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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3398-21

ROSA M. WILLIAMS-HOPKINS, on behalf of herself and those similarly situated,

Plaintiff-Appellant,

v.

LVNV FUNDING, LLC,

Defendant-Respondent.

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Argued September 28, 2023 – Decided October 17, 2023

Before Judges Mayer and Paganelli.

On appeal from the Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-6190-17.

Scott Borison (Borison Firm, LLC) of the District of Columbia, Maryland, and California bars, admitted pro hac vice, argued the cause for appellant (Kim Law Firm, LLC, and Scott Borison, attorneys; Yongmoon Kim, Hassan Siddiqui, Scott Borison, and Mark Jensen, on the briefs).

Jacqueline A. DiCicco (J. Robbin Law, PLLC) argued the cause for respondent.

PER CURIAM

Plaintiff Rosa M. Williams-Hopkins appeals from a May 26, 2022 order denying her motion to lift the stay of the Law Division action and ending the arbitration process. We affirm.

Since we previously issued an opinion in this matter, we are fully familiar with the facts and circumstances. Rosa M. Williams-Hopkins v. LVNV Funding, Inc., No. A-5325-17 (App. Div. April 26, 2019). We recite portions of our earlier opinion, to provide context:

> [P]laintiff acquired a credit card from First Premier Bank (Bank). To be issued a credit card plaintiff was required to sign a Credit Card Contract and Initial Disclosure Agreement (Agreement), indicating her assent to the terms and conditions of the document. The Agreement stated "any claim, dispute or controversy between you and us arising from or relating to the [c]ontract or your [c]redit [a]ccount relationship . . . including, but not limited to the validity, enforceability or scope of the [a]rbitration [p]rovision [or] the contract . . . shall be settled by binding arbitration. The term "claim" addressed "claims of every kind and nature, including but not limited to initial claims, counterclaims, cross claims and third party claims, and claims based upon contract, tort, fraud and other torts, statutes, . . . regulations, common law and equity. The word "contract" encompassed "the terms and conditions outlined in [the] Agreement." The term "us" included the Bank "and all of its affiliates, licensees, predecessors, successors, assigns, [and] any purchaser of your [c]redit [a]ccount . . . ." The Agreement also

> included, in capital letters, a "Waiver of Right to Trial" and "waiver of Right to Participate in Class Action."
>
> Plaintiff did not deny signing the Agreement. Nor did she disavow her use of the credit card for three years before defaulting on her payment obligation.
>
> Defendant LVNV Funding, LLC purchased plaintiff's credit card account debt from the Bank. Plaintiff did not dispute that defendant purchased her debt related to the credit card.
>
> [Id., slip op. at 2 – 3.]

We affirmed the trial court's "June 8, 2018 order . . . compelling arbitration."[1] We observed that: (1) "[t]he Agreement states any claim 'including, but not limited to the validity, enforceability or scope of the [a]rbitration [p]rovision [or] contract' shall be 'settled by binding arbitration'"; (2) "[t]he Agreement expressly provides neither party has 'the right to litigate any claim in court or have a jury trial on that claim'"; and (3) "[t]he Agreement applies to plaintiff and 'any purchaser of [a] [c]redit [a]ccount.'" Id., slip op. at 4.

[1] We also noted that "[t]he Uniform Arbitration Act provides for stays, rather than dismissals, of matters pending arbitration," GMAC v. Pittella, 205 N.J. 572, 582 n.6 (2001) (citing N.J.S.A. 2A:23b-7(g)), and "remand[ed] the matter to the trial court to enter an amended order staying the action pending arbitration or, in the alternative, dismissing the complaint without prejudice." Williams-Hopkins v. LVNV, slip op. at 6. The trial court entered a stay of the litigation pending arbitration.

Moreover, we relied upon United States and New Jersey Supreme Court precedent that provide "a court may not decide an arbitrability question that the parties have delegated to an arbitrator," Henry Schein, Inc. v. Archer & White Sales Inc., 586 U.S. _ (2019), 139 S. Ct. 425, 530 (2019), and "[a] court's duty is to refrain from adjudicating the merits of a dispute that properly belongs to an arbitrator." Amalgamated Transit Union, Local 880 v. N.J. Transit Bus Operations, Inc., 200 N.J. 105, 118 (2009). Williams-Hopkins v. LVNV, slip op. at 4.

We determined "[h]ere, plaintiff's claim relates to the Bank's assignment of the Agreement to defendant. This issue, as well as other issues raised by plaintiff, must be submitted to arbitration in accordance with the terms of the Agreement." Ibid.

At arbitration, the arbitrator determined: (1) "the evidence adduced does not show that the assignment of the [plaintiff's] account to [defendant] was ever perfected. . . . [therefore defendant] does not possess the right as assignee to enforce the arbitration agreement," [however] (2) since [plaintiff's complaint] "makes repeated references to and 'presumes the existence' of [the] Agreement. . . . it would be inequitable to find that [plaintiff] can assert claims directly

related to her credit card agreement against [defendant], while ignoring the broad arbitration clause contained in that agreement."

Plaintiff, displeased with the arbitrator's decision, filed a motion with the trial court alleging the arbitrator "exceeded the scope of his authority." The trial court, despite reviewing the parties' arguments, observed that "the Appellate Division previously held, it is for the arbitrator to determine the enforceability of the arbitration provision." We agree and, for us, that concludes the analysis.

"'Law of the case' . . . . [is a] discretionary doctrine [that] merely operates to prevent re[-]litigation of a previously resolved issue." In re Estate of Stockdale, 196 N.J. 275, 311 (2008). Once the window to appeal an order expires, that order becomes the law of the case. Borden v. Cadles of Grassy Meadows II, LLC, 412 N.J. Super. 567, 580 (App. Div. 2010). The time in which to appeal our April 26, 2019 opinion has expired.

Further,

> An appellate decision on the merits is final though it does not terminate the case, and it becomes the law of the case. State v. Myers, 239 N.J. Super. 158, 164 (App. Div. 1990). Such a decision is not tentative, or subject to later review. Ibid. Generally, "[p]rior decisions on legal issues should be followed unless there is substantially different evidence at a subsequent trial, new controlling authority, or the prior decision was clearly erroneous." Sisler v. Gannett Co., Inc., 222 N.J. Super. 153, 159 (App. Div. 1987). The doctrine is

> more stringent when applied to an appellate decision in the same case than it is when applied to prior trial court decisions in the same case. In re SMB Assocs. v. Dep't of Envtl. Prot., 264 N.J. Super. 38, 60 (App. Div. 1993).
>
> [Acuna v. Turkish, 384 N.J. Super. 395, 407 (App. Div. 2006), rev'd on other grounds, 192 N.J. 399 (2007).]

Here, there is no new evidence or controlling authority and there is no indication our prior decision was clearly erroneous. Sisler, 222 N.J. Super. 159. Plaintiff does not argue otherwise.

Instead, plaintiff argues that our prior opinion did not preclude it from further argument on the issue of the arbitrator's authority to determine arbitrability. We disagree. We apply the law of the case doctrine and decline to re-visit our opinion that the arbitrator has the authority to determine whether the parties are subject to arbitration.

The arbitrator's determination, that the lack of a perfected assignment precluded defendant from "enforce[ing] the arbitration agreement," did not extinguish the arbitrator's authority to determine arbitrability. Instead, "[t]he Agreement states any claim 'including, but not limited to the validity, enforceability or scope of the [a]rbitration [p]rovision [or] content of the contract' shall be 'settled by binding arbitration.'" Williams-Hopkins v. LVNV, slip op. at 4. Therefore, in keeping with our prior opinion, the arbitrator was

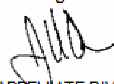
within his authority to determine whether the arbitration agreement was enforceable for other reasons. The parties must complete the arbitration process.

We are unaware of any court rule, statute, or decisional law allowing the parties to return to the courthouse prior to the arbitrator reaching a final decision on the merits. "[W]hen binding arbitration is contracted for by litigants, the judiciary's role to determine the substantive matters subject to arbitration ends." Minkowitz v. Israeli, 433 N.J. Super. 111, 134 (App. Div. 2013).

A party dissatisfied with an arbitrator's award is not without a judicial remedy at the appropriate time. N.J.S.A. 2A:23B-23(a), sets forth grounds for a party to "vacate an award made in the arbitration proceeding . . . ." (emphasis added). For instance where: "an arbitrator exceeded the arbitrator's powers," N.J.S.A. 2A:23B-23(a)(4); or "there was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection . . . ." N.J.S.A. 2A:23B-23(a)(5) (emphasis added). Importantly, however, these remedies ripen only after the arbitrator renders "an award."

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION