Circuit Court for Charles County
Case No.: C-08-CV-20-000606

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 960

September Term, 2023

GARY SHAW, ET AL.

v.

LITZ CUSTOM HOMES, INC.

Reed,
Beachley,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: August 13, 2024

*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 Rule 1-104(a)(2)(B).

This case returns to us as part of a near decade-long dispute between appellants Gary and Joann Shaw (the "Shaws") and appellee Litz Custom Homes, Inc. ("Litz"). In September 2014, the Shaws sued Litz in the Circuit Court for Charles County, alleging breach of contract and fraud related to "long term water intrusion" in the home Litz had built for them.[1] The circuit court stayed the case pending arbitration as provided in the operative contract. The parties then spent five years engaged in extensive discussions about mediating and arbitrating the Shaws' claims. After the Shaws filed a demand for arbitration in February 2020, Litz petitioned the court to stay the arbitration and moved for summary judgment, alleging the Shaws had waived their right to arbitration. After a hearing, the court granted summary judgment for Litz. The Shaws appealed, and we reversed, finding that the record was insufficient to establish that the Shaws, as a matter of law, waived their right to arbitration. *Shaw v. Litz Custom Homes, Inc.*, No. 190, Sept. Term 2021, slip op. at 1-2 (filed Dec. 9, 2021) ("*Shaw I*").

On remand, the circuit held two more hearings and, again, granted summary judgment for Litz on May 1, 2023. The Shaws filed a motion two days later asserting that the court "made the wrong decision" as a matter of law. The court denied their motion on June 22, and the Shaws noted an appeal within 30 days. Litz then moved to strike the Shaws' notice of appeal as untimely. The court granted Litz's motion and struck the Shaws' first notice on September 8. They timely appealed from that order.

[1] The Shaws also sued their insurance company, Nationwide Mutual Fire Insurance Company ("Nationwide"), for breach of contract.

In this appeal, we must resolve two issues:

1. Did the circuit court err in striking the Shaws' July 13, 2023 notice of appeal?

2. Did the circuit court err in determining, as a matter of law, that the Shaws waived their contractual right to arbitrate claims against Litz arising out of the contract?

Concluding that the court erred on both counts, we reverse and remand for further proceedings.

FACTS AND PROCEEDINGS

We set forth a detailed history of this dispute in *Shaw I*, which we shall not repeat fully here. That said, because "our courts engage with the facts of each case to decide whether the party seeking arbitration has intentionally and unequivocally waived that right," *Gannett Fleming, Inc. v. Corman Constr., Inc.*, 243 Md. App. 376, 398 (2019) (citing *BarGale Indus., Inc. v. Robert Realty Co., Inc.*, 275 Md. 638, 643-44 (1975)), we shall recount factual and procedural history relevant to consideration of this appeal before reviewing the post-remand proceedings.

Underlying Dispute

In July 2005, the Shaws contracted Litz to build them a custom home. *Shaw I*, No. 190, Sept. Term 2021, slip op. at 1. The parties' contract contained an arbitration provision requiring that any dispute between them be submitted to binding arbitration conducted by a three-member panel of the American Arbitration Association ("AAA"). *Id.*, slip op. at 2. The provision did not contain a time limit for demanding arbitration. *Id.*, slip op. at 6.

The Shaws lived in the home without incident until September 8, 2011, when their

basement flooded. *Id.*, slip op. at 2. On September 5, 2014, just three days before the statute of limitations expired, the Shaws sued Litz in the Circuit Court for Charles County, alleging fraud and breach of contract. *Id.* The Shaws also sued their own homeowners insurer, Nationwide—who was not party to the arbitration agreement—in the same action alleging breach of contract. *Id.*

Litz moved to dismiss the Shaws' complaint, arguing the contract required that the dispute be arbitrated.[2] *Id.*, slip op. at 2-3. On March 17, 2015, the court denied Litz's motion without a hearing, but stayed the case pending arbitration. *Id.*, slip op. at 3.

Both parties acknowledged that an arbitration hearing would be expensive and that, if possible, they preferred to avoid that cost. *Id.* Therefore, rather than immediately proceeding to arbitration, they embarked on five years of discussions focused on possibly settling the Shaws' claims through less expensive means. *Id.*

We shall repeat our summary of relevant events that followed the stay order:

- August 3, 2015: The Shaws' attorney advised Litz's attorney that the Shaws had "authorized [counsel] to prepare the arbitration demand," but also asked whether "a resolution of the issues between [their] clients" was possible. *Id.*

- August 17, 2015: Litz's counsel requested further documentation to support the Shaws' claims, and conveyed he would be "happy to look at any documentation" before initiating arbitration. *Id.*

Over the next year, the parties continued communicating and sharing information about the Shaws' damages. *Id.* We resume our summary of events:

[2] Litz also raised a limitations defense and asserted that the complaint failed to state a cause of action. *Id.*, slip op. at 3 n.2.

- August 12, 2016: The Shaws' attorney sent Litz's attorney a letter stating, "per our discussion I will contact, for arbitration purposes, retired Circuit Court Judges in our area who perform this service which as you and I discussed would be substantially preferable to utilization of the [AAA]." Litz's counsel promptly responded that he was "willing to discuss the manner in which this case is arbitrated[.]" *Id.*, slip op. at 4.

- The court issued a Notification of Contemplated Dismissal under Rule 2-507 on March 3, 2017, and the Shaws moved to defer dismissal, stating their anticipation that the arbitration process could be completed within 60 days. The court deferred dismissal until July 31, 2017. *Id.*

- July 13, 2017: The Shaws' counsel filed a "Status Update" advising the court that the parties had agreed to use Judge Sothoron as a mediator, but acknowledging that Litz's counsel "would prefer a different Arbitrator." *Id.*

- Between August 2017 and July 2018, the parties exchanged multiple letters attempting to schedule mediation with Judge Sothoron. *Id.*

- July 17, 2018: The circuit court issued a second Notification of Contemplated Dismissal. *Id.*

- August 1, 2018: The Shaws moved to defer the contemplated dismissal, asserting that "if this matter is not resolved within the next six (6) month period," they intended to file a "Motion to Compel Arbitration." *Id.*

- August 30, 2018: The parties (including Nationwide) filed a Stipulation of Dismissal. *Id.*

- September 5, 2018: The Shaws' counsel sent the Shaws a letter advising them of the dismissal and stating that "Litz has reaffirmed its obligation to submit to the binding arbitration" under the contract. *Id.*

- Between September 2018 and March 2019, counsel exchanged letters and emails between themselves and Judge Sothoron attempting to schedule mediation. In the end, mediation was never scheduled. *Id.*

- April 5, 2019: The Shaws' attorney advised Litz's attorney that he was withdrawing from the case. *Id.*

- February 4, 2020: The Shaws file a written "Demand for Arbitration" with the AAA. *Id.*, slip op. at 4-5.

- September 21, 2020: An AAA panel issued an Order, in response to Litz's motion to dismiss or for summary judgment, that a court, not the arbitration panel, must decide whether the Shaws waived their right to arbitrate the controversy. *Id.*, slip op. at 5.

- October 14, 2020: Litz petitioned the circuit court to stay arbitration pending the ruling on Litz's motion for summary judgment on whether the Shaws waived arbitration. The Shaws consented to the stay. *Id.*

- March 9, 2021: After a hearing at which the court considered the parties' arguments on Litz's motion, the court granted summary judgment for Litz, concluding that the Shaws' conduct waived their right to arbitration under the contract. *Id.*

  The Shaws timely appealed. *Id.*

Shaw I

The issue in *Shaw I* was whether, as a matter of law, the Shaws had unequivocally and intentionally waived their right to arbitration by "wait[ing] too long to assert the right . . . and instead 'engag[ing] [themselves] substantially in the judicial forum.'" *Gannett Fleming*, 243 Md. App. at 394 (quoting *The Redemptorists v. Coulthard Servs., Inc.*, 145 Md. App. 116, 141 (2002)). We held they had not.

In short, we were unconvinced that the circuit court had even relied on the Shaws' delay as a basis for granting summary judgment. *Shaw I*, No. 190, Sept. Term 2021, slip op. at 8. On that point, we concluded:

> [W]e see no evidence that the court expressly or implicitly determined that the Shaws engaged in a course of delay with the intention of disavowing arbitration. The court did not equate the Shaws' delay to an intentional and unequivocal waiver of arbitration; to the contrary, the court noted that "if the matter was not resolved by mediation then the parties would have arbitrated." Accordingly, we reject Litz's broad interpretation that the delay in this case

provided the basis for the circuit court's grant of summary judgment.

Id., slip op. at 8-9.

We proceeded to hold that, even if the court relied on the Shaws' delay as a basis for summary judgment, that determination "would not support a finding that the Shaws intentionally and unequivocally waived arbitration." *Id.*, slip op. at 9. We stated that "the post-stay communications between the parties [were] equivocal at best (and perhaps even favorable to the Shaws' position that they did not intentionally waive arbitration)," and therefore the facts, viewed in a light most favorable to the Shaws, did not support granting summary judgment. *Id.*, slip op. at 10. We also concluded that the circumstances of the Shaws' engagement in the judicial forum suggested that they had "legitimate reason for participating in litigation" such that their conduct did not constitute an intentional and unequivocal waiver of their right to arbitration. *Id.*, slip op. at 13 (quoting *Abramson v. Wildman*, 184 Md. App. 189, 201 (2009)). We therefore reversed the judgment and remanded to the circuit court for further proceedings. *Id.*, slip op. at 14.

Proceedings on Remand[3]

Following remand,[4] Litz served on the Shaws Requests for Admission under Maryland Rule 2-424. Because the Shaws did not respond, the statements were considered

[3] The circuit court judge who presided over the case leading to *Shaw I* retired while the appeal was pending. The case was reassigned to a new judge on remand.

[4] After receiving the circuit court's first ruling, but before resolution of *Shaw I*, the AAA Panel closed the matter. Litz does not contend that this renders any of the issues in this case moot.

"conclusively established." Md. Rule 2-424(b), (d). Nearly all of the 22 admissions state facts we laid out in *Shaw I* as discussed above, so we highlight only those that arguably clarify or supplement those facts:

- "At the time of filing their Response" to Litz's motion to dismiss on February 5, 2015, the Shaws "wanted to pursue the lawsuit that they filed[.]"
- The Shaws "wanted to mediate this matter with Judge Sothoron and/or other inform[al] mediation to avoid the costs of arbitrating this matter with the [AAA]."
- No alternative arbitrator was selected.
- The Shaws did not communicate with Litz between April 5, 2019, and filing their Demand for Arbitration on February 4, 2020.
- The Shaws did not pay the full AAA arbitration fees before dismissal of the arbitration.
- From the September 2017 inspection until the August 2018 report, no proposed scope of work was provided to Litz.
- Following the September 2017 inspection, Litz repeatedly requested a proposed scope of work.

After two additional hearings on March 27 and May 1, 2023, at which the circuit court again considered arguments on Litz's motion,[5] the court again granted summary judgment in favor of Litz, this time concluding the Shaws' delay constituted a waiver of their right to arbitration under the contract.

[5] In a rather odd procedure, the court placed the Shaws under oath prior to receiving their arguments on the summary judgment motion. As we will allude to *infra*, these statements under oath further support our conclusion that the court erred in granting summary judgment.

Post-judgment Motions

The judgment was entered on May 1, 2023. Two days later, the Shaws filed a motion on a court-provided template, captioned "Motion (Md. Rule 2-311)." The body of the motion stated in its entirety: "[We] believe that the District [sic] Court Judge made the wrong decision. Based on the spirit of the law and law logic." The Shaws filed another motion using the same template on June 13, 2023. This motion stated:

> The motion [we] filed asking for a new tr[ia]l has not been decided. [We] w[ere] waiting for a ruling on [the] May 3 motion until [we] filed [our] appeal. From the Maryland Court website (see Md. Rule 3-535) for most cases, you have 30 days after the judg[]ment date to file your appeal. If you have filed a motion for a new tr[ia]l or a Motion to Alter or Amend you have 30 days from the date of the ruling on the motion to file your appeal.

Litz did not respond to the Shaws' first motion but opposed their second. The circuit court denied the Shaws' first motion on June 22, 2023, and their second on July 10. The Shaws noted an appeal on July 13.

Then, on July 27, Litz moved to strike the Shaws' notice as untimely filed. The Shaws filed an opposition on September 1. A week later, the circuit court granted Litz's motion and struck the Shaws' notice of appeal. The Shaws' timely appealed from that order.

DISCUSSION

I. Timeliness

We must first determine the scope of our review. As noted, the circuit court here struck the Shaws' first notice of appeal, which itself is an appealable order. *See Cnty.*

Comm'rs of Carroll Cnty. v. Carroll Craft Retail, Inc., 384 Md. 23, 42 (2004). We review an order striking a notice of appeal for compliance with the Maryland Rules. *See id.*

Maryland Rule 8-203(a) permits a circuit court to strike a notice of appeal that has not been filed within the time prescribed by Rule 8-202. Rule 8-202(a), in turn, requires that a notice of appeal "be filed within 30 days after entry of the judgment or order from which the appeal is taken." In civil cases, such as this one, a party may toll their appeal by timely moving to alter or amend the judgment under Rule 2-534. Md. Rule 8-202(c). The motion need not correctly identify its basis to have this effect: If filed within 10 days after the entry of judgment, a motion to alter, amend, revise, or reconsider a judgment, "however labeled," will be treated as a Rule 2-534 motion. *White v. Prince George's County*, 163 Md. App. 129, 140 (2005) (quoting *Sieck v. Sieck*, 66 Md. App. 37, 44-45 (1986)). In other words, any revisory motion—if filed within 10 days after the entry of judgment—will toll the deadline to note an appeal from the underlying judgment. *Id.* at 139-40.

Here, the Shaws filed a motion just two days after entry of the judgment. To be sure, as Litz points out in its brief, the Shaws' motion neither cited to Rule 2-534, nor explicitly requested that the court alter or amend its judgment. Although "[i]t is a well-established principle of Maryland law that *pro se* parties must adhere to procedural rules in the same manner as those represented by counsel[,]" *Dept. of Lab., Licensing & Regul. v. Woodie*, 128 Md. App. 398, 411 (1999), Maryland courts "generally liberally construe [filings] by *pro se* litigants[,]" *Mitchell v. Yacko*, 232 Md. App. 624, 643 n.12 (2017) (quoting *Simms v. Shearin*, 221 Md. App. 460, 480 (2015)).

At bottom, the Shaws' May 3 Motion signaled that they believed the court "made the wrong decision" as a matter of law, and the bare fact that they filed a motion at all suggested they were requesting *some* relief based on that belief. *Cf.* Md. Rule 2-311(a) ("An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, and shall set forth the relief or order sought."). The motion, though faulty, was clear enough that the circuit court should have inferred the Shaws were asking the court to reconsider its judgment. *Cf.* Paul V. Niemeyer & Linda M. Schuett, *Maryland Rules Commentary* 56 (5th ed. 2019) ("[F]orm requirements [generally] should not overrule substance."). And any question about the relief sought was clarified by the Shaws' second motion, in which they stated they had requested—or at least believed they had requested—either a new trial or for the court to alter or amend its judgment.

Consequently, because the Shaws' first motion sufficiently asked the court to exercise its revisory power and was filed within 10 days after the entry of judgment, it acted as a motion to alter or amend the judgment under Rule 2-534 and tolled their deadline to note an appeal. The Shaws' 30-day clock did not start running until the circuit court denied their first motion—June 22, 2023. *See* Md. Rule 8-202(c). They then had until July 24 to note their appeal.[6] They did so on July 13. Accordingly, the Shaws' first notice of

[6] Thirty days from June 22, 2023, was July 22—a Saturday. The Shaws' deadline would therefore have been extended to the next non-holiday weekday: July 24. *See* Md. Rule 1-203(a).

appeal was timely, and the circuit court erred in striking it. We will therefore address the merits of the underlying judgment.

II. Waiver of the Right to Arbitration

The Maryland Uniform Arbitration Act "expresses the legislative policy favoring enforcement of agreements to arbitrate." *Allstate Ins. Co. v. Stinebaugh*, 374 Md. 631, 641 (2003). Because the Act limits the role of courts whenever a valid arbitration agreement exists, a party generally may invoke the court's equitable jurisdiction "only to determine, as a threshold matter, whether a dispute is in fact arbitrable." *Gannett Fleming*, 243 Md. App. at 390 (citing *Holmes v. Coverall N. Am., Inc.*, 336 Md. 534, 546 (1994)). Once invoked, the court exercises that jurisdiction to consider "but one thing—is there in existence an agreement to arbitrate the dispute sought to be arbitrated?" *Id.* (quoting *Stauffer Constr. Co., Inc. v. Bd. of Educ. of Montgomery Cnty.*, 54 Md. App. 658, 665 (1983)). If so, "the court must enforce it by ordering the parties to arbitrate." *Park Plus, Inc. v. Palisades of Towson, LLC*, 478 Md. 35, 51 (2022).

The issue of the existence of an arbitration agreement includes not only whether the dispute falls under the agreement, but also whether the right to enforce it was waived. *Id.* at 52 (citing *Stauffer Constr. Co.*, 54 Md. App. at 666). Here, whether the dispute falls under the arbitration provision is uncontested. Rather, the question raised by Litz is whether the Shaws' 5-year delay between being ordered to arbitrate and initiating arbitration proceedings operated as a waiver of their right to arbitrate.

"Waiver is 'the intentional relinquishment of a known right.'" *Id.* (quoting *Charles J. Frank, Inc. v. Associated Jewish Charities of Balt., Inc.*, 294 Md. 443, 449 (1982)). "A party's intention to waive the right to arbitrate 'must be clearly established and will not be inferred from equivocal acts or language.'" *Id.* (quoting *Charles J. Frank*, 294 Md. at 449). Waiver can occur in many ways. *See generally Gannett Fleming*, 243 Md. App. at 394 n.7. Litz asserts that the Shaws waived their right to arbitration by failing to make a timely demand for arbitration.

Courts decide timeliness "only 'insofar as it requires a determination of whether an agreement to arbitrate still exists based on possible waiver.'" *Park Plus*, 478 Md. at 53 (quoting *The Redemptorists*, 145 Md. App. at 141). Timeliness becomes a waiver issue in one of two ways: "First, a party may fail to make a demand for arbitration within the time limits spelled out in the text of the agreement itself." *Gannett Fleming*, 243 Md. App. at 394. Alternatively, even if the agreement "sets no demand deadlines, a right to arbitration may be waived if the party waits too long to assert the right to arbitration and instead 'engage[s] itself substantially in the judicial forum.'" *Id.* (quoting *The Redemptorists*, 145 Md. App. at 141) (alteration in original).

As mentioned above, the arbitration provision here does not contain a time limit to demand arbitration. *Shaw I*, No. 190, Sept. Term 2021, slip op. at 6. And we held in *Shaw I* that the Shaws did not improperly engage themselves "substantially in the judicial forum." *Id.*, slip op. at 6, 10. All that is left to determine, then, is whether the Shaws'

delay, alone, "clearly establishe[s]" that they intentionally and unequivocally waived arbitration. *See Park Plus*, 478 Md. at 52 (quoting *Charles J. Frank*, 294 Md. at 449).

We note at the outset that waiver is not laches; they are distinct equitable principles. Waiver "hinges on the intent of the party and requires an unequivocal demonstration that waiver was intended." *Anderson v. Great Bay Solar I, LLC*, 243 Md. App. 557, 607 (2019) (citing *Taylor v. Mandel*, 402 Md. 109, 135-36 (2007)). Laches, in contrast, "applies when there is an unreasonable delay in the assertion of one's rights and that delay results in prejudice to the opposing party." *Id.* at 610 (quoting *State Ctr., LLC v. Lexington Charles Ltd. P'ship*, 438 Md. 451, 586 (2014)). Though superficially similar, there is a critical difference in how laches and a timeliness waiver are analyzed: Laches analyzes the length of the delay and its effect on the opposing party without regard to the delaying party's intent. *See id.* at 611-12. Waiver, on the other hand, focuses almost solely on the delaying party's intent and analyzes whether the delay was an "unequivocal demonstration" of the party's intent to waive their right. *See id.* at 607-08 (citing *Taylor*, 402 Md. at 135-36).

Litz did not raise a laches defense in the circuit court, nor has it raised laches on appeal. As our Supreme Court put it in a similar case: Litz has "put all its eggs" into the timeliness-waiver basket.[7] *See Park Plus*, 478 Md. at 49 n.7. Thus, whether laches may have applied here is not before this Court. *See* Md. Rule 8-131(a). We will confine our discussion accordingly.

[7] At the remand hearing, Litz stated: "This is strictly the waiver argument, meaning the waiver by time."

Standard of Review

This appeal stems from a grant of summary judgment, which we review *de novo*. *Schneider Elec. Bldgs. Critical Sys., Inc. v. Western Sur. Co.*, 454 Md. 698, 705 (2017). Yet Litz contends that we should, instead, review the court's judgment for clear error. Litz's position would be closer to the mark had the proceedings on remand resulted in a trial on the merits rather than a grant of summary judgment. When faced with a petition to stay arbitration, "[i]f the court determines that existence of the arbitration agreement is in substantial and bona fide dispute, it shall try this issue promptly" and "without a jury." Md. Code (1974, 2020 Repl. Vol.), §§ 3-204 & 3-208(c) of the Courts and Judicial Proceedings Article. We would then "review the case on both the law and the evidence" and would "not set aside the judgment of the trial court on the evidence unless clearly erroneous[.]" Md. Rule 8-131(c); *see also Gannett Fleming*, 243 Md. App. at 391-92. The court here, though, did not "try [the] issue"; it granted summary judgment for Litz.

To be sure, the line between summary judgment proceedings and a bench trial is often thin. But "[a] summary judgment motion is not a substitute for a trial." *Coit v. Nappi*, 248 Md. App. 44, 53 (2020) (quoting *Okwa v. Harper*, 360 Md. 161, 178 (2000)). Because the hearings here related only to the motion for summary judgment, and the court's order evidences its grant of summary judgment, we will review it under the *de novo* standard. In conducting this *de novo* review, we evaluate "the record in the light most favorable to [the Shaws] and construe any reasonable inferences that may be drawn from the facts against [Litz]." *Windesheim v. Larocca*, 443 Md. 312, 326 (2015) (quoting *Myers v. Kayhoe*, 391

Md. 188, 203 (2006)); *see also Payne v. Erie Ins. Exchange*, 442 Md. 384, 398 n.11 (2015) ("Cross motions for summary judgment may be contrasted to a bench trial, . . . in which a circuit court may make factual findings and need not indulge inferences in favor of one party or the other.").

Analysis

The court here provided the following reasoning when it granted summary judgment in favor of Litz:

> So, when I . . . I look back at the arguments that were made the last time we were in court, I do find that there . . . there was delay. And, the delay was . . . the delay of arbitration is what . . . what caused . . . was caused by the Shaws and that delay constitutes waiver.
>
> And, so the Motion for Summary Judgment is granted. I'm finding that [the Shaws] waived their right to arbitrate the underlying claims and/or issues related to the Contract between the parties. And, judgment is entered in favor of [Litz] and the matter is dismissed.

(Ellipses in original).

In its brief, Litz characterizes this decision as consistent with our holding in *Shaw I*. According to Litz, we "remanded the case for the [c]ircuit [c]ourt to make certain findings of fact that [we] believed it did not make prior to entering judgment in favor of [Litz] the first time." In Litz's view, the court "made the requisite factual findings that the [Shaws] caused the substantial delay in arbitration and that constituted a waiver of their right to arbitration." We disagree.

Litz frames the issue as though we reversed *Shaw I* on a technicality. At the remand hearing, Litz told the circuit court: "The only thing [the first judge] didn't say was that the

conduct that constituted the waiver was delay[]. That specific phrase wasn't uttered and that's what the [Appellate] Court took umbrage with[.]" Litz then claimed that "the specific fault that was noted [by the Appellate Court] was that the [first judge] didn't say that the delay was a factor or the reason that the conduct waived the . . . right to arbitrate." We summarily reject Litz's interpretation of our holding in *Shaw I*.

For starters, our appellate courts rarely—if ever—reverse a circuit court's judgment solely because the court failed use some "magic words." *See*, *e.g.*, *State v. Norton*, 443 Md. 517, 549 n.29 (2015) (noting that Maryland appellate courts are "loath" to require the use of "magic words"). Indeed, the "mere incantation of the 'magic words' of a legal test, as an adherence to form over substance, . . . is neither required nor desired[.]" *In re: D.M.*, 250 Md. App. 541, 563 (2021) (first alteration in original) (quoting *In re Adoption/Guardianship of Darjal C.*, 191 Md. App. 505, 531-32 (2010)). In discussing the court's basis for granting summary judgment in *Shaw I*, we clearly stated that we saw "no evidence that the court expressly or implicitly determined that the Shaws engaged in a course of delay with the intention of disavowing arbitration." *Shaw I*, No. 190, Sept. Term 2021, slip op. at 8. But that was not because the court failed to state, on the record, that the Shaws waived arbitration by their delay. Rather, the court had noted that "if the matter was not resolved by mediation then the parties would have arbitrated[,]" suggesting the court did not believe the Shaws unequivocally intended to relinquish that right just because they first attempted to exhaust cheaper, informal alternatives. *Id.*

Further, in the very next paragraph of our opinion in *Shaw I*, we conducted our analysis with the assumption that the court *had* relied on the Shaws' delay as a basis for granting summary judgment. *Id.*, slip op. at 9. In our view, "such a determination would not be supported by th[e] record" in light of the parties' post-stay communications. *Id.* Put simply, we did not reverse in *Shaw I* because the circuit court failed to link the Shaws' delay to its finding of waiver; we reversed because, even if it had, that determination would not be supported by the record. *Id.*, slip op. at 9. So too here.

Litz did not produce any additional evidence on remand suggesting that the Shaws intended to waive arbitration; none of the unanswered requests for admissions established any new fact reflective of the Shaws' intent.[8] Indeed, at the remand hearing, Litz largely corroborated the substance and sequence of the post-stay communications we recounted in *Shaw I*. Throughout Litz's recitation of those communications, it never suggested that any of them reflected the Shaws' intent to relinquish their right to arbitration. Litz's only complaint was about the length of the delay.

The circuit court, likewise, did not point to any evidence other than the Shaws' delay to justify its finding of waiver. It did not "engage with the facts of [the] case to decide whether the [Shaws] ha[d] intentionally and unequivocally waived" their right to arbitration. *See Gannett Fleming*, 243 Md. App. at 398 (citing *BarGale Indus.*, 275 Md. at

[8] The only admissions that related to the Shaws' intent were (1) that as of February 5, 2015, the Shaws "wanted to pursue the lawsuit that they filed," and (2) that they wanted to mediate this matter to avoid the costs of arbitration. But these facts were acknowledged in *Shaw I*. *Id.*, slip op. at 3.

643-44). Instead, it merely incanted the magic words, found that there was a delay caused by the Shaws, and held that was enough to find waiver. But there are two fatal defects with the circuit court's decision.

First, our analysis in *Shaw I* assumed those same facts. *Shaw I*, No. 190, Sept. Term 2021, slip op. at 9. In accordance with *Shaw I*, they are insufficient, as a matter of law, to support a finding of waiver in light of the post-stay communications between the parties' counsel. *Id.* *Second*, "no Maryland court has found a party to have waived a right to arbitration due *solely* to delay; by itself, delay in demanding arbitration is not an 'intentional relinquishment' of the right to arbitrate claims." *Gannett Fleming*, 243 Md. App. at 398 (quoting *The Redemptorists*, 145 Md. App. at 141). In other words, there must be something more than mere delay to infer waiver. *See*, *e.g.*, *Park Plus*, 478 Md. at 53 (discussing how arbitration may be waived by delay plus a contractual time limit); *Gannett Fleming*, 243 Md. App. at 394-95 (discussing how arbitration may be waived by delay plus substantial engagement in the judicial forum); *see also Anderson*, 243 Md. App. at 608 (holding, in a suit for injunctive relief, that a circuit court's waiver finding based solely on delay was clearly erroneous). Neither Litz nor the circuit court identified anything in the record that moves the needle on the Shaws' delay from mere delay to intentional, unequivocal waiver. The grant of summary judgment, therefore, was improper.[9]

[9] We note that the Shaws provided sworn statements at both the March 27 and May 1, 2023 hearings that further support our conclusion that summary judgment was improperly granted. At the March 27, 2023 hearing, Ms. Shaw stated that "we had always wanted to go to arbitration" and reiterated several times that "all along" they wanted (continued)

In sum, whether a party has waived its right to arbitration is a fact-specific inquiry. *Gannett Fleming*, 243 Md. App. at 398. When analyzing the issue, the court must "engage with the facts of [the] case[,]" *id. (citing BarGale Indus.*, 275 Md. at 643-44), to determine whether there is "an unequivocal demonstration that waiver was intended[,]" *Anderson*, 243 Md. App. at 607 (citing *Taylor*, 402 Md. at 135-36). Furthermore, on a motion for summary judgment, the court must view the facts and inferences in a light most favorable to the non-moving party (here, the Shaws). *Windesheim*, 443 Md. at 326. The court here failed to conduct the appropriate analysis, and, as we stated in *Shaw I*, the circumstances are insufficient to establish that the Shaws, as a matter of law, intentionally and unequivocally waived their right to arbitration. We therefore reverse the judgment and remand to the circuit court for further proceedings.

JUDGMENT OF THE CIRCUIT COURT FOR CHARLES COUNTY REVERSED. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEE.

arbitration. At the May 1, 2023 hearing, Ms. Shaw noted that Litz "reaffirmed its obligation to submit to binding arbitration" and expressed their desire to "move forward with arbitration." To be clear, we hold that summary judgment was improperly granted irrespective of these sworn statements; nevertheless, these statements, viewed in a light most favorable to the Shaws, further support our conclusion that the record as a whole does not evidence an intentional and unequivocal waiver of arbitration.