

## Is Your Petition to Compel Arbitration Barred by the Statute of Limitations?



Contracting parties recognize that a lawsuit in court for breach of contract must generally be commenced before the statute of limitations had expired. But what if the claimant, pursuant to a mandatory arbitration provision, fails to demand arbitration of a dispute before the statute of limitations had expired on its substantive claim for breach of contract. Has the claimant waived its right to compel arbitration?

This issue was addressed recently by the Court of Appeals of Maryland in *Park Plus, Inc. v. Palisades of Towson, LLC*, 478 Md .35, 272 A. 3d 309 (2022). And, as will be noted, there have been differing opinions among the limited numbers of state courts, including Pennsylvania, that have addressed this very question.

The matter involved a contract for Park Plus to furnish and install a parking system in a luxury apartment building owned by Palisades. As the court pointed out, agreements to arbitrate are now commonplace and parties are free to structure them to suit their needs. Thus, they may specify how to initiate the arbitration process, the number and identity of arbitrators, the scope and extent of discovery, the locale of the proceeding and the extent to which the rules of evidence may apply. Nonetheless, they often fail to recognize that by creating their own procedures they are, in effect, “agreeing to curtail the role that courts may play in resolving their dispute”.

Included in the contract was a mandatory arbitration provision which contained no mention of a limitations period within which the demand for arbitration must be made.

Over an extended period of years, starting in 2010, the parties had disagreements over whether there was a breach and whether there would be an arbitration. Ultimately, in 2016, Palisades filed a petition in the court seeking to enforce the arbitration agreement.

Parks Plus opposed the petition to compel arbitration, contending that it was untimely as it was subject to the three-year statute of limitations provided under Section 5-101 of the Maryland statute which provides:

“A civil action at law shall be filed within three years from the date it accrues unless another provision of the Code provides a different period of time within which an action shall be commenced”.

Palisades (in addition to contending that any three-year period would have commenced at a later time by reason of other circumstances) argued that as there was no time limitation in the contract within which arbitration must be demanded, Section 5-101’s three-year period did not apply. **READ MORE..**

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