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## Recent Developments: Park Plus, Inc. v. Palisades of Towson

Brandon Ewing

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## RECENT DEVELOPMENT

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### ***PARK PLUS, INC. v. PALISADES OF TOWSON, LLC: THE STATUTORY LIMITATIONS PERIOD FOR CIVIL ACTIONS DOES NOT WAIVE THE RIGHT TO ARBITRATE OR COMPEL ARBITRATION WHEN THE ARBITRATION AGREEMENT OMITS A LIMITATIONS PERIOD.***

***By: Brandon Ewing***

The Court of Appeals of Maryland held that when arbitration agreements omit a statutory limitation period, the three-year statutory limitations period for civil actions does not waive a party's right to arbitration or petition to compel pursuant to the Maryland Uniform Arbitration Act ("MUAA"). *Park Plus, Inc. v. Palisades of Towson, LLC*, 478 Md. 35, 60, 272 A.3d 309, 323-24 (2022). The court explained the three-year statutory limitations period extinguishes a party's ability to seek a remedy through civil actions for damages, not the right to arbitrate as contractually agreed upon. *Id.* at 59, A.3d at 323. Additionally, the MUAA defines the courts' role in enforcing arbitrable agreements. *Id.* at 40, 51, 272 A.3d at 311, 318 (citing Md. Code Ann., Cts. & Jud. Proc. §§ 3-207, 3-208 (LexisNexis 2022)). One such role: determining whether an agreement exists. *Id.* (citing *Gold Coast Mall, Inc. v. Larmar Corp.*, 298 Md. 96, 104, 468 A.2d 91, 95 (1983)). If a court determines the agreement exists, it must provide equitable relief by enforcing the agreement. *Id.* at 51, 272 A.3d at 318 (first citing Md. Code Ann., Cts. & Jud. Proc. §§ 3-207, 3-208(c) (LexisNexis 2022); then citing *Holmes v. Coverall N. Am., Inc.*, 336 Md. 534, 546, 649 A.2d 365, 370 (1994)).

In 2009, Palisades of Towson, LLC and Encore Development Corp. ("Palisades"), and Park Plus, Inc. ("Park Plus"), entered into a contract ("the contract") obligating Park Plus to install an automated parking system in an apartment building in Towson, Maryland. The contract required any dispute relating to work progress or interpretation of the contract be submitted to the architect or engineer, then to arbitration upon demand within 30 days of the original decision. The contract omitted any deadline requiring a party to submit a demand for arbitration or petition to compel arbitration.

As tenants began using the parking lot, issues plagued the system, resulting in Park Plus and Palisades disputing maintenance responsibility. Pursuant to the contract, Palisades sent its claims to the project's architect and a written arbitration demand to Park Plus in 2014. The architect refused to review the claims, and Palisades submitted another written arbitration demand within 30 days of the refusal. Various difficulties, including Park Plus's refusal to arbitrate, delayed arbitration for over two years.

Palisades filed a petition to enforce the arbitration agreement in the Circuit Court for Baltimore County in 2016. The circuit court found Park Plus's refusal to arbitrate was a separate contractual breach that triggered the three-year statute of limitations period. As such, the court found the action was timely and granted the petition to compel arbitration. The Court of Special Appeals of Maryland affirmed the circuit court's ruling. Subsequently, the Court of Appeals of Maryland granted Park Plus's petition for a writ of *certiorari*.

The Court of Appeals of Maryland first reviewed the history of equitable relief and the MUAA in Maryland. *Park Plus, Inc.*, 478 Md. at 47-50, 272 A.3d at 316-18. The court observed that before 1984, courts in Maryland were separated into courts of law and courts of equity depending on the nature of the relief sought. *Id.* at 47, 272 A.3d at 316, 728 (first citing *Higgins v. Barnes*, 310 Md. 532, 540, 530 A.2d 724 (1987); then citing *Ver Brycke v. Ver Brycke*, 370 Md. 669, 697-98, 843 A.2d 758, 774-75 (2004)). In 1984 Maryland courts merged, and only one cause of action was recognized, however, the distinction between the types of relief remained important. *Park Plus, Inc.*, 478 Md. 48, 272 A.3d at 316 (citing *Taylor v. Taylor*, 306 Md. 290, 297 n.6, 508 A.2d 964, 967 (1986)).

The court observed that the MUAA was enacted before the merger of law and equity and promotes the public policy of favoring arbitration due to its perceived benefits to litigation. *Park Plus, Inc.*, 478 Md. at 49, 272 A.3d at 317 (citing *Allstate Ins. Co. v. Stinebaugh*, 374 Md. 631, 641, 824 A.2d 87, 93 (2003)). The MUAA confers to courts the jurisdiction to provide equitable relief through enforcing agreements and entering an arbitration award as a judgment. *Park Plus, Inc.*, 478 Md. at 49, 272 A.3d at 317 (citing Md. Code Ann., Cts. & Jud. Proc. § 3-202 (LexisNexis 2022)).

The court observed that parties seeking to either compel or stay arbitration may invoke their ability to enforce arbitration agreements. *Park Plus, Inc.*, 478 Md. at 51, 272 A.3d at 318 (citing Md. Code Ann., Cts. & Jud. Proc. §§ 3-207(a); 3-208(a)). In both scenarios, the court must determine if an arbitration agreement exists. *Park Plus, Inc.*, 478 Md. 51, 272 A.3d at 318 (first citing Md. Code Ann., Cts. & Jud. Proc. §§ 3-207, 3-208 (LexisNexis 2022); then citing *Gold Coast Mall, Inc.*, 298 Md. at 104, 468 A.2d 91, 95). If an arbitration agreement does exist, the court must enforce that agreement by compelling arbitration. *Park Plus, Inc.*, 478 Md. at 51, 272 A.3d at 318 (first citing Md. Code Ann., Cts. & Jud. Proc. §§ 3-207(c)§ 3-208(c) (LexisNexis 2022); then citing *Holmes*, 336 Md. at 546, 649 A.2d 365). Identifying the existence of an arbitration agreement includes determining whether arbitration applies to the issue at hand and whether the right to demand arbitration was waived. *Park Plus, Inc.*, 478 Md. at 52, 272 A.3d at 319 (citing *Stauffer Constr. Co v. Bd. of Educ.*, 54 Md. App. 658, 666, 460

A.2d 609, 613 (1983)). If the arbitration provision does not apply or the provision was waived, the right to arbitrate is deemed nonexistent, and petitions to compel arbitration are denied. *Park Plus, Inc.*, 478 Md. at 53, 272 A.3d at 319. Park Plus did not dispute that an arbitration agreement existed but rather that Palisades waived the right to arbitrate by failing to timely submit a claim. *Id.*

Waiver is “the intentional relinquishment of a known right.” *Park Plus, Inc.*, 478 Md. at 52, 272 A.3d at 319 (quoting *Charles J. Frank, Inc. v. Associated Jewish Charities of Balt., Inc.*, 294 Md. 443, 449, 450 A.2d 1304, 1306 (1982)). Waiver may occur in a variety of ways, including failing to make a timely arbitration demand. *Park Plus, Inc.*, 478 Md. at 53, 272 A.3d at 319. Timeliness is a decision for the court, solely to determine whether an agreement exists. *Id.* at 53, 272 A.3d at 319 (citing *The Redemptorists v. Coulthard Servs., Inc.*, 145 Md. App. 116, 141, 801 A.2d 1104, 1118 (2002); then citing *Chesapeake Beach v. Pessoa Constr. Co.*, 330 Md. 744, 748-49, 625 A.2d 1014, 1016 (1993); and then citing *Allstate Ins. Co. v. Stinebaugh*, 374 Md. 631, 646, 824 A.2d 87, 96 (2003)). To establish whether a party waived its right to arbitration, the court must undertake a fact-specific analysis. *Park Plus, Inc.*, 478 Md. at 52, 272 A.3d at 319 (citing *Charles J. Frank, Inc.*, 294 Md. at 449, 450 A.2d at 1306). Typically, timeliness becomes a waiver issue when the agreement specifically provides a limitations period. *Park Plus, Inc.*, 478 Md. at 53, 272 A.3d at 319. Here, the contract did not include such a period. *Id.* at 54, 272 A.3d at 320.

The court next analyzed the background and legislative history of the statutory limitations period for civil actions. *Park Plus, Inc.*, 478 Md. at 55-56, 272 A.3d at 320-21. Reviewing the language and typical application of the statute, the court found that the statutory limitation period applies to civil actions and not petitions seeking equitable relief. *Id.* at 56-57, 272 A.3d at 321. Generally, statutes of limitations are considered procedural defenses that defeat the remedy for enforcing the right, not the right itself. *Id.* at 54, 272 A.3d at 320 (citing *Frank v. Wareheim*, 177 Md. 43, 58-59, 7 A.2d 186, 193 (1939)). The court explained if the contract did not include an arbitration provision, Palisades would have been barred from seeking monetary damages because it was seeking to enforce its right to a working parking system after the statute of limitations. *Park Plus, Inc.*, 478 Md. at 54, 272 A.3d at 320.

Because the contract did in fact include an arbitration provision, Palisades sought to enforce its rights to arbitrate – an equitable remedy. *Id.* The three-year statute of limitations period is inapplicable to disputes seeking equitable relief; thus, Palisades’ right to arbitrate was not waived. *Id.* at 55, 272 A.3d at 320. Under the MUAA, when an agreement exists, the court must enforce the agreement by compelling arbitration. *Id.* Moreover, legislative history

confirmed the three-year statutory limitation period only applies to civil actions at law, not when a court sits in equity. *Id.*

The Court of Appeals of Maryland clarified that when a court sits in equity, such as when a party petitions to compel arbitration, the three-year statutory limitations period does not apply. Instead, the MUAA confers jurisdiction to the court to provide relief by enforcing the agreement. To avoid future issues, arbitration agreements should include a clear limitation period requiring the submission of a demand for arbitration. If a limitation period is not included in an agreement, the court will likely enforce the agreement by compelling the parties to arbitrate. Litigators should recognize the legislative policy favoring arbitration and prepare for the court's preference towards enforcing the agreement.