

IN THE COURT OF APPEALS OF IOWA

No. 3-647 / 12-1975
Filed September 5, 2013

ROBERT F. KAZIMOUR CO., Individually and Derivatively on Behalf of RFK TRANSPORTATION, L.L.C., KORLIN K. KAZIMOUR, Individually and Derivatively on Behalf of RFK TRANSPORTATION LOGISTICS, L.L.C.; KIMBERLY K. KAZIMOUR, Individually and Derivatively on Behalf of RFK TRANSPORTATION LOGISTICS, L.L.C.; ROBERT F. KAZIMOUR, JANIS L. KAZIMOUR, RFK TRANSPORTATION, INC.; JANCO TRANSPORTATION, INC.; PAN AMERICAN WORLD HIGHWAYS, LTD.; and ROBERT F. AND JANIS L. KAZIMOUR CHARITABLE LEAD TRUST,
Plaintiffs-Appellees,

vs.

WEST SIDE UNLIMITED CORPORATION; WEST SIDE TRANSPORT, INC.; WEST SIDE BROKERAGE, INC.; and DONALD VOGT,
Defendants-Appellants.

Appeal from the Iowa District Court for Linn County, Fae E. Hoover-Grinde, Judge.

The defendants appeal the district court's order denying a motion for an award of attorney fees. **AFFIRMED.**

Robert S. Hatala and Kevin J. Visser of Simmons Perrine Moyer Bergman, P.L.C., Cedar Rapids, for appellants.

Donald G. Thompson and Vernon P. Squires of Bradley & Riley, P.C., Iowa City, for appellees.

Considered by Vogel, P.J., and Vaitheswaran and Bower, JJ.

VAITHESWARAN, J.

West Side Unlimited Corporation and Robert F. Kazimour Company unsuccessfully attempted a joint enterprise. The failed enterprise spawned litigation that was submitted to arbitration. The arbitration panel ruled in favor of the Kazimours, with the majority awarding damages of \$378,330. A dissenting member would have awarded them significantly more.

The Kazimours filed an application to vacate the arbitration award. See Iowa Code § 679A.12(1)(c), (f) (2009). They asserted that the majority's lower damage award was not supported by substantial evidence and a remand was required with specific instructions to recalculate damages. West Side resisted the Kazimours' application to vacate and contemporaneously filed a motion to confirm the award.

The district court found substantial evidence to support the lower award. The court confirmed the award and this court affirmed. See *Robert F. Kazimour Co. v. W. Side Unlimited Corp.*, No. 11-1493, 2012 WL 2407536, at *7 (Iowa Ct. App. June 27, 2012).

West Side then sought to have the Kazimours pay its attorney fees and expenses "in defending Plaintiffs' attack on the Arbitration Award." The district court denied the motion.

On appeal, West Side claims the district court "erred in refusing to shift to Kazimours the fees and expenses West Side incurred in enforcing the arbitration award." The Kazimours counter that the express and unambiguous language of their arbitration agreement with West Side precluded its attorney-fee claim. See *Nevada Care, Inc. v. Dep't of Human Servs.*, 783 N.W.2d 459, 470 (Iowa 2010)

("[A] written contract must contain an express provision regarding attorney fees and litigation expenses in order for a court to include attorney fees and litigation expenses in a favorable judgment."); *Van Sloun v. Agans Bros., Inc.*, 778 N.W.2d 174, 182 (Iowa 2010) ("In order for fees to be taxed the case must come clearly within the terms of the statute or agreement.").

The pertinent paragraph of the agreement states:

Judgment. The parties agree that judgment on the arbitration award may be entered in any state or federal court having jurisdiction. Any award shall be paid within 45 days. If the party or parties against whom an award or judgment is rendered fails to pay the award or judgment within 45 days, the party or parties entitled to payment shall be entitled to seek enforcement of the award or judgment in any state or federal court having jurisdiction. The parties agree that the 90 day period provided for in Iowa Code 679A.12 and 679A.13 is hereby shortened by agreement to 45 days, to permit the payment of the award within 45 days in the absence of an application to vacate an award under Section 679A.12 or an application for modification or correction of an award under Section 679A.13. *The party or parties entitled to an award or judgment also shall be entitled to recover interest at the statutory rate on the date of the award and reasonable attorney's fees and expenses incurred to enforce the arbitration award or judgment.*

(Emphasis added). This language plainly and unambiguously permits a party "entitled to an award" to recover reasonable attorney fees. See *Margeson v. Artis*, 776 N.W.2d 652, 659 (Iowa 2009) (citing "[t]he plain language of the contract provision" in resolving a contract dispute). West Side was not a party entitled to an award. As the district court stated,

While West Side filed an Application to Confirm the Arbitration Award Pursuant to Iowa Code § 679A.11 at the same time it resisted Kazimours' Application to Vacate Arbitration Award and Remand with Instructions, West Side is not "entitled to an award or judgment" on which it would be "entitled to recover interest at the statutory rate on the date of the award." Therefore West Side is not the party entitled to "reasonable attorney's fees and expenses incurred to enforce the arbitration award or

judgment.” Paragraph 36 of the arbitration agreement is one sided in that the party entitled to the award on which interest may be awarded shall be the only party entitled to attorney’s fees and expenses. In this case, West Side prevailed on its Application to Confirm the Arbitration Award, but because it is the party seeking to confirm the award in order to pay the award, it is not entitled to attorney fees and expenses pursuant to paragraph 36 of the arbitration agreement.

We discern no error in this ruling.

AFFIRMED.