are itemized. A merger clause states that the A131 Document and the documents incorporated therein "represent[] the entire and integrated agreement between the Owner and the Construction Manager." A131 Document at § 9.2.2. Under a choice of law clause, the Contract is governed by Maryland law.

Section 1.2 of the A131 Document, entitled "General Conditions," incorporates the A201 Document and states that the term "Contractor" as used in that document shall mean "Construction Manager," *i.e.*, WBCM-CS. The A201 Document also includes a merger clause stating that the "Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral." A201 Document at § 1.1.2. That section further provides that the Contract "shall not be construed to create a contractual relationship of any kind (1) between the Architect and Contractor, . . . [or] (3) between the Owner and Architect." *Id.*

Article 4 of the A201 Document governs "ADMINISTRATION OF THE CONTRACT." It states that the Architect shall act as the Owner's representative, shall

[2] Under the standard language, the Owner shall retain the Architect.

have authority to act on the Owner's behalf as specified in the Contract, shall visit the construction site and keep the Owner informed of the progress on the Project, and shall certify the amounts due and payable to the Construction Manager.

Section 4.3 pertains to "CLAIMS AND DISPUTES." It defines a "Claim" as "a demand or assertion by one of the parties seeking [a change of the Contract terms, payment of money, extensions of time, or other relief]." A201 Document at § 4.3.1. Any claim first must be referred to the Architect. An "initial decision" by the Architect is a "condition precedent to mediation, arbitration, or litigation" of any claim "between the Contractor and Owner." A201 Document at § 4.4.1. If the Architect fails to issue a decision on the claim within 30 days, the claim is deemed to be denied.

The arbitration clause at issue in this appeal is set forth in Section 4.6 "ARBITRATION":

> Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived . . ., shall, after decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with . . . Section 4.5.

A201 Document at § 4.6.1. A "demand for arbitration" under Section 4.6.1 must be "filed in writing with the other party to the Contract" and with the American Arbitration Association ("AAA"), and "a copy shall be filed with the Architect." A201 Document at § 4.6.2.

Subsection 4.6.4 limits who may be joined in an arbitration. With respect to the Architect, it states:

> No arbitration arising out of or relating to the Contract shall include, by consolidation or joinder or in any other manner, the Architect, the Architect's employees or consultants, except by written consent containing specific reference to the Agreement and signed by the Architect, Owner, Contractor and any other person or entity sought to be joined.

On September 9, 2014, BCC filed two demands for arbitration with the AAA, one against WBCM-CS and one against WBCM, for "breach of contract for design-build of office and shop buildings." On September 15, 2014, it filed amended demands adding claims for negligence.

On September 24, 2014, in the Circuit Court for Carroll County, WBCM filed its "Petition to Enjoin and Terminate or Stay Arbitration Proceeding." It alleged that it is a "separate and distinct company from WBCM[-CS]" and that it had not "entered into any agreement with . . . BCC . . . under which it agreed to submit any disputes to arbitration." It attached to its petition an affidavit by Leon Kriebel, averring that he is president of WBCM and executive vice-president of WBCM-CS; that the two companies are "separate and distinct Maryland limited liability companies"; that WBCM is not a party to any contract with BCC that includes an agreement to arbitrate; that BCC is not a third-party beneficiary of any contract between WBCM and WBCM-CS; and that WBCM does not consent to arbitrate any dispute with BCC.

On November 7, 2014, BCC filed an opposition to the petition, asserting that WBCM is a party to the Contract. It attached an affidavit by Mr. Bradshaw, its managing member, attesting that BCC was referred to WBCM for the design of the Project; that he met with Mr. Aaby and negotiated the Contract; that Mr. Aaby, on behalf of WBCM and

WBCM-CS, modified the standard A131 Document and presented it to BCC for signature; that those modifications "resulted in both the design and construction being covered by one contract"; and that Mr. Aaby was the contact person for WBCM and WBCM-CS throughout the design and construction phases of the Project.

On December 19, 2014, the court held a hearing on WBCM's petition. Citing *Case Handyman & Remodeling Services, LLC v. Schuele*, 183 Md. App. 44 (2008), *vacated on other grounds by Scheule v. Case Handyman & Remodeling Servs., LLC*, 412 Md. 555 (2010), and *Thompson v. Witherspoon*, 197 Md. App. 69 (2011), the court raised the question whether WBCM was equitably estopped to refuse to arbitrate the dispute if it directly benefited from the Contract. The court asked the parties to submit memoranda addressing what, if any, direct benefit accrued to WBCM under the Contract.

The parties filed their memoranda in February 2015. BCC attached a second affidavit by Mr. Bradshaw. In it, he attested that "the design concept presented by WBCM to [him] was the determinative factor in the formation of the [C]ontract"; the Contract provided for payment for WBCM's design work; WBCM advertised its design work for BCC on its website; and the dispute that would be arbitrated "chiefly concerns [WBCM]'s design . . . of [the Project]."

On May 8, 2015, the court issued its memorandum opinion and order, which were entered that day. The court stated that it is undisputed that WBCM is not a signatory to the Contract, but "is named [in the Contract] as the Architect and was engaged to perform design services for [the Project]." The court framed the issue before it as "whether

[WBCM], a non-signatory to the Contract containing the provision for arbitration, can be compelled to participate in arbitration regarding a dispute arising out of the Contract." Applying the theory of equitable estoppel to reason that WBCM is bound by the arbitration clause in the Contract, the court answered that question in the affirmative. It explained that in *Case Handyman* and *Thompson*, this Court recognized that "'a non-signatory can enforce, or be bound by, an arbitration provision within a contract executed by other parties.'" (Quoting *Case Handyman*, 183 Md. App. at 57.) A party to the contract who seeks to compel a non-signatory to arbitrate must show that the non-signatory received a direct benefit from the contract. The court found that WBCM had directly benefited from the Contract because it was named as the Architect; its compensation for design services was guaranteed; and it was not required to bid or compete for the job.[3] The court further found that WBCM had participated in the

[3] The court stated that "Section 3 of the Contract names WBCM, LLC as Architect for the [P]roject and Section 4.1.1 of the Contract provides for payments to the Architect for design services, distinguishing those costs from construction costs." Our review of the Contract does not bear out these findings. Article 3 of the A131 Document governs "Owner's Responsibilities" and provides at section 3.3 that WBCM-CS "shall retain the architect and design consultants directly and coordinate the design team and construction team in such a way as to provide a design to meet the Owner's needs and budget." That language modifies the standard form language in Document A131, which provides that the Owner, not the Construction Manager, shall retain an architect. In any event, Section 3 does not name WBCM as the Architect. The only place where WBCM is named as the Architect is on the cover page of Document A131.

Similarly, while the court found that section 4.1.1 of the A131 Document "provides for payments *to the Architect*," it plainly does not. That section falls under Article 4, governing "COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES." At 4.1.1, it states that "the Construction Manager's compensation shall be calculated as follows:" and breaks down the

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negotiations that lead to the Contract and "arguably its design was the *sine qua non* for the Contract." The court concluded that the "parties' [sic] intended WBCM to directly benefit from the Contract"; "to allow WBCM . . . to succeed in its attempts to avoid arbitration when the underlying contractual dispute arises out of an alleged defective design would be unjust"; and therefore WBCM was equitably estopped to "refus[e] to participate in arbitration of a controversy arising out of that Contract."

WBCM noted a timely appeal.

DISCUSSION

"Arbitration is the process whereby parties voluntarily agree to substitute a private tribunal for the public tribunal otherwise available to them." *Charles J. Frank, Inc. v. Assoc. Jewish Charities of Baltimore, Inc.*, 294 Md. 443, 448 (1982). The Maryland Uniform Arbitration Act ("MUAA"), Md. Code (1973, 2013 Repl. Vo., 2015 Supp.), sections 3-201–3-234 of the Courts and Judicial Proceedings Article ("CJP"), confers jurisdiction on the circuit court to "enforce" "[a]n agreement providing for arbitration" and to "enter judgment on an arbitration award." CJP § 3-202. "If a party denies existence of the arbitration agreement, he [or she] may petition [the] court to stay commenced or threatened arbitration proceedings." CJP § 3-208(a). The denial of a

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compensation for "Architectural, Structural, Mechanical & Electrical Performance Specification." All those payments were to be made to WBCM-CS as Construction Manager, not to WBCM.

petition to stay arbitration is a final, appealable judgment. *See Town of Chesapeake Beach v. Pessoa Constr. Co. Inc.*, 330 Md. 744 (1993).

A circuit court's decision about the arbitrability of a dispute is a conclusion of law that we review *de novo*. *Walther v. Sovereign Bank*, 386 Md. 412, 422 (2005). "Arbitration is consensual; a creature of contract." *Hartford Accident & Indem. Co. v. Scarlett Harbor Assocs. Ltd. P'Ship*, 346 Md. 122, 127 (1997) (citations omitted); *see also Gold Coast Mall, Inc. v. Larmar Corp*., 298 Md. 96, 103 (1983) ("Arbitration is a matter of contract which the parties should be allowed to conduct in accordance with their agreement."). Thus, "[t]he issue of whether an agreement to arbitrate exists is governed by contract principles." *Holloman v. Circuit City Stores, Inc*., 391 Md. 580, 590 (2006). Our starting point is to "determine from the language of the agreement itself what a reasonable person in the position of the parties would have meant at the time it was effectuated." *General Motors Acceptance Corp. v. Daniels*, 303 Md. 254, 261 (1985). If "the language of the contract is plain and unambiguous there is no room for construction, and a court must presume that the parties meant what they expressed." *Id*.

"A party cannot be required to submit any dispute to arbitration that it has not agreed to submit." *Gold Coast Mall, Inc*., 298 Md. at 103. *Curtis G. Testerman Co. v. Buck*, 340 Md. 569 (1995), is instructive in that regard. There, the Court considered "[w]hether one who is neither a party to the arbitration agreement nor a signatory of the underlying contract can be bound by an arbitration award." *Id*. at 574. The owners of a single family home entered into a construction contract with a contractor to build an

addition on the home. After the contractor failed to complete the work, the homeowners sued it and its individual owner for breach of contract and negligence, among other claims. The contractor moved to compel arbitration under an arbitration clause in the contract. The clause stated, in pertinent part: "All claims or disputes between the Contractor and the Owner arising out [of] or relating to the Contract, or the breach thereof, shall be decided by arbitration." *Id*. at 573. After the circuit court granted the contractor's motion, the homeowners moved to compel the contractor's owner to arbitrate as well. The court granted their motion. The arbitration proceeded and ultimately the circuit court confirmed a joint and several arbitration award in favor of the homeowners and against the contractor and its owner.

The Court of Appeals granted a petition for writ of *certiorari* on its own initiative prior to review by this Court. The contractor's owner challenged the circuit court's ruling compelling it to arbitrate, arguing that the contract was between the homeowners and the contractor only and he had not entered into any contract with the homeowners. The Court of Appeals rejected the homeowners' arguments that the contractor's owner could be bound by the arbitration clause in the contract as an agent for the contractor or as a corporate officer. It reasoned that he only could be compelled to arbitrate if he were "a party to the agreement [to arbitrate] or underlying contract." *Id*. at 580. The Court held that the plain language of the contract was clear that the parties did not intend for the contract to bind the contractor's owner individually because he signed the contract only in his representative capacity as president of the contractor.

The Court found unpersuasive "numerous cases [cited by the homeowners] in support of the proposition that an arbitration agreement can be enforced against non-signatories or non-parties to the agreement." *Id*. at 581. It noted that some of those cases involved federal statutes and principles not applicable to the facts presented, *see, e.g.*, *Lee v. Chica*, 983 F.2d 883 (8th Cir. 1993) (compelling non-signatory agent of a brokerage firm to arbitrate under federal substantive law and based upon a finding that the arbitration agreement revealed an intent to bind the agent); and others involved a non-party who consented to arbitrate and whose request to join was opposed by a party to the arbitration agreement, *see, e.g.*, *Pritzker v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 7 F.3d 1110 (3rd Cir. 1993) (holding that a non-signatory agent's liability was arbitrable over the objection of a party). It found persuasive cases holding that "a non-signatory or non-party to an arbitration agreement *cannot* be forced to arbitrate disputes against their will." *Testerman*, 340 Md. at 584 (emphasis in original); *see also Town of Chesapeake Beach*, 330 Md. at 757 (Maryland "looks with favor upon arbitration as a method of dispute resolution, [but] it does not look with favor upon sending parties to arbitration when there is no agreement to arbitrate."); *accord Futurecare Northpoint, LLC v. Peeler*, 229 Md. App. 108 (2016).

In the case at bar, WBCM was not a party to the Contract. The Contract identifies the parties as BCC and WBCM-CS and states unambiguously that it may "not be construed to create a contractual relationship of any kind . . . between the Owner and Architect." A201 Document at § 1.1.2. Moreover, the section of the Contract governing

arbitration specifies that no arbitration arising under the Contract shall include the Architect, absent the written consent of WBCM, WBCM-CS, and BCC. In light of this unambiguous language, it is clear that there was no agreement that disputes between the parties to the Contract and WBCM, as the Architect, would be subject to arbitration.

As the circuit court emphasized, this Court has recognized that established common law principles of estoppel "'dictate that in an appropriate case a nonsignatory can enforce, or be bound by, an arbitration provision within a contract executed by other parties.'" *Case Handyman*, 183 Md. App. at 57 (quoting *Washington Square Securities, Inc. v. Aune*, 385 F.3d 432, 435 (4th Cir. 2004)). "The principle underlying the theory of equitable estoppel rests on a simple proposition: it is unfair for a party to rely on a contract when it works to its advantage, and repudiate it when it works to its disadvantage." *Id.*. at 58 (citation omitted); *see also Dickerson v. Longoria*, 414 Md. 419, 453-54 (2010) (quoting *Creveling v. GEICO*, 376 Md. 72, 101-02 (2003) (internal quotations omitted)) ("'[t]he basis of equitable estoppel is the effect of the conduct of one party on the position of the other party'"). In the "arbitration context, 'equitable estoppel' is a misnomer because, unlike equitable estoppel in a contracts context, detrimental reliance is not required." *Scheule*, 412 Md. at 563 n.3; *see also Griggs v. Evans*, 205 Md. App. 64, 82 n.5 (2012).

In *Case Handyman*, homeowners entered into a home improvement contract with a franchisee of Case Handyman and Remodeling Services, LLC ("Case Handyman"). The franchisee's owner signed the contract as "Case Handyman Services." The contract

included an arbitration clause stating, in pertinent part, that "[a]ny controversy/claim arising out of or relating to this contract or its breach thereof, shall be settled by final and binding arbitration." 183 Md. App. at 50. The franchisee subsequently filed for bankruptcy and did not commence work. Thereafter, the homeowners filed suit against Case Handyman for breach of contract, fraud, negligence, and other claims. Case Handyman moved to dismiss or, in the alternative, to stay and compel arbitration. The court denied its motion.

Case Handyman appealed, arguing, as relevant here, that it could enforce the arbitration clause in the contract between the homeowners and the franchisee under the doctrine of equitable estoppel because the homeowners' claims were predicated on duties owed under the contract and they had alleged concerted misconduct by the franchisee and Case Handyman. This Court agreed, holding that the homeowners were estopped to refuse to arbitrate. Relying on federal cases, we reasoned that "a non-signatory of an applicable arbitration contract can enforce an arbitration clause under the doctrine of equitable estoppel when the signatory's claims against the non-signatory rely on the written agreement." *Id*. at 62 (footnote omitted). We concluded that because the homeowners' claims were based on their contract with the franchisee they were estopped to refuse to arbitrate. *See also Griggs*, 205 Md. App. at 64 (2012) (holding that a signatory to a mortgage loan agreement containing an arbitration rider could not be compelled to arbitrate claims against a non-signatory arising from the denial of her claim under a credit life insurance policy that had been executed simultaneous with the closing

on the mortgage loan because her claims were wholly unrelated to the mortgage loan agreement). The Court of Appeals granted a petition for writ of *certiorari* and dismissed the appeal without reaching the merits because the order denying Case Handyman's motion to compel arbitration was a non-appealable interlocutory order. *Schuele*, 412 Md. at 557.

In 2011, this Court addressed the "mirror image" of the issue in *Case Handyman*: "the circumstances under which a *signatory* to a contract with an arbitration clause can enforce those provisions against a *non-signatory* to that agreement." *Thompson*, 197 Md. App. at 73 (emphasis in original). The dispute in *Thompson* concerned the terms of a second-to-die life insurance policy. Nancy and Albert Thompson obtained the policy from Manulife and named their six children as the beneficiaries and policy owners. The Thompsons' son-in-law, Gordon Witherspoon, worked for what is now UBS Financial Services ("UBS"), which acted as an insurance producer and broker for Manulife at that time. Witherspoon was the Manulife agent who procured the Thompsons' policy. Initially, the Thompsons paid the yearly premium as gifts on behalf of their children. They later stopped, allegedly upon Witherspoon's advice. Thereafter, unbeknown to three of the Thompsons' children ("the Children"), Manulife borrowed against the value of the policy to pay the premiums and interest. After Mr. Thompson died, the Children learned that $900,000 had been borrowed against the value of the policy. They sued Manulife, Witherspoon, and UBS for negligent misrepresentation, deceit, conversion, negligence, and breach of contract.

Witherspoon and UBS moved to stay and compel arbitration. They alleged that thirteen years after the Thompsons obtained the policy, they established accounts at UBS for which they signed account agreements and brokerage agreements ("the UBS Agreements"), which included an arbitration clause requiring that

> any and all controversies which may arise between [UBS], any of [UBS's] employees or agents and Client concerning any account, transaction, dispute or the construction, performance or breach of this Agreement or any other agreement, whether entered into prior to, on or subsequent to the date hereof, shall be determined by arbitration.

Id. at 77. Witherspoon and UBS argued that because the Children were suing as owners and beneficiaries of the policy and because the policy had been procured by Witherspoon, a UBS employee, the dispute was covered by the arbitration clauses in the UBS Agreements. They also took the position that the Children were equitably estopped to avoid arbitration because they were seeking to enforce rights under the terms of the policy. The circuit court granted the motions to compel arbitration, reasoning that the "causes of action are so intertwined with the contractual relationship by and between the Thompsons and UBS" that the arbitration clause was enforceable against the Children. *Id.* at 78.

This Court reversed on appeal. We analyzed Maryland and federal case law applying the doctrine of equitable estoppel to bind a non-signatory to a contract to an arbitration clause therein.[4] We noted that although *Case Handyman* had been vacated on

[4] We concluded that the arbitration clause in the UBS Agreements was governed by the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1–6 because it affected interstate (Continued…)

procedural grounds, it nevertheless was persuasive authority. We distinguished it, however, because it involved a *non-signatory* to a contract with an arbitration clause seeking to compel a *signatory* to arbitrate. We explained that in that scenario, federal decisions make clear that to compel a *non-signatory* to arbitrate, a signatory must show more than that the non-signatory's claims are intertwined with the contract. The signatory also must show that the non-signatory "directly benefited from the agreement containing the arbitration clause or had attempted to enforce other provisions of the contract." *Thompson*, 197 Md. App. at 87; *see also Thomson-CSF v. Am. Arbitration Ass'n.*, 64 F.3d 773, 778–79 (2d Cir. 1995) (holding that a non-signatory was not equitably estopped to refuse to arbitrate a dispute with a signatory because the non-signatory had not directly benefited from the contract containing the arbitration clause); *Int'l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411, 418 (4th Cir. 2000) (holding that "[a] nonsignatory is estopped from refusing to comply with an arbitration clause when it receives a 'direct benefit' from a contract containing an arbitration clause") (citations omitted). A direct benefit is "'one contained within the provisions of the contract, which stands in contrast to an "indirect benefit" which flows as a result of the contract formation.'" *Thompson*, 197 Md. App. at 87 (quoting *Coots v.*

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commerce. Accordingly, we applied federal substantive law in analyzing the arbitrability of the dispute. The MUAA is "the 'State analogue . . . to the [FAA]," *Holmes v. Coverall N. Am., Inc*., 336 Md. 534, 541 (1994) (citation omitted), however, and this Court also looks to federal decisions in resolving issues of arbitrability under the State act. *Thompson*, 197 Md. App. at 80.

Wachovia Sec., Inc., 304 F.Supp.2d 694 (D. Md. 2003), *vacated on other grounds*, 114 Fed. Appx. 586 (4th Cir. 2004)).

We held in *Thompson* that the Children had not directly benefited from the UBS Agreements and therefore were not estopped to refuse to arbitrate their claims against UBS and Witherspoon. We emphasized that the UBS Agreements were executed many years after the policy was obtained and the "[t]he relationship between the insurance policy and the UBS Agreements [was] one of coincidence, not cause and effect." *Id.* at 88. We further distinguished *Case Handyman* because the claims brought by the Children were not intertwined with and reliant upon the terms of UBS Agreements.

We return to the case at bar. Unlike in *Case Handyman*, where a non-signatory sought to compel a signatory to arbitrate, and *Thompson*, where a non-signatory sued a signatory and the signatory then sought to compel arbitration, here WBCM is neither a signatory to the Contract nor the party seeking relief under the Contract. Moreover, here the Contract includes a provision expressly *excluding* WBCM, as the Architect, from any arbitration proceeding arising under the Contract, absent written consent by WBCM, WBCM-CS, and BCC. Thus, the issue before us is whether a non-signatory to a contract that includes an arbitration clause *and* a clause excluding the non-signatory from arbitration nevertheless may be compelled to arbitrate by a signatory making claims against it, under the doctrine of direct benefits estoppel. We conclude that it may not.

Our research has not revealed any case where a non-signatory to a contract with an arbitration clause that also expressly excludes the non-signatory from arbitration has been

compelled to arbitrate. At least one state court has held that the doctrine of equitable estoppel cannot be used to compel an architect to arbitrate when the standard form language in the A201 Document prohibits the architect from being included in arbitration. In *Stallings & Sons, Inc. v. Sherlock, Smith, & Adam, Inc.*, 670 So.2d 861 (Ala. 1995), a contractor involved in the construction of an addition to a hospital entered into a contract with the hospital that incorporated the A201 Document and included the same standard language excluding the architect from any arbitration arising under the contract. That contractor and others later sued the architect, alleging that it had suppressed information about the project and, in doing so, caused the contractor to suffer economic loss. The architect moved to stay and to compel arbitration under the terms of the contractor's contract with the hospital. The trial court granted the motion, concluding that the contractor was equitably estopped to refuse to arbitrate the dispute because its claims were intertwined with the contract containing the arbitration clause. On appeal, the Supreme Court of Alabama reversed. It focused on the language in the A201 Document that "specifically prohibited" the architect from being included in the arbitration of disputes under the contract and concluded that that language barred the court from applying equitable estoppel to compel arbitration. *Id*. at 863.

In this case, BCC has made claims arising from the Contract against a signatory (WBCM-CS) *and* against a non-signatory (WBCM). Compelling WBCM to arbitrate those claims would not advance the equitable principle that a party should not be permitted to "rely on a contract when it works to its advantage, and repudiate it when it

works to its disadvantage." *Case Handyman*, 183 Md. App. at 58 (citation omitted). WBCM is not relying on the Contract to enforce any rights against BCC. Rather, BCC is relying on the terms of its Contract that are to its benefit while at the same time repudiating the term of the Contract that precludes arbitration against the Architect. Having contracted directly with WBCM-CS and agreed that WBCM, as the Architect, would not be included in any arbitration of a dispute arising out of or related to the Contract, BCC may not force WBCM to arbitrate disputes arising under that Contract. *See Testerman*, 340 Md. at 584 (A non-signatory to a contract containing an arbitration clause may not be "forced to arbitrate disputes against their will."). To hold otherwise would render meaningless the clause in the Contract precluding inclusion of the Architect in any arbitration proceeding. *See Towson Univ. v. Conte*, 384 Md. 68, 81 (2004) ("courts do not interpret contracts in a manner that would render provisions superfluous or as having no effect").

II.

Our resolution of the first issue obviates the need for us to address whether BCC's demand for arbitration against WBCM also was improper under the economic loss rule.

JUDGMENT REVERSED. CASE REMANDED TO THE CIRCUIT COURT FOR CARROLL COUNTY WITH INSTRUCTION TO ENTER AN ORDER GRANTING THE APPELLANT'S PETITION TO ENJOIN ARBITRATION. COSTS TO BE PAID BY THE APPELLEE.