STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1492

BuyRite Auto Glass, Inc., d/b/a Rapid Glass,
Respondent,

vs.

Progressive Casualty Insurance Company, et al.,
Appellants.

Filed April 9, 2012
Affirmed in part and reversed in part; motion denied
Connolly, Judge

Hennepin County District Court
File No. 27-CV-10-4058

Charles J. Lloyd, Rachael J. Abrahamson, Livgard & Lloyd PLLP, Minneapolis, Minnesota (for respondent)

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Considered and decided by Connolly, Presiding Judge; Johnson, Chief Judge; and Randall, Judge.[*]

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

CONNOLLY, Judge

The district court consolidated numerous individual auto-glass repair or replacement payment claims assigned to respondent auto-glass company for purposes of arbitration against the insurer appellants. The arbitrator issued an award in favor of respondent auto-glass company against insurer appellants and included prejudgment interest at a rate of four percent. Appellants challenge the district court's decision to confirm the arbitrator's award in favor of respondent and its imposition of ten-percent prejudgment interest. Because the arbitrator did not exceed his authority in determining that appellant breached its contractual obligation to pay the disputed claims, we affirm the district court's denial of appellants' motion to vacate the arbitration award, but because none of the individual claims or awards exceeded the $7,500 threshold for prejudgment interest, we reverse the district court's application of a ten-percent interest award. We deny appellants' motion to strike as moot.

FACTS

For each of the auto-glass repair or replacement payment claims involved, respondent BuyRite Auto Glass, Inc., d/b/a Rapid Glass repaired or replaced auto glass for appellants Progressive Casualty Insurance Company, et al., insured policyholders and received an assignment of the policyholders' claim for payment of the cost of the replacement. Respondent then billed appellants for the auto-glass work. The 580 claims here all involve invoices that were allegedly underpaid or unpaid by Progressive from January 2005 through April 2010, and each claim was for less than $7,500.

In June 2010, the district court granted respondent's motion to consolidate the 580 allegedly underpaid and unpaid glass repair and replacement invoices for arbitration. In October 2010, a No-Fault Arbitration was held pursuant to the Minnesota No-Fault Automobile Insurance Act (No-Fault Act), Minn. Stat. § 65B.525, subd. 1 (2010). Appellants' policy requires it to pay "the amount necessary to repair the damaged property to its pre-loss condition." The policy further provides:

> [I]n determining the amount necessary to repair damaged property to its pre-loss condition, the amount to be paid by [Progressive]:
>
> (i) shall not exceed a competitive price that is fair and reasonable within the local industry at large for the cost of repair or replacement parts and equipment; and
> (ii) will be based on a competitive price that is fair and reasonable within the local industry at large for the cost of repair or replacement parts and equipment . . . .

The central issue at the arbitration was whether the charges submitted by the claimant, respondent, or the payments made by appellants were fair, reasonable, and competitive within the local industry at large. Respondent argued that the issue related to the charges submitted, while appellants argued that the issue related to the payments made. The arbitrator "determined that the word 'price' is synonymous with 'charge' and though the respective parties' positions is one largely of semantics, the [arbitrator] has determined that the charge or price submitted by [respondent] is the focal factor in the case." The arbitrator considered evidence presented by both sides regarding the factors to be considered in evaluating pricing, ultimately awarding respondent a total of $157,851.46 for the underpaid and unpaid claims. Following arbitration, the arbitrator granted respondent prejudgment interest at a rate of four percent.

Appellants brought a motion in district court to vacate the arbitration award. Respondents then filed a motion to modify the arbitration award, seeking ten-percent interest rather than the four-percent interest awarded. The district court denied appellants' motion to vacate the award and granted respondent's motion to modify the interest awarded to ten percent. This appeal follows.

D E C I S I O N

I. Arbitration Award

Appellants argue that the district court erred in denying its motion to vacate the arbitration award because the arbitrator exceeded his authority by applying a legal standard contrary to appellants' insurance contract. Appellants argue that, in determining whether appellant breached its policy, the arbitrator decided a legal question, which is to be reviewed de novo. Respondent disagrees, arguing that the arbitrator made a factual determination which is conclusive and not subject to review by this court.

"There is a strong policy in Minnesota favoring the finality of arbitration, and the grounds for vacating an arbitrator's award are narrow." *Erickson v. Great Am. Ins. Cos.*, 466 N.W.2d 430, 432 (Minn. App. 1991). Minn. Stat. § 572.19 (2010) sets forth the narrow grounds on which a court may vacate an arbitrator's award. One such exception is where the arbitrator exceeds his or her powers. Minn. Stat. § 572.19, subd. 1(3). An arbitrator exceeds his or her powers when the arbitrator errs as a matter of law in making an award.

Under the No-Fault Act, arbitrators "are limited to deciding questions of fact, leaving the interpretation of law to the courts." *Weaver v. State Farm Ins. Cos.*, 609

N.W.2d 878, 882 (Minn. 2000). An arbitrator's findings of fact are final and not subject to review by this court. *Klinefelter v. Crum & Forster Ins. Co.*, 675 N.W.2d 330, 333 (Minn. App. 2004). Questions of law, however, are subject to de novo review. *Id.* at 333-34. "When applying the law to the facts, an arbitrator has authority to decide a legal question, but the arbitrator's legal determination is subject to de novo review by the district court." *Id.* This rule reflects the state's goal for consistent interpretation of the No-Fault Act. *Weaver*, 609 N.W.2d at 882. The party seeking to vacate an arbitration award "has the burden of proving the invalidity of the arbitration award." *Nat'l Indem. Co. v. Farm Bureau Mut. Ins. Co.*, 348 N.W.2d 748, 750 (Minn. 1984).

"Generally, a coverage dispute presents a question of law for the courts, not the arbitrators . . . ." *W. Nat. Ins. Co. v. Thompson*, 797 N.W.2d 201, 206 (Minn. 2011); *see also Johnson v. Am. Family Mut. Ins. Co.*, 426 N.W.2d 419, 421 (Minn. 1988) (concluding that an arbitration panel exceeds the scope of its authority when it decides a coverage issue). "The distinction between coverage disputes for the court and other types of disputes for the arbitrators is that questions that go not to the merits of a claim but to whether a claim exists should be decided by the district court." *W. Nat. Ins. Co.*, 797 N.W.2d at 206 (quotation omitted).

The dispute in this case is not whether a claim exists or whether coverage itself is available; both parties agree that respondent has a right to be paid by appellants *some* amount for the auto-glass repair work that it completed. The dispute before the arbitrator was whether appellants breached the insurance policy, or rather, whether appellants

satisfied the contract by paying "the amount necessary to repair damaged property to its pre-loss condition."

Appellants argue that the arbitrator was required to interpret appellants' insurance policy, particularly the word "necessary," in order to resolve the dispute. Therefore, they argue that the arbitrator improperly decided a legal issue involving contract interpretation. We disagree because the interpretation of the policy language was not an issue here. The arbitrator was not required to interpret the term "necessary" because the contract provided the definition:

> In determining the amount necessary to repair damaged property to its pre-loss condition, the amount to be paid by [Progressive]:
>
> (i) shall not exceed a competitive price that is fair and reasonable within the local industry at large for the cost of repair or replacement parts and equipment; and
>
> (ii) will be based on a competitive price that is fair and reasonable within the local industry at large for the cost of repair or replacement parts and equipment . . . .

Under the terms of the contract, "necessary" means "a competitive price that is fair and reasonable within the local industry at large . . . ." Issues regarding reasonableness are issues of fact. *Weaver*, 609 N.W.2d at 883 ("Reasonableness has traditionally been considered an issue of fact."). In this case, the arbitrator examined evidence from both parties "addressing whether [respondent] submitted a competitive price for windshield replacements that was fair and reasonable within the local industry at large" before awarding respondent $157,851.46 for the underpaid and unpaid claims. The arbitrator's determination that the price charged by respondent was fair and reasonable is a factual finding that is not subject to review by this court.

Appellants argue that the arbitrator erred by focusing his inquiry on the reasonableness of the price *charged* by respondent rather than the reasonableness of the price *paid* by appellants. The case *Glass Serv. Co., Inc. v. Progressive Specialty Ins. Co.*, 603 N.W.2d 849 (Minn. App. 2000) (*Glass Service I*) is directly on point. That case also arose when Progressive did not pay the full amount of the auto-glass company's invoices. *Id.* at 850. The court was required to interpret the term "necessary" in the insurance contract where the policy stated that the insurer would pay the amount necessary to replace a windshield with one of like kind and quality. *Id.* at 852. The court determined that "common sense dictates that the amount 'necessary' to replace a windshield with one of like kind and quality is a price that is reasonable in the marketplace." *Id.* The court then found that in determining the "necessary" costs, "[t]he trial court properly focused on the reasonableness of [the glass company's] *charges*." *Id.* (emphasis added).

Appellants argue that *Glass Service I* does not apply here because it involved a different contract and that contract did not define "necessary," as does the current policy. However, appellants' definition of necessary in their own contract reflects the definition of "necessary" provided by the court in *Glass Service I*—"a price that is reasonable in the marketplace." *Id.* Appellants' current contract states that in determining the amount necessary to repair damaged property, the amount to be paid by appellants "shall not exceed" and "will be based on" "a competitive price that is fair and reasonable within the local industry at large . . . ." The definition of "necessary" provided both in appellants' current contract and by the court in *Glass Service I* focuses on a reasonable price in the marketplace. The court in *Glass Service I* held that, in determining a reasonable, or

necessary, price, the court properly focused on the charges. *Id.* Therefore, the arbitrator did not err in focusing on the reasonableness of the price charged by respondent rather than the reasonableness of the price paid by appellants.

Appellants also argue that the *Glass Service I* decision is no longer applicable because the legislature has since amended the Unfair Claims Practices Act (UCPA) so that it no longer requires insurers to pay "all reasonable costs." However, any analysis of the UCPA is irrelevant because the UCPA is for regulatory enforcement only and is not a basis for a private cause of action. *Id.*, n.2. Because *Glass Service I* did not rely in any way on the UCPA in arriving at its decision, the subsequent amendment of the UCPA has no bearing on this case.

Finally, appellants argue that, as long as they paid an amount that was within a range of reasonableness under the policy, the policy provision that appellants will pay a price that "shall not exceed a competitive price," only obligates appellants to pay any amount in the range of reasonableness, even if a higher amount billed is also reasonable. This argument was squarely rejected by this court in *Garlyn, Inc. v. Auto-Owners Ins. Co.*, ___ N.W.2d ___, 2012 WL 987321, at *3 (Minn. App. Mar. 26, 2012). As in *Garlyn*, appellants' policy "does not say that [the insurance company] will pay the lowest of a range of necessary costs." *Id.* Based on a plain reading of the policy, there is no merit to appellants' assertion that they are only required to pay the lowest reasonable amount.

Because the arbitrator properly focused on the reasonableness of the price charged by respondent and because a determination of reasonableness is an issue of fact

unreviewable by this court, we affirm the district court's denial of appellants' motion to vacate the arbitrator's award.

II. Prejudgment Interest

Appellants also argue that the district court erred in applying an interest rate of ten percent to the consolidated arbitration claims. After the arbitration, the arbitrator awarded respondent four-percent prejudgment interest. The district court then modified the prejudgment interest, holding that, because the award on the consolidated claims after arbitration was for more than $150,000, "Minnesota Statute Section 549.09 provides that awards in excess of $50,000 are subject to an interest rate of 10%." Appellants argue that the district court erred in awarding ten-percent interest because each arbitration claim was less than $7,500, and under Minn. Stat. § 549.09 (2010), awards under $7,500 shall not be awarded prejudgment interest.

First, respondent argues that appellants did not properly challenge the interest award before the district court. Appellants' only motion before the district court was a motion to vacate the award. Respondent then filed a motion to modify the prejudgment interest, and appellants responded to that motion, asking the district court to correct the interest rate. Appellants' response seeking a modification was filed more than 90 days after the initial award.

Minn. Stat. § 572.20 (2010), requires that motions to vacate or modify awards by a party be made within 90 days of receiving a copy of the award. Respondent relies on *Abd Alla v. Mourssi*, 680 N.W.2d 569 (Minn. App. 2004) to argue that appellants failed to meet this deadline. In *Mourssi*, the appellant filed a motion to vacate outside the time

limits prescribed in the arbitration statutes, even though it was filed in response to a motion to confirm. 680 N.W.2d at 572. *Mourssi* is distinguishable because here, appellants properly and timely filed their initial motion to vacate the arbitration award within 90 days. Although they did not specify in their motion to vacate that they were challenging the interest award, the proper amount of interest due under Minn. Stat. § 549.09 was an issue presented to the arbitrator and went to the merits of the controversy. Therefore, appellants properly raised the issue to the district court by timely filing a motion to vacate.

Two statutes govern prejudgment interest in arbitrations. Minn. Stat. § 572.15 (2010), states that an arbitration award "must include interest." Minn. Stat. § 549.09, subd. 1(b) provides:

> Except as otherwise provided by contract or allowed by law, preverdict, preaward, or prereport interest on pecuniary damages shall be computed as provided in paragraph (c) . . . Except as otherwise provided by contract or allowed by law, preverdict, preaward or prereport interest shall not be awarded on the following: . . .
>
> > (4) judgments or awards not in excess of the amount specified in section 491A.01.

Minn. Stat. § 491A.01, subd. 3 (2010) specifies this amount to be $7,500.

This court recently held, in *Garlyn*, that these two statutes governing prejudgment interest should be read together so that Minn. Stat. § 549.09 is read as a limitation on Minn. Stat. § 572.15. 2012 WL 987321, at *5. When determining how much prejudgment interest to award in a consolidated arbitration, the court considers the value of each individual claim, and not the value of the total award. *Id.* Because none of the

individual claims or awards in this case exceeded the $7,500 threshold for prejudgment interest, the district court erred in awarding respondent ten-percent interest and we reverse the district court's denial of appellants' motion to vacate the prejudgment-interest award.

Appellants moved to strike portions of respondent's appendix and references to those pages in respondent's brief. Because we did not rely on the challenged documents in reaching our decision, appellants' motion to strike is denied as moot.

Affirmed in part and reversed in part; motion denied.