IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

THOMAS SOLARINO and CYNTHIA S. SOLARINO,	:	C.A. No. 03C-09-045HdR
Plaintiffs,	:	
v.	:	
ANTHONY & SYLVAN POOLS CORPORATION, a foreign corporation,	:	
Defendants.	:	

Submitted: August 27, 2004
Decided: November 15, 2004

ORDER

Upon Defendant's Motion to Vacate Judgment.
Granted in part; Denied in part.

Craig T. Eliassen, Esquire of Schmittinger & Rodriguez, P.A., Dover, Delaware; attorneys for the Plaintiffs.

George T. Lees, III, Esquire and David A. Denham, Esquire of Bifferato Gentilotti & Biden, Wilmington, Delaware; attorneys for the Defendants.

WITHAM, J.

Upon consideration of the parties' briefs and the record below, it appears to this Court:

1. In October 2003, Thomas Solarino and Cynthia Solarino ("Plaintiffs") filed a complaint against Anthony & Sylvan Pools Corporation ("Defendant") alleging Breach of Contract, Negligence, and Breach of Warranty. Plaintiffs' complaint demanded a judgment comprising of general compensatory damages, special compensatory damages, prejudgment interest, post-judgment interest, and costs. After an arbitration hearing was conducted on July 21, 2004, the arbitrator found for Plaintiffs in the amount of $30,000.00. Despite Plaintiffs' requests, the arbitrator's order did not include an award for costs or interest. On August 13, 2004, after the time period for filing an appeal had elapsed, Plaintiffs filed a Motion for Entry of Judgment, with an order attached, which this Court subsequently signed on August 17, 2004. The order stated:

> IT IS HEREBY ORDERED that judgment is entered in favor of Plaintiffs and against Defendant in the amount of $30,000.00, plus court costs of $205.00, prejudgment interest at the legal rate of 5.75% per annum from March 21, 2003 and post-judgment interest at the aforesaid legal rate.

On the same day this order was signed, Defendant filed a response to Plaintiffs' motion disputing Plaintiffs' entitlement to interest and costs. Defendant argued that Plaintiffs were barred by the doctrines of *res judicata* and *collateral estoppel* from raising these issues before this Court because the plaintiffs had already requested interest and costs during arbitration where the arbitrator declined to order

such awards. Pursuant to Superior Court Civil Rule 60, Defendant subsequently filed a Motion to Vacate Judgment advancing the same arguments.

Superior Court Civil Rule 60 enables a court to relieve a party from a final judgment based upon mistake or for " any other reason justifying relief."[1] This rule essentially empowers the Court to set aside a judgment if necessary to prevent manifest injustice.[2] Thus, in exercising its discretion, this Court may vacate a judgment when justice so requires.[3] Further, in determining whether vacating a judgment is necessary in order to prevent injustice, the Court must consider the particular facts and circumstances of each case.[4]

2. Plaintiffs oppose Defendant's motion to vacate judgment and maintain their position that they are entitled to prejudgment interest, post-judgment interest and costs. Plaintiffs' arguments regarding this Court's authority to order such awards accurately reflect the law. This Court does have the authority to award court costs and post-judgment interest to the prevailing party.[5] This Court also concurs with Plaintiffs that a Court may award prejudgment interest for damages

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

[2] *See W.D. Haddock Construction Co. v. Overmeyer Co.*, 256 A.2d 760 (Del. Super. Ct. 1969).

[3] *See Jewell v. Division of Social Servs.*, 401 A.2d 88 (Del. 1979).

[4] *Model Fin. Co. v. Barton*, 136 A.2d 547 (Del. 1957).

[5] *See* Super. Ct. Civ. R. 54(d) and *Moskowitz v. Mayor & Council of Wilmington*, 391 A.2d 209, 210 (Del. 1978).

based upon a claim for breach of contract.[6] However, the question confronted by this Court is whether costs and interest can be awarded by this Court in addition to the arbitration award during a Motion for Entry of Judgment pursuant to Superior Court Civil Rule 16.1(k)(11)(C).[7]

3. Defendant, relying on the holding in *Cooper v. Celente,*[8] contends the doctrines of *collateral estoppel* and *res judicata* prohibit Plaintiffs from seeking interest and costs in their Motion for Entry of Judgment because Plaintiffs' requests for such awards have already been rejected by the arbitrator. In *Cooper*, both parties signed a uniform submission agreement that required the parties to submit their claims to arbitration which would be conducted in accordance with the National Association of Securities Dealer's ("NASD") Code of Arbitration Procedure. Section 41(b) of the NASD Code provided "unless the applicable law directs otherwise, all awards rendered pursuant to this Code shall be deemed final and not subject to review or appeal."[9] Pursuant to the parties' agreement and in accordance with the NASD Code, the Court concluded the arbitration award had a *res judicata*

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[6] *See Rollins Environment Services, Inc.*, 426 A.2d 1363 (Del. Super. Ct. 1980).

[7] Super. Ct. Civ. R. 16.1(k)(11)(C) *states* "The arbitration order shall be entered as an order of judgment by any judge of the Court, upon motion of a party, after the time for requesting a trial de novo has expired. A judgment so entered shall have the same force and effect as a judgment of the Court in a civil action but shall not be subject to appeal."

[8] *Cooper v. Celente*, 1992 Del. Super. LEXIS 370.

[9] *Id.* at *14.

effect on subsequent litigation efforts in the courts.[10] Based upon the analysis in *Cooper*, Defendant contends Plaintiffs' claims for interest and costs are now barred by the doctrines of *res judicata* and *collateral estoppel.*

Superior Court Civil Rule 16.1(k)(11)(F) expressly refutes Defendant's contention that the doctrine of *collateral estoppel* applies to arbitration hearings. This subsection states "awards entered in arbitration proceedings under this Rule shall not have collateral estoppel effect in any other judicial proceedings."[11] Accordingly, this Court must reject Defendant's contention that the doctrine of *collateral estoppel* precludes Plaintiffs' claim before this Court. However, the rule is silent with respect to *res judicata.* While this Court recognizes the analysis in *Cooper* was premised, at least in part, upon the parties' agreement which made the arbitrator's award conclusive and final, this Court finds that the doctrine of *res judicata* may still apply under certain circumstances even in the absence of such an agreement. The pivotal issue for this Court is not the presence of a written agreement but rather the intentions of the parties.

"Res judicata bars a suit involving the same parties based upon the same cause of action."[12] In addition to claims that were actually argued, *res judicata* also

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[10] *Id.* at *16.

[11] Super. Ct. Civ. R. 16.1(k)(11)(F).

[12] *RSS Acquisition, Inc. v. Dart Group Corp.*, 1999 Del. Super. LEXIS 591, at *9 (*citing M.G. Bancorporation v. LeBeau*, 737 A.2d 513, 520 (Del. 1999)).

precludes claims that could have been argued.[13] In order for the doctrine of *res judicata* to apply, the following prerequisites must be satisfied:

1. The court making the prior adjudication must have had jurisdiction over the subject matter of the suit and of the parties to it;
2. The parties to the prior action were the same as the parties, or their privies, in the pending case;
3. The prior cause of action was the same as that in the present case, or the issues necessarily decided in the prior action were the same as those raised in the pending case;
4. The issues in the prior action were decided adversely to the contentions of the plaintiffs in the pending case; and
5. The prior decree is final.[14]

Pursuant to Superior Court Civil Rule 16.1(a), Plaintiffs' claims against Defendant were subject to compulsory arbitration.[15] Since neither party requested

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[13] *RSS Acquisition, Inc.*, 1999 Del. Super LEXIS 599, at *10 (*citing Cooper*, 1992 Del. Super. LEXIS 370)).

[14] *Cooper*, 1992 Del. Super LEXIS 370, at *17-18 (*citing Playtex Family Products v. St. Paul Surplus*, 564 A.2d 681, 683 (Del. Super. Ct. 1989)).

[15] Super. Ct. Civ. R. 16.1(a) *states* "All civil actions, except those listed in subsection (d) hereof, (1) in which a trial is available (2) monetary damages are sought (3) any nonmonetary claims are nominal and (4) counsel for claimant has not certified that damages exceed one hundred thousand dollars ($100,000) exclusive of costs and interest, are subject to compulsory alternative dispute resolution...."

a trial de novo within the prescribed time period, the arbitrator's decision may be entered as an order of judgment by this Court which will have the same force and effect as a judgment of the Court in a civil action.[16] Accordingly, this Court concludes that the arbitrator had the authority and subject matter jurisdiction to make the prior adjudication. This Court also concludes the parties to this action are the same as those present at the arbitration hearing since this dispute merely arose from Plaintiffs' motion for entry of judgment of the arbitrator's award.

This Court also finds that Plaintiffs' requests for prejudgment interest and costs were argued at the arbitration hearing and both issues were decided adversely for the Plaintiffs. The record indicates Plaintiffs demanded prejudgment and post-judgment interest along with costs in their initial complaint and also argued for such awards before the arbitrator. Here, the arbitrator's order awarded Plaintiffs $30.000.00 but made no reference to an award for either prejudgment interests or costs.[17] Considering the rules, instructions, and sample forms provided to arbitrators, this Court is convinced that the arbitrator was well-informed and knew he could order interest and costs if the case warranted such awards. Further, this Court is convinced that the arbitrator would have included in his order an award for prejudgment interest and costs had he intended to make such awards. Accordingly,

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[16] Super. Ct. Civ. R. 16.1(k)(11)(C).

[17] Although the Arbitrator's Order did state "the Arbitrator's fee is not included as costs in the action," the Court finds such language to be neither indicative of an intention to award or of an intention to deny costs.

this Court finds the order's silence to be a reflection of the arbitrator's decision not to award prejudgment interest or costs.

This Court does not, however, reach the same conclusion regarding Plaintiff's request for post-judgment interest. In Delaware, post-judgment interest is not subject to the Court's discretion but is rather a right the prevailing party holds.[18] In addition, Plaintiffs' legal right to post-judgment interest does not attach until there is an entry of judgment.[19] Accordingly, the arbitrator's order might not have referenced post-judgment interest because it is automatic or because it does not attach until one party motions this court for an entry of judgment. Thus, this Court cannot conclude that the order's silence regarding post-judgment interest is necessarily indicative of an adverse ruling for the Plaintiffs.

Finally, this Court finds the Arbitrator's order to be a final decree. Although the parties did not sign an agreement that made the Arbitrator's decision binding and final as did the parties' in *Cooper*, both parties' actions indicated their intentions for the order to be final. Superior Court Rule 16.1 provides that a party may demand a trial de novo within 20 days after the Arbitration Order has been filed with the Prothonotary's Office.[20] The rule further provides that a trial de novo is

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[18] *See Moskowitz*, 391 A.2d at 210.

[19] *See Wilmington Country Club v. Cowee*, 747 A.2d 1087, 1097 (Del. 2000) (*citing Moffitt v. Carroll*, 640 A.2d 169, 178 (Del. 1994) (holding that the legal right to post-judgment interest is attached on entry of judgment, not on later date when amount of judgment was modified).

[20] Super. Civ. Ct. R. 16.1(k)(11)(D).

the parties' only remedy.[21] If neither party exercises the sole remedy provided by this rule, this Court construes such inaction as an indication both parties intended the Arbitrator's order to be final. Accordingly, although the Arbitrator's order is not entered as an order of judgment by the Court until one party motions for such action, the Arbitrator's order is deemed final for purposes of *res judicata* if neither party demands a trial de novo within the 20-day time period.

In sum, arbitration awards may have a *res judicata* effect on further litigation efforts in the Courts.[22] Although this Court finds that Plaintiffs were entitled to argue for prejudgment interest and costs, the proper forum for such arguments was before the Arbitrator. Having unsuccessfully argued before the arbitrator for costs and prejudgment interest, the doctrine of *res judicata* prohibits Plaintiffs from rearguing these same issues before this Court on a Motion for Entry of Judgment. Even if these arguments were not argued before the arbitrator, Plaintiffs' claims would still be barred because the doctrine of *res judicata* also precludes issues that could have been brought before the arbitrator.[23]

4. Further, granting Plaintiffs' request for prejudgment interest and costs in addition to the arbitrator's award would literally contravene the express language

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[21] Super. Civ. Ct. R. 16.1(k)(11)(D) provides in part "...a demand for a trial de novo is the sole remedy of any party in any action subject to arbitration under this Rule."

[22] *See Cooper*, 1992 Del. Super. LEXIS 370, at *16; *see also RSS Acquisition, Inc.*, 1999 Del. Super. LEXIS 591, at *12.

[23] *RSS Acquisition, Inc.*, 1999 Del. Super. LEXIS 591, at *10.

of the statute. Superior Court Civil Rule 16.1 (k)(11)(C) provides " the arbitration order shall be entered as an order of judgment by any judge of the Court, upon motion of a party, after the time for requesting a trial de novo has expired. A judgement so entered shall have the same force and effect as a judgment of the Court in a civil action but shall not be subject to appeal." Superior Court Civil Rule 16.1 (k)(11)(D) explicitly states " a demand for a trial de novo is the sole remedy of any party in any action subject to arbitration under this rule." When these sections are read *in pari materia*, it is clear this Court cannot award prejudgment interest and costs in addition to the arbitration order. Although the arbitrator ordered defendant to pay $30,000.00, the arbitrator's order was silent with respect to the prejudgment interest and at best ambiguous regarding an award for costs.[24] Accordingly, pursuant to Rule 16(k)(11)(C), this Court should have awarded Plaintiff $30,000.00 upon entering the arbitration order as an order of judgment. This Court's order should have also included post-judgment interest to the Plaintiffs as a matter of right for which this Court has no discretion. However, Plaintiffs' additional requests for prejudgment interests and costs should have been denied. These additional requests are in essence disputing the arbitrator's award. Superior Court Rule 16.1 clearly provided Plaintiffs with an adequate and exclusive remedy that they should have implemented if they wanted to contest the arbitrator's award. Requesting additional awards on their Motion for Judgment of Entry is not that remedy.

[24] The Arbitrator's Order stated "the Arbitrator's fee is not included as costs in this action."

If Plaintiffs were malcontent with the Arbitrator's award, the proper procedure for Plaintiffs would have been to demand a trial de novo within 20 days of the arbitration order. Their case would have then been placed back onto the court calendar and would have proceeded as if there was no arbitration.[25] As provided in Superior Court Civil Rule 16.1(k)(11)(D), this is Plaintiff's exclusive remedy. Rather than adhere to the exclusive remedy provided by the rule, Plaintiffs simply requested this court to award prejudgment interest and costs in addition to the arbitrator's order. The express provisions of this rule preclude this court from ordering such additional awards.

Although Plaintiffs direct this Court to *Continental Insurance Company v. Rizzi*[26] for the proposition that this Court may order prejudgment interest in addition to the arbitrator's award, this Court finds Plaintiffs' argument unpersuasive. Pursuant to their insurance agreement, the parties in *Rizzi* submitted their claims to arbitration. The arbitrator's award was subsequently appealed by Continental. Although no interest was awarded in the arbitrator's award, the Court held that prejudgment interest could be awarded by the Court because the arbitrator's award became a contract dispute upon being entered.[27] The Court explained " to allow a party to litigate an arbitration award that had fixed damages without any

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[25] Super. Civ. Ct. R. 16.1(k)(11)(D)(I).

[26] 1992 Del. Super. LEXIS 58.

[27] *Id.* at *8.

responsibility for paying interest on that fixed sum would defeat the relative quick and inexpensive means of dispute resolution arbitration."[28] Further, the Court stated " I do not find *Church Home Foundation, Inc. v. Homesey, Inc.*[29] to control because this is a presently a contract dispute and not merely a confirmation of an award of an arbitrator."[30] In *Church Foundation, Inc.*, the court declined to award prejudgment interest stating " I do not question the arbitrator' s power to award interest but rather question this Court' s ability to alter the award of the arbitrator on Plaintiff' s request for confirmation."[31] Here, unlike Continental, Defendant has not appealed or attempted to further litigate the arbitrator' s award. Rather, Plaintiffs have simply motioned this Court to enter the arbitrator' s order as an order of judgment. Accordingly, this Court finds *Rizzi* to be factually disparate and thus uncontrolling.

5. Finally, there are sound policy reasons to reject Plaintiffs' claims for prejudgment interests and costs. The ultimate goal of arbitration is to secure a just and fair determination of every action in less time and at less expense than those cases which are not subject to arbitration. Arbitration is supposed to provide a quick and effective way to resolve disputes. In order for arbitration to remain effective

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[28] *Id.*

[29] 1983 Del. Ch. LEXIS 475.

[30] *Id.*

[31] *Id.* at *3.

and efficient, parties must be able to rely on the arbitration order in determining whether to appeal the arbitrator's decision. In accordance with Superior Court Rule 16.1, a party cannot file a Motion for Entry of Judgment until the period for filing a trial de novo expires. Allowing additional awards to be argued on a Motion for Judgment of Entry would force a party who otherwise would not have filed an appeal to demand a trial de novo merely to avoid the uncompromising position of potentially being ordered to pay an additional and unanticipated amount in damages after the period for filing an appeal has expired. Such a result would be contrary to Delaware policy which favors arbitration because of its efficiency.

Based on the aforementioned reasons, although this Court correctly awarded post-judgment interest to Plaintiffs, pursuant to Rule 60, this Court is required to partially vacate its earlier decision because it erred in granting Plaintiffs' requests for prejudgment interest and costs in addition to the arbitrator's order. Accordingly, Defendant's Motion to Vacate Judgment is hereby ***granted in part and denied in part***. IT IS SO ORDERED.

/s/ William L. Witham, Jr.
J.

oc: Prothonotary
xc: Order Distribution
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