

Massachusetts Supreme Judicial Court Holds that Arbitration Clause Does Not Preclude MCAD Proceeding

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The Massachusetts Supreme Judicial Court recently held that an employee could file a complaint with the Massachusetts Commission Against Discrimination (“MCAD”), despite that she was subject to a valid arbitration agreement that expressly covered claims of employment discrimination. In *Joulé, Inc. v. Simmons*, Randi Simmons claimed that her employer, Joulé, subjected her to a hostile work environment and discriminated against her on the basis of gender and pregnancy. Although Simmons had signed an employment contract in which she expressly agreed to arbitrate any claims of discrimination, harassment and hostile work environment, Simmons filed a complaint with the MCAD instead of pursuing arbitration. Joulé then sued Simmons in Superior Court, requesting that the Court compel her to arbitrate her claims. Simmons opposed Joulé’s request, arguing that the arbitration provision was unenforceable, and regardless, did not prevent her from participating in the MCAD proceeding. The MCAD intervened in the case and argued that the parties’ agreement to arbitrate did not affect its authority to investigate and adjudicate Simmons’s claims. The Superior Court agreed with the MCAD. It denied Joulé’s motion to compel arbitration, held that Simmons could participate as a party in the MCAD matter, and stayed the court action pending resolution of her claims at the MCAD. The Court did not address whether the arbitration agreement was unenforceable.

Joulé appealed the decision of the Superior Court. On appeal, the Supreme Judicial Court agreed with the lower court’s decision that even a clear and unmistakable agreement requiring arbitration of discrimination claims would not affect an employee’s right to file a claim with the MCAD and participate in the MCAD’s investigation and adjudication of that claim. However, it found that the Superior Court erred by staying the court action. The Supreme Judicial Court stated that if an employer and an employee enter into a valid agreement to arbitrate disputes relating to discrimination, the party seeking arbitration is entitled to have the agreement enforced, even if that means the arbitration and MCAD case proceed concurrently. The Court then remanded the case so that the Superior Court could determine whether or not the arbitration provision was enforceable. The Court stated that if the provision was valid, Joulé’s motion to compel arbitration should be allowed.

Although we assume that a valid arbitration agreement will still prevent employees from removing their claims from the MCAD to take them to court, employers should be aware that, as a result of this decision, employees can have two bites at the apple—they will be able to pursue their claims in an arbitration and before the MCAD. It is unclear to what extent a factual finding in one forum may be binding on the other forum, nor is it clear whether there are circumstances under which

an employee might receive a double recovery. The decision offered little guidance on these issues. In a footnote, the Court recognized the possibility of a double recovery and implied that it should not be allowed.