

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2813-20

JACOB MATULLO,

Plaintiff-Appellant,

v.

SKYZONE TRAMPOLINE
PARK, SKYZONE, LLC,

Defendants-Respondents.

APPROVED FOR PUBLICATION

May 16, 2022

APPELLATE DIVISION

Argued February 2, 2022 – Decided May 16, 2022

Before Judges Gilson, Gooden Brown, and Gummer.

On appeal from the Superior Court of New Jersey, Law
Division, Ocean County, Docket No. L-3117-20.

William D. Wright argued the cause for appellant (The
Wright Law Firm, attorneys; William D. Wright, on the
briefs).

Deborah J. Davison argued the cause for respondents
(Wood Smith Henning & Berman LLP, attorneys; Kelly
A. Waters, of counsel and on the brief; Deborah J.
Davison and Sean P. Shoolbraid, on the brief).

The opinion of the court was delivered by

GILSON, J.A.D.

In this appeal, we address the enforceability of an arbitration provision in an agreement signed by a fifteen-year-old minor to gain access to a commercial trampoline park. We hold that the arbitration provision is not enforceable because the minor had the right to disaffirm the agreement and the limited exceptions to that right did not apply.

Accordingly, we reverse and vacate the order granting defendants' motion to compel arbitration of plaintiff's claims and to dismiss his complaint with prejudice. We remand with instruction that plaintiff's complaint be reinstated so that his claims can be litigated in the Law Division.

I.

The trial court decided the motion under Rules 4:6-2(a) and 4:6-2(e). Accordingly, we take the facts from the pleadings and "assume that the allegations in the pleadings are true and afford the pleader all reasonable inferences." Sparroween, LLC v. Twp. of W. Caldwell, 452 N.J. Super. 329, 339 (App. Div. 2017).

On November 10, 2017, plaintiff went to the Sky Zone Trampoline Park in Lakewood, New Jersey. He was fifteen years old. When he entered the Sky Zone facility, plaintiff was presented with a "Participant Agreement, Release and Assumption of Risk (The Agreement)." The Agreement had various

provisions, including an "ARBITRATION OF DISPUTES; TIME LIMIT TO BRING CLAIM" (the Arbitration Provision). The Arbitration Provision stated that the patron was waiving his or her right to bring a lawsuit against the Sky Zone Trampoline Park and its affiliates, agents, and employees. The Arbitration Provision also explained that any claims arising out of the patron's access to or use of the trampoline park would be resolved by arbitration. The Provision went on to state that the Agreement was governed by New Jersey law and that any arbitration would be governed by the Federal Arbitration Act (FAA), 9 U.S.C. §§ 1-16. In its entirety, the Arbitration Provision stated:

I understand that by agreeing to arbitrate any dispute as set forth in this section, I am waiving my right, and the right(s) of the minor child(ren) above, to maintain a lawsuit against SZ and the other Releasees for any and all claims covered by this Agreement. By agreeing to arbitrate, I understand that I will **NOT** have the right to have my claim determined by a jury, and the minor child(ren) above will **NOT** have the right to have claim(s) determined by a jury. Reciprocally, SZ and the other Releasees waive their right to maintain a lawsuit against me and the minor child(ren) above for any and all claims covered by this Agreement, and they will not have the right to have their claim(s) determined by a jury. **ANY DISPUTE, CLAIM OR CONTROVERSY ARISING OUT OF OR RELATING TO MY OR THE CHILD'S ACCESS TO AND/OR USE OF THE SKY ZONE PREMISES AND/OR ITS EQUIPMENT, INCLUDING THE DETERMINATION OF THE SCOPE OR APPLICABILITY OF THIS AGREEMENT TO**

ARBITRATE, SHALL BE BROUGHT WITHIN ONE YEAR OF ITS ACCRUAL (i.e., the date of the alleged injury) FOR AN ADULT AND WITHIN THE APPLICABLE STATUTE OF LIMITATIONS FOR A MINOR AND BE DETERMINED BY ARBITRATION IN THE COUNTY OF THE SKY ZONE FACILITY, NEW JERSEY, BEFORE ONE ARBITRATOR. THE ARBITRATION SHALL BE ADMINISTERED BY JAMS PURSUANT TO ITS RULE 16.1 EXPEDITED ARBITRATION RULES AND PROCEDURES. JUDGMENT ON THE AWARD MAY BE ENTERED IN ANY COURT HAVING JURISDICTION. THIS CLAUSE SHALL NOT PRECLUDE PARTIES FROM SEEKING PROVISIONAL REMEDIES IN AID OF ARBITRATION FROM A COURT OF APPROPRIATE JURISDICTION.

This Agreement shall be governed by, construed and interpreted in accordance with the laws of the State of New Jersey, without regard to choice of law principles. Notwithstanding the provision with respect to the applicable substantive law, any arbitration conducted pursuant to the terms of this Agreement shall be governed by the Federal Arbitration Act (9 U.S.C., Sec. 1-16), I understand and acknowledge that the JAMS Arbitration Rules to which I agree are available online for my review at jamsadr.com, and include JAMS Comprehensive Arbitration Rules & Procedures; Rule 16.1 Expedited Procedures; and, Policy On Consumer Minimum Standards Of Procedural Fairness.

The Agreement had a place for the patron to electronically sign it and provide the signer's birthdate. Just above that information, the Agreement explained that if the patron was bringing a child with him or her, by signing the

Agreement the patron was representing he or she was a parent, legal guardian, or had the power of attorney with authority to execute the Agreement on behalf of the child. At the end of that paragraph, the Agreement stated:

"I am eighteen years of age or older, I am entering this Agreement on behalf of myself, my spouse or domestic partner, the [c]hild and our respective and/or collective issues, parents, siblings, heirs, assignees, personal representatives, estate(s) and anyone else who can claim by or through such person or persons (collectively, the 'Releasing Parties')."

In executing the Agreement, plaintiff first listed himself as the signing party and gave a birthday of July 4, 1998. He also listed himself as a minor and gave the birthday of July 4, 2002.

In December 2020, plaintiff filed a complaint in the Law Division alleging that he had been severely injured while participating in jumping activities at the trampoline park in 2017. As defendants, plaintiff named Sky Zone Trampoline Park and Sky Zone, LLC (collectively Sky Zone or defendants).¹

Defendants moved to dismiss plaintiff's complaint and compel arbitration based on the Arbitration Provision. After hearing oral argument, the motion judge granted defendants' motion and explained the reasons for the ruling on the

¹ According to defendants, the trampoline park is owned and operated by "Sky Zone, LLC, and Buckingham Investment Group, Inc. i/p/a Sky Zone Trampoline Park."

record. The judge acknowledged the general rule that a minor can avoid a contract but held that plaintiff had defrauded Sky Zone by representing that he was an adult when he signed the Agreement. The judge also reasoned that the "equities" and "law" require that people should be bound to a contract when they receive the benefit of the contract through fraud. On April 30, 2021, the judge entered an order dismissing plaintiff's complaint with prejudice and compelling arbitration of his claims. Plaintiff now appeals from that order.

II.

The principal argument plaintiff raises on appeal is that he had the right to disaffirm the Arbitration Provision because a minor can elect to avoid a contract and the estoppel exception to that right should not apply to the Provision. We hold that the agreement plaintiff signed was voidable.

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 appellate courts conduct a plenary review of legal questions. Skuse v. Pfizer, Inc., 244 N.J. 30, 46 (2020) (citing Kernahan v. Home Warranty Adm'r of Fla., Inc., 236 N.J. 301,

316 (2019)); 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)).

The FAA and "the nearly identical New Jersey Arbitration Act [(NJAA)] enunciate federal and state policies favoring arbitration." Atalese, 219 N.J. at 440 (citation omitted). Under both the FAA and NJAA, arbitration is fundamentally a matter of contract. 9 U.S.C. § 2; NAACP of Camden Cnty. E. v. Foulke Mgmt. Corp., 421 N.J. Super. 404, 424 (App. Div. 2011). "[T]he FAA 'permits states to regulate . . . arbitration agreements under general contract principles,' and a court may invalidate an arbitration clause 'upon such grounds as exist at law or in equity for the revocation of any contract.'" Atalese, 219 N.J. at 441 (alteration in original) (quoting Martindale v. Sandvik, Inc., 173 N.J. 76, 85 (2002)). The NJAA also permits arbitration agreements to be invalidated under general principles of contract law. N.J.S.A. 2A:23B-6(a); Flanzman v. Jenny Craig, Inc., 244 N.J. 119, 133-34 (2020).

A. A Minor's Right to Avoid a Contract.

New Jersey has long recognized the general rule that a person can disaffirm a contract he or she entered before reaching the age of majority and avoid being bound by the terms of the contract. Mechs. Fin. Co. v. Paolino, 29 N.J. Super. 449, 453 (App. Div. 1954); see also Restatement (Second) of

Contracts §§ 12, 14 (Am. Law Inst. 1981); 7 Corbin on Contracts § 27.2 (Perillo rev. 2002); 5 Williston on Contracts § 9.5 (Lord ed., 4th ed. 1993); Hojnowski v. Vans Skate Park, 187 N.J. 323, 349-50 (2006) (LaVecchia, J., concurring in part and dissenting in part). This rule, which is sometimes called the infancy defense, has its genesis in the concept that minors do not have the capacity to bind themselves to contractual obligations. See La Rosa v. Nichols, 92 N.J.L. 375, 379 (1918); Bancredit, Inc. v. Bethea, 65 N.J. Super. 538, 547 (App. Div. 1961).

Exceptions to the general rule include an estoppel exception that can preclude disaffirmance if the minor, when entering the contract, misrepresented that he or she was an adult. See La Rosa, 92 N.J.L. at 380. In La Rosa, the Court of Errors and Appeals, the state's highest court at that time, established the estoppel exception. The plaintiff in La Rosa was twenty years old when he entered a contract with the defendant garage owner for storage and repair of his car. Id. at 375, 379. At that time, the age of majority was twenty-one years, but the plaintiff falsely represented that he was an adult when he entered the contract. Ibid. The garage charged \$74.49 for the storage and the services. When the plaintiff refused to pay, the garage owner retained possession of the

car, and the plaintiff brought a replevin action seeking to repudiate the contract. Id. at 375-76.

The La Rosa Court acknowledged the general rule that a contract with a minor is voidable by the minor. Id. at 378. The Court held, however, that a minor can be equitably estopped from exercising that right:

[I]f a youth under 21 years of age, by falsely representing himself [or herself] to be an adult, which he [or she] appears to be, for the purpose of inducing another to enter into a contract with him [or her], and thereby, through such representation and appearance the other party is led to believe that such infant is an adult, and makes a contract with him [or her], the benefit of which he [or she] obtains and retains, then, in a suit on that contract, the minor will not be permitted to set up the privilege of infancy, because, by his [or her] fraudulent conduct he [or she] has estopped himself [or herself] from so pleading; and this in a court of law, as well as in a court of equity.

[Id. at 380.]

For the exception to apply, the party seeking to enforce the contract must show that (1) the minor misrepresented that he or she was an adult; (2) the other party reasonably relied on the misrepresentation; and (3) the minor received and retained the benefit of the contract. Ibid.; Manasquan Sav. & Loan Ass'n v. Mayer, 98 N.J. Super. 163, 164 (App. Div. 1967). Consequently, the estoppel

exception "applies only where the [minor] received and retained a benefit under the contract he [or she] fraudulently induced." Paolino, 29 N.J. Super. at 454.

B. The Application of the Law to the Arbitration Provision.

Plaintiff was fifteen years old when he signed the Agreement with the Arbitration Provision. Consequently, he is entitled to assert the infancy defense that allows him to elect to disaffirm the contract. Sky Zone argues that he should be estopped from disavowing the Agreement because he lied about his age by representing that he was nineteen years old. We reject that argument as applied to the Agreement signed by plaintiff.

Sky Zone does not claim that any of its employees or representatives reviewed the Agreement before plaintiff entered the park. Had a Sky Zone representative reviewed plaintiff's information, that representative could not have reasonably relied on the information provided by plaintiff. Plaintiff signed himself in as the "signing party." In doing so, he used his own name: "Jacob Matullo." And he gave his date of birth as "7/4/1998," which would have made him nineteen years old at the time. Plaintiff then listed himself as a minor using the same name "Jacob Matullo," with a date of birth of "7/4/2004." Anyone reviewing that information would have had to question its accuracy. There were obvious questions as to the authority of the nineteen-year-old to waive the rights

of the fifteen-year-old. Moreover, the use of the same name and the listing of birthdays, which were on the same month and day and four years apart, raised even more questions. A reasonable person reviewing that information would have recognized how unlikely it is that a nineteen-year-old is the legal guardian of a fifteen-year-old who shares the same name and birthday. Sky Zone could not have reasonably relied on one sentence in which plaintiff misrepresented his age when in the next sentence he disclosed his age.

Our holding here is consistent with the rationale the New Jersey Supreme Court applied in Hojnowski v. Vans Skate Park, 187 N.J. 323 (2006). 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 and that such agreements were unenforceable. 187 N.J. at 338. The Court based that ruling on New Jersey's public policy of protecting minors. Id. at 333. Although the Court also ruled that a parent can bind a minor to an arbitration agreement, the important principle is that an authorized adult must assent to the arbitration agreement on behalf of the minor. Id. at 343. No authorized adult assented to the Arbitration Provision, and Sky Zone cannot show it reasonably relied on plaintiff's assent.

Our ruling is also consistent with our prior decisions where we held that arbitration provisions are not enforceable if the adult signing on behalf of the child does not have the authority to waive a minor's right to go to court. See Gayles v. Sky Zone Trampoline Park, 468 N.J. Super. 17, 21-22 (App. Div. 2021); Checchio v. Evermore Fitness, LLC, __ N.J. Super. __, __ (App. Div. 2022) (slip op. at 4-5). In both those cases, we held that a non-parent adult, who lacked actual or apparent authority, cannot waive a minor's right to go to court. Those cases implicitly recognize that an adult needs authorization to waive a minor's right to go to court. As already noted, any reasonable person reviewing plaintiff's signature and related information in the Agreement would have recognized that the person signing the Agreement was not an adult with authority to waive plaintiff's right to go to court.

Because plaintiff disavowed the Agreement and its Arbitration Provision when he filed his suit in the Law Division and because Sky Zone could not have reasonably relied on plaintiff's misrepresentation of his age, we reverse the order compelling arbitration. We remand with direction that plaintiff's complaint be reinstated and he be allowed to litigate his claims in the Law Division.

Reversed and remanded. 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