STATE OF MICHIGAN

COURT OF APPEALS

ALBERT BEST, DEBORAH AUSTIN, and MARTHA SZOSTAK,

Plaintiffs/Counter-Defendants,

and

SHARON DAY and JULIAN HOWARD,

Plaintiffs/Counter-Defendants-Appellants,

and

VIVIAN BEST, CHERYL CRIST, HEIDI RICE, MICHAEL A. VALLILLO, and MARIA VALLILLO,

Plaintiffs,

v

PARK WEST GALLERIES, INC.,

Defendant/Counter-Plaintiff/Third-Party Plaintiff-Appellee,

and

ALBERT SCAGLIONE, MORRIS SHAPIRO, and ROYAL CARIBBEAN CRUISES, LTD,

Defendants-Appellees,

and

FINE ART REGISTRY and FRANK HUNTER,

Third-Party Defendants.

UNPUBLISHED
September 5, 2013

No. 305317
Oakland Circuit Court
LC No. 2008-096952-CZ

ALBERT BEST,

Plaintiff/Counter-Defendant,

and

VIVIAN BEST and HEIDI RICE

Plaintiffs,

and

SHARON DAY and JULIAN HOWARD,

Plaintiffs/Counter-Defendants-Appellants/Cross-Appellees,

and

DEBORAH AUSTIN, CHERYL CRIST, MICHAEL A. VALLILLO, MARIA VALLILLO, and MARTHA SZOSTAK,

Plaintiffs/Counter-Defendants,

v

No. 308085
Oakland Circuit Court
LC No. 2008-096952-CZ

PARK WEST GALLERIES, INC.,

Defendant/Counter-Plaintiff/Third-Party Plaintiff-Appellee,

and

ALBERT SCAGLIONE and MORRIS SHAPIRO,

Defendants-Appellees,

and

ROYAL CARIBBEAN CRUISES,

Defendant-Appellee/Cross-Appellant,

and

THERESA FRANKS, FINE ART REGISTRY, and FRANK HUNTER,

Third-Party Defendants,

and

ALBERT MOLINA and PLYMOUTH AUCTIONEERING SERVICE,

Defendants.

Before: MURPHY, C.J., and MARKEY and RIORDAN, JJ.

PER CURIAM.

In docket no. 305317, plaintiffs Sharon Day and Julian Howard (appellants), appeal by leave granted the opinion and order granting summary disposition to Park West Galleries, Inc., Albert Scaglione, and Morris Shapiro (the Park West defendants), in this action involving fraudulent artwork.

In docket no. 308085, appellants appeal by leave granted the opinion and order granting reconsideration to Royal Caribbean Cruises (Royal Caribbean), regarding the trial court's initial denial of Royal Caribbean's motion for summary disposition. Royal Caribbean also filed a cross-appeal from the trial court's initial ruling that denied summary disposition. On this Court's own motion, these cases were consolidated for appellate review. We reverse and remand for proceedings consistent with this opinion.

I. FACTUAL BACKGROUND

Appellants Day and Howard were among 10 plaintiffs who filed suit against the Park West defendants and Royal Caribbean, asserting various claims for the sale of fraudulent artwork. While passengers on a Royal Caribbean ship named "Adventures of the Seas," appellants encountered Nick Dobrota, the onboard auctioneer for Park West. Although appellants purchased artwork onboard the ship, that artwork is not at issue in this appeal. Rather, it was after disembarking from the ship that Dobrota contacted appellants and facilitated an introduction with Morris Shapiro of Park West. Appellants claimed that they relied on Dobrota and Shapiro to complete an off-board purchase. For $422,601.50, appellants purchased what they thought was the complete unframed set of woodcuts titled "The Divine Comedy" from artist Salvador Dali.

Appellants Day and Howard received a certificate of authenticity and an appraisal indicating that the value of the artwork was $510,000. However, some time later they approached Park West about the possibility of reselling the artwork. When Park West refused, appellants became suspicious. They obtained an independent appraisal and discovered that the artwork was fraudulent, and further inspection revealed that the artwork was damaged and incomplete.

Along with eight other plaintiffs, appellants initiated this instant lawsuit. After protracted litigation, including a previous appeal in this Court, appellants were allowed to amend their complaint to allege an agency theory of liability against Royal Caribbean. After almost two and a half years of litigation, the Park West defendants and Royal Caribbean eventually asserted the

defense of arbitration. They claimed that an arbitration clause existed in the invoice and entitled them to arbitration. While appellants argued that defendants had waived their right to arbitration, the trial court disagreed.

The trial court granted Park West's motion for summary disposition based on the arbitration clause. After initially ruling that Royal Caribbean was not entitled to summary disposition, the trial court then granted Royal Caribbean's motion for reconsideration on the basis of the arbitration clause. Appellants Day and Howard now appeal. Royal Caribbean filed a cross-appeal, contending that the trial court erred in initially denying its motion for summary disposition. These appeals have been consolidated for appellate review.

II. WAIVER OF ARBITRATION

A. Standard of Review

Appellants first contend that the trial court erred in finding that the Park West defendants were entitled to arbitration and in granting Royal Caribbean's motion for reconsideration on the same basis.

"We review de novo the question of law whether the relevant circumstances establish a waiver of the right to arbitration, and we review for clear error the trial court's factual determinations regarding the applicable circumstances." *Madison Dist Pub Sch v Myers*, 247 Mich App 583, 588; 637 NW2d 526 (2001) (internal citation omitted). "This Court reviews de novo a trial court's ruling on a motion for summary disposition." *Anzaldua v Neogen Corp*, 292 Mich App 626, 629; 808 NW2d 804 (2011).

"A trial court's ruling regarding a motion for reconsideration is reviewed for an abuse of discretion." *McCoig Materials, LLC v Galui Const, Inc*, 295 Mich App 684, 693; 818 NW2d 410 (2012). "An abuse of discretion occurs when the trial court's decision is outside the range of reasonable and principled outcomes." *Smith v Khouri*, 481 Mich 519, 526; 751 NW2d 472 (2008). Questions of law are reviewed de novo. *McCoig Materials, LLC*, 295 Mich App at 693.

B. Analysis

Appellants contend that the Park West defendants and Royal Caribbean waived their right to arbitration, and the trial court erred in holding otherwise. "Waiver of a contractual right to arbitrate is disfavored." *Madison Dist Pub Sch*, 247 Mich App at 588. The party contending that the right to arbitration has been waived "bears a heavy burden of proof and must demonstrate" that there was: (1) knowledge of an existing right to compel arbitration; (2) acts inconsistent with the right to arbitrate; (3) and prejudice resulting from the inconsistent acts. *Id.* (quotation marks and citation omitted). Whether waiver occurred depends on the facts and circumstances of each case, although this Court has given the following guidance:

> It has been generally held or recognized that by such conduct as defending the action or proceeding with the trial, a party waives the right to arbitration of the dispute involved. A waiver of the right to [arbitration] . . . has also been found from particular acts of participation by a party, each act being considered independently as constituting a waiver. Thus, a party has been held to have

> waived the right to arbitration of the dispute involved by filing an answer without properly demanding or asserting the right to arbitration, by filing an answer containing a counterclaim . . . without demanding arbitration or by filing a counterclaim which was considered inconsistent with a previous demand for arbitration, by filing a third-party complaint or cross-claim, or by taking various other steps, including filing a notice of readiness for trial, filing a motion for summary judgment, or utilizing judicial discovery procedures. [*Id.* at 589 (quotation marks, brackets, and citation omitted).]

"A waiver may be express or it may be implied when a party actively participates in a litigation or acts in a manner inconsistent with its right to proceed to arbitration." *Capital Mortg Corp v Coopers & Lybrand*, 142 Mich App 531, 535; 369 NW2d 922 (1985).

In the instant case, appellants bore a heavy burden of demonstrating that the Park West defendants and Royal Caribbean knew of an existing right to compel arbitration, acted inconsistently with that right, and prejudice resulted from these inconsistent actions. *Madison Dist Pub Sch*, 247 Mich App at 588. The invoice containing the arbitration clause was the result of an agreement between Park West and appellants, and Park West makes no meaningful argument on appeal that it lacked knowledge of its arbitration clause.[1] Moreover, the invoice was mentioned in the initial complaint, which was served on Park West at the commencement of this litigation.[2]

Further, the Park West defendants engaged in a course of conduct that was inconsistent with their right to arbitrate. Appellants filed their initial complaint on December 23, 2008. On January 23, 2009, defendants Park West, Scaglione, and Shapiro filed an answer and asserted affirmative defenses, but made no mention of any right to arbitrate. Also on January 23, 2009, Park West filed a counterclaim against plaintiffs, including appellants Howard and Day, as well as a third-party complaint. While it could have done so, Park West made no mention of any right to arbitrate. On December 23, 2009, Park West filed its first motion for summary disposition. Park West presented numerous arguments in favor of dismissal, but it did not allege that arbitration was one of those grounds.[3] Scaglione and Shapiro likewise filed a motion for summary disposition on December 23, 2009, and failed to invoke the arbitration clause.

The Park West defendants correctly note that there eventually was a stay in the proceedings. However, the order to stay proceedings was not entered until June 7, 2010, over 17

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[1] In fact, Park West conceded at oral argument that this first prong was met.

[2] Even if we were to consider Scaglione and Shapiro separately from Park West in this context, the record demonstrates that they at least had knowledge of the arbitration clause on December 23, 2009, when Park West explicitly referred to it in its motion for summary disposition.

[3] While Park West referenced the arbitration clause, it was to argue that appellants intentionally invoked the certificates of authenticity and not the invoice as the basis for the contract. As Park West conceded at oral argument, it did not argue in this motion that summary disposition was justified based on the arbitration clause.

months after the initial complaint was filed.[4] According to the Park West defendants, the trial court orally lifted the stay in the proceedings on April 7, 2011, at a status conference. It was not until April 13, 2011, when Park West, Scaglione, and Shapiro finally filed a motion to amend their responsive pleadings to include the defense of arbitration. This was almost two and a half years after the initial complaint was filed.

Thus, before ever asserting a right to arbitrate, the Park West defendants filed an answer to the complaint, filed a countercomplaint and third-party complaint,[5] and filed a motion for summary disposition. As noted above, a waiver of the right to arbitrate has been found when a party files an answer, a counterclaim, third-party complaint, cross-claim, uses judicial discovery procedures, or files a motion for summary disposition without asserting the right to arbitrate. *Madison Dist Pub Sch*, 247 Mich App at 589. Thus, there was "considerable behavior inconsistent with [defendants'] right to proceed to arbitration." *Joba Constr Co, Inc v Monroe Co Drain Comm'r*, 150 Mich App 173, 179; 388 NW2d 251 (1986).[6]

However, the Park West defendants, like the trial court, focus on the fact that in the initial complaint appellants pleaded their breach of contract claim based on the certificates of authenticity, not the invoice with the arbitration clause. The Park West defendants contend that it was not until appellants' response to their motion for summary disposition that appellants pivoted, with a new focus on the invoice. Yet, a party has the opportunity in responsive pleadings and motions to direct the court to a preferred narrative. If Park West believed that the invoice with the arbitration clause was the basis for any alleged breach of contract, it had the opportunity to raise this argument in its responsive pleadings as an affirmative defense. It chose not to do so. Further, the language of the arbitration clause is broad: "Any disputes or claims of any kind including but not limited to the display, promotion, auction, purchase, sale or delivery of art, items, or appraisals shall be brought solely in non-binding arbitration and not in any court or to any jury." Considering the breadth of this clause, Park West could have reasonably raised

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[4] The order stated that: "Upon Motion of Park West for adjournment of trial and an oral motion for stay of proceedings by Third-Party Defendant, Frank Hunter . . . this matter . . . is hereby stayed until further order of this Court[.]"

[5] The countercomplaint was brought by Park West, not Scaglione or Shapiro.

[6] We also find meritless Park West's argument that because appellants stipulated to the filing of the amended answer, they somehow conceded that the affirmative defenses in that answer were true or precluded litigation.

Nor did the filing of the amended complaint revive the ability to raise the existence of the invoice's arbitration clause as a defense for the first time. The amended complaint did not alter the thrust or scope of plaintiffs' allegations in a manner that would allow for the assertion of the arbitration clause at such an advanced stage of litigation. There was ample opportunity to raise that defense in response to the original complaint and the Park West and Royal Caribbean defendants chose not to do so.

it in response to the first complaint, regardless of whether appellants focused on the certificates of authenticity. This conclusion is consistent with the purpose of arbitration, which is to avoid protracted litigation. *Cipriano v Cipriano*, 289 Mich App 361, 367; 808 NW2d 230 (2010).

Royal Caribbean likewise contends that it did not waive its right to assert arbitration because it did not have knowledge of the arbitration clause and did not act inconsistently with that right. Appellants, on the other hand, allege that because Royal Caribbean adopted and ratified the contract by receiving the benefits, Royal Caribbean is charged with knowledge of the terms and clauses and acted inconsistently with the right to arbitrate.

As noted above, appellants filed their initial complaint on December 23, 2008, and the invoice was mentioned in the complaint. On January 23, 2009, Park West filed a third-party complaint and attached an exhibit of Fine Art Registry's website, which included a copy of the invoice, although the legibility is dubious. However, Royal Caribbean at a minimum had notice that there was an invoice containing various terms and conditions. On March 2, 2009, in lieu of filing an answer to appellants' complaint, Royal Caribbean filed a motion to dismiss for failure to state a claim, but did not mention the arbitration agreement. On May 6, 2009, Royal Caribbean filed a reply brief to appellant's response to the motion to dismiss, and again did not raise any arguments relating to arbitration. The trial court then granted Royal Caribbean's motion to dismiss on May 15, 2009.

Another copy of the invoice, with the arbitration clause, was attached to appellants' motion to amend their complaint on June 5, 2009. Royal Caribbean filed a response to appellants' motion to amend the complaint on June 30, 2009, and while they opposed the motion, they again did not reference the arbitration clause. On December 11, 2009, this Court ordered that plaintiffs be permitted to amend their complaint.

On December 23, 2009, Park West filed a motion for summary disposition and for the first time made an explicit reference to the invoice and the arbitration clause. While there was a stay entered on June 7, 2010, Royal Caribbean was not a party to that order. Royal Caribbean did not file its motion for summary disposition until June 21, 2011. For the first time on that date it contended that the arbitration clause precluded the current litigation. Royal Caribbean then filed its answer to the amended complaint on October 21, 2011, and raised the defense of arbitration.

In light of these lengthy proceedings wherein Royal Caribbean did not assert any right to arbitration until almost two and a half years after the complaint was filed, there was sufficient evidence that Royal Caribbean knew of the arbitration clause and acted inconsistently with that knowledge. When the initial complaint was filed, it referenced the invoice. Further, a legible copy of the invoice with the arbitration clause was submitted on June 5, 2009, attached to appellant's motion to amend the complaint. While Royal Caribbean filed a response to this motion, they did not mention the arbitration clause. In fact, Royal Caribbean did not assert the arbitration clause as a defense until June 21, 2011. After Royal Caribbean had notice that there was an arbitration clause, they failed to assert that right promptly. As noted above, filing

responsive pleadings and motions without asserting a right to arbitration is inconsistent with that right. *Madison Dist Pub Sch*, 247 Mich App at 589.[7]

Moreover, prejudice would result if the Park West defendants and Royal Caribbean were allowed to invoke the arbitration clause at this late stage of the litigation. *Madison Dist Pub Sch*, 247 Mich App at 588. At the time of this appeal, the litigation has been going on for over four years and both parties have expended significant time and resources. If this Court "referred the matter to arbitration at this point after [appellants] expended resources to litigate the merits of this case in the trial court, and this this Court[,]" prejudice would result. *Salesin v State Farm Fire & Cas Co*, 229 Mich App 346, 356-357; 581 NW2d 781 (1998).

Although the burden to establish a waiver of arbitration is heavy, appellants have met that burden in this case. The trial court's ruling that the Park West defendants did not waive their right to arbitrate was in error. Because the trial court's ruling on the motion for reconsideration was based on that same erroneous finding as it applied to Royal Caribbean, it was outside the range of reasonable and principled outcomes. *Smith*, 481 Mich at 526.[8]

III. SECTION 12(B) OF THE CRUISE TICKET CONTRACT

A. Standard of Review

On cross-appeal, Royal Caribbean appeals from the trial court's initial order denying its motion for summary disposition. Royal Caribbean posits that Section 12(B) of the cruise ticket contract applied and precluded the instant litigation. "This Court reviews de novo a trial court's ruling on a motion for summary disposition." *Anzaldua*, 292 Mich App at 629. "Absent a disputed question of fact, the determination whether a cause of action is barred by a statute of limitation is a question of law that this Court reviews de novo." *Doe v Roman Catholic Archbishop of Archdiocese of Detroit*, 264 Mich App 632, 638; 692 NW2d 398 (2004).

B. Analysis

Royal Caribbean contends that the trial court erred in failing to apply Section 12(B) of the cruise ticket contract, which states:

> NO SUIT SHALL BE MAINTAINABLE AGAINST CARRIER, THE VESSEL OR THE TRANSPORT FOR ANY CLAIM, INCLUDING BUT NOT LIMITED TO, DELAY, DETENTION, PERSONAL INJURY, ILLNESS OR DEATH OF PASSENGER UNLESS WRITTEN NOTICE OF THE CLAIM, WITH FULL PARTICULARS, SHALL BE DELIVERED TO CARRIER AT ITS PRINCIPAL

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[7] While appellants also challenge Royal Caribbean's authority to invoke the arbitration provision, we need not address this issue as any right Royal Caribbean had was waived.

[8] We decline to address appellants' alternate arguments for why the trial court's ruling was in error. Because Park West did not prevail on this issue, it is not entitled to costs and attorney fees.

> OFFICE WITHIN SIX (6) MONTHS FROM THE DAY CAUSE OF ACTION OCCURRED; AND IN NO EVENT SHALL ANY SUCH SUIT FOR ANY CAUSE AGAINST CARRIER, THE VESSEL, OR THE TRANSPORT BE MAINTAINABLE UNLESS SUCH SUIT SHALL BE COMMENCED (FILED) WITHIN ONE (1) YEAR FROM THE DAY WHEN THE CAUSE OF ACTION OCCURRED AND PROCESS SERVED WITHIN THIRTY (30) DAYS AFTER FILING, NOTWITHSTANDING ANY PROVISION OF LAW OF ANY STATE OR COUNTRY TO THE CONTRARY.

Even assuming, *arguendo*, that the cruise ticket contract applied to the disputed transaction, Royal Caribbean's arguments are meritless.[9] In its initial ruling on Royal Caribbean's motion for summary disposition, the trial court found Section 12(B) to be unavailing. The trial court held that the statute of limitations set forth in MCL 600.5855, the fraudulent concealment statute, governed. MCL 600.5855 states:

> If a person who is or may be liable for any claim fraudulently conceals the existence of the claim or the identity of any person who is liable for the claim from the knowledge of the person entitled to sue on the claim, the action may be commenced at any time within 2 years after the person who is entitled to bring the action discovers, or should have discovered, the existence of the claim or the identity of the person who is liable for the claim, although the action would otherwise be barred by the period of limitations.

"Fraudulent concealment means employment of artifice, planned to prevent inquiry or escape investigation, and mislead or hinder acquirement of information disclosing a right of action. The acts relied on must be of an affirmative character and fraudulent." *Doe*, 264 Mich App at 642 (quotation marks and citation omitted). As this Court explained in *Prentis Family Found v Barbara Ann Karmanos Cancer Inst*, 266 Mich App 39, 48; 698 NW2d 900 (2005):

> Generally, for fraudulent concealment to postpone the running of a limitations period, the fraud must be manifested by an affirmative act or misrepresentation. The plaintiff must show that the defendant engaged in some arrangement or contrivance of an affirmative character designed to prevent subsequent discovery. If liability were discoverable from the outset, then MCL 600.5855 will not toll the applicable period of limitations. [Quotation marks and citation omitted.]

On appeal, appellants contend that evidence of fraudulent concealment was that Dobrota made false representations about the authenticity of the artwork, and Park West provided appellants with an untruthful certificate of authenticity and appraisal. "It is quite clear that only

[9] Royal Caribbean contends that Section 12(B) applied, appellants failed to meet the requirements set forth in that section, and MCL 600.5855 was inapplicable because there was no evidence of fraudulent concealment. Neither party has offered any challenge to the threshold finding that MCL 600.5855, if applicable, would supersede Section 12(B).

actions *after* the alleged injury could have concealed plaintiff[s'] causes of action against defendant[s] because actions taken before the alleged injury would not have been capable of concealing causes of action that did not yet exist. So, in focusing on the fraudulent-concealment claim, we focus on defendant[s'] alleged actions after the alleged abuse." *Doe*, 264 Mich App at 641 (emphasis added). Thus, any conduct plaintiffs contend occurred before the alleged injury cannot be the basis for their claims of fraudulent concealment.

A "plaintiff must plead in the complaint the acts or misrepresentations that comprised the fraudulent concealment." *Doe*, 264 Mich App at 643 (quotation marks and citation omitted). In the instant case, appellants alleged in their amended complaint that they received the invoice then wired the money to Royal Caribbean on March 17, 2008. Appellants asserted that after the purchase, they received an email from Dobrota on March 19, 2008, congratulating them on purchasing a masterpiece created by one of the world's most famous and influential artists. The artwork was then shipped, and appellants received a certificate of authenticity and an appraisal dated April 4, 2008. In light of this timeline, appellants have asserted sufficient factual allegations to raise a question of fact regarding whether there were material misrepresentations, including the certificate of authenticity and appraisal, *after* their cause of action arose.

Moreover, whether any of these apparently false representations constituted fraudulent concealment still remains a question of fact. As noted above, fraudulent concealment involves more than just a false statement. Park West and its agents had to engage in deceptive behavior that was "planned to prevent inquiry or escape investigation[.]" *Doe*, 264 Mich App at 642. In their amended complaint, plaintiffs contend that all defendants made material representations knowing they were false or reckless and with bad faith.[10] Further, while Royal Caribbean contends that appellants did not use reasonable diligence to discover this cause of action, they have cited no authority to justify a finding that reasonableness in this context would require appellants to either recognize the fraud simply by looking at the artwork or require them to obtain an independent expert at their own expense.

Because a "disputed question of fact" remains, this is not a question of law for this Court to decide. *Doe*, 264 Mich App at 638; see also *Int'l Union United Auto Workers of Am v Wood*, 337 Mich 8, 13; 59 NW2d 60 (1953) ("Questions of concealment and diligence are questions of fact.").

IV. SECTION 4 OF THE CRUISE TICKET CONTRACT

A. Standard of Review

Lastly, Royal Caribbean contends that the trial court initially erred in finding that Section 4 of the cruise ticket contract did not apply and that Royal Caribbean was not entitled to

[10] While Royal Caribbean claims that fraudulent concealment cannot be based on actions by a third-party, this Court has already ruled that appellants sufficiently pleaded an agency theory as it relates to Royal Caribbean. Docket No. 293502.

summary disposition. "This Court reviews de novo a trial court's ruling on a motion for summary disposition." *Anzaldua*, 292 Mich App at 629.

B. Analysis

Royal Caribbean contends that appellants failed to comply with Section 4 of the cruise ticket contract, which states:

> Any medical personnel, masseuse, hair stylist, manicurist or other service providers on board of the Vessel or on Transport are . . . independent contractors and not acting as agents or representatives of Carrier. Carrier assumes no liability whatsoever for any treatment, diagnosis, advice, examination or other services provided by such persons. Passenger shall pay for all medical care requested or required, whether abroad or ashore, including the cost of any emergency medical care or transportation incurred by Carrier.

The trial court found that this section applied to service providers, not vendors selling goods like artwork to passengers.

We agree with the trial court that Section 4 of the cruise ticket contract did not preclude the current litigation. It is axiomatic that the language of a contract is given its plain and ordinary meaning. *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 47; 664 NW2d 776 (2003). "An unambiguous contractual provision is reflective of the parties' intent as a matter of law, and if the language of the contract is unambiguous, we construe and enforce the contract as written." *Coates v Bastian Bros, Inc*, 276 Mich App 498, 503; 741 NW2d 539 (2007) (quotation marks, citation, and brackets omitted). Further, "contracts must be construed so as to give effect to every word or phrase as far as practicable." *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 467; 663 NW2d 447 (2003) (quotation marks and citation omitted).

Here, Section 4 specifically refers to medical personnel, masseuses, hair stylists, manicurists and other service providers. Royal Caribbean focuses on the term "other service providers" to suggest that Park West and its employees were providing a service in that they were dolling out advice and expertise, and were therefore included in Section 4. However, "under the doctrine of *noscitur a sociis*, a word or phrase is given meaning by its context or setting." *Bloomfield Estates Improvement Ass'n, Inc v City of Birmingham*, 479 Mich 206, 215; 737 NW2d 670 (2007) (quotation marks and citation omitted). In context of the other words in Section 4, none of the providers listed are similar to Park West and its employees. Hair stylists, medical personnel, manicurists, and masseuses all provide services for payment, which do not involve the transfer of goods. Park West and its employees, in contrast, existed solely to sell artwork in exchange for money. While Park West contends that its employees provided advice to passengers, even if that were true, that function is still intricately connected to the sale of goods, unlike the other service providers listed in Section 4.

This interpretation is bolstered by the remaining language in Section 4, which states that Royal Caribbean assumed no liability for "treatment, diagnosis, advice, examination or other services provided by such persons" and that passengers had to "pay for all medical care requested or required[.]" This language implicates medical and health providers, not vendors

selling art. See *Smith v Smith*, 292 Mich App 699, 702; 823 NW2d 114, 116 (2011) ("When a court interprets a contract, the entire contract must be read and construed as a whole."). Thus, Royal Caribbean has failed to establish that Section 4 of the cruise ticket contract applied and precluded the current litigation.

V. CONCLUSION

The Park West defendants and Royal Caribbean waived their right to arbitration and the trial court erred in finding otherwise. A question of fact remains regarding whether fraudulent concealment existed to toll the limitations period set forth in Section 12(B) of the cruise ticket contract. Lastly, Royal Caribbean has failed to establish that Section 4 of the cruise ticket contract applied and precluded the current litigation.

We have reviewed all other arguments raised by the parties in the briefs and found them to be without merit. We reverse and remand for proceedings consistent with this opinion.

/s/ William B. Murphy
/s/ Jane E. Markey
/s/ Michael J. Riordan