

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

BENJAMIN K. RAPHAEL and)	
MARY CATHERINE RAPHAEL,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 19273-VCP
)	
DEBORRAH A. WILSON,)	
)	
Defendant.)	

MEMORANDUM OPINION

Submitted: May 1, 2008
Decided: July 10, 2008

Benjamin K. Raphael, Mary Catherine Raphael, Newark, Delaware; *Pro Se Plaintiffs*

Deborrah A. Wilson, Newark, Delaware; *Pro Se Defendant*

PARSONS, Vice Chancellor.

This action arises out of a dispute in which Plaintiffs, Benjamin K. Raphael and Mary Catherine Raphael, sought to acquire by adverse possession a triangular-shaped piece of land located on Defendant, Deborah A. Wilson's, property. The matter is before me on the Raphaels' motion to declare void and vacate an August 16, 2004 arbitrator's order rendered in favor of Wilson.¹ In support of their motion, the Raphaels contend that (1) they received inadequate counsel, (2) the arbitrator, Donald C. Taylor, Esquire, died shortly after arbitration, and (3) Wilson has acted in complete opposition to the arbitrator's recommendations. Wilson filed a countermotion requesting the Court to dismiss the Raphaels' motion and grant Wilson mandatory injunctive relief in furtherance of the arbitrator's order.

For the reasons stated in this memorandum opinion, I deny the Raphaels' motion because it is time-barred, and even if the motion was timely filed, the Raphaels have failed to demonstrate any basis for vacating the arbitrator's order. In denying the Raphaels' motion, I also formally confirm the August 16, 2004 arbitrator's order in favor of Wilson, but deny and dismiss, without prejudice, Wilson's countermotion for injunctive relief as premature.

¹ As part of the resolution of this litigation in the Court of Chancery, the parties entered into a binding arbitration agreement, which this Court approved on June 25, 2004. The disputed arbitrator's order was rendered pursuant to that agreement.

I. BACKGROUND

A. Nature of the Dispute

The Raphaels jointly own real property known as 727 Art Lane, Lot 12, Newark, Delaware (“Lot 12”).² Wilson is the owner of real property known as 731 Art Lane, Lot 13, Newark, Delaware (“Lot 13”). Lots 12 and 13 are adjacent to each other.

The property in dispute is a triangular-shaped piece of land situated at the junction of Lots 12 and 13, on which a portion of the Raphaels’ driveway is located. The disputed sliver of land has an area of approximately 18 square feet.

B. Procedural History

The Raphaels commenced this action on November 21, 2001 by filing a complaint seeking title to the triangular-shaped piece of land in dispute based on the law of adverse possession.

Wilson filed her answer and a counterclaim on December 22, 2001. Wilson also brought a third party claim for any loss or damage to her arising out of this action against Howard L. Robertson, Inc. (“Robertson”), a surveyor, based on a 1986 survey Robertson performed for Wilson.³

Robertson filed a Motion for Summary Judgment on September 11, 2003, asserting it was not liable to Wilson because the survey explicitly stated that it did not certify the location of any driveways unless specifically shown and located. On

² The facts recited in this section are not subject to any genuine dispute.

³ Def.’s Third Party Compl. ¶ 12.

December 22, 2003, the Court denied Robertson's motion as premature because the Raphaels and Wilson were attempting to settle, and concurrently denied a pending motion by Wilson to dismiss.

On April 5, 2004, Wilson filed a Motion for Summary Judgment, contending that there were no genuine issues of material fact, and the Raphaels would be unable, as a matter of law, to prove adverse possession. In the same month, Robertson also moved for summary judgment. In June 2004, while the summary judgment motions were pending, the parties entered into a binding arbitration agreement. Under the agreement, the parties agreed to proceed to arbitration before Donald C. Taylor, Esquire, and to dismiss the claim against Robertson.

Taylor issued an arbitrator's order on August 16, 2004 in favor of Wilson (the "Arbitrator's Order"). Taylor found that the Raphaels had not proven their claim of adverse possession by even a preponderance of the evidence. In a transmittal letter to counsel of the same date, Taylor explained that the Raphaels had failed to show clear evidence of their hostile intent and notorious and adverse use. Pursuant to the arbitration agreement, the Arbitrator's Order was filed with this Court on September 13, 2004. The Raphaels did not seek to vacate or modify the Arbitrator's Order at any time before they filed the pending motion on or about July 30, 2007.

The Raphaels' motion, filed three years after the filing of the Arbitrator's Order, seeks to vacate that order and have it declared void.⁴ Wilson responded in a letter dated August 15, 2007, urging this Court to deny the Raphaels' motion and grant her injunctive relief.

In the fall of 2007, I referred this matter to a Master in Chancery for disposition. Regrettably, due to an internal administrative error, the Court lost track of the Raphaels' motion, and the problem was not discovered until May 2008. To avoid any further holdup, the Court has vacated the referral and proceeded to consider the Raphaels' motion directly.

C. Parties' Contentions

The Raphaels contend the Arbitrator's Order should be declared void for three reasons: (1) they received inadequate counsel from their then attorney, Richard S. McCann, who was subsequently disbarred; (2) the arbitrator died shortly after the arbitration; and (3) Wilson has acted in complete opposition to the arbitrator's recommendations. The Raphaels also contend that although the arbitrator ruled in favor

⁴ On August 1, 2007, the Court informed the Raphaels that it would treat their July 30, 2007 letter as a motion for relief from judgment under Court of Chancery Rule 60(b). On further reflection, it appears that technically, because neither party applied to have the Arbitrator's Order confirmed, there is no final judgment from which the Raphaels can seek relief. Therefore, the Court will treat the Raphaels' motion as an application to vacate an arbitration award under 10 *Del. C.* § 5714. Furthermore, I note that, as discussed *infra* note 51, I would reach the same result even if the Raphaels' motion to vacate was treated as a motion under Rule 60(b).

of Wilson, he did not order the Raphaels to “correct the encroachment.”⁵ Thus, the Raphaels suggest that the Arbitrator’s Order did not require them to remove the encroachment.

According to the Raphaels, who are proceeding *pro se*, McCann provided them with inadequate counsel because he relied on the “rarely used” law of adverse possession as the basis for their claim to the property in dispute, and was later disbarred on November 1, 2005.⁶

The Raphaels also assert that Wilson has ignored the arbitrator’s recommendations. While the Raphaels admit Wilson is not required to abide by those recommendations, they allege that Wilson’s subsequent behavior demonstrates her “penchant for vindictiveness.”⁷ According to the Raphaels, Wilson repeatedly has complained to the Newark police about them. In addition, the Raphaels allege that Wilson installed several physical obstructions along the property line near their driveway, which have caused, or have the potential to cause, damage to their and others’ vehicles.

Wilson calls for denial of the Raphaels’ motion because the parties entered the binding arbitration agreement knowingly and voluntarily, and the Raphaels have unreasonably delayed by waiting nearly three years before challenging the Arbitrator’s Order. Wilson also asks the Court to order the Raphaels to remove the driveway

⁵ Pls.’ Letter dated Aug. 23, 2007 at 2.

⁶ *In re McCann*, 894 A.2d 1087 (Del. 2005).

⁷ Pls.’ Letter dated Aug. 23, 2007 at 3.

encroachment by a specific date, and authorize her to have the encroachment removed at the Raphaels' expense if they do not comply.

As to the Raphaels' specific complaints about the Arbitrator's Order, Wilson disputes that the Raphaels received inadequate counsel from McCann, and asserts that, in any event, their remedy would be through a malpractice action against McCann, not a challenge to the validity of the Arbitrator's Order. Wilson also contests the Raphaels' criticism of Taylor's conduct or abilities as an arbitrator as merely conclusory and not supported by any specific facts. Finally, Wilson asserts that any recommendations the arbitrator made were off the record, and not incorporated in his order; hence, they have no legal effect.

Additionally, Wilson alleges that after the Arbitrator's Order was issued, the Raphaels informed her that they would not remove the encroachment and did not believe Wilson could force them to do so. Wilson further accuses the Raphaels of repeatedly removing or damaging physical constructs she installed on her property.

II. ANALYSIS

A. Standard of Review

In Delaware, there is strong statutory and public policy support for the resolution of disputes through arbitration.⁸ Under the Delaware Uniform Arbitration Act (the "Arbitration Act"), an application to vacate an arbitration award may be granted only in

⁸ *Weir v. Manerchia*, 1997 WL 74651, at *1 (Del. Ch. Jan. 28, 1997).

five narrow circumstances.⁹ The party attempting to vacate the award bears the burden of showing that one of the required statutory grounds exists.¹⁰

The Arbitration Act requires that an application to vacate an arbitration award be made within ninety days after delivery of a copy of the award to the applicant.¹¹ The only exception is if the award was predicated upon corruption, fraud, or other undue means, in which case the application must be made within ninety days after such grounds are known or should have been known.¹²

In considering an application to vacate, if none of the five statutory grounds for vacating the order exists, and there is no pending motion to modify or correct the award, the court must confirm the award.¹³

B. The Raphaels' Motion

1. The motion is time-barred

As a threshold matter, I address Wilson's argument that the Raphaels' request for relief from the Arbitrator's Order is time-barred. Section 5714 required the Raphaels to file any application to vacate the Arbitrator's Order within ninety days after they received it. The Raphaels do not deny they received a copy of the Arbitrator's Order shortly after

⁹ 10 *Del. C.* § 5714(a). The Arbitrator's Order constitutes an arbitration award within the meaning of Section 5714.

¹⁰ *Weir*, 1997 WL 74651, at *2.

¹¹ 10 *Del. C.* § 5714(b).

¹² *Id.*

¹³ 10 *Del. C.* § 5714(d).

it issued.¹⁴ Accordingly, the statutorily-mandated period for the Raphaels to seek to vacate that order expired in approximately November 2004. Thus, the Raphaels' July 30, 2007 motion is time-barred, unless the Raphaels show that the exception for corruption, fraud, or other undue means applies here.

The Raphaels, however, have not demonstrated that the Arbitrator's Order was predicated upon corruption, fraud, or undue means. At most, they accuse Wilson of lying at the arbitration hearing about gardening on approximately fifty square feet of the Raphaels' property.¹⁵ Yet, the record shows that the Raphaels were aware of this alleged misrepresentation at the time of the arbitration hearing in 2004.¹⁶ Thus, even if the Raphaels' allegations were true, they would not extend the time period for seeking to vacate the Arbitrator's Order.¹⁷ Accordingly, the Raphaels' motion must be denied as time-barred.

¹⁴ Nothing in the record indicates precisely when the Raphaels received a copy of the Arbitrator's Order. Documents of record, however, show the Raphaels received the order by September 17, 2004, at the latest. On that date, Mr. Raphael responded to two letters from Wilson's counsel that expressly mentioned that the Raphaels had lost the arbitration. Mr. Raphael's September 17, 2004 responsive letter suggests he was aware of the Arbitrator's Order.

¹⁵ See Pls.' Letter dated Aug. 23, 2007 Ex. 5.

¹⁶ *Id.*

¹⁷ 10 *Del. C.* § 5714(b); see *Geis v. Tech Int'l, Inc.*, 1998 WL 409148, at *3 (Del. Ch. June 17, 1998) (holding that because a party knew or had reason to know of an alleged misrepresentation before the arbitration hearing was held, the standard 90-day limitation period applies).

2. Even if the Raphaels' motion was timely, none of the statutory grounds for vacating apply

Even assuming the Raphaels' motion is not time-barred, they have failed to demonstrate that any of the five statutory criteria for vacating the Arbitrator's Order applies here.¹⁸ The Raphaels do not claim the arbitrator exceeded his powers, or so imperfectly executed them that a final and definite award upon the subject matter submitted was not made.¹⁹ They also do not claim that the arbitrator refused to postpone the hearing or hear evidence material to the controversy.²⁰ Nor do they deny the existence of a valid arbitration agreement, or that Wilson complied with the agreement.²¹ Therefore, the only potential bases for the Raphaels' motion are that (1) the order was procured by "corruption, fraud, or other undue means," and (2) there was evident partiality by the arbitrator.²²

a. The Raphaels have not sufficiently alleged that the Arbitrator's Order was procured by corruption, fraud, or other undue means

To prevail under Section 5714(a)(1), the Raphaels must provide clear and convincing evidence that Wilson procured the Arbitrator's Order by corruption, fraud, or

¹⁸ See 10 Del. C. § 5714(a).

¹⁹ *Id.* § 5714(a)(3).

²⁰ *Id.* § 5714(a)(4).

²¹ *Id.* § 5714(a)(5).

²² See *id.* § 5714(a)(1)-(2).

undue means.²³ The Raphaels have not met this burden. At most, the Raphaels allege Wilson lied under oath about gardening on their property at the arbitration hearing.²⁴ Yet, the Raphaels have not demonstrated that the alleged misrepresentation was material, relevant to the arbitrator's decision, or relied upon by the arbitrator in making his award.²⁵

Furthermore, nothing in the record suggests the Raphaels were not able to challenge the veracity of Wilson's testimony at the arbitration hearing. It would be inequitable for this Court now to consider the Raphaels' claims of fraud and deceit by Wilson when they had a full and fair opportunity to challenge Wilson's testimony at the arbitration hearing, and also failed to seek to vacate the Arbitrator's Order on those grounds in a timely fashion.²⁶

I therefore conclude that the Raphaels have failed to provide clear and convincing evidence that conceivably could demonstrate the Arbitrator's Order was procured by corruption, fraud, or other undue means.²⁷

²³ See *Pocket Change Kahunaville, Inc. v. Kahunaville of Eastwood Mall, Inc.*, 2003 WL 1791874, at *4 (Del. Ch. Mar. 21, 2003).

²⁴ Pls.' Letter dated Aug. 23, 2007 Ex. 5.

²⁵ See *Pocket Change Kahunaville*, 2003 WL 1791874, at *3-4.

²⁶ See *id.* at *3.

²⁷ See *id.*

b. No partiality by the arbitrator has been alleged

Under Section 5714(a)(2), when an arbitrator does not disclose a relationship with a party or a party's attorney, there is evident partiality and vacatur of an award is required.²⁸ Accordingly, the Raphaels conceivably could prevail under this exception if they could demonstrate that the arbitrator, Taylor, failed to disclose a relationship between himself and either their attorney, Wilson, or Wilson's attorney.²⁹ The Raphaels, however, have neither made such an allegation or contention, nor pointed to anything else in the record that would support an inference of evident partiality by Taylor during the arbitration proceeding. Thus, they may not rely on Section 5714(a)(2) to vacate the Arbitrator's Order.

c. The Raphaels' other arguments are without merit

The Raphaels also argue that (1) they received inadequate counsel from their attorney, McCann, and (2) Wilson, although not required to abide by the arbitrator's recommendations, has acted in complete opposition to them. Neither of these arguments supports vacating the Arbitrator's Order.³⁰

²⁸ *Beebe Med. Ctr., Inc. v. Insight Health Servs. Corp.*, 751 A.2d 426, 427 (Del. Ch. 1999).

²⁹ *See id.*

³⁰ *See 10 Del. C. § 5714(a).*

1. The Raphaels' inadequate counsel argument

The Raphaels contend they received inadequate counsel from McCann, and point to his subsequent disbarment in support of their position.³¹ This argument is without merit. Delaware law does not recognize inadequate or ineffective assistance of counsel as a basis for vacating an otherwise valid Arbitrator's Order.³²

Furthermore, the Raphaels have not alleged any specific facts that suggest McCann provided them with inadequate legal representation, or was an incompetent legal advisor. Plaintiffs' misguided argument that McCann relied on the "rarely used" law of adverse possession³³ is frivolous. The law of adverse possession is well established and routinely applied in appropriate circumstances.³⁴ Failure to prevail on a claim of adverse possession hardly supports an inference of inadequate or ineffective legal representation.³⁵

³¹ Pls.' Letter dated Aug. 23, 2007 at 2. McCann was disbarred in November 2005 for falsely certifying that he was in compliance with regulations regarding proper maintenance of books and records relating to his clients' funds, for failing to comply with state and federal regulations regarding payroll and income taxes, and for failing to properly manage his clients' estate matters. *McCann*, 894 A.2d at 1088.

³² *See* 10 *Del. C.* § 5714.

³³ Pls.' Letter dated Aug. 23, 2007 at 2.

³⁴ *See Del-Chapel Assoc. v. Conectiv*, 2008 WL 1934503, at *7 (Del. Ch. May 5, 2008); 10 *Del. C.* § 7901.

³⁵ As noted by the arbitrator in his August 16, 2004 letter transmitting his order, the Raphaels failed to prove the elements of hostile intent and notorious possession in connection with their claim of adverse possession. Pls.' Letter dated Aug. 23, 2007 Ex. 1 at 2. The arbitrator also commended both sides' attorneys for

Additionally, the Raphaels' assertion that McCann's animosity toward Wilson's attorney impaired his judgment as Plaintiffs' legal counsel is mere speculation.³⁶ The Raphaels have not alleged any facts that would link the asserted ill will between counsel to anything in the record that would support an inference that the Arbitrator's Order was procured by corruption, fraud, or other undue means. Thus, this aspect of Plaintiffs' motion provides no basis for vacating the Arbitrator's Order.³⁷

2. Wilson is not required to comply with the arbitrator's recommendations

The Raphaels concede that Wilson is not required to comply with the recommendations set forth in Taylor's August 16, 2004 letter transmitting his arbitration order,³⁸ but complain that Wilson has acted in complete opposition to them.³⁹ According to the Raphaels, Wilson has installed several physical obstructions along the property line near the driveway encroachment, which have caused damage to the Raphaels'

presenting "very complete materials" for his review and the hearing itself, and stated, "[a]ll of you did a fine job as attorneys." *Id.* at 3.

³⁶ Pls.' Letter dated Aug. 23, 2007 at 2.

³⁷ *See* 10 *Del. C.* § 5714(a)(1)-(2), (b).

³⁸ In Taylor's August 16, 2004 letter to the parties, he recommended that Wilson grant the Raphaels an easement over the property in dispute, which would be recorded and terminated at Wilson's sole discretion when she put her property up for sale. Pls.' Letter dated Aug. 23, 2007 Ex. 1 at 3.

³⁹ Pls.' Letter dated Aug. 23, 2007 at 3.

automobile, as well as the vehicles of others.⁴⁰ They also accuse Wilson of making numerous baseless complaints about them to the Newark police.⁴¹

The Raphaels' allegations provide no basis for vacating the Arbitrator's Order.⁴² As they acknowledge, Wilson had no obligation to comply with Taylor's recommendations because he did not make them part of his Arbitrator's Order.⁴³ Further, even if Wilson did act in "complete opposition" to Taylor's recommendations, she generally enjoys the freedom, as the owner of Lot 13, to utilize or modify her property as she wishes. The most reasonable solution to the parties' dispute may be for Wilson to offer the Raphaels an easement over the driveway encroachment along the lines Taylor suggested. Unfortunately for the Raphaels, however, Wilson is under no compunction to act reasonably in the present circumstances. Moreover, Wilson's submission in opposition to the Raphaels' motion indicates she would contest the reasonableness of their conduct just as strenuously.⁴⁴

⁴⁰ The Raphaels allege that Wilson installed a fence with a post situated at the corner of the driveway encroachment, which caused over \$3,000 damage to their car. The Raphaels also aver that Wilson installed a small retaining wall along the property line, and put a large rock at the corner of the retaining wall, which was scraped by a visitor. *Id.*

⁴¹ *Id.*

⁴² *See* 10 *Del. C.* § 5714.

⁴³ Nothing in the June 25, 2004 binding arbitration agreement indicates that the parties would be bound by any informal recommendations by the arbitrator.

⁴⁴ *See* Def.' Letter dated Aug. 15, 2007 at 1-2.

C. Wilson's Countermotion

Wilson seeks to have the Court order the Raphaels to remove the driveway encroachment. In addition, Wilson asks this Court to set a deadline for completion of the removal, and authorize her to have the encroachment removed at the Raphaels' expense if they fail to complete the removal by the deadline.

I deny Wilson's countermotion as premature and possibly procedurally defective. Because no application was previously made to have the August 16, 2004 Arbitrator's Order confirmed, there was no final judgment that Wilson could petition to enforce until now.⁴⁵ Consistent with 10 *Del. C.* § 5714(d),⁴⁶ I now confirm the Arbitrator's Order. In addition, I note that the Arbitrator's Order only held that the Raphaels failed to prove their claim of ownership of the disputed property by adverse possession. I express no opinion as to whether Wilson may obtain the mandatory injunctive relief requested in her countermotion in this action, or must pursue such a claim in a separate action.

III. CONCLUSION

For the reasons stated, the Raphaels' motion to vacate the August 16, 2004 Arbitrator's Order is denied.⁴⁷ As there are no outstanding motions to modify or correct

⁴⁵ See 10 *Del. C.* §§ 5713, 5716.

⁴⁶ Section 5714(d) provides: "If the application to vacate is denied and no motion to modify or correct the award is pending, the Court shall confirm the award."

⁴⁷ Even if this Court treated the Raphaels' motion as one for relief from a judgment or order under Court of Chancery Rule 60(b), their motion would still fail. See *supra* note 8. A motion under Rule 60(b) "is a discretionary matter which requires the Trial Judge to weigh the facts and circumstances of each case." *Bachtle v. Bachtle*, 494 A.2d 1253, 1256 (Del. 1985). Furthermore, relief under Rule 60(b)

the Arbitrator's Order, I hereby confirm that order in favor of Wilson. In addition, I deny and dismiss without prejudice Wilson's counter-motion on the ground it is premature.

IT IS SO ORDERED.

is generally disfavored because Rule 60(b) "implicates two important values: the integrity of the judicial process and the finality of judgments." *Credit Lyonnais Bank Nederland, N.V. v. Pathe Commc'ns Corp.*, 1996 WL 757274, at *1 (Del. Ch. Dec. 20, 1996).

Under Rule 60(b), a court may relieve a party from a final judgment, order, or proceeding for six reasons. Del. Ct. Ch. R. 60(b). The Raphaels, however, have not demonstrated that any of the six reasons applies here. The Raphaels do not contend that there was a mistake, inadvertence, surprise, or excusable neglect, nor do they contend that there is any newly discovered evidence. *Id.* R. 60(b)(1)-(2). There is also no evidence that the Arbitrator's Order is void, or has been satisfied, released, or discharged such that the order is no longer equitable. *Id.* R. 60(b)(4)-(5). As I have stated in this opinion, the Raphaels have not alleged any facts, nor pointed to anything in the record, to support an inference of fraud, misrepresentation, or other misconduct of Wilson or Wilson's attorney. *See* discussion *supra* Part II.B.2. Finally, none of the Raphaels' other arguments provides a sufficient basis for this Court to grant relief from operation of the August 16, 2004 Arbitrator's Order. *See* Del. Ct. Ch. R. 60(b)(6). Accordingly, even under Rule 60(b), this Court would hold that the Raphaels have failed to demonstrate that they are entitled to relief from the Arbitrator's Order.