

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

ASPIC ENGINEERING AND)
CONSTRUCTION COMPANY,)
)
Judgment Creditor,)
)
v.) C.A. No. N17J-04042
)
ECC CENTCOM CONSTRUCTORS,)
LLC and ECC INTERNATIONAL,)
LLC,)
)
Judgment Debtors.)

Submitted: October 6, 2017
Decided: January 3, 2018

Upon ASPIC Engineering and Construction Company’s “Appeal from
Commissioner’s Finding of Fact and Recommendations”: **DENIED**

ORDER

AND NOW TO WIT, this 3rd day of January, 2018, the Court
having duly considered ASPIC Engineering and Construction Company’s
 (“ASPIC”) “Appeal from Commissioner’s Findings of Fact and
Recommendations,” which constitutes a Motion for Reconsideration of
Commissioner’s Order pursuant to Super. Ct. Civ. R. 132(a)(3); and ECC Centcom
Constructors, LLC and ECC International, LLC’s (collectively the “Defendants”)
response thereto, **IT APPEARS THAT:**

1. On September 25, 2017, a Superior Court Commissioner granted the Defendants' Motion for Attorneys' Fees¹ and ordered ASPIC to pay \$16,149.75 in attorneys' fees and costs to the Defendants.²
2. On October 6, 2017, ASPIC filed an "Appeal from Commissioner's Finding of Fact and Recommendations."³ Pursuant to Rule 132(a)(3)(ii), ASPIC's filing should have been entitled, "Motion for Reconsideration of a Commissioner's Order." Pursuant to Super. Ct. Civ. R. 132(a)(3)(ii) and (iv), a judge may reconsider a Commissioner's determination on a non-dispositive issue "only where it has been shown on the record that the Commissioner's Order is based upon findings of fact that are clearly erroneous, or is contrary to law, or is an abuse of discretion."
3. Delaware courts have awarded attorneys' fees and costs under the bad faith exception to the American Rule⁴ "when parties have unnecessarily prolonged or delayed litigation or knowingly asserted frivolous claims,"⁵

¹ Trans. ID 60914642 (D.I. 16).

² Trans. ID 61155248 (D.I. 25) ("Commissioner's Order").

³ Trans. ID 61207421 (D.I. 30).

⁴ *Johnston v. Arbitrium (Cayman Islands) Handels AG*, 720 A.2d 542, 546 (Del. 1991); *Montgomery Cellular Holding Co. v. Dobler*, 880 A.2d 206, 227 (Del. 2005). Although there is no single, comprehensive definition of bad faith that will justify a fee-shifting award, a party engages in bad faith conduct sufficiently egregious to justify an award of attorneys' fees to its opponent when it: (1) defends the action despite knowledge there is no valid defense, (2) delays the litigation and asserted frivolous motions, (3) falsifies evidence, and (4) changes his or her testimony to suit his or her needs. *Montgomery Cellular*, 880 A.2d at 227-28 (quoting *Johnston*, 720 A.2d at 546).

⁵ See *Johnston*, 720 A.2d at 545-46.

and have broad discretion in fixing the amount of attorneys' fees to be awarded.⁶

4. Although ASPIC stipulated that: (i) the judgment at issue was entered in error by the California State Court, and (ii) the judgment at issue should be vacated by the California Federal Court,⁷ ASPIC nonetheless sought to enforce that same judgment in Delaware Superior Court. The Affidavit of Counsel⁸ submitted with ASPIC's Application to Record a Foreign Judgment in Delaware⁹ on May 24, 2017 does not mention that ASPIC stipulated to the vacatur of the judgment in California because it was entered erroneously, or that an unopposed motion to vacate the judgment was pending in California.¹⁰ Rather, counsel for ASPIC averred and represented to this Court that "the Judgment is valid, enforceable and unsatisfied."¹¹
5. To be clear, ASPIC asked this Court to enforce a judgment after, and despite the fact that, it had taken the position in California State Court and California Federal Court that the judgment was entered in error and should

⁶ *Id.* at 547.

⁷ See *Aspic Eng. & Constr. Co. v. ECC Centcom Constr., LLC et al.*, No. 17-cv-00224-YGR, at 1 (N.D. Cal. Feb. 13, 2017) (Trans. ID 60875768) (D.I. 11); Hearing Transcript on Motion for Attorneys' Fees Dated August 25, 2017, 14:4 (Trans. ID 61507691) (D.I. 38).

⁸ Trans. ID 60641464 (D.I. 1).

⁹ *Id.*

¹⁰ See *Aspic Eng. & Constr. Co. v. ECC Centcom Constr., LLC et al.*, 2017 WL 2289219, at *2 (N.D. Cal. May 25, 2017) (Trans. ID 60767158) (D.I. 8).

¹¹ Trans. ID 60641464 (D.I. 1).

be vacated,¹² and when ASPIC knew an unopposed motion to vacate that judgment was pending decision by the California Federal Court.¹³

6. One day after ASPIC filed its Application to Record a Foreign Judgment in Delaware in this Court, the California Federal Court vacated the judgment.¹⁴ That same day, the Defendants' counsel sent an email to ASPIC, and another email on May 31, 2017, informing ASPIC that the foreign judgment had been vacated and noting that ASPIC's statements made in its May 24, 2017 Affidavit of Counsel filed with this Court were not consistent with the California Federal Court's order vacating the judgment.¹⁵ ASPIC's counsel did not respond to those emails.¹⁶
7. On July 18, 2017, the California Federal Court then vacated the underlying arbitration award.¹⁷ Thus, as of July 18, 2017, ASPIC had no judgment and no arbitration award. Despite this, ASPIC did not withdraw its Application to Record a Foreign Judgment in Delaware.

¹² *Aspic Eng. & Constr. Co. v. ECC Centcom Constr., LLC et al.*, 2017 WL 2289219, at *2 (N.D. Cal. May 25, 2017) (Trans. ID 60767158) (D.I. 8); Hearing Transcript on Motion for Attorneys' Fees Dated August 25, 2017, 19:19-21 (Trans. ID 61507691) (D.I. 38).

¹³ *Id.*; Commissioner's Order at 5.

¹⁴ *Aspic Eng. & Constr. Co. v. ECC Centcom Constr., LLC et al.*, 2017 WL 2289219 (N.D. Cal. May 25, 2017) (Trans. ID 60767158) (D.I. 8).

¹⁵ Trans. ID 60767158 (D.I. 7); Trans. ID 60914642 (D.I. 16).

¹⁶ *Id.*

¹⁷ *Aspic Eng. & Constr. Co. v. ECC Centcom Constr., LLC et al.*, 2017 WL 3033631 (N.D. Cal. July 18, 2017) (Trans. ID 60873742) (D.I. 9).

8. On June 22, 2017, Defendants filed a Motion to Vacate Judgment,¹⁸ which this Court granted,¹⁹ and then filed a Motion for Attorneys' Fees,²⁰ which the Commissioner granted.²¹
9. ASPIC's conduct here unnecessarily prolonged and delayed the litigation, and counsel was not candid with the Court.²² The Court will not reconsider the Commissioner's decision awarding attorneys' fees and costs. The Order is not based upon findings of fact that are clearly erroneous, is not contrary to law, and is not an abuse of discretion.

¹⁸ Trans. ID 60767158 (D.I. 7).

¹⁹ Trans. ID 60883916 (D.I. 13).

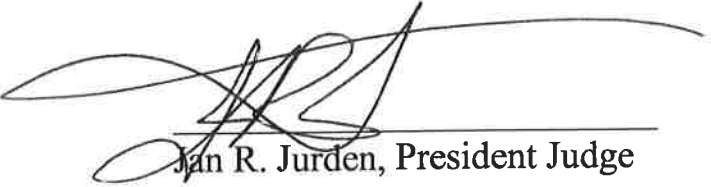
²⁰ Trans. ID 60914642 (D.I. 16).

²¹ Commissioner's Order at 8.

²² ASPIC sought to enter a judgment in Delaware that it knew was erroneously entered in California, it did not advise the Court that there was an unopposed motion to vacate that judgment pending decision in California, and once the judgment was vacated in California, ASPIC failed to withdraw its foreign judgment. *Aspic Eng. & Constr. Co. v. ECC Centcom Constr., LLC et al.*, 2017 WL 2289219 (N.D. Cal. May 25, 2017) (Trans. ID 60767158) (D.I. 8). As the Commissioner correctly noted, this case is not dissimilar to that of *Johnston v. Arbitrium (Cayman Islands) Handels AG*, 720 A.2d 542 (Del. 1998). See Commissioner's Order at 6. Counsel for ASPIC should have advised the Court about the unopposed motion to vacate pending decision in California Federal Court when ASPIC filed its Application to Record a Foreign Judgment in Delaware. The Commissioner's analysis and assessment of reasonable attorneys' fees and costs was properly guided by the factors set forth in Rule 1.5 of the DLRPC.

WHEREFORE, IT IS HEREBY ORDERED that ASPIC's October 5, 2017 Motion for Reconsideration of the Commissioner's Order is **DENIED**.

IT IS SO ORDERED.



Jan R. Jurden, President Judge

Original to Prothonotary

cc: Vivian A. Houghton, Esq.
Philip Trainer, Jr., Esq.
Hayley M. Lenahan, Esq.