No. 21-CV-370

IN THE

District of Columbia Court of Appeals

WALGREEN CO.,

Respondent-Appellant,

v.

HUMANA HEALTH PLAN, INC., HUMANA INSURANCE COMPANY, AND HUMANA PHARMACY SOLUTIONS, INC.,

Movants-Appellees.

ON APPEAL FROM THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA, CIVIL DIVISION, CASE NO. 2021 CA 001581 B
THE HONORABLE HIRAM E. PUIG-LUGO, JUDGE PRESIDING

REPLY BRIEF OF APPELLANT

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SUMMARY OF ARGUMENT

Arbitration is a matter of contract. A party cannot be compelled to arbitrate any dispute with another party it has not agreed to submit to arbitration. Accordingly, arbitrators have authority only to resolve disputes to the extent that parties have specifically granted it. Therefore, before it can compel arbitration a court first must find that the relevant parties have an enforceable agreement to arbitrate. Because it is undisputed that Walgreen Co. ("Walgreens") and its former law firm Crowell & Moring LLP ("Crowell & Moring") never agreed to arbitrate any dispute, the Superior Court's Order effectively requiring Walgreens to arbitrate its claim for preliminary injunctive relief against Crowell & Moring ran directly contrary to the law of the District of Columbia and was clear error.

Alternatively, Crowell & Moring never requested, let alone secured, the informed consent of Walgreens to arbitrate professional ethics claims, as required by the District of Columbia Rules of Professional Conduct. That undisputed fact serves as an independent ground for reversing the Order of the Superior Court.

Humana Health Plan, Inc., Humana Insurance Company, and Humana Pharmacy Solutions, Inc. (collectively, "Humana") cannot and do not claim that there is an agreement to arbitrate between Walgreens and Crowell & Moring. Instead, Humana tries to shoehorn Walgreens' independent dispute with Crowell & Moring into a separate agreement between Walgreens and Humana, which does

contain an arbitration provision and to which Crowell & Moring is not even a party (the "Walgreens-Humana Agreement"). Allowing Humana to do so would controvert basic principles of contract and arbitration law. In an attempt to circumvent black-letter law, Humana makes a series of arguments bereft of support in this Court's arbitration jurisprudence.

Humana argues that the absence of an agreement to arbitrate between Walgreens and Crowell & Moring is irrelevant. Not so. This Court has made very clear that the question of whether parties have agreed to arbitrate is the critical threshold issue in determining whether they can be compelled to do so.

Humana also contends that it is a relevant party to the professional ethics dispute between Walgreens and Crowell & Moring, because the granting of relief to Walgreens could impact Humana's ability to retain its desired counsel, and that this possibility empowers Humana, by means of its agreement with Walgreens, to compel Walgreens to arbitrate its dispute with Crowell & Moring. Even if that is true, any derivative effect that resolution of the dispute between Walgreens and Crowell & Moring might have on Humana does not allow Humana to avoid the foundational legal principle that only parties that have agreed to arbitrate may be compelled to do so.

Humana also relies heavily on the fact that it and Walgreens separately agreed between themselves to submit to arbitration questions of arbitrability. That reliance

is misplaced. Walgreens and Humana so agreed in the Walgreens-Humana Agreement, to which Crowell & Moring is not a party. By doing so, Walgreens did not commit itself to arbitrate arbitrability disputes involving non-parties such as Crowell & Moring.

Finally, Humana simply ignores the fact that Walgreens never provided its informed consent to arbitrate disputes with Crowell & Moring, as required by the Rules of Professional Conduct. Instead, Humana attacks a strawman, arguing that Walgreens is asking this Court to impose a blanket rule barring arbitrators from deciding disqualification questions. Walgreens made no such argument. It simply asked the Superior Court to apply the legal ethics rules protecting clients from being compelled to arbitrate disputes as they are written, which would permit arbitration of disqualification questions only in those instances where, unlike here, the client provided its informed consent.

The Order of the Superior Court should be reversed.

ARGUMENT

I. Parties Can Only Be Compelled to Arbitrate If They Have Agreed to Arbitrate With Each Other

The law of the District of Columbia is clear: the threshold question in determining whether parties can be compelled to arbitrate is whether they have contracted to do so. *See, e.g.*, *Bank of Am., N.A. v. District of Columbia*, 80 A.3d 650, 663 (D.C. 2013) (explaining that arbitration "is a way to resolve those

disputes—but only those disputes—that the parties have agreed to submit to arbitration") (internal quotation marks and citation omitted). That is because, as this Court recently reiterated, "arbitration is a matter of contract." *Univ. of the D.C. Faculty Ass'n v. Bd. of Trs. of the Univ. of the D.C.*, --- A.3d ---, No. 19-CV-326, 2021 D.C. App. LEXIS 242, at *10 (D.C. Aug. 26, 2021) (citing *Jahanbein v. Ndidi Condo. Unit Owners Ass'n*, 85 A.3d 824, 827 (D.C. 2014)). Barring common-law exceptions inapplicable here (and which Humana has not raised), the absence of an agreement between parties to arbitrate prevents them from being compelled to do so. *See id.* at *9 ("Before granting a motion to compel arbitration, a court must find that . . . the parties have an enforceable agreement to arbitrate . . . .") (citing *Jahanbein*, 85 A.3d at 827). Here, the parties have no agreement to arbitrate.

Federal jurisprudence is consistent with the law of the District of Columbia. *See EEOC v. Waffle House, Inc.*, 534 U.S. 279, 294 (2002) ("[T]he [Federal Arbitration Act ('FAA')] is 'at bottom a policy guaranteeing the enforcement of private contractual arrangements.'") (quoting *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 625 (1985)). Federal jurisprudence also requires that "before referring a dispute to an arbitrator, the court determines whether a valid arbitration agreement exists." *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524, 530 (2019) (citing 9 U.S.C. § 2). And the FAA "does not require parties to arbitrate when they have not agreed to do so." *Waffle House*, 534 U.S. at

293 (quoting *Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Junior Univ.*, 489 U.S. 468, 478 (1989)).

A. The Superior Court Failed to Analyze the Dispositive Fact That Walgreens and Crowell & Moring Never Entered Into an Arbitration Agreement

As Walgreens explained in its opening brief (at 3–4), it filed a motion for a preliminary injunction in the Superior Court seeking an order prohibiting Crowell & Moring from continuing to breach its ethical and fiduciary duties to Walgreens. JA 115–17. Crowell & Moring represents Humana in an ongoing arbitration[1] involving the same legal issues on which Crowell & Moring had previously advised Walgreens.[2] JA 135–36, 140–41, 176, 253–55. Notably, the preliminary injunctive relief Walgreens sought would have a broader effect than only prohibiting Crowell & Moring from representing Humana in the arbitration; it would, for example, also bar Crowell & Moring from acting adversely to Walgreens in any other proceeding

[1] Inexplicably, Humana asserts in its brief that the arbitration is taking place in Kentucky. Humana Br. at 1. In fact, the seat of arbitration (by mutual agreement of Walgreens and Humana) is the District of Columbia.

[2] Crowell & Moring initially denied Walgreens had been a client of the firm, but eventually conceded that point. JA 180, 249, 253–55. Crowell & Moring also refused, at first, to turn over to Walgreens its client file, JA 180, prompting Walgreens to bring suit against Crowell & Moring to access its file, JA 85–92. Walgreens later added additional claims against Crowell & Moring, including breach of fiduciary duty. JA 93–113.

involving the same issues on which Crowell & Moring previously advised Walgreens. JA 117.

Humana, in turn, filed a new action in the Superior Court and moved to compel Walgreens to arbitrate its request for a preliminary injunction against Crowell & Moring. JA 5, 115–17. The Superior Court granted Humana's motion to compel arbitration, JA 41–46, and stayed Walgreens' motion for preliminary injunction, JA 317.

The Superior Court's Order, which effectively compels Walgreens to arbitrate its motion for a preliminary injunction against Crowell & Moring, departs from the aforementioned precedent. *See* JA 41–46. That precedent makes clear that the Superior Court's analysis should have begun and ended with a simple, undisputed fact: Walgreens and Crowell & Moring never agreed to arbitrate any dispute. As a matter of black letter law, it follows that Walgreens cannot be compelled to arbitrate its professional ethics claims against its former counsel.

To avoid this straightforward result, Humana attempts both to reframe the dispute between Walgreens and Crowell & Moring as if it is a dispute between Walgreens and Humana (and therefore encompassed by the Walgreens-Humana Agreement), and to downplay the dispositive fact that Walgreens and Crowell & Moring are not parties to an arbitration agreement. Humana does so through a series of unavailing arguments.

Humana's argument that "the fact that [Walgreens] has no arbitration agreement with Crowell [& Moring] . . . is irrelevant to whether Walgreens must arbitrate with Humana," Humana Br. at 10, should be dismissed out of hand. Far from being "irrelevant," binding precedent instructs that whether Walgreens and Crowell & Moring are parties to an arbitration agreement is the critical threshold question that must be answered in the affirmative before any dispute between them can be compelled into arbitration. *See, e.g.*, *Univ. of the D.C. Faculty Ass'n*, 2021 D.C. App. LEXIS 242, at *10 ("[A]rbitration is a matter of contract, and therefore a court must not require a party to submit to arbitrate any dispute that it has not agreed to do so.") (citing *Jahanbein*, 85 A.3d at 827). Conversely, a negative answer to that threshold question—which all parties agree to be the answer required here—ends the analysis. *See id.* In other words, Humana's concession that Walgreens and Crowell & Moring are not parties to an arbitration agreement is all this Court needs to reverse the Superior Court's Order. *See, e.g.*, *Jahanbein,* 85 A.3d at 830–31 (reversing an order granting a motion to compel arbitration because the moving party needed but failed to show that he and the party being compelled to arbitrate were parties to an arbitration agreement).

Humana's argument that it is a "relevant" party to the dispute between Walgreens and Crowell & Moring fares no better. *See* Humana Br. at 10–11. As Walgreens explained in its opening brief (at 8–9), Humana's argument is foreclosed

by this Court's decision in *Jahanbein*. There, the owner of a condominium unit sued his condominium association for breach of fiduciary duty and another condominium unit owner for negligence after water pipes in the second unit owner's apartment burst and damaged the first unit owner's apartment. *Jahanbein*, 85 A.3d at 826. The condominium association and the second unit owner moved to compel arbitration, claiming that the association's bylaws created an enforceable agreement requiring the first condominium unit owner to arbitrate all of his claims. *Id.* Rejecting that argument, this Court held that the first unit owner could not be compelled to arbitrate his claim against the second unit owner because "[n]othing in the Bylaws assures us that the unit owners are direct parties to each other's agreements with the Condo Association." *Id.* at 831. This Court found that the bylaws created an arbitration agreement between the first condominium unit owner and the condominium association. *Id.* at 828. Importantly, however, the fact that an arbitration agreement between those two parties contained language that arguably covered the claims asserted by the first unit owner against the second unit owner did not mean that the first unit owner could be forced to arbitrate those claims. *See id.* at 830–31. The Court found that the fact that the first unit owner and the condominium association were parties to an arbitration agreement was of no moment to the key question of whether the first unit owner could be compelled to arbitrate his claims against the second unit owner. *See id.* That was so, the Court held, because "[b]efore

compelling arbitration under District of Columbia law, a court must find that the parties have an enforceable agreement to arbitrate and that 'the underlying dispute between the parties falls within the scope of the agreement.'" *Id.* at 827 (quoting *Meshel v. Ohev Sholom Talmud Torah*, 869 A.2d 343, 354 (D.C. 2005)).

Moreover, the Court rejected the second unit owner's argument that it and the first unit owner had agreed to arbitrate by virtue of each having agreed to be bound by the condominium's bylaws and the arbitration clause therein. The Court reasoned that "[n]othing in the Bylaws assures us that the unit owners are direct parties to each other's agreements with the Condo Association." *Id.* at 831. Likewise, Humana offers no credible argument that Walgreens and Crowell & Moring are "direct parties" to the separate Walgreens-Humana Agreement.

Accordingly, "relevance" to a dispute is not a substitute for an enforceable arbitration agreement. In effectively ordering Walgreens to arbitrate its request for a preliminary injunction against Crowell & Moring in the absence of an arbitration agreement between Walgreens and Crowell & Moring, the Superior Court's Order ran directly contrary to this Court's ruling in *Jahanbein*.

Unsurprisingly, Humana provides no authority to support the conclusion that its self-described "relevance" to the professional ethics dispute between Walgreens and Crowell & Moring somehow allows Humana to press Walgreens and Crowell & Moring into arbitration pursuant to an arbitration agreement between Walgreens

and Humana. That is because, as *Jahanbein* made clear, the mere fact that Crowell & Moring continues to represent Humana was no basis for the Superior Court to ignore the threshold dispositive issue of whether Walgreens and Crowell & Moring agreed to arbitrate.

Similarly, it is irrelevant that Humana (and not Crowell & Moring) sought to compel arbitration. *See* Humana Br. at 10–11. The core dispute remains between Walgreens and Crowell & Moring—not between Walgreens and Humana. *See Dean Witter Reynolds, Inc. v. Clements, O'Neill, Pierce & Nickens, L.L.P.*, No. H-99-1882, 2000 U.S. Dist. LEXIS 22852, at *6, *33–34 (S.D. Tex. Sep. 8, 2000) (denying a similar motion to compel arbitration and correctly framing "the present disqualification dispute" as "between [the former client] and [the former client's law firm]"). Thus, the relevant question is not whether Walgreens and Humana have an arbitration agreement; it is whether Walgreens and Crowell & Moring have an arbitration agreement. With respect to *that* question, no one disputes that the answer is negative. *Jahanbein* makes clear that a court cannot compel arbitration of a dispute between two parties who are not also parties to an arbitration agreement. *See Jahanbein*, 85 A.3d at 827 ("Before compelling arbitration under District of Columbia law, a court must find that the parties have an enforceable agreement to arbitrate . . . .") (citation omitted). That should be the end of the inquiry.

Humana also observes that in *Jahanbein* a non-party to an arbitration agreement attempted to compel arbitration, whereas here Humana, which is a party to an arbitration agreement, sought to compel arbitration. Humana Br. at 16–17. That is a red herring. The fact that Humana is a party to an arbitration agreement with Walgreens does not change the dispositive effect of the undisputed fact that Walgreens and Crowell & Moring never agreed to arbitrate any dispute. Moreover, it does not allow Humana to subvert the essentially consensual nature of arbitration. *See Waffle House*, 534 U.S. at 294 ("Arbitration . . . is a matter of consent, not coercion.") (quoting *Volt*, 489 U.S. at 479).

Humana's assertion that the derivative impact on it of Walgreens' requested relief against Crowell & Moring is "irrefutable evidence that the dispute at least *may* fall within" the Walgreens-Humana Agreement, Humana Br. at 11, also is flatly contrary to arbitration and contract law. Walgreens cannot be forced into arbitration by the mere function of collateral effects of the relief it seeks. If Humana's position were correct, non-parties to arbitration agreements would routinely be pulled into arbitration, converting arbitration from a voluntary contractual matter into a compulsory process. *See Univ. of the D.C. Faculty Ass'n*, 2021 D.C. App. LEXIS 242, at *10 ("[A]rbitration is a matter of contract, and therefore a court must not require a party to submit to arbitrate any dispute that it has not agreed to do so.") (citing *Jahanbein*, 85 A.3d at 827).

Further, "[i]t is a fundamental and unobjectionable principle that a contract cannot bind a non-party—*i.e.*, someone who has not assented to be bound to its terms." *Ebling v. DOJ*, 796 F. Supp. 2d 52, 63 (D.D.C. 2011) (citing *Waffle House*, 534 U.S. at 294). Here, Walgreens and Crowell & Moring cannot be bound by the arbitration agreement between Walgreens and Humana merely because Humana believes it may be disadvantaged by judicial resolution of Walgreens' professional ethics claims against Crowell & Moring.[3]

B. The Superior Court Misconstrued the Question Before It as One of Arbitrability

District of Columbia law provides that it is for courts, and not arbitrators, to decide if parties have agreed to arbitrate. *Wash. Teachers' Union v. D.C. Pub. Schs.*, 77 A.3d 441, 446 (D.C. 2013) (citation omitted). Arbitrators derive their authority solely from the consent of the parties. Thus, allowing arbitrators to make arbitrability determinations before ascertaining whether the parties have, in fact, delegated any authority to arbitrators in the first instance would put the cart before the horse. *See Univ. of the D.C. Faculty Ass'n*, 2021 D.C. App. LEXIS 242, at *10.

As Walgreens explained in its opening brief (at 17), the Superior Court erred in basing its Order on the question of arbitrability without first addressing the

[3] At least one logical ramification of accepting Humana's argument would be that the Superior Court would also be without authority to grant final, equitable relief for Walgreens against Crowell & Moring if that relief has any collateral impact on Humana.

absence of any arbitration agreement between Walgreens and Crowell & Moring. In an attempt to sidestep this reality, Humana asserts that the Walgreens-Humana Agreement commits arbitrability determinations to the arbitrator. *See* Humana Br. at 8. But Humana then overreaches, effectively arguing that the Walgreens-Humana Agreement requires that the arbitrability of Walgreens' claim for preliminary injunctive relief against Crowell & Moring be resolved by an arbitrator. Citing *Jahanbein*, Humana argues that the Superior Court was required to submit the disqualification question to arbitration if "the arbitration agreement was 'susceptible of an interpretation' that covered the dispute between the parties." Humana Br. at 18.

This Court should reject Humana's effort to radically stretch the reach of the Walgreens-Humana Agreement so that it applies to a non-party to that agreement (Crowell & Moring). By entering into the Walgreens-Humana Agreement, Walgreens did not consent to commit to arbitration all arbitrability disputes Walgreens had with third parties. Rather, Walgreens agreed to submit to arbitration questions about the arbitrability of disputes between it and Humana. And *Jahanbein* does nothing to help Humana, given that *Jahanbein* provides that a presumption in favor of arbitration "attaches only *after* the trial court has determined that a valid agreement to arbitrate exists." *Jahanbein*, 85 A.3d at 831 (citations omitted).

Accepting Humana's position would mean that non-parties to an arbitration agreement that did not consent to arbitrate arbitrability questions would be subject to arbitrability decisions made by arbitrators to whom they did not grant the authority to make such decisions. Sensibly, the law of the District of Columbia does not allow what Humana seeks. *See Univ. of the D.C. Faculty Ass'n*, 2021 D.C. App. LEXIS 242, at *10 ("Because 'the arbitrator's authority derives from the consent of the parties,' it is the court's responsibility to settle 'the basic contractual question' of 'whether the parties are bound by a given arbitration clause.'") (quoting *Hossain v. JMU Props., LLC*, 147 A.3d 816, 821 (D.C. 2016)); *see also Wash. Teachers' Union*, 77 A.3d at 446.

Humana also mistakenly relies on the Supreme Court's decision in *Henry Schein* for the proposition that the Walgreens-Humana Agreement commits to arbitration determination of the arbitrability of the dispute between Walgreens and Crowell & Moring. In fact, *Henry Schein* supports Walgreens. In holding that a court cannot override an arbitration agreement to determine arbitrability where the agreement reserves that determination for the arbitrator, the Supreme Court cautioned: "To be sure, before referring a dispute to an arbitrator, the court determines whether a valid arbitration agreement exists." *Henry Schein*, 139 S. Ct. at 529–30 (citation omitted). Because Walgreens and Crowell & Moring never

agreed to arbitrate their dispute, the question of who decides whether their dispute is arbitrable is irrelevant.

Humana suggests that this Court should bypass the first step of the arbitration analysis—which asks if the parties to a dispute are party to an enforceable arbitration agreement—and skip, illogically, to the arbitrability determination of whether there is an interpretation of the Walgreens-Humana Agreement that allows a wholly separate dispute to fall within its bounds. Neither the decisions of this Court nor of the Supreme Court allow Humana to warp established arbitration law in this way. The professional ethics dispute here is solely between Walgreens and its former counsel, Crowell & Moring. Because Walgreens and Crowell & Moring never entered into an arbitration agreement, the Court does not reach the step that Humana incorrectly asserts is the crux of the analysis in this case.

C. Humana's Remaining Arguments Are Unavailing

Humana also suggests that the Order was proper because Walgreens remains free to pursue all of its claims in the Superior Court except its request for an order enjoining Crowell & Moring from continuing to breach its ethical and fiduciary duties to Walgreens.[4] Humana Br. at 13. However, whether Walgreens can pursue

[4] As described above, Walgreens sought in the Superior Court relief against Crowell & Moring beyond its request to enjoin the firm from representing Humana in the Walgreens-Humana arbitration. That additional requested relief included permanently enjoining Crowell & Moring from continuing to breach its fiduciary duty of loyalty to Walgreens. JA 112. If the Superior Court granted that permanent

some of its claims against Crowell & Moring in the Superior Court is irrelevant. It certainly does not excuse Humana from establishing—as a threshold matter, before seeking to compel arbitration—that Walgreens and Crowell & Moring agreed to arbitrate the professional ethics dispute between them. At risk of belaboring the point, Humana has not established, and cannot establish, any such thing.

Humana also argues that the arbitration between it and Walgreens is the proper forum in which to adjudicate Walgreens' request to enjoin Crowell & Moring from continuing to breach its fiduciary duties to its former client. *See* Humana Br. at 15–16. This presumes that Walgreens and Crowell & Moring are subject to an applicable agreement to arbitrate. Because they are not, there is no cause for an arbitrator to have any say over Walgreens' professional ethics claims.[5]

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injunction, Humana would be affected, so long as Crowell & Moring continues to represent Humana adversely to Walgreens on the same issues on which it previously advised Walgreens. That Humana chose to compel into arbitration only some of Walgreens' requested relief that would indirectly affect Humana exposes the fallacy of its notion that the potential impact of requested relief can move that relief within the ambit of an otherwise irrelevant arbitration provision.

[5] Humana repeatedly describes Walgreens' suit as seeking to "disqualify" Crowell & Moring. *See, e.g.*, Humana Br. at 6–7, 10, 16. But Walgreens did not move for disqualification; it sought an injunction against Crowell & Moring that would prohibit Crowell & Moring from continuing to violate its ethical and fiduciary obligations to Walgreens. JA 117. Discontinuing its representation of Humana in the arbitration would have been only one way in which Crowell & Moring would need to comply with Walgreens' requested injunction. The relief was not limited to Crowell & Moring's conduct in the arbitration. *See* JA 117. Accordingly, Walgreens' motion to enjoin Crowell & Moring from continuing to breach its fiduciary duty to Walgreens was properly before the Superior Court.

II. Alternatively, Walgreens Cannot Be Compelled to Arbitrate Its Motion for a Preliminary Injunction Against Crowell & Moring Because Walgreens Did Not Give Its Informed Consent

As Walgreens explained in its opening brief (at 5, 18–19), Rule 1.8 of the District of Columbia Rules of Professional Conduct protects clients by prohibiting a lawyer from entering into an agreement with a client to arbitrate professional liability claims unless "the client is fully informed of the scope and effect of the agreement." D.C. R. Prof'l Conduct 1.8 cmt. [13]. It is uncontested that Crowell & Moring did not obtain Walgreens' informed consent to arbitrate any such claims.

Humana ignores this point entirely. Instead, Humana creates a strawman argument, dedicating more than 15 pages of briefing to attacking an argument Walgreens never made. *See* Humana Br. at 30–46. Humana contends that Walgreens seeks "to impose a blanket rule that arbitrators can *never* decide issues of attorney disqualification." *Humana Br.* at 7. Walgreens made no such argument. Rather, Walgreens cited persuasive authority consistent with the public policy of protecting clients that animates the District of Columbia Rules of Professional Conduct—rules Humana never bothers to acknowledge, much less address. *See* Walgreens Br. at 19–24.

Far from suggesting that this Court should radically restrict the ability of arbitrators to disqualify attorneys, Walgreens' argument here—that the Court should apply the plain language of the relevant Rule of Professional Conduct to this

dispute—inherently recognizes that arbitrators *can* address professional ethics claims, but only in those instances where the client has given its informed consent. Because that did not happen here, Walgreens cannot be compelled to arbitrate any aspect of its dispute with Crowell & Moring.

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CONCLUSION

For the foregoing reasons and those contained in Walgreens' opening brief, the Court should reverse the Order of the Superior Court.

Dated: October 13, 2021

Respectfully submitted,

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I hereby certify that on October 13, 2021, I electronically filed the foregoing Reply Brief of Appellant and, with the consent of counsel, served a copy of same via email upon the following:

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A courtesy copy of the Reply Brief of Appellant was also sent this day via email to the following counsel for Crowell & Moring LLP in *Walgreen Co. v. Crowell & Moring LLP*, No. 2021 CA 000861 B (D.C. Super. Ct.):

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Court of Appeals

REDACTION CERTIFICATE DISCLOSURE FORM

Pursuant to Administrative Order No. M-274-21 (filed June 17, 2021), this certificate must be filed in conjunction with all briefs submitted in all cases designated with a "CV" docketing number to include Civil I, Collections, Contracts, General Civil, Landlord and Tenant, Liens, Malpractice, Merit Personnel, Other Civil, Property, Real Property, Torts and Vehicle Cases.

I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21 and Super. Ct. Civ. R. 5.2, and removed the following information from my brief:

1. All information listed in Super. Ct. Civ. R. 5.2(a); including:

   - An individual's social-security number
   - Taxpayer-identification number
   - Driver's license or non-driver's' license identification card number
   - Birth date
   - The name of an individual known to be a minor
   - Financial account numbers, except that a party or nonparty making the filing may include the following:

     (1) the acronym "SS#" where the individual's social-security number would have been included;
     (2) the acronym "TID#" where the individual's taxpayer-identification number would have been included;
     (3) the acronym "DL#" or "NDL#" where the individual's driver's license or non-driver's license identification card number would have been included;
     (4) the year of the individual's birth;
     (5) the minor's initials; and
     (6) the last four digits of the financial-account number.

2. Any information revealing the identity of an individual receiving mental-health services.

3. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.

4. Information about protection orders, restraining orders, and injunctions that "would be likely to publicly reveal the identity or location of the protected party," 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266(5) (defining "protection order" to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).

5. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.

6. Any other information required by law to be kept confidential or protected from public disclosure.

/s/ Frederick Robinson
Signature

21-cv-370
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