Circuit Court for Baltimore City
Case No. 24-C-19-005343

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 259

September Term, 2024

SOUTHWAY BUILDERS, INC.

v.

MAAMECH MIDATLANTIC, INC., ET AL.

Zic,
Kehoe, S.,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zic, J.

Filed: July 14, 2026

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

This case arises from a successful motion to dismiss a contract dispute. Southway Builders, Inc. ("Southway"), appellant, the prime contractor on a Virginia construction project, sued the sureties, United States Surety Company and U.S. Specialty Insurance Company (collectively, "Sureties"), appellees, on a subcontractor's performance bond ("Performance Bond") in the Circuit Court for Baltimore City, seeking to recover on its bond claim. The Sureties moved to dismiss, contending that the choice-of-law and forum-selection provisions in the Performance Bond and a related memorandum of understanding ("MOU") required that the dispute be governed by the law of Virginia and litigated in Virginia, where the project was located. The circuit court granted the motion.

QUESTIONS PRESENTED

Southway presents one question for our review, which we have recast and rephrased as follows:[1] Did the circuit court err in granting the motion to dismiss? For the following reasons, we answer this question in the negative and affirm.

BACKGROUND

The Project and Parties

In December 2015, Southway entered into a contract ("Prime Contract") with Laurel Hill Venture, LLC, to construct a housing development ("Project") in Virginia. In February 2016, Southway, as prime contractor, entered into a subcontract ("Subcontract") with MAAMECH Mid-Atlantic, LLC ("MAAMECH"), under which MAAMECH agreed

[1] Southway phrased the question as follows: Did the [circuit court] [e]rr in [g]ranting the Sureties' [m]otion to [d]ismiss [b]ased on a [f]orum-[s]election [p]rovision in the Performance Bond that was void *ab initio* pursuant to Md. Insurance Code Ann. §[ ]12-104(a)?

to perform plumbing and HVAC work for the Project. The Subcontract contained a forum-selection clause providing that any action arising from or in connection with it "shall be commenced and maintained in a court of competent jurisdiction in the City of Baltimore and shall not be commenced or maintained in any other court."

In April 2016, the Sureties issued a Performance Bond[2] and a labor and material payment bond (collectively, "Bonds"), naming Southway as obligee. The Performance Bond secured MAAMECH's performance obligations under the Subcontract, which were to be performed in Virginia. The Performance Bond provided that "[a]ny proceeding, legal or equitable, under this Bond, must be instituted in a court of competent jurisdiction in the jurisdiction in which the Project is located[,]" and it described the Project as "PLUMBING & HVAC LAUREL HILL ADAPTIVE REUSE, 9380 QUADRANGLE STREET, LORTON, VA 22079[.]" (First alteration in original.)

The Performance Bond further provided that, in the event of any conflict or inconsistency between its terms and those of the Subcontract, the Performance Bond would prevail. It designated a one-year limitations period for disputes arising under it, requiring that any proceeding be instituted, "if at all, within one (1) year after the Principal [MAAMECH] first defaulted or was declared . . . to be in default, . . . or within one (1) year after the Surety has refused to perform pursuant to this Bond, which ever

[2] At the motions hearing, Southway's counsel explained that "a performance bond is, in essence, a three-party agreement involving a surety, who issues the surety insurance; a principal, upon whose benefit the surety insurance is issued or at his behest; and, finally, the obligee. And the obligee is the insured under this insurance policy."

first occurs." The Performance Bond also stated, "[i]f the provisions of this paragraph are void or prohibited by law, the minimum period of limitations available to [the S]ureties as a defense in the jurisdiction where any proceeding is instituted shall apply."

The Bond Claim and the MOU

Around March 15, 2017, Southway issued a notice that MAAMECH was in default[3] under the Subcontract and made a claim against the Performance Bond. In May 2017, Southway and the Sureties executed a MOU[4] concerning Southway's claims against the Performance Bond and MAAMECH's scope of work under the Subcontract.

The MOU defined the Project as "work for [Southway] on the Project known as Laurel Hill Adaptive Reuse[.]" It reaffirmed that all "disputes arising under [] [it], the Subcontract[,] or the Bonds shall be resolved in a competent jurisdiction located in the State of Virginia," and that all such agreements "shall be . . . interpreted and adjudicated solely in accordance with the laws of the State of Virginia." In April 2018, the Sureties denied Southway's claim against the Performance Bond.

[3] "In the first quarter of 2017, MAAMECH began to experience financial problems[,]" and "[o]n or about July 24, 2017, [MAAMECH's owners and sole stockholders] filed a personal bankruptcy petition with the United States Bankruptcy Court for the District of Maryland . . . ." That bankruptcy filing asserted "that MAAMECH had a value of $0.00[.]" MAAMECH forfeited its corporate status on October 16, 2018.

[4] The Sureties' trial counsel characterized the MOU as an "attempt[] to work together to figure out a path forward as to [Southway's] claim and how certain payments were going to be made" and "not [as] a surety contract or surety bond or a rider endorsement."

The Maryland Litigation

In October 2019, Southway filed a complaint against the Sureties and MAAMECH in the Circuit Court for Baltimore City. The Sureties moved to dismiss the claims against them, arguing that the forum-selection and choice-of-law clauses set forth in the Performance Bond and MOU required that such a dispute be litigated in Virginia and be analyzed under Virginia law.

Following a hearing on the motion on April 15, 2020, the circuit court issued an oral ruling, later memorialized in a written order, that granted the Sureties' motion to dismiss and staying the claims against MAAMECH. Finding the parties had "agreed to apply Virginia law" pursuant to the MOU, the court determined that the complaint presented "an issue for which Maryland for the most part doesn't have an interest" because "this [P]roject [was] happening in Virginia" and "Virginia is the most invested, affected, to deal with whatever happens with this [P]roject." The court declined to invalidate the forum-selection clauses in the Performance Bond and the MOU because the dispute involved "a [P]roject for which . . . this state has no interest in protecting or preserving." The court also granted the Sureties' request to stay the proceedings against MAAMECH, pending the outcome of litigation in Virginia.

The Virginia Litigation

In November 2019, the Sureties filed a complaint for declaratory judgment against Southway in the Circuit Court for Fairfax County, Virginia. The court found in the Sureties' favor, declaring:

> Virginia law applies to disputes and claims under the Performance Bond that is the subject of this action and that Southway is time-barred from bringing a claim on the Performance Bond against the Sureties relating to MAAMECH Mid-Atlantic, Inc.'s work on the subject Project, and any such claim is therefore invalid.

In July 2022, the Supreme Court of Virginia affirmed, reasoning as follows:

> Assuming arguendo that Virginia choice-of-law rules required the circuit court to apply Maryland law, and Maryland law rendered the [l]imitation [p]rovision void, the [s]aving [p]rovision in the Performance Bond would apply to the applicable limitation period. The Saving Provision states that if the [l]imitation [p]rovision in the Performance Bond is deemed void, then the "minimum period of limitations available to [S]ureties as a defense in [Virginia] shall apply."

Southway Builders, Inc. v. United States Sur. Co., No. 210310, 2022 WL 2978256, at *3 (Va. July 28, 2022). The Supreme Court of Virginia noted that Virginia Code § 38.2-314 permits parties to an insurance contract to provide a minimum limitation period of one year, and that a one-year period was the contractual minimum period set forth in the Performance Bond. *Id.* at *4. Determining that the one-year period had lapsed, the Supreme Court of Virginia held that Southway's claim against the Performance Bond was time barred. *Id.*

The Return to the Maryland Litigation

In January 2023, the circuit court lifted the stay of Southway's claims against MAAMECH, and in February 2024, the court dismissed Southway's claim against MAAMECH "for lack of prosecution without prejudice[.]" Southway noted this timely appeal.

STANDARD OF REVIEW

"Generally, the 'standard of review of the grant or denial of a motion to dismiss is whether the trial court was legally correct.'" *Blackstone v. Sharma*, 461 Md. 87, 110 (2018) (quotation omitted). We review such decisions *de novo* and "accept all well-pled facts in the complaint, and reasonable inferences drawn from them, in a light most favorable to the non-moving party[.]" *Id.* (citations omitted).

DISCUSSION

THE CIRCUIT COURT DID NOT ERR IN GRANTING THE MOTION TO DISMISS.

A. Parties' Arguments

Southway contends that the circuit court erred in granting the motion to dismiss because, pursuant to § 12-104(a) of the Insurance ("Ins.") Article of the Maryland Code, (1995, Repl. Vol. 2017),[5] the "forum-selecting provision" in the Performance Bond is "void *ab initio*[.]" In Southway's view, the Bonds were issued by at least one Maryland

[5] Pursuant to Ins. § 12-104(a):

> (a) A provision in an insurance contract or surety contract that sets a shorter time to bring an action under or on the insurance contract or surety contract than required by the law of the State when the insurance contract or surety contract is issued or delivered is against State public policy, illegal, and void.
>
> (b) If any insurance contract or surety contract contains a provision that is illegal under this section:
>
> (1) a State court may not give effect to the provision; and
>
> (2) a defense to liability under the insurance contract or surety contract may not be based upon the shorter limitation period.

surety for a Maryland-based principal (*i.e.*, MAAMECH) and a Maryland-based obligee (*i.e.*, Southway), in connection with a subcontract executed in Maryland between two Maryland companies, so that Maryland law, and Maryland's public policy, should govern. Southway argues that the practical effect of channeling the dispute to Virginia is to reduce the limitations period from 12 years to one year, contrary to Maryland public policy, and that the offending provision is therefore unenforceable, void *ab initio*, and incapable of being revived by the MOU.

The Sureties respond that Southway's Maryland suit was "contrary to the plain and unambiguous terms of the Performance Bond and M[emorandum] [of] [U]nderstanding, and [that] the [c]ircuit [c]ourt acted properly when it gave these unambiguous terms legal effect and dismissed" the suit. As to the choice-of-law clause, the Sureties argue that "[t]he undisputed facts of this case mirror those before [this Court] in [*Gen. Ins. Co. of Am.* ("*Gen. Ins. Co.*") *v.*] *Interstate*[, 118 Md. App. 126 (1997),]" thus supporting the conclusion that, "because Virginia had a greater interest in this case than Maryland, application of Virginia's limitations period . . . was justified and proper." They add that there "are no facts in the record to support Southway's assertion that the Bonds were issued and delivered in Maryland." With respect to the forum-selection provision, the Sureties contend it does not conflict with Ins. § 12-104 because the provision makes no reference to the statute of limitations. The Sureties argue that, in any event, the MOU is not an "insurance contract" governed by Ins. § 12-104. Finally, the Sureties contend that the final decision of the Supreme Court of Virginia is entitled to full faith and credit.

B. Legal Framework

"The grant of a motion to dismiss is proper if the complaint does not disclose, on its face, a legally sufficient cause of action." *Hrehorovich v. Harbor Hosp. Ctr., Inc.*, 93 Md. App. 772, 785 (1992) (citing *Bramble v. Thompson*, 264 Md. 518, 520 (1972)).

"[I]t is 'generally accepted that the parties to a contract may agree as to the law which will govern their transaction, even as to issues going to the validity of the contract.'" *Gen. Ins. Co.*, 118 Md. App. at 137 (quoting *Nat'l Glass, Inc. v. J.C. Penney Props., Inc.*, 336 Md. 606, 610 (1994)). "This general principle, however, is subject to the limitations set forth in Restatement (Second) Conflict of Laws § 187," which Maryland has adopted as follows:

> (1) The law of the state chosen by the parties to govern their contractual rights and duties will be applied if the particular issue is one which the parties could have resolved by an explicit provision in their agreement directed to that issue.
>
> (2) The law of the state chosen by the parties to govern their contractual rights and duties will be applied, even if the particular issue is one which the parties could not have resolved by an explicit provision in their agreement directed to that issue, unless either
>
> > (a) the chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties' choice, or
> >
> > (b) application of the law of the chosen state would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue and which, under the rule of § 188, would be the state of the applicable law in the absence of an effective choice of law by the parties.

Gen. Ins. Co., 118 Md. App. at 137 (quoting *Nat'l Glass, Inc.*, 336 Md. at 610-11 (quoting Restatement (Second) Conflict of Laws § 187(2) (Supp.1989))). "[S]ubsection (2) applies when it is sought to have the chosen law determine issues which the parties could not have determined by explicit agreement directed to the particular issue[,]" including "issues of substantial validity, such as whether the contract is illegal." *Gen. Ins. Co.*, 118 Md. App. at 137-38 (quoting Restatement (Second) Conflict of Laws § 187, cmt. (d)).

Thus, where the chosen state has a substantial relationship to the parties or transaction, the analysis proceeds under Restatement (Second) Conflict of Laws § 187(2)(b), and the dispositive question becomes "whether Maryland has a materially greater interest in the determination of the issue than do[es]" the chosen state. *Gen. Ins. Co.*, 118 Md. App. at 138-39 (citing *Nat'l Glass, Inc.*, 336 Md. at 615). That inquiry turns on weighing the relevant contacts between the competing states, with particular attention to where the work under the bonded contract was to be, and in fact was, performed, and where the bonds were issued and to be performed. *Gen. Ins. Co.*, 118 Md. App. at 139-41.

Gen. Ins. Co. involved a challenge to the limitations period provision pursuant to Article 48A, § 377B (1957, 1994 Repl. Vol.) of the Maryland Code, the statutory precursor to Ins. § 12-104.[6] This Court, applying Restatement (Second) Conflict of Laws

[6] In its reply brief, Southway represented that *Gen. Ins. Co.*, which involved an earlier iteration of Ins. § 12-204, "did not involve a Maryland statute declaring the challenged provision 'against State public policy, illegal, and void.'" At oral argument (continued)

§ 187(2)(b), held that Maryland lacked a materially greater interest than the District of Columbia and Virginia (where the projects were located), no work was performed in Maryland, the bonds "were not issued in Maryland and were not to be performed in Maryland[,]" and the only Maryland contact was that Interstate was a Maryland corporation. *Id.* at 139. We emphasized that, unlike Maryland, Virginia "expressly permits a limitation of actions provision" of the kind at issue. *Id.* (citing Va. Code § 38.2-314).

C. Analysis

1. The choice-of-law clause selecting Virginia is valid and enforceable.

We begin, and ultimately end, with the choice-of-law clause. The MOU provides that the parties' agreements "shall be . . . interpreted and adjudicated solely in accordance with the laws of the State of Virginia." The threshold question under Restatement (Second) Conflict of Laws § 187(2) is whether Virginia has "no substantial relationship to the parties or the transaction." As the site of the Project, Virginia plainly does. *See Gen. Ins. Co.*, 118 Md. App. at 138 ("[I]t cannot seriously be contended that . . . Virginia, the site[] of the project[], ha[s] 'no substantial relationship to the parties or the

before this Court, Southway's counsel conceded that *Gen. Ins. Co.* did, in fact, involve Ins. § 12-204, and explained that the "sentence [in the reply brief] probably came out wrong."

After clarifying, counsel stated that "[t]here was no choice-of-law provision" at issue in *Gen Ins. Co.* But again, this is mistaken. The provision at issue in *Gen. Ins. Co.* provided: "[t]he [c]ontract shall be governed by the law of the place where the [p]roject is located." 118 Md. App. at 131. This is a choice-of-law provision.

transaction.'"). We, therefore, proceed to analyzing the clause under Restatement (Second) Conflict of Laws § 187(2)(b). *Id.*

Southway's contention that "courts do not engage in free-floating interest balancing to decide whether to enforce a prohibited clause" when a Maryland statute could apply is not persuasive. Although Ins. § 12-104 reflects a State public policy against contractually shortened limitations periods, we must enforce a choice-of-law provision unless Maryland "has a materially greater interest than the chosen state," *i.e.*, Virginia, "in the determination of the particular issue." Restatement (Second) Conflict of Laws § 187(2)(b); *see also Gen. Ins. Co.*, 118 Md. App. at 138-41 (applying this Restatement). "[I]t is noteworthy that, with respect to [surety] bond[s], Virginia law expressly permits a limitation of actions provision; it is not merely silent." *Gen. Ins. Co.* at 139 (citing Va. Code § 38.2-314). "The law of . . . Virginia is deserving of enforcement when Maryland has no materially greater interest in the issue than" Virginia. *Id.* On this record, Maryland does not.

The undisputed facts mirror those that controlled in *Gen. Ins. Co.*[7] By Southway's own admission in its response in opposition to the motion to dismiss, the Subcontract's

[7] Southway additionally argues that *Gen. Ins. Co.* is distinguishable because the surety contract at issue in that case was a payment bond, whereas the instant appeal involves a performance bond. Southway specifically contends that there is a material distinction because the obligee in *Interstate* was the project owner, whereas here, the obligee is Southway, the prime contractor. We are not persuaded. For both payment bonds and performance bonds, the "suretyship obligation" arises in "the place of performance of the underlying contracts and the location of the primary obligation." *Gen. Ins. Co.*, 118 Md. App. at 139. A contract of suretyship, "a tripartite agreement among a principal obligor, his obligee, and a surety[,] *Gen. Motors Acceptance Corp. v.*
(continued)

scope was "to construct a housing development in Lorton, Virginia . . . ." The Subcontract, Performance Bond, and MOU each identify the Project as "Laurel Hill Adaptive Reuse[,]" and the Subcontract and Performance Bond make clear that the Project is located in Lorton, Virginia. Southway acknowledged in its complaint that the Project was located there. The work was to be performed in Virginia, and none of it was to be performed in Maryland. As in *Gen. Ins. Co.*, that is the contact that matters most, as the analysis focuses on where the work was "to be performed." 118 Md. App. at 139.

We are also not persuaded that the additional contacts cited by Southway give Maryland a materially greater interest than Virginia. That the Subcontract may have been executed in Maryland is inapposite, because the Restatement (Second) Conflict of Laws § 187(b)(2) inquiry looks to where the work was to be performed, rather than to where the contract was signed. *Gen. Ins. Co.*, 118 Md. App. at 139. Nor does Southway's assertion that the Bonds were issued in Maryland, to Maryland parties, carry the day. The Sureties' observation that "[t]here are no facts in the record to support Southway's assertion that the Bonds were issued and delivered in Maryland" is well taken. The circuit court made the same observation, accepting counsel for Southway's representation only as a proffer:

Daniels, 303 Md. 254, 259 (1985)[,] [] is a direct and original undertaking under which the surety is primarily or jointly liable with the principal obligor and, therefore, responsible at once if the principal obligor fails to perform." *Big Louie Bail Bonds, LLC v. State*, 435 Md. 398, 405-06 (2013) (citation omitted). Thus, the suretyship obligation arises in the same location regardless of which type of surety bond is at issue, because it rises and falls with the principal obligor's (here, MAAMECH's) expected performance (here, MAAMECH's performance was expected in Virginia).

> THE COURT: So in this case, I did hear [Southway's] counsel say that the bonds were signed and issued in Maryland. I accept that as a proffer. I didn't see that in the documents.

The Bonds secured a suretyship obligation arising in Virginia, the place of performance of the underlying contract and the location of the primary obligation. As in *Gen. Ins. Co.*, the law of the chosen state is "deserving of enforcement" where, as here, Virginia, unlike Maryland, "expressly permits a limitation of actions provision" and "is not merely silent." *Id.* (citing Va. Code § 38.2-314); *see also Southway Builders, Inc.*, No. 210310, 2022 WL 2978256, at *4 (Va. July 28, 2022) (explaining that, under Virginia Code § 38.2-314, "a one-year limitation period . . . is the minimum limitation period available in Virginia"). Maryland's public policy codified in Ins. § 12-104 that strongly disfavors contractually shortened limitations periods is therefore inapplicable, because we enforce § 12-104 only when Maryland's interest is materially greater than that of the chosen state. *See Gen. Ins. Co.*, 118 Md. App. at 138-42 (applying the out-of-state choice-of-law provisions because Maryland did not have a materially greater interest").

We, accordingly, hold that the parties' choice-of-law clause selecting Virginia is valid and enforceable, and that the circuit court correctly gave it effect.

2. The choice-of-law holding is dispositive, and we need not reach Southway's arguments as to the forum-selection clause.

Our conclusion that the choice-of-law clause is enforceable resolves this appeal, and it does so in a manner directly analogous to *Gen. Ins. Co.* Because, as explained above, Virginia law governs the parties' agreements, and because Virginia, unlike Maryland, permits the one-year contractual limitation contained in the Performance

Bond, *see* Va. Code § 38.2-314, the limitations provision is enforceable and Southway's claim is time-barred regardless of the forum in which it is brought. The result therefore does not turn on whether the forum-selection clause is independently enforceable. *See id.* at 139 (applying Virginia and District of Columbia law to hold the limitations provision enforceable despite the parties "expressly consent[ing] to Maryland as the forum state").

Accordingly, whether the forum-selection clause is void under Ins. § 12-104, whether it is "void *ab initio*," and whether enforcement would be "unreasonable" under the standard articulated in *Gilman v. Wheat, First Sec., Inc.*, 345 Md. 361, 378-79 (1997) are questions we need not, and do not, decide, because they would not alter our disposition. *Cf. Gen. Ins. Co.*, 118 Md. App. at 137-40 (resolving the validity of the bonds' limitations provisions on the choice-of-law grounds). For the same reason, we need not address the Sureties' contention that the final decision of the Supreme Court of Virginia is entitled to full faith and credit.

CONCLUSION

We hold that the circuit court properly granted the Sureties' motion to dismiss because the parties' choice-of-law clause selecting Virginia was enforceable.

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