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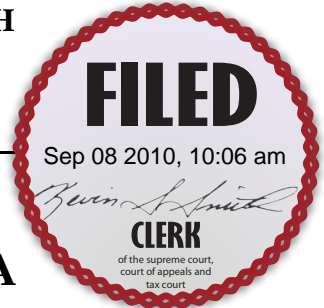
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**IN THE
COURT OF APPEALS OF INDIANA**

LAMBERT C. GENETOS, DEMETRI J. RETSON,)
STACIA L. YOON and MARCO A. MOLINA,)

Appellants-Defendants,)

vs.)

ANDREW J. KOPKO,)

Appellee-Plaintiff.)

No. 64A05-0912-CV-680

APPEAL FROM THE PORTER SUPERIOR COURT
The Honorable Roger V. Bradford
Cause No. 64D01-0803-PL-2441

September 8, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Andrew Kopko sued Lambert Genetos and others (collectively “Genetos”) who were members of a law firm Kopko, Genetos, and another attorney started. The dispute went to arbitration. The arbitrators entered a decision and later amended it to be more favorable to Genetos. Genetos moved to confirm/enforce the amended award and Kopko requested entry of judgment on the original award. The trial court entered judgment on the arbitrators’ original award, rather than their amended award.

As Kopko did not timely seek entry of judgment, we reverse and remand.

FACTS AND PROCEDURAL HISTORY

In 1999, Kopko, Genetos, and Demetri Retson formed a partnership. Other partners were subsequently admitted. In 2007, Kopko sued the other partners for breach of the partnership agreement. Kopko demanded arbitration pursuant to Section 24 of the agreement, which addressed dispute resolution. The parties agreed the dispute would be submitted to arbitration and the trial court ordered “the disputes among the parties . . . be submitted to arbitration under the terms of the partnership agreement.” (App. at 29.)

In December 2008, the arbitrators issued a decision and award. On January 19, 2009, Genetos filed a motion for “Clarification and Modification/Correction of Award,” (App. at 36), to which Kopko responded. On March 30, the arbitrators entered an amended award. On June 1, 2009, Kopko filed a motion with the arbitrators to clarify the amended award and the arbitrators issued a clarification June 19. Genetos filed a “Motion to Confirm/Enforce [the amended] Arbitration Award,” (*id.* at 31), with the trial court on July 7, and on August 3,

Kopko asked the trial court to enter judgment on the original award. The trial court heard argument, then entered judgment on the original award.

DISCUSSION AND DECISION

Both sides' arguments are premised on the question whether the Uniform Arbitration Act ("the UAA"), Ind. Code ch. 34-57-2, governs. It does. Section 24 of the partnership agreement addresses "Dispute Resolution" and provides that if a dispute under the agreement is not resolved within thirty days, any party may submit the dispute to arbitration. That section does not explicitly refer to the UAA, but it provides the "Agreement will be construed and enforced in accordance with the laws of the State of Indiana." (App. at 171.)

Section 24(h) of the agreement provides in pertinent part:

Decisions. The parties agree that any decision reached by the representatives will be binding upon the parties, and that a judgment in accordance with the decision of the Representatives may be entered in any court of proper jurisdiction. Not in limitation of the foregoing, the parties expressly acknowledge and agree that the procedures provided for the resolution of disputes in this Section constitute full, fair, and adequate procedures and the parties expressly waive any and all rights not provided herein.

(*Id.* at 169.)

Kopko characterizes "the parties expressly waive any and all rights not provided herein" as a waiver of any right "to challenge the Arbitrators' decision not provided by Section 24." (Br. of Appellee at 8.) Kopko offers no explanation why the phrase "any decision reached by the representatives" refers only to an original award and not to an amended award. We decline to attribute to the parties, based on the language in Section 24,

an intention to foreclose any means of correcting an award even if all parties agreed the award was plainly erroneous and needed to be modified, and all agreed on what the modifications needed to be.¹ Finally, we note statutes and the law as otherwise existing became a part of every contract and must be read into it. *Dollman v. Pauley*, 202 Ind. 387, 394, 174 N.E. 729, 731 (1931). We accordingly find the UAA applies and turn to the question whether Kopko challenged the amended award in time.

The UAA governs changes to or clarification of arbitration awards *by the arbitrator*:

On written application of a party or, if an application to the court is pending under section 12, 13, or 14 of this chapter (or IC 34-4-2-12, IC 34-4-2-13, or IC 34-4-2-14 before their repeal), on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated in section 14(a)(1) and 14(a)(3) of this chapter, or for the purpose of clarifying the award. *The application shall be made within twenty (20) days after delivery of the award to the applicant.* Written notice thereof shall be given forthwith to the opposing party, stating that the opposing party must serve his objections thereto, if any, within ten (10) days from the notice. The award so modified or corrected is subject to sections 12,² 13, and 14 of this chapter.

Ind. Code § 34-57-2-10 (emphasis supplied) (footnote added). Another section explains

¹ Both parties explicitly referred to the UAA in various documents they submitted to the court or the arbitrators during this dispute. *See, e.g.*, (App. at 195) (Kopko’s motion for clarification of arbitration award “pursuant to Indiana Code Section 34-57-2-14”); (*id.* at 31) (Genetos motion to confirm/enforce arbitration award “pursuant to I.C. 34-57-2-12”).

² Ind. Code § 34-57-2-12 provides:

Upon application of a party, but not before ninety (90) days after the mailing of a copy of the award to the parties, the court shall confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in sections 13 and 14 of this chapter. Upon confirmation, the court shall enter a judgment consistent with the award and cause such entry to be docketed as if rendered in an action in the court.

when an arbitration decision may be modified or corrected *by the court*:

- (a) Upon application *made within ninety (90) days after mailing of a copy of the award to the applicant*, the court shall modify or correct the award where:
 - (1) there was an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the award;
 - (2) the arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or
 - (3) the award is imperfect in a matter of form, not affecting the merits of the controversy.
- (b) If the application is granted, the court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected. Otherwise, the court shall confirm the award as made.
- (c) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

Ind. Code § 34-57-2-14 (emphasis supplied).

We agree with Genetos that the trial court was obliged to enter judgment on the amended award because Kopko did not object to that award within the time provided by the statute. Under the UAA, Kopko had three options for challenging the amended award: he could request the arbitrators modify, correct, or clarify the amended award within twenty days pursuant to Section 10; he could apply to the court within ninety days to vacate the amended award under Section 13, or he could ask the trial court to correct or modify the amended award within ninety days pursuant to Section 14. Kopko did none of those things.

The amended award was issued March 30, 2009. On August 3, 2009, Kopko requested the trial court enter judgment on the original award. By that time, however, more than ninety days had passed since the arbitrators had entered the amended award. Thus, the

trial court did not have authority to vacate the arbitrators' amended award under Section 13.

To bring himself within the ninety-day limit, Kopko argues the ninety-day period did not begin until June 19, when the arbitrators issued a "clarification," (App. at 155), of the amended award. However, Kopko did not request that clarification until June 1, which was not within the twenty-day period required by Section 10. The arbitrators no longer had statutory authority to clarify, modify, or amend the award at the time Kopko filed his June 1 motion.

Nor was the clarification Kopko wanted available to him under the longer time limit provided in Section 14. That section addresses modification and correction of an award by the *court*, but the "clarification" Kopko sought could be obtained only from the arbitrators:

The statutory authority to modify an award *for clarification purposes* is only bestowed upon the arbitrator; the reviewing court only may correct an evident miscalculation or descriptive mistake, imperfect form, or an award in which the arbitrator reached non-submitted matters. *Compare* [Colo. Rev. Stat.]§ 13-22-211, [including the language found also in Ind. Code § 34-57-2-10 to the effect an *arbitrator* may "modify or correct the award . . . for the purpose of clarifying the award."] *with* [Colo. Rev. Stat.] § 13-22-215 [parallel provision to Ind. Code § 34-57-2-14 which governs modification or correction of an arbitration award *by the court* for "an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the award," or "[t]he award is imperfect in a matter of form, not affecting the merits of the controversy"]. Since a reviewing court neither conducts the arbitration nor formulates and drafts the award, it has no basis apart from extrinsic evidence upon which to correct miscalculations not evident on the award's face or to clarify a vague, confusing award.

Only the arbitrator absolutely knows what was intended in the award. And, it is the arbitrator's intent, not the court's, for which the parties bargained. . . . Therefore, only the arbitrator properly can elucidate his or her intent obscured by a mistake, ambiguity, or general lack of clarity.

Sooper Credit Union v. Sholar Group Architects, P.C., 113 P.3d 768, 772-73 (Colo. 2005)

(citations omitted) (emphasis added).

As Kopko did not request the arbitrators modify or amend the amended award within twenty days of its issue, the court was obliged to enter judgment on that award. We must accordingly reverse and remand.

Reversed and remanded.

BAILEY, J., and BARNES, J., concur.