

Circuit Court for Montgomery County  
Case No. 439347V

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 298

September Term, 2018

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CHARLES BOATENG

v.

NATIONAL TIRE AND BATTERY

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Arthur,  
Reed,  
Zarnoch, Robert A.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Zarnoch, J.

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Filed: July 8, 2019

\*This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

In this case we consider whether the Circuit Court for Montgomery County abused its discretion by ruling on a motion to compel arbitration without considering an untimely opposition that was filed after the mandatory deadline set forth in Maryland Rule 2-311. Finding no abuse of discretion, we affirm.

### **BACKGROUND & PROCEDURAL HISTORY**

In 2015, mechanic Charles Boateng took an extended trip to Ghana while employed at National Tire and Battery (“NTB”). Upon his return, he discovered that the toolbox he used for work (valued, he claims, at almost \$74,000) was no longer where he had left it in the NTB shop. After attempting to seek reimbursement or a return of the toolbox from NTB, Boateng filed a complaint in the Circuit Court for Montgomery County, seeking compensation from NTB for the missing toolbox and lost income. In response, on January 18, 2018, NTB filed a Motion to Compel Arbitration and to Dismiss or Stay the Litigation, on the basis that NTB and Boateng had an arbitration agreement that governed the dispute.

On February 12, 2018, through counsel, Boateng filed a late opposition to NTB’s motion, along with a Motion for Leave of Court to File Opposition Late. The next day, in an order dated February 13, 2018 (but not docketed until February 15), the circuit court granted NTB’s motion to compel arbitration. In the order granting NTB’s motion, a handwritten notation crossed out the typed phrase “...[and] upon consideration of any [opposition to the motion],” and wrote in by hand: “...[and] with no [opposition to the

motion]”—strongly suggesting that the circuit court judge did not see Boateng’s filings before granting NTB’s motion.<sup>1</sup>

Boateng appealed the grant of NTB’s motion to compel arbitration.

### DISCUSSION

Boateng argues: (1) the circuit court should have considered his untimely motions before granting NTB’s motion; and (2) given that Boateng claims he never signed an arbitration agreement, if the circuit court *had* considered his motions, it would have been required to resolve on the merits whether the parties did, in fact, have an arbitration agreement. We review the circuit court’s handling of a motion pursuant to Rule 2-311 for an abuse of discretion. *Miller v. Mathias*, 428 Md. 419, 445-46 (2012). An abuse of discretion occurs “where no reasonable person would take the view adopted by the [trial] court,” or when a circuit court acts “without reference to any guiding rules or principles.” *Powell v. Breslin*, 430 Md. 52, 62 (2013) (Quotation omitted).

Simply put, the circuit court did not abuse its discretion by granting NTB’s motion to compel arbitration without considering Boateng’s untimely motions. Rule 2-311(b) gives a party 15 days to respond after being served with a motion; if the party “fails to file a response” by that 15-day deadline, the circuit court “may proceed to rule on the motion.” Here, there is no dispute that after NTB filed its motion to compel arbitration on

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<sup>1</sup> In addition to the copies of the motions that were filed with the clerk of the circuit court, Boateng’s counsel claims that he also delivered copies to chambers. Be that as it may, the delivery of chambers’ copies never guarantees that pertinent documents will in fact end up in a judge’s hands by a certain time.

January 18, 2018, Boateng missed the 15-day deadline (nor did he request an extension of time). As a result, the circuit court was permitted by the plain text of Rule 2-311(b) to rule on NTB’s motion. In other words, it did not constitute an abuse of discretion for the circuit court to exercise the discretion afforded to it by the Rule. Irrespective of whether the circuit court could have logistically or equitably considered Boateng’s motions, if we were to find an abuse of discretion here, we would effectively be rewriting Rule 2-311 to require that any untimely response be considered by the circuit court, so long as it is filed before the circuit court rules on a motion. This we are not permitted to do. Such an interpretation would also obligate the circuit court to continually scan for new, untimely filings before releasing an order.<sup>2</sup>

Because it was not an abuse of discretion to grant NTB’s motion without considering Boateng’s filings, we need not address the substantive claims raised within the motions about whether Boateng in fact had signed an arbitration agreement.

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<sup>2</sup> Furthermore, we note that after the circuit court dismissed Boateng’s complaint without prejudice, Boateng did not refile his complaint. Nor did he file a post-judgment motion seeking reconsideration by the circuit court.

We also note that a party may petition a court to stay arbitration proceedings once they have commenced—or vacate an ultimate arbitration award—on the grounds that a valid contract to arbitrate did not exist between the parties. *Stephen L. Messersmith, Inc. v. Barclay Townhouse Assocs.*, 313 Md. 652, 661-62, 664 (1988) (“As we have made clear, an award issued by an arbitration panel acting without jurisdiction should be accorded no deference at all on appeal, when the basis for appeal is that there was no agreement to arbitrate.”); *see* Md. Code (2013 Repl. Vol., 2018 Cum. Supp.), Courts & Judicial Proceedings Article, §§ 3-208, 3-224(b)(5).

**JUDGMENT OF THE CIRCUIT COURT  
FOR MONTGOMERY COUNTY  
AFFIRMED. COSTS TO BE PAID BY  
APPELLANT.**