SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD R. COOCH
RESIDENT JUDGE

DANIEL L. HERRMANN COURT HOUSE
WILMINGTON, DELAWARE 19801

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Re: ***Blank Rome Comisky & McCauley LLP v. Miklos Vendel, Technicorp International II, Inc., and Statek Corporation***
C.A. No. 99C-05-012 RRC

Submitted: February 15, 2002
Decided: April 12, 2002

On Defendants' Motion to Vacate.
DENIED.

Dear Counsel:

Before the Court is the motion of defendants Miklos Vendel, Technicolor International II, Inc., and Statek Corporation (collectively "Defendants") to vacate this Court's November 8, 2000 Order ("Order") dismissing the above action at the mutual request of Defendants and plaintiff law firm Blank Rome Comisky & McCauley LLP ("Blank Rome"). This

lawsuit was filed in May 1999 to collect the unpaid legal fees and related expenses Blank Rome claims it is owed by Defendants. The parties later voluntarily dismissed the action in favor of binding arbitration. Although they were not required to do so, the parties requested the Court to enter their arbitration agreement (constituting, among other things, their consensual dismissal of the case) as an order.

Defendants now seek to vacate this Court's Order pursuant to Superior Court Civil Rule 60(b)(6), which provides for relief from a final order for "extraordinary circumstances". Such action by this Court, if granted, would have the apparent effect of nullifying the actions of the arbitrator. Indeed, Defendants, in their motion, have requested a "prompt trial" to follow vacation of the Order. The gist of Defendants' claim for relief from the Order is that the agreed upon arbitrator subsequently "failed to enter an [a]ward in the time frame required by the [agreement providing for arbitration]" and that the arbitrator otherwise failed to sufficiently set forth reasons for certain decisions he rendered after the arbitration hearing was held in March 2001. [1]

Defendants' motion is **DENIED** because this Court does not have subject matter jurisdiction under the Delaware Uniform Arbitration Act to substantively entertain the motion, as the Act confers jurisdiction on the

[1] Defs.' Mot. at 1.

Court of Chancery to resolve disputes involving binding arbitration such as the one at hand.

FACTS AND PROCEDURAL HISTORY

Although the history of this case (and of related litigation in other courts) is lengthy and complicated, the salient facts necessary to dispose of Defendants' motion follow.

Plaintiff has previously described the basis of this lawsuit as follows: "In March 1998, Defendants met with and retained [Blank Rome] in Wilmington, Delaware to represent them in connection with three civil litigations and to render general advice."[2] "The terms of that representation were set forth in a fee agreement dated March 25, 1998…."[3]

Defendants have asserted that Blank Rome's billing was "inflated by false charges, inefficiency, errors and unauthorized work, among other things."[4]

Blank Rome's complaint averred that Defendants owed it about $700,000 in legal fees and expenses. Blank Rome claimed that despite demand, Defendants had failed to make payment on their accounts due, and therefore were in breach of their fee agreement. The parties thereafter

[2] Compl. ¶ 5.

[3] Compl. ¶ 6.

[4] Aff. of Margaritha E. Werren ¶ 6.

participated in two separate mediations, neither of which resolved the dispute. Following other pre-trial maneuvering, the parties ultimately agreed in Fall 2000 to submit their dispute to binding arbitration. The agreement provided that the action would be "dismissed with prejudice in favor of the Arbitration for which this Agreement provides."[5] Both sides signed releases conditioned on execution of the arbitration agreement.

The parties had mutually agreed upon the person chosen to conduct the arbitration. The agreement contained a provision stating that the arbitrator would render his decision within 10 days of the close of the arbitration hearing. The agreement also provided that the arbitrator need not make formal findings of fact and conclusions of law, but need only apprize the parties of the bases for his decision.

In an introductory paragraph, the agreement provides:

> 1. The captioned matter shall be submitted to binding arbitration before a single arbitrator pursuant to the provisions of 10 Del. C. § 5701 *et seq*.

This Court, pursuant to the agreement, would not retain jurisdiction over the matter, and the case would be dismissed:

> 6. Effective upon entry of this Agreement as an Order by the Superior Court, the above-caption Action shall be dismissed with prejudice in favor of the Arbitration for which this agreement provides.

[5] Order ¶ 6 (Dkt. 99).

At the center of the parties' dispute is Paragraph 15 of the arbitration agreement, which provides:

> 15. The Award. Within 10 business days after the close of the hearing, the Arbitrator will render his award. Although formal findings of fact and conclusions of law shall not be required, the Arbitrator will set forth in a separate opinion the reasons for the award in brief and concise form, sufficient to apprize the parties of the bases for his decision.

With regard to enforceability, the agreement provides:

> 17. If the award is not satisfied within ten business days [of the date on which the arbitrator's decision is rendered], either side may enter [the arbitrator's] award in the Delaware Court of Chancery as a judgment of said court, which judgment may thereafter be re-registered in any appropriate jurisdiction in the world as may be necessary to obtain execution.

With regard to appealability or "collateral attack", the agreement provides:

> 18. The Arbitrator's award shall be final, binding and nonappealable except as provided by 10 Del. C. § 5714. If any party attempts to appeal or to attack collaterally [the arbitrator's] award, the prevailing party in such appeal or collateral attack shall be entitled to its costs and reasonable attorneys' fees.

The agreement also provides:

> 19. The Delaware Court of Chancery shall have jurisdiction over the parties for purposes of entry, appeal and enforcement of the Arbitrator's award and the provisions of this Agreement.

Immediately after the parties' signatures at the conclusion of the document, the phrase "SO ORDERED this __ day of _____, 2000 _____(J.)" appears; this Court signed the order on November 8, 2000.

The arbitrator then held a hearing that concluded on March 16, 2001. By letter dated April 24, 2001, the arbitrator informed the parties that although he would not "go through every penny of the bills submitted by [Blank Rome]," he would "discuss in general terms the reasonableness of the bills…."[6] The arbitrator then described portions of the disputed bills in broad terms, upholding some of the charges as "reasonable" and specifically finding other charges "unreasonable." The arbitrator closed his letter by stating "I trust this resolves the issue, I will leave the accounting to the parties."[7]

The arbitrator and the parties thereafter corresponded frequently about the interpretation to be given the April 24th letter. In a June 19, 2001 letter written by the arbitrator (in response to a letter submitted by Defendants that the arbitrator characterized as a "motion for…clarification"[8]), the arbitrator further offered to assist the parties in their efforts to resolve this case, this time conveying his availability to help the parties to reach an exact computation of properly billed hours. Specifically, the arbitrator wrote "if the parties cannot agree on dollar amounts covered, upon request I will

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[6] Letter from the arbitrator to counsel of 4/24/01, at 2. (Ex. B to Aff. of Margaritha E. Werren)

[7] Id. at 4.

[8] Letter from the arbitrator to counsel of 6/19/01, at 1. (Ex. G to Aff. of Margaritha E. Werren)

schedule a meeting and a hearing to determine the exact amount due Blank Rome."[9] A meeting for this purpose was held on July 5, 2001; however, no exact final computation of the amount owed Blank Rome was reached by the arbitrator as of mid-December 2001, as is evidenced by a December 14, 2001 letter in which the arbitrator advised the parties that, "based upon [my] decision in this matter computation is left to the parties."[10]

Defendants' final communication to the arbitrator, dated January 3, 2002, notified the arbitrator of their intended withdrawal from the arbitration agreement pursuant to a claimed right "under Delaware law…."[11] Defendants' stated reason for their withdrawal was the arbitrator's purported "failure to render an award" and his alleged "failure to provide an explanation of the bases for his award." Later that day, Blank Rome wrote to the arbitrator and enclosed a "proposed form of Final Arbitration Award" requesting that it be awarded $620,514.02. In its letter, Blank Rome stated that Defendants had "thus far declined to cooperate in agreeing to the computation of the award."[12]

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[9] Id. at 2.

[10] Letter from the arbitrator to counsel of 12/14/01, at 2. (Ex. K to Aff. of Margaritha E. Werren)

[11] Letter from Defendants to the arbitrator of 1/3/02, at 2. (Ex. L to Aff. of Margaritha E. Werren)

[12] Letter from Blank Rome to the arbitrator of 1/3/02, at 1. (Ex. A to Defs.' Rep.)

On January 7, 2002, the arbitrator signed the "proposed form of Final Arbitration Award" that had been submitted by Blank Rome. In a letter to the parties that accompanied an executed copy of that document, the arbitrator wrote in part:

> It is agreed that [I] did not decide this matter within the (10) days provided by the Order. However, it must be noted that the number of exhibits submitted by the parties numbered in the thousands of pages. Although [I] did not review every word in every page of every exhibit submitted, a considerable number were reviewed.
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> It should also be noted that Defendant[s] did not object to the timing after the first decision on April 24, 2001, nor did the Defendant[s] object when [they] submitted a further letter requesting clarification that was decided on May 1, 2001. Nor did the Defendant[s] object to the timing when they filed a further request for clarification and when a hearing was held. It was not until after December 14, 2001 when [I] issued a third decision in this matter and a proposed Final Arbitration Award was submitted that the Defendant[s] objected.[13]

Defendants filed their motion to vacate in this Court on January 7, 2002, the same day that the arbitrator signed the "proposed form of Final Arbitration Award".[14]

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[13] Letter from the arbitrator to counsel of 1/7/2002, at 1. (Ex. 2 to Blank Rome's Opp'n to Defs.' Mot. to Vacate)

[14] Also, on January 17, 2002, Blank Rome filed a "Complaint to Confirm Arbitration Award" in the Court of Chancery. Blank Rome Comisky & McCauley LLP v. Vendel et al., C.A. No. 19355 (Del. Ch. filed Jan. 17, 2002). In its complaint, Blank Rome seeks to have the $620,514.02 awarded by the arbitrator on January 7, 2002 confirmed by the Court of Chancery. That litigation is pending.

CONTENTIONS OF THE PARTIES

In their motion, Defendants seek to vacate the court-ordered arbitration because 1) the arbitrator allegedly failed to enter an "award" within the time frame required by this Court's Order, *i.e.*, within 10 business days after the close of the hearing; and 2) the arbitrator "otherwise failed to perform consistent with the [Order]."[15] Defendants, citing 10 Del. C. § 5709(b)[16] of Delaware's Uniform Arbitration Act, argue that the arbitrator's authority had "terminated" before he signed the proposed "Final Arbitration Award" on January 7, 2002 (because of their "withdrawal" from the arbitration agreement). Defendants aver that no award had been issued prior to their January 3, 2002 withdrawal because an award "consists of the dollar amount of damages to be paid by a party."[17] Defendants further claim that Blank Rome has implicitly acknowledged that no award had been made

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[15] Defs.' Mot at 1.

[16] 10 Del. C. § 5709(b) provides:

> An award shall be made within the time fixed therefore by the agreement or, if not so fixed, within such time as the Court orders on complaint or application of a party in an existing case. The parties may extend the time in writing either before or after the expiration thereof. A party waives the objection that an award was not made within the time required unless the party notifies the arbitrators of such objection prior to the delivery of the award. The arbitrators shall deliver a copy of the award to each party in the manner provided in the agreement, or if no provision is so made, personally or by registered or certified mail, return receipt requested.

[17] Defs.' Mot. at 3.

prior to Defendants' purported withdrawal when it sent the January 3, 2002 letter asking the arbitrator to execute the proposed form of "Final Arbitration Award" (Blank Rome's term) attached thereto.

In response, Blank Rome primarily argues that this Court lacks subject matter jurisdiction to vacate or modify the arbitrator's April 24, 2001 award and the subsequent "Final Arbitration Award" entered by the arbitrator. Blank Rome states that it filed its January 17, 2002 complaint in the Court of Chancery because the agreement provides that the arbitrator's award shall be final, binding and nonappealable except as provided in 10 Del. C. § 5714, and that the Court of Chancery shall have jurisdiction for purposes of "appeal" of the arbitrator's award.[18] Blank Rome asserts that 10 Del. C. Ch. 57 (Delaware's Uniform Arbitration Act) "provides the exclusive forum to address Defendants' dissatisfaction with the arbitration award."[19] Blank Rome also points to the fact that releases were signed before the agreement became effective, and that this Court then dismissed the action with prejudice in favor of court-ordered arbitration.

Blank Rome additionally asserts (as to the merits of the arbitration process) that the arbitration is complete, that a "Final Arbitration Award" has been made, and that the arbitrator fulfilled his duties under the

[18] Blank Rome's Resp. ¶ 6.

[19] Blank Rome's Resp. ¶ 14.

agreement by issuing "four separate opinions explaining the bases for his decision."[20]

Blank Rome also requests this Court to award it its "costs and reasonable attorneys' fees" associated with litigating the motion, pursuant to paragraph 18 of the Order.

STANDARD OF REVIEW

On motion and upon such terms as are just, the Superior Court can relieve a party from a final judgment, order, or proceeding.[21] Superior Court Civil Rule 60(b)(6), upon which Defendants rely, provides relief from a final judgment if there is "any other reason justifying relief from the operation of the judgment" and has been described as a "catch-all" provision.[22] A party must demonstrate "extraordinary circumstances" before a court will grant relief from judgment under the rule.[23]

DISCUSSION

The parties, in executing the arbitration agreement that this Court subsequently entered as an order, agreed to participate in binding arbitration.

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[20] Blank Rome's Resp. ¶ 4.

[21] Super. Ct. Civ. R. 60(b).

[22] See, e.g., Dowell v. State Farm Fire & Casualty Co., 993 F.2d 46, 48 (4th Cir. 1993) (stating that "Rule 60(b)(6) is a catchall provision which allows a court to grant relief for any reason").

[23] See Jewell v. Division of Soc. Servs., 401 A.2d 88 (Del. 1979) (adopting federal "extraordinary circumstances" standard).

The agreement provides that the dispute would be submitted to binding arbitration pursuant to the provisions of 10 Del. C. Ch. 57. Because the agreement that the parties signed contemplates arbitration under Delaware's Uniform Arbitration Act, any issue arising out of the subsequent arbitration—including, as a threshold matter, the jurisdiction of this Court—must be analyzed according to the Act's terms.

A written agreement to submit a controversy to arbitration "confers jurisdiction on the [Court of Chancery]…to enforce [that agreement] and to enter judgment on an award."[24] Among other things, the Court of Chancery has the power to vacate an award where the "arbitrator[ ] exceeded [the arbitrator's] powers[ ] or so imperfectly executed [those powers] that a final and definite award upon the subject matter submitted was not made";[25] the Court of Chancery can also vacate an award where there "was no valid arbitration agreement, or the [arbitration agreement] ha[s] not been complied with…."[26] However, after the Court of Chancery enters an order on an arbitration award, that award can be transferred to Superior Court where it

[24] Del. Code Ann. tit. 10, §§ 5701, 5702 (1999).

[25] Del. Code Ann. tit. 10, § 5714(a)(3) (1999).

[26] Del. Code Ann. tit. 10, § 5714(a)(5) (1999).

constitutes "a judgment or decree on the docket with the same force and effect as if rendered in an action at law."[27]

Delaware's Uniform Arbitration Act generally gives the Court of Chancery jurisdiction over arbitration controversies arising under the Uniform Arbitration Act. While both §5701 and §5702 speak of the Court of Chancery's jurisdiction "to enforce…and to enter judgment on an award,"[28] §5714(a)(3) and §5714(a)(5) both explicitly refer controversies to the Court of Chancery where an arbitrator has "exceeded" or "imperfectly executed" the arbitrator's powers, or where there has been a lack of compliance with an arbitration agreement (or there is no valid agreement at all). The Court of Chancery's jurisdiction over arbitration disputes is broader than is argued by Defendants, who assert that because "no [a]ward has been rendered, [they] have not moved to vacate,"[29] *i.e.*, Defendants have not pursued their motion in the Court of Chancery because they argue that

[27] Del. Code Ann. tit. 10, § 5718(a) (1999).

[28] Del. Code Ann. tit. 10, §§ 5701, 5702 (1999).

[29] Defs. Mot. at 3 n.1.

no "award" has been rendered;[30] the Court of Chancery is given jurisdiction to resolve the issue of enforcing or entering judgment on an award.[31]

In contrast to the jurisdiction conferred on the Court of Chancery, the Uniform Arbitration Act appears to provide that Superior Court will only have "execution" jurisdiction once an award has been confirmed by the Court of Chancery and then transferred to the Superior Court.[32] This Court has held that an automobile insurer participating in arbitration under Title 21 did not have a right to an appeal *de novo* in Superior Court.[33] The Court held that "the only power conferred upon the Superior Court by [Delaware's Uniform Arbitration Act] is the power to enter awards for money damages or place liens on real estate," and that such power "arises, however, upon confirmation, modification or correction of such awards by the Court of Chancery."[34]

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[30] The heading of Del. Code Ann. tit. 10, § 5714 (1999) is "Vacating an award," but § 5714 applies also to instances where an award may not have been made. Cf. 1 Del. Code Ann. tit. 1, § 306 (2001) (providing that "headings or catchlines [of Code sections]…do not constitute part of the law").

[31] DMS Properties–First, Inc. v. P.W. Scott Assocs., Inc., 748 A.2d 389 (Del. 2000) (holding that the issue of arbitrability of architectural services dispute that arbitration panel had dismissed on motion of party was subject to an independent or *de novo* determination by the Court of Chancery).

[32] Del. Code Ann. tit. 10, § 5718 (1999) (stating that upon the granting of an order "confirming, modifying, or correcting an award for money damages, a duly certified copy of the award and of the order…shall be filed with the Prothonotary of the Superior Court…").

[33] New Hampshire Ins. Co. v. State Farm Ins. Co., 643 A.2d 328 (Del. Super. Ct. 1994)

[34] Id. at 331.

This Court does not have subject matter jurisdiction to grant the relief that Defendants request.[35] It was not necessary for the Court to have originally "ordered" the dismissal of this case for the parties to participate in binding arbitration.[36] "Court approval of a stipulation of dismissal is not required".[37] Defendants make no claim that the arbitration agreement was not otherwise a valid contract between the parties; Defendants complain about the arbitrator's performance pursuant to that agreement. The fact that an order dismissing this case was entered when one was not needed does not operate to confer backdoor jurisdiction on the Superior Court via a Rule 60(b)(6) motion where jurisdiction does not otherwise exist.[38]

Having found that it does not have subject matter jurisdiction and that the Court of Chancery is the proper forum to address the issues raised in

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[35] Cf. Speidel et al. v. St. Francis Hospital, Inc., Del. Super., C.A. No. 98C-05-227, Cooch, J. (Jan. 30, 2002) (Letter Op.) (holding in part that Superior Court would not compel arbitration with a particular arbitrator specified in parties' agreement which stated that binding arbitration was to be conducted "pursuant to Superior Court Civil Rule 16.1", and noting that the parties had not filed a complaint in the Court of Chancery as otherwise required by the Uniform Arbitration Act).

[36] See Superior Court Civil Rule 41(a)(1)(II) which provides, in pertinent part, that "an action may be dismissed by the plaintiff without order of court by filing a stipulation of dismissal signed by all the parties who have appeared in the action."

[37] 24 Am. Jur. 2d Dismissal, Discontinuance, and Nonsuit § 10 (1998); see also 8 James Wm. Moore et al., Moore's Federal Practice § 41.34[6][a] (3d. ed. 2001) (stating that approval or implementation by the court of a voluntary dismissal by stipulation is "unnecessary").

[38] Notably, Defendants do not attempt in their Reply to refute Blank Rome's main legal argument in its Response that this Court lacks subject matter jurisdiction to decide the pending motion.

Defendants' motion, this Court need not reach Blank Rome's other arguments (on the merits) that a final award was validly issued by the arbitrator. Additionally, the Court will not act on Blank Rome's application for reasonable attorneys' fees and costs, since paragraph 19 of the Order provides that the Court of Chancery shall have jurisdiction over the parties "for purposes of entry, appeal and enforcement of the Arbitrator's award and the provisions of this Agreement."

CONCLUSION

For all of the above reasons, Defendants' motion is **DENIED**.

IT IS SO ORDERED.

Very truly yours,

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Richard R. Cooch

cc: Prothonotary