

**NOT FOR PUBLICATION WITHOUT THE  
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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-0553-21**

REESE L. SAYRE, a minor,  
by her parents and guardians ad  
litem BENJAMIN J. SAYRE  
and MICHELE SAYRE,

Plaintiffs-Appellants,

v.

SKY ZONE LLC, SKY ZONE  
FRANCHISE GROUP, LLC,  
CIRCUSTRIX HOLDINGS, LLC,  
MGB MONMOUTH, LLC d/b/a  
SKY ZONE INDOOR  
TRAMPOLINE PARK, FUN SPOT  
MANUFACTURING, LLC, and  
ABEO NORTH AMERICA, INC.,

Defendants-Respondents.

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Argued March 30, 2022 – Decided June 6, 2022

Before Judges Gilson, Gooden Brown, and Gummer.

On appeal from the Superior Court of New Jersey, Law  
Division, Monmouth County, Docket No. L-4088-20.

David K. Chazen argued the cause for appellants (Chazen & Chazen, LLC, attorneys; David K. Chazen, on the briefs).

Brendan A. Johnson argued the cause for respondents Sky Zone, LLC, Sky Zone Franchise Group, LLC, MGB Monmouth, LLC, d/b/a Sky Zone Indoor Trampoline Park, and Circustrix Holdings, LLC (Wood Smith Henning & Berman LLP, attorneys; Kelly A. Waters, of counsel and on the brief; Brendan A. Johnson, on the brief).

Timothy M. Jabbour argued the cause for respondents Fun Spot Manufacturing, LLC and Abeo North America, Inc. (Tressler, LLP, attorneys; Timothy M. Jabbour, on the brief).

#### PER CURIAM

When plaintiff Reese Sayre was four years old, her father took her to a trampoline park. To gain access to the park, her father was presented with an electronic agreement, which included an arbitration provision. The agreement stated, among other things, that the father was waiving his child's right to bring a claim against the park's owners, employees, and agents and the child could pursue claims only through binding arbitration.

Plaintiff unfortunately broke her leg while jumping on a trampoline at the park. She appeals from an order granting defendants' motion to dismiss her personal-injury complaint and compelling her claims to arbitration. Because a parent can waive a minor's right to go to court, Hojnowski v. Vans Skate Park,

187 N.J. 323, 343 (2006), we affirm the portion of the order compelling arbitration of the claims against defendants Sky Zone, LLC, Sky Zone Franchise Group, LLC, MGB Monmouth, LLC, and CircusTrix Holdings, LLC (collectively, the Sky Zone defendants).

We reverse and remand for entry of a new order compelling the claims against the Sky Zone defendants to arbitration and staying the Law Division action, including the claims against defendant Abeo North America, Inc. (Abeo) and Fun Spot Manufacturing, LLC (Fun Spot). Fun Spot and Abeo are not parties to the agreement or its arbitration provision. Nor are they agents of the Sky Zone defendants. Consequently, the claims against Fun Spot and Abeo are to be stayed until arbitration is completed. We also hold that the "liquidated damages" clause in the agreement is unenforceable because it is a penalty.

#### I.

On March 26, 2017, plaintiff's father took her to the Sky Zone Trampoline Park in Ocean Township. At that time, plaintiff was four years old. To enter the park, the father was required to check himself and plaintiff in at a kiosk. At the kiosk, the father had an opportunity to electronically review an access agreement (the Agreement). The Agreement included various provisions, including a "Waiver of Trial, and Agreement to Arbitrate" (the Arbitration

Provision), a "Pre-Injury Waiver of Liability, and Agreement to Indemnity," a "Severability" clause, and a parent-certification statement.

The Arbitration Provision stated that the father and plaintiff were waiving their rights to bring a lawsuit against the Sky Zone defendants and, instead, were agreeing to arbitrate any claims related to an injury at the park. The Provision also stated that disputes would be heard before an arbitrator and that New Jersey law would apply. In addition, the Arbitration Provision included a paragraph stating that if plaintiff or her father did not file for arbitration and instead initiated a lawsuit against the Sky Zone defendants, they agreed to pay \$5,000 to the Sky Zone defendants within sixty days as "liquidated damages." That paragraph also stated that if the liquidated damages were not paid within sixty days, they agreed to pay interest on the \$5,000 calculated at twelve percent per year.

In its entirety, the Arbitration Provision stated:

IF I AM INJURED AND WANT TO MAKE A CLAIM AND/OR IF THERE ARE ANY DISPUTES REGARDING THIS AGREEMENT, I HEREBY WAIVE ANY RIGHT I HAVE TO A TRIAL IN A COURT OF LAW BEFORE A JUDGE AND JURY. I AGREE THAT SUCH DISPUTE SHALL BE BROUGHT WITHIN ONE YEAR OF THE DATE OF THIS AGREEMENT AND WILL BE DETERMINED BY BINDING ARBITRATION BEFORE ONE ARBITRATOR TO BE ADMINISTERED BY JAMS

PURSUANT TO ITS COMPREHENSIVE ARBITRATION RULES AND PROCEDURES. I further agree that the arbitration will take place solely in the state of New Jersey and that the substantive law of New Jersey shall apply. I acknowledge that if I want to make a claim against [Sky Zone], I must file a demand before JAMS [www.jamsadr.com](http://www.jamsadr.com).

To the extent that any claim I have against [Sky Zone] has not been released or waived by this Agreement, I acknowledge that I have agreed that my sole remedy is to [arbitrate] such claim, and that such claim may only be brought against [Sky Zone] in accordance with the above Waiver of Trial, and Agreement to Arbitrate.

If, despite my express agreement to arbitrate any claims of injury and/or disputes regarding this agreement, I file or otherwise initiate a lawsuit against [Sky Zone], I agree to pay within 60 days liquidated damages in the amount of \$5,000 to [Sky Zone]. Should I fail to pay this liquidated damages amount within the 60 day time period provided by this Agreement, I further agree to pay interest on the \$5,000 amount calculated at 12% per annum.

The Pre-Injury Waiver of Liability, and Agreement to Indemnity provision stated that it applied only to "persons eighteen (18) years-old or older." That provision was consistent with the governing law of New Jersey. In 2006, the New Jersey Supreme Court held that a parent could not sign a pre-injury release of a minor's future tort claims arising out of the use of a commercial recreational facility and that such agreements were unenforceable as a matter of public policy. Hojnowski, 187 N.J. at 338.

The Agreement's severability provision stated, "that if any portion of this Agreement is found to be void or unenforceable, the remaining portions shall remain in full force and effect."

Plaintiff's father checked boxes next to the Arbitration Provision and severability provision. At the end of the Agreement, he added his name, plaintiff's name, their birthdates, his address, and his phone number. Just below that information, there was a parent certification, which stated: "I further certify that I am the parent or legal guardian of the child[] listed above on this Agreement or that I have been granted power of attorney to sign this Agreement on behalf of the parent or legal guardian of the child[] listed above." Finally, the Agreement set forth a "Signature Certificate" where plaintiff's father acknowledged that he was digitally signing and agreeing to the terms of the Agreement.

In December 2020, plaintiff's parents, as her legal guardians, filed a complaint in the Law Division alleging that plaintiff had sustained a tibia fracture while participating in trampoline activities at the Sky Zone park in 2017. As defendants, plaintiff named the Sky Zone defendants, Fun Spot, and Abeo. Fun Spot and Abeo filed answers to the complaint. The Sky Zone defendants moved to dismiss the complaint and compel arbitration.

After hearing oral argument, on September 16, 2021, the trial court entered an order and issued a statement of reasons granting the motion to dismiss. The order compelled plaintiff to arbitrate her claims against the Sky Zone defendants and dismissed plaintiff's complaint against them. The trial court's order did not expressly address the claims against MGB Monmouth, LLC, but no party disputes that MGB is covered by the Arbitration Provision.

Neither the order nor the statement of reasons stated whether the claims against Abeo and Fun Spot were stayed, dismissed, or compelled to arbitration. Plaintiff now appeals from the September 16, 2021 order.

## II.

On appeal, plaintiff makes four arguments. She contends that (1) her father did not agree to waive her right to a jury trial; (2) she cannot be compelled to arbitrate because the Arbitration Provision stated that the arbitration would be conducted by JAMS, but JAMS was not conducting arbitrations in New Jersey when her father signed the Agreement in 2017; (3) the Agreement contained unconscionable provisions that could not be severed; and (4) her complaint should not have been dismissed because her claims against Abeo and Fun Spot were not subject to arbitration.

A. The Enforceability of the Arbitration Provision.

We use a de novo standard of review when determining the enforceability of an arbitration agreement. Goffe v. Foulke Mgmt. Corp., 238 N.J. 191, 207 (2019) (citing Hirsch v. Amper Fin. Servs., LLC, 215 N.J. 174, 186 (2013)). The validity of an arbitration agreement is a question of law, and we conduct a plenary review of such legal questions. Atalese v. U.S. Legal Servs. Grp., L.P., 219 N.J. 430, 445-46 (2014) (citing Kieffer v. Best Buy, 205 N.J. 213, 222-23 (2011)); Barr v. Bishop Rosen & Co., Inc., 442 N.J. Super. 599, 605 (App. Div. 2015) (citing Hirsch, 215 N.J. at 186).

The New Jersey Arbitration Act (NJAA), N.J.S.A. 2A:23B-1 to -36, enunciates a policy favoring arbitration. Atalese, 219 N.J. at 440. Under the NJAA, arbitration is fundamentally a matter of contract. NAACP of Camden Cnty. E. v. Foulke Mgmt. Corp., 421 N.J. Super. 404, 424 (App. Div. 2011). Accordingly, the NJAA allows arbitration agreements to be regulated under general contract principles, and a court may invalidate an arbitration clause under principles of contract law. N.J.S.A. 2A:23B-6(a); Flanzman v. Jenny Craig, Inc., 244 N.J. 119, 133-34 (2020).

"An agreement to arbitrate, like any other contract, 'must be the product of mutual assent, as determined under customary principles of contract law.'"



Atalese, 219 N.J. at 442 (quoting NAACP of Camden Cnty. E., 421 N.J. Super. at 424). "A legally enforceable agreement requires 'a meeting of the minds.'" Ibid. (quoting Morton v. 4 Orchard Land Tr., 180 N.J. 118, 120 (2004)). Consequently, to be enforceable, the terms of an arbitration agreement must be clear, and any legal rights being waived must be identified. Id. at 442-43; see also Kernahan v. Home Warranty Adm'r of Fla., Inc., 236 N.J. 301, 319-20 (2019). "No particular form of words is necessary to accomplish a clear and unambiguous waiver of rights." Atalese, 219 N.J. at 444. If, "at least in some general and sufficiently broad way," the language of the clause conveys that arbitration is a waiver of the right to bring suit in a judicial forum, the clause will be enforced. Id. at 447.

A parent can bind a minor to an arbitration agreement so long as the adult assents to the arbitration agreement on behalf of the minor. Hojnowski, 187 N.J. at 343. In Hojnowski, the Court held that a parent could not sign a pre-injury release of a minor's future tort claims arising out of the use of a commercial recreational facility. Id. at 338. The Court based that ruling on New Jersey's public policy of protecting minors. Id. at 333. In contrast, the Court also ruled that a parent can bind a minor to an arbitration agreement because an agreement

to arbitrate is not a waiver of the right to bring a claim; rather, the arbitration agreement provides for the forum where the claim will be heard. Id. at 343.

The language of the Arbitration Provision in the Agreement signed by plaintiff's father is clear. It states that if plaintiff is injured while at the trampoline park, she has waived her right to trial in a court of law before a judge and jury and that she could pursue personal-injury claims only through binding arbitration. There was also no dispute that plaintiff's father was her legal guardian and had the authority to waive her right to go to court.

Plaintiff contends that the Agreement fails to explain the ramifications of surrendering her constitutional right to a jury trial because the Arbitration Provision does not explain that there is a distinction between resolving a dispute in arbitration rather than in a judicial forum. We reject that contention because the plain language of the Arbitration Provision makes clear that plaintiff was waiving the right to a jury trial and agreeing to binding arbitration to resolve a personal-injury claim.

**B. The Liquidated Damages Clause and Unconscionable Provisions.**

Plaintiff argues that arbitration was optional under the Agreement because the Arbitration Provision included a liquidated damages clause allowing her to pay \$5,000 if she chose to file a lawsuit against the Sky Zone defendants. We

reject this argument because it is inconsistent with the plain language of the liquidated damages clause. The clause does not give an option; rather, it sets forth a penalty if a plaintiff files a lawsuit rather than pursue arbitration.

Although the liquidated damages clause is not an option, it is an unenforceable penalty. Courts scrutinize stipulated damages provisions for "reasonableness." Holtham v. Lucas, 460 N.J. Super. 308, 317 (App. Div. 2019) (quoting MetLife Cap. Fin. Corp. v. Washington Ave. Assocs., L.P., 159 N.J. 484, 494 (1999)). "The need for close scrutiny arises from the possibility that stipulated damages clauses may constitute an oppressive penalty. Enforceable stipulated damages clauses are referred to as 'liquidated damages,' while unenforceable provisions are labeled 'penalties.'" MetLife, 159 N.J. at 493 (quoting Wasserman's, Inc. v. Middletown, 137 N.J. 238, 248 (1994)).

"The enforceability of stipulated damages turns primarily on two factors: the extent the stipulated amount is within a plausible range of actual damages, viewed from either the time of contracting or breach; and the difficulty of calculating damages upon breach." Holtham, 406 N.J. Super. at 317 (citing MetLife, 159 N.J. at 493-95). "The purpose of a stipulated damages clause is not to compel the promisor to perform, but to compensate the promisee for non-performance." Wasserman's, 137 N.J. at 254. Consequently, clauses calling for

liquidated damages are enforceable only if "the amount so fixed is a reasonable forecast of just compensation for the harm that is caused by the breach." Ibid. (quoting Westmount Country Club v. Kameny, 82 N.J. Super. 200, 206 (App. Div. 1964)).

The liquidated damages clause in the Arbitration Provision is a penalty. It is clearly designed to discourage patrons from suing Sky Zone in a court of law instead of going to arbitration. The \$5,000, with twelve percent interest, is not tied to any reasonable forecast of Sky Zone's actual damages. In that regard, it would not be difficult to calculate Sky Zone's actual damages if a patron filed a suit. Instead, the \$5,000, with twelve percent interest, is a penalty.

To the extent that plaintiff argued that the liquidated damages clause was unconscionable, our ruling eliminates that issue. Accordingly, the liquidated damages clause is severed under the severability clause.

Furthermore, the Arbitration Provision's one-year time-limitation does not apply to the claims of a minor. See Hojnowski, 187 N.J. at 338-39 ("[A]lthough a parent may control a minor's right to seek tort compensation until the age of majority—either by choosing not to sue or by neglecting to do so—a minor's claim is not eliminated by the parent's decision; it merely is delayed."); N.J.S.A.

2A:14-2 (minor retains right to sue for most personal injuries for two years after reaching age of majority).

As already noted, the Pre-Injury Waiver of Liability, and Agreement to Indemnity provision expressly does not apply to plaintiff because that provision applies only to persons eighteen years of age or older. Plaintiff has not identified any other alleged unconscionable provisions.

C. The Unavailability of JAMS.

Plaintiff also argues that the Arbitration Provision is unenforceable because it called for an arbitration by JAMS, but JAMS was not available to conduct the arbitration. The Arbitration Provision states it will be interpreted in accordance with New Jersey law. The NJAA provides for a court-appointed arbitrator if the designated arbitrator is unavailable. N.J.S.A. 2A:23B-11(a).

Moreover, our Supreme Court has held that "[n]o New Jersey statutory provision or prior decision has elevated the selection of an 'arbitral institution' . . . to the status of [an] essential contract term[]." Flanzman, 244 N.J. at 139. Unless the parties have unambiguously expressed their intent not to arbitrate their disputes when the designated arbitral forum is unavailable, an alternative arbitration forum can be appointed. Id. at 139-40.

The Arbitration Provision does not state the parties intended not to arbitrate their disputes if JAMS is unavailable, and nothing indicates the designation of JAMS was integral to the Arbitration Provision. Accordingly, we conclude the unavailability of JAMS does not render the Arbitration Provision unenforceable.

D. The Claims Against Abeo and Fun Spot.

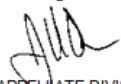
The final issue is whether plaintiff's claims against Abeo and Fun Spot can be compelled to arbitration or should be stayed pending the arbitration. The Agreement defines the parties that it covers to include the Sky Zone defendants and "their agents, owners, officers, directors, representatives, assigns, affiliates, volunteers, participants, employees, insurers, and all other persons or entities acting in any capacity on their behalf." In the answers filed by Abeo and Fun Spot, they make clear that they are not representatives or agents of the Sky Zone defendants. Under the NJAA, a court must stay an arbitrable action pending the arbitration. N.J.S.A. 2A:23B-7(g); see also GMAC v. Pittella, 205 N.J. 572, 583, n.7 (2011) (explaining that N.J.S.A 2A:23B-7(g) "only enable[s] [a] trial court to 'stay' the claims"). Although not mandatory, when significant overlap exists between parties and issues, claims against parties who have not agreed to arbitrate should be stayed pending the arbitration. Alfano v. BDO Seidman,

LLP, 393 N.J. Super. 560, 577 (App. Div. 2007); N.J.S.A. 2A:23B-7(g) ("If the court orders arbitration, the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration."). The agreement to arbitrate must be enforced notwithstanding the presence of other entities who are not parties to the Agreement. Accordingly, on remand, we direct the trial court to enter an order compelling plaintiff to arbitrate her claims against the Sky Zone defendants and staying the Law Division action, including the claims against Abeo and Fun Spot.

Affirmed in part, reversed in part, and remanded for entry of a new order.

We do not retain jurisdiction.

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



CLERK OF THE APPELLATE DIVISION