Circuit Court for Prince George's County
Case No. CAL 21-09482

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1393

September Term, 2021

6525 BELCREST ROAD, LLC

v.

DEWEY L.C.

Berger,
Friedman,
Albright,

JJ.

Opinion by Berger, J.

Filed: October 25, 2022

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This case is before us on appeal from an order of the Circuit Court for Prince George's County confirming an arbitration award and entering a judgment in favor of Dewey, L.C. ("Dewey"), appellee, and against 6525 Belcrest Road, LLC ("Belcrest"), appellant. Belcrest further appeals an order of the circuit court denying its Motion to Modify, Reconsider, or Revise Judgment filed pursuant to Md. Rule 2-535.

Belcrest presents three questions[1] for our consideration on appeal, which we have consolidated and rephrased as follows:

> I. Whether the circuit court erred by confirming the arbitration award entered in favor of Dewey.
>
> II. Whether the circuit court erred by denying Belcrest's Rule 2-535 motion.

Answering both questions in the negative, we shall affirm.

[1] The questions, as presented by Belcrest, are:

> 1. Whether the Circuit Court properly granted Appellee-Dewey's Petition to Confirm Arbitration Award when the arbitrator exceeded the scope of their arbitration assignment by ruling on a non-arbitrable Parking Waiver.
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> 2. Whether the Circuit Court properly granted Appellee-Dewey's Petition to Confirm Arbitration Award when the arbitrator's decision would have an effect on necessary third parties under the initial declaratory judgment action that were not bound to arbitration under the Ground Lease's arbitration clause.
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> 3. Whether the Circuit Court erred in not dismissing the case in accordance with Appellant-Belcrest's Rule 2-535 Motion and concurrent bankruptcy filings that released it from the Ground Lease contract.

FACTS AND PROCEEDINGS

This is the second time a case has come before us stemming from a dispute between Dewey and Belcrest regarding a surface parking lot located on Dewey's property. As we explained in our prior opinion in a related case, *6525 Belcrest Rd. LLC v. Prince George's Cnty. Council*, No. 726, Sept. Term 2021 (unreported opinion filed May 4, 2022) ("*Belcrest I*"), Belcrest is the owner of a commercial office building known as Metro Center III in Hyattsville, Maryland, which is located across the street from Dewey's property.[2] Dewey's property is currently used as a surface parking lot, but Dewey proposes to develop the property by removing the existing surface parking lot and replacing it with a predominantly residential development consisting of multifamily dwellings and condominiums, as well as limited commercial/retail uses. Since 1970, owners and tenants of Metro Center III have used the surface parking lot located on Dewey's property. There is no on-site parking at Metro Center III.

In our prior opinion, we addressed Belcrest's assertion that a Waiver of Off-Street Parking and/or Loading Requirements (the "Parking Waiver") that was obtained at the time of Metro Center III's construction formed the basis for Belcrest's continuing right to use the parking lot. We expressly rejected Belcrest's Parking Waiver arguments in *Belcrest I*, in which we held that the Parking Waiver was an exemption from then-applicable parking

[2]After we filed our Opinion in the related case, Belcrest filed a petition for a writ of certiorari, which was subsequently denied by the Court of Appeals. Petition for Writ of Certiorari, *6525 Belcrest Road LLC v. Prince George's County Council, et al.*, Petition Docket No. 145, Sept. Term 2022 (denied August 30, 2022). For context, we set forth certain facts and proceedings as summarized in our prior opinion.

requirements set forth in the Prince George's County Code in 1970 and did not establish or grant a continuing, perpetual right in the Dewey Property separate and apart from any agreement negotiated privately between the parties. Slip Op. at 20.

Belcrest and Dewey are parties to a contractual parking arrangement (the "Ground Lease"), which was entered into on March 31, 1998, by Belcrest's predecessor and Dewey. The Ground Lease was amended in July of 2014. Pursuant to the Ground Lease, the owner of Metro III is the lessee of 7.92 acres of the surface parking lot on the Dewey Property. Section 6.1 of the Ground Lease provided that "[u]pon prior written notice," the landlord had "the right, at any time and from time to time, to substitute" different parking premises so long as certain conditions were satisfied. The Ground Lease contains an arbitration clause.

In 2019, Dewey sought to provide substitute parking to Belcrest pursuant to Section 6.1 of the Ground Lease. In response, Belcrest filed an action in the Circuit Court for Prince George's County seeking a declaratory judgment establishing that Dewey had no right to provide substitute parking. Circuit Court for Prince George's County, Case No. CAE20-11589. Belcrest named multiple defendants in addition to Dewey, including Bald Eagle Partners, LLC, BE UTC Dewey Parcel LLC, and the Maryland-National Capital Park and Planning Commission ("MNCPPC"). Dewey immediately filed a demand for arbitration before the American Arbitration Association. The circuit court stayed all proceedings in the declaratory judgment action pending resolution of the arbitration matter,

having determined "that all points of controversy in this matter either directly or indirectly arise from two written agreements, both of which contain arbitration clauses."

Before the arbitrator, Belcrest presented several arguments regarding arbitrability, arguing *inter alia* that the issue of parking substitution was outside the scope of the arbitrator's authority and that the Parking Waiver issue was non-arbitrable. Belcrest argued that Dewey sought relief "outside the scope and jurisdiction of the arbitration." In an October 19, 2020 opinion and order granting partial summary judgment to Dewey, the arbitrator rejected Belcrest's arguments, explaining as follows:

> The Arbitrator, again, finds that jurisdiction exists over [the] subject matter and the parties have submitted to the jurisdiction pursuant to Section 11.12 of the Ground Lease which provides:
>
> > "Any controversy or claim arising out of or relating to this Agreement or a breach thereof shall, upon the request of any interested party, be submitted to an arbitrator, selected by all parties in interest, for arbitration. If the parties in interest cannot agree upon a sole arbitrator, then any controversy shall be submitted to and settled by arbitration by the American Arbitration Association . . . and the decision rendered . . . shall be final and conclusive on all parties involve[d]; and judgment upon such decision may be entered in the highest court of any form, state or federal having jurisdiction."
>
> The claims presented are "controvers[ies] or claim[s] arising out of or relating to [the Ground Lease]" vesting jurisdiction in the arbitrator. [Belcrest]'s assertion that jurisdiction is lost because other, non-joined parties' interests may be affected by the outcome of the Arbitration is not persuasive. Other parties may seek to join cases and submit to jurisdiction, but they are not parties necessary to resolve the contractual claims before the Arbitrator.

The arbitrator reaffirmed this decision in a separate opinion and order granting, in part, and denying, in part, Dewey's Second Motion for Partial Summary Judgment on February 14, 2021.

The arbitrator issued a Final Award of Arbitration on August 12, 2021, ordering, *inter alia*, that Dewey "was within its rights under the Ground Lease and the First Amendment to make a parking substitution under Paragraph 6(f) of the Ground Lease and First Amendment and the Parking Exchange Notices issued by Claimant are a valid and legally binding exercise of those rights." After the arbitration concluded, the circuit court lifted a stay in the declaratory judgment case and dismissed the matters as to all parties on November 17, 2021.

On May 19, 2021, Belcrest filed for bankruptcy in the Bankruptcy Court for the Southern District of New York. *In Re 6525 Belcrest Road, LLC*, Case No. 21-10968-MEW (Bankr. S.D.N.Y.). Belcrest asked the bankruptcy court to stay the proceedings before the Circuit Court of Prince George's County, but the bankruptcy court declined to do so and lifted the stay on June 17, 2021. Following an evidentiary hearing, the bankruptcy court rejected Belcrest's assertion, determining that Dewey was permitted to "enforce the parking substitution" despite the ongoing litigation. On September 14, 2021, Belcrest moved in the bankruptcy court to reject the Ground Lease in accordance with the Bankruptcy Code, 11 U.S.C. § 365. The bankruptcy court granted Belcrest's motion to reject the Ground Lease on October 4, 2021. Belcrest subsequently rejected the Ground Lease.

On August 24, 2021, while the bankruptcy action was pending, Dewey filed a petition to enforce the arbitrator's award in the Circuit Court for Prince George's County. In response, Belcrest moved to vacate the arbitration award, arguing that the arbitrator exceeded the scope of his authority when addressing the Parking Waiver issue. The circuit court denied Belcrest's motion to vacate and confirmed the arbitration award.[3] Belcrest noted an appeal on November 3, 2021.

Further, on November 3, 2021, Belcrest filed a Rule 2-535 Motion to Modify, Reconsider, or Revise Judgment in the circuit court, arguing that the order confirming the arbitration award should be reconsidered and revised in light of Belcrest's rejection of the Ground Lease. Belcrest contended that the arbitration award, "to the extent it sought to declare the rights and obligations of the parties under the Ground Lease, became moot" when the bankruptcy court authorized Belcrest's rejection of the Ground Lease. The circuit court denied Belcrest's Rule 2-535 motion on December 14, 2021. On January 10, 2022, Belcrest filed a second notice of appeal challenging the circuit court's denial of its Rule 2-535 motion.

STANDARD OF REVIEW

"[T]he General Assembly has severely restricted the role the courts play in the arbitration process," providing for narrowly confined "circumstances in which the court has the power to vacate an arbitral award." *Mandl v. Bailey*, 159 Md. App. 64, 85 (2004).

[3] The order was dated and signed by the circuit court on October 6, 2021, but the docket entry reflects a date of October 5, 2021.

The Maryland Uniform Arbitration Act ("MUAA") is set forth in Md. Code (1974, 2020 Repl. Vol.), §§ 3-201 *et seq.* of the Courts and Judicial Proceedings Article ("CJP"). The MUAA provides for five limited grounds upon which a court "shall vacate" an arbitration award:

> (1) An award was procured by corruption, fraud, or other undue means;
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> (2) There was evident partiality by an arbitrator appointed as a neutral, corruption in any arbitrator, or misconduct prejudicing the rights of any party;
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> (3) The arbitrators exceeded their powers;
>
> (4) The arbitrators refused to postpone the hearing upon sufficient cause being shown for the postponement, refused to hear evidence material to the controversy, or otherwise so conducted the hearing, contrary to the provisions of § 3-213 of this subtitle, as to prejudice substantially the rights of a party; or
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> (5) there was no arbitration agreement as described in § 3-206 of this subtitle, the issue was not adversely determined in proceedings under § 3-208 of this subtitle, and the party did not participate in the arbitration hearing without raising the objection.

CJP § 3-224(b)(1) - (5).

A circuit court's decision on a petition to vacate or modify an arbitration award is "a conclusion of law, which we review without deference." *WSC/2005 LLC v. Trio Ventures Assocs.*, 460 Md. 244, 253 (2018). "[W]e review that court's disposition for legal error." *State v. Philip Morris, Inc.*, 225 Md. App. 214, 242 (2015) (quotation and citation omitted).

"Judicial review of an arbitrator's decision is extremely limited, and a party seeking to set it aside has a heavy burden." *Letke Sec. Contrs., Inc. v. United States Sur. Co.*, 191 Md. App. 462, 472 (2010). We will not vacate an arbitration award simply because the court would not have made the same award as the arbitrator, or for mere legal error. *Id.* at 472-73. "Significantly, the General Assembly has 'expressly proscribed any possibility of substitution of a reviewing court's judgment for that of the arbitrator.'" *Id.* at 473 (quoting *Nick–George Ltd. P'ship v. Ames–Ennis, Inc.*, 279 Md. 385, 389 (1977)). We have observed that "[t]his limited review serves to strike a balance between the need for efficient, speedy, and economical dispute resolution, and the need to establish justified confidence in arbitration among the public." *Id.*

DISCUSSION

I.

Belcrest's first allegation of error is that the circuit court erred in confirming the arbitration award because the arbitrator exceeded the scope of his authority. Specifically, Belcrest asserts that the arbitrator exceeded his authority by addressing the Parking Waiver issue in his October 19, 2020 order granting Dewey's first motion for partial summary judgment. The arbitrator considered the Parking Waiver in connection with his determination that "[t]he Ground Lease is not subordinate to the Parking Waiver issued by the County Commissioners on November 27, 1970" and "there exist no easement rights benefiting" Belcrest "over either the Leased Premises as defined in the Ground Lease, nor in the Larger Tract parcel(s) in which the Lease premises are situate[d]." Belcrest asserts

that the allegations surrounding the substitution of parking issue were "in no way predicated upon a prerequisite analysis of the Parking Waiver" and that the analysis of the Parking Waiver "was flatly outside the scope of the arbitration clause itself." As we shall explain, we are not persuaded.

First, we observe that the determination of arbitrability is generally within the discretion of the arbitrator. *Balt. Cnty. v. Balt. Cnty. FOP Lodge No. 4*, 439 Md. 547, 577-78 (2014) ("[T]he general policy in Maryland is to allow the question of arbitrability to go to the arbitrator in the first instance if it is unclear from the arbitration agreement whether the parties have agreed to submit a particular subject matter to arbitration or if the court, in addressing arbitrability, must consider the merits of the dispute."). Indeed, the Court of Appeals has explained that

> when the language of an arbitration clause is unclear as to whether the subject matter of the dispute falls within the scope of the arbitration agreement, the legislative policy in favor of the enforcement of agreements to arbitrate dictates that **ordinarily the question of substantive arbitrability initially should be left to the decision of the arbitrator**.

Gold Coast Mall, Inc. v. Larmar Corp., 298 Md. 96, 107 (1983) (emphasis supplied).

The arbitration clause contained within the Ground Lease provides as follows:

> 11.12 Arbitration. **Any controversy or claim arising out of or relating to this Agreement** or a breach thereof shall, upon the request of any interested party, be submitted to an arbitrator, selected by all parties in interest, for arbitration. If the parties in interest cannot agree upon a sole arbitrator, then any such controversy or claim shall be submitted to and settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and the decision rendered by the arbitrators (or pursuant to any other

> agreed form of arbitration) shall be final and conclusive on all parties involved; and judgment upon such decision may be entered in the highest court of any forum, state or federal, having jurisdiction. All reasonable costs, fees and expenses of any such arbitration shall be divided among and borne by the parties affected.

(Emphasis supplied.) The broad arbitration clause in the Ground Lease did not specifically exclude any matters from the scope of arbitration.

The arbitrator was tasked with determining the parties' rights under the Ground Lease, and, specifically, Dewey's right to provide substitute parking to Belcrest. In the original Demand for Arbitration filed by Dewey, Dewey sought an award declaring its rights under the Ground Lease to make the parking substitution. Dewey further sought a determination of the rights under the Ground Lease "to make a parking substitution . . . and, as a necessary foundation, a determination that the Ground Lease is 'fully effective and not subordinate to a 'parking waiver' or any other contention of Belcrest." Because the Parking Waiver issue could potentially affect the parties' rights to the use of the leased premises, the arbitrator reasonably concluded that the Parking Waiver issue was "relat[ed] to the" Ground Lease, and, therefore, was within the appropriate scope of the arbitration. The Ground Lease requires arbitration of any and all disputes "arising out of or relating to" the Ground Lease. Accordingly, the arbitrator did not err by considering the Parking Waiver issue in the context of determining the scope of Dewey's right to provide substitute parking. We, therefore, reject Belcrest's contention that the arbitrator exceeded the scope of his authority when considering this issue.

II.

Belcrest further asserts that the circuit court erred by confirming the arbitration award because the arbitrator implicated the interests of third parties. Belcrest contends that an analysis of the Ground Lease alone would not implicate third parties, but the analysis of the Parking Waiver issue necessarily implicated third parties. Belcrest asserts that the failure and general inability to include necessary third parties in an arbitration dispute that addressed the legal status of the Parking Waiver exceeded the proper scope of the arbitration.

In support of this argument, Belcrest points to the case of *Questar Homes of Avalon, LLC v. Pillar Const., Inc.*, 388 Md. 675, 685 (2005), observing that "[t]he principal requirement [for arbitration] is that an arbitration agreement between the parties must exist." Belcrest further emphasizes that "[a] party cannot be required to submit any dispute to arbitration that it has not agreed to submit." *Allstate Ins. Co. v. Stinebaugh*, 374 Md. 631, 645 (2003) (internal quotation and citation omitted). Belcrest contends that third parties such as the MNCPPC, Bald Eagle Partners, LLC, and BE UTC Dewey Parcel LLC, which were parties to the declaratory judgment action, had their interests implicated in the arbitration. Belcrest asserts that the third parties' legal interests were abrogated when the arbitrator issued its ruling. Dewey argues in response that the arbitration proceedings in this matter only ruled upon the rights afforded to Belcrest and Dewey by the Ground Lease. As we shall explain, we agree with Dewey.

The only issue before the arbitrator was the resolution of the dispute between Belcrest and Dewey regarding the proper interpretation of the Ground Lease to which Belcrest and Dewey were the only parties. Belcrest named other parties in the declaratory judgment action, but no parties other than Belcrest and Dewey were parties to the Ground Lease. Indeed, the arbitrator specifically addressed and rejected Belcrest's assertion regarding other necessary parties, explaining as follows:

> The claims presented [in this arbitration] are "controvers[ies] or claim[s] arising out of or relating to [the Ground Lease]" vesting jurisdiction in the arbitrator. [Belcrest]'s assertion that jurisdiction is lost because other, non-joined parties' interests may be affected by the outcome of the Arbitration is not persuasive. Other parties may seek to join cases and submit to jurisdiction, but they are not parties necessary to resolve the contractual claims before the Arbitrator.

We agree with the arbitrator and Dewey that the other parties could have but chose not to join the arbitration.

Belcrest and Dewey are the only parties to the Ground Lease, and Belcrest and Dewey arbitrated the issue regarding the substitution of parking pursuant to the Ground Lease in accordance with the Ground Lease's arbitration requirement. We reject Belcrest's contention that this jurisdiction was somehow lost because certain third parties that might have an interest in the outcome of the arbitration. The arbitrator clearly had jurisdiction to decide the matter of Dewey's right to provide substitute parking pursuant to the Ground Lease, and that is precisely what the arbitrator did. Accordingly, we hold that the circuit court did not err by confirming the arbitration award.

III.

Belcrest's final allegation of error on the part of the circuit court focuses upon the denial of Belcrest's Rule 2-535 Motion to Modify, Reconsider, or Revise Judgment. Belcrest filed its Rule 2-535 motion on November 3, 2021, arguing that the circuit court should reconsider and revise its order confirming the arbitration award because Belcrest had rejected the Ground Lease. The circuit court denied Belcrest's motion, and we shall affirm.

While the arbitration in this case was ongoing, Belcrest's bankruptcy case in the Bankruptcy Court for the Southern District in New York was proceeding as well. On September 14, 2021, Belcrest moved in the bankruptcy court to reject the Ground Lease in accordance with the Bankruptcy Code, 11 U.S.C. § 365. The bankruptcy court granted Belcrest's motion to reject the Ground Lease on October 4, 2021, and Belcrest subsequently rejected the Ground Lease. Belcrest contends that the rejection of the Ground Lease rendered the arbitration proceedings and the circuit court case regarding the Ground Lease moot. As we shall explain, we are not persuaded by Belcrest's contentions.

We discussed the rejection of unexpired leases pursuant to federal bankruptcy laws in *Middlebrook Tech, LLC v. Moore*, 157 Md. App. 40, 60 (2004), explaining:

> The federal bankruptcy laws are codified in 11 U.S.C. sections 361, *et seq.* Section 365, entitled "Executory contracts and unexpired leases," provides, *inter alia*, that, with certain exceptions and subject to the Bankruptcy Court's approval, the trustee of a debtor may assume or reject an unexpired lease of the debtor. § 365(a). *See also In re Alongi*, 272 B.R. 148, 152–53 (Bankr. D. Md. 2001). In a case under Chapter 7 of the Bankruptcy law, if within 60 days of the granting of relief by

> the bankruptcy court, the trustee does not assume or reject an unexpired lease of non-residential real property under which the debtor is the lessee, the lease is deemed rejected, and the trustee shall immediately surrender the real property to the lessor. Section 365(d)(1); *In re Alongi*, *supra*, 272 B.R. at 153.
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> **Rejection of the unexpired lease does not terminate the lease.** Rather, it means that the debtor's estate will not become a party to the lease and that the lease is not part of the bankruptcy estate and is not under the jurisdiction of the Bankruptcy Court. *In re Alongi*, *supra*, 272 B.R. at 153. **The rejection of the lease constitutes a breach by the debtor that is considered to have occurred immediately prior to the filing of the bankruptcy petition.** Section 365(g); *RCC Tech. Corp. v. Sunterra Corp.*, 287 B.R. 864, 866 n. 3 (D.Md.2003), *rev'd on other grounds*, *In re Sunterra Corp.*, No. 03-1193, 361 F.3d 257, 2004 WL 527832 (4th Cir.) (Md. Mar. 18, 2004); *In re Alongi*, *supra*, 272 B.R. at 154.

(Emphasis supplied.) "[R]ejection does not change the substantive rights of the parties to the contract, but merely means the bankruptcy estate itself will not become a party to it." *In re Alongi*, *supra*, 272 B.R. at 153.

Belcrest cites no authority for its assertion that its rejection of the Ground Lease in October 2021 served to render the arbitration moot. Indeed, the bankruptcy court lifted the stay and expressly permitted the arbitration and confirmation to proceed, including this appeal. Dewey acknowledges that the parties are free to litigate issues arising from Belcrest's rejection of the Ground Lease, subject to further action by the bankruptcy court. The rejection of the lease, however, did not serve to undermine the validity of the arbitration award. Accordingly, we hold that the circuit court did not err by denying Belcrest's Rule 2-535 Motion to Modify, Reconsider, or Revise Judgment and affirming the arbitration award entered in favor of Dewey.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.