

**COURT OF CHANCERY  
OF THE  
STATE OF DELAWARE**

SAM GLASSCOCK III  
VICE CHANCELLOR

COURT OF CHANCERY COURTHOUSE  
34 THE CIRCLE  
GEORGETOWN, DELAWARE 19947

Date Submitted: January 20, 2012

Date Decided: March 13, 2012

Josiah R. Wolcott  
P.O. Box 2207  
1007 North Orange Street  
Wilmington, Delaware 19899

Theopalis K. Gregory, Sr.  
2227 N. Market Street, 2nd Floor  
Wilmington, Delaware 19802

Re: *Wolfe v. Holman*,  
Civil Action No. 6431-VCG

Dear Counsel:

I have before me the Plaintiff's Motion for Summary Judgment seeking the confirmation of a March 25, 2011, arbitration award in the amount of \$19,817.50 (the "Award"). The Award represents an \$18,655.00 delinquency in the amount owed by the Defendant to the Plaintiff for construction services performed by the Plaintiff pursuant to a May 11, 2009, Homeowner/Contractor Agreement (the "Contract"),<sup>1</sup> plus the Defendant's one-half share, \$1,162.50, of the arbitration costs.<sup>2</sup> Having reviewed the briefs, I find that no material dispute of fact exists that prevents me from entering judgment, and that the Defendant's request to vacate the

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<sup>1</sup> See Pl.'s Opening Br. Ex. A.

<sup>2</sup> See *id.* Ex. D.

Award is unsupported by fact or law.<sup>3</sup> I therefore grant the Plaintiff's Motion and confirm the Award.

Summary judgment is the common method by which this Court confirms or vacates an arbitration award.<sup>4</sup> Summary judgment is appropriate where, viewing the record in the light most favorable to the non-moving party, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.<sup>5</sup> The Federal Arbitration Act (the "FAA") provides that a court must confirm an arbitration award "unless the award is vacated, modified, or corrected as prescribed by sections 10 and 11 of [the FAA]."<sup>6</sup> The Defendant seeks vacatur of the Award. The FAA provides four grounds upon which an award may be vacated:

- (1) where the award was procured by corruption, fraud, or undue means;
- (2) where there was evident partiality or corruption in the arbitrators, or either of them;
- (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the

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<sup>3</sup> The Plaintiff also contends that the Defendant's request to vacate is untimely. Based on the extant record, it appears that the Defendant indeed seeks vacatur well outside of the three-month time limit imposed by the Federal Arbitration Act. *See* 9 U.S.C. § 12; *see also* 10 *Del. C.* § 5714(b) (providing that application for vacatur must be made within 90 days). For the purposes of the Plaintiff's Motion, however, I assume that the defense is timely. I nonetheless find that judgment in favor of the Plaintiff is appropriate on substantive grounds.

<sup>4</sup> *TD Ameritrade, Inc. v. McLaughlin, Piven, Vogel Secs., Inc.*, 953 A.2d 726, 730 (Del. Ch. 2008).

<sup>5</sup> Ch. Ct. R. 56(c).

<sup>6</sup> 9 U.S.C. § 9. I assume for purposes of this Motion that the FAA controls the issues here. The same result would obtain under the Delaware Uniform Arbitration Act. *See* 10 *Del. C.* ch. 57.

controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or

- (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.<sup>7</sup>

I presume, as I must absent a sufficient showing to the contrary by the Defendant, that the arbitrator's actions were appropriate.<sup>8</sup> The Defendant has failed to demonstrate the existence of a material fact with respect to any of these four grounds; thus, confirmation of the Award by summary judgment is appropriate.

The Defendant first challenges the Award on the grounds that the Contract did not authorize arbitration by the American Arbitration Association (the "AAA"). The Defendant's argument is belied by the unambiguous language of the Contract: "Claims or disputes . . . will be resolved by the Construction Industry Arbitration Rules of the [AAA] unless both parties mutually agree to other methods."<sup>9</sup> The Defendant has not argued that the parties reached an agreement altering this provision, which clearly authorizes arbitration by the AAA.

The Defendant next challenges the Award on the basis that he was not given proper notice of the arbitration proceeding or the entry of the Award. Assuming for

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<sup>7</sup> *Id.* § 10(a).

<sup>8</sup> See *TD Ameritrade*, 953 A.2d at 732 ("[T]here is a presumption that the arbitration panel acted within the scope of its authority . . . . '[T]he Court is not to pass an independent judgment on the evidence or applicable law,' and '[i]f any grounds for the award can be inferred from the facts on the record, the Court must presume that the arbitrator did not exceed his authority and the award must be upheld." (quoting *Audio Jam, Inc. v. Fazelli*, 1997 WL 153814, at \*1 (Del. Ch. Mar. 20, 1997))).

<sup>9</sup> Pl.'s Opening Br. Ex. A, ¶ 6.

purposes of this decision that failure of notice alleged by the Defendant is an adequate ground for vacatur of an arbitration award, the Defendant's argument is nonetheless conclusory and directly contradicted by the record. The Defendant refused the Plaintiff's demand for arbitration, which was sent by certified mail.<sup>10</sup> Additionally, the arbitrator indicated in the Award that the Defendant "failed to appear after due notice by mail in accordance with the Rules of the AAA."<sup>11</sup> Finally, the record indicates that the Defendant received a copy of the Award via email on March 25, 2011, and via first class mail shortly thereafter.<sup>12</sup> The Defendant's barebones allegations of insufficient notice find no support in the record.

To the extent that the Defendant attempts to raise other grounds for vacatur of the Award in conclusory fashion, those assertions are without merit.

For the foregoing reasons, the Plaintiff's Motion for Summary Judgment is GRANTED, and the arbitration award is CONFIRMED.

IT IS SO ORDERED.

Sincerely,

*/s/ Sam Glasscock III*

Sam Glasscock III

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<sup>10</sup> *Id.* Ex. C.

<sup>11</sup> *Id.* Ex. D.

<sup>12</sup> *Id.*