

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2009 CA 1858

DOMINION BOARD OF DIRECTORS AND DOMINION ARCHITECTURAL
CONTROL COMMITTEE

VERSUS

MR. LEO CAILLIER, III AND MRS. NAYDJA LARKINS CAILLIER
AS OWNERS OF REAL PROPERTY AT 241 EMPRESS COURT; LOT 29,
PHASE II DOMINION SUBDIVISION MADISONVILLE, LA 70447

Judgment Rendered: May 7, 2010

Appealed from the
Twenty-Second Judicial District Court
In and for the Parish of St. Tammany, Louisiana
Trial Court Number 2008-15749

Honorable Reginald T. Badeaux, Judge

Clint L. Pierson, Jr.
Covington, LA

Attorney for
Plaintiffs – Appellees
Dominion Board of Directors
and Dominion Architectural
Control Committee

Anthony L. Glorioso
Metairie, LA

Attorney for
Defendants – Appellants
Mr. Leo Caillier, III and
Mrs. Naydja Larkins Caillier as
Owners of Real Property

BEFORE: WHIPPLE, HUGHES, AND WELCH, JJ.

WELCH, J.

Leo Caillier, III and Naydja Larkins Caillier appeal a judgment of the district court confirming an arbitration award against them and in favor of Dominion Board of Directors (“DBD”) and Dominion Architectural Control Committee (“DACC”) and awarding DBD and DACC additional sums. For reasons that follow, we amend the judgment, and as amended, the judgment is affirmed.

I. FACTUAL AND PROCEDURAL HISTORY

Dominion is a residential subdivision located in St. Tammany Parish. It was developed by Fairway Development Group, L.L.C. By authentic act dated January 28, 2004, and recorded in the public records for St. Tammany Parish, certain restrictive covenants for Dominion were created. Those restrictive covenants were later amended by authentic act dated May 24, 2005, and recorded in the public records. The owners of property located in Dominion belong to Dominion Subdivision Homeowner’s Association (“DSHA”), which is governed by DBD. DACC administers the various rules and regulations regarding construction and use of a property located within Dominion.

By act of cash sale dated December 24, 2006, the Cailliers acquired a lot in Dominion and moved into a home located on the property. The act of cash sale specifically provided that the property was subject to the restrictive covenants of Dominion. Shortly thereafter, the Cailliers began to store a boat and trailer in their yard, and a dispute between the Cailliers and DACC arose. Relevant to this dispute, the restrictive covenants for Dominion provide, in pertinent part:

III. PROHIBITED ACTIVITIES

....

4. No structure of a temporary character such as a trailer, camper, camp truck, house trailer, mobile home, or other prefabricated trailer, house trailer, or recreational vehicle or other vehicle having once been designed to be moved on wheels, no tents, shacks, barns or other outbuilding shall be used on any lot at any time

as a residence either temporarily or permanently. *Further, no such trailer, camper, camp truck, junk vehicle, recreational vehicle, motorcycle, boat and/or boat trailer shall be kept on any lot or in the street adjoining any lot in the subdivision. It is provided, however, that this restriction shall not apply to such vehicles, motorcycles, boats and/or trailers, or machinery or equipment enclosed and kept within a garage or behind a fenced or landscaped enclosure approved by DACC but not in the front yard (the front yard being measured from the front of the house to the front property line, or the side yard of a corner lot)] (the side yard being measured from the side of the house to the side property line adjoining the street right of way).* (Emphasis added.)

DBD and DACC had several communications with the Cailliers concerning the lack of an enclosure approved by DACC for their boat and trailer. In response, the Cailliers submitted plans to DACC for a landscaped enclosure of the boat by the use of shrubs. DACC rejected the plans for the proposed landscaped enclosure and instead, informed the Cailliers that they would have to erect a six-foot wood fenced enclosure, as DACC had required with all other property owners in the subdivision. When the Cailliers refused, in accordance with the by-laws of DSHA, DBD and DACC initiated arbitration proceedings against the Cailliers, seeking their compliance with the restrictive covenants regarding boat and trailer storage on the property and with DACC's decision with regard to the appropriate enclosure for the boat.

An arbitration hearing was conducted on October 1, 2008. The Cailliers did not attend the arbitration hearing; however, the arbitrator considered the photographs, claims, and information submitted by the Cailliers prior to the hearing. On October 1, 2008, the arbitrator made an award finding that the DSHA and DACC had proven their case, and giving the Cailliers ten days from the date of the award to either submit plans for approval to DSHA and DACC for the installation of a six-foot wood fence on their property or remove the boat (and trailer) from their property until they complied with the requirements of DSHA and DACC. Additionally, the arbitrator assessed the costs of the arbitration totaling

\$2,048.30 against the Cailliers.

On October 29, 2008, DBD and DACC commenced these proceedings in district court, seeking to confirm the arbitration award and to have judgment entered in accordance with the arbitration award. In response, the Cailliers sought to modify and/or correct the arbitration award so as to allow them the option to submit a plan for a landscaped enclosure as provided by the restrictive covenants.

On April 23, 2009, the district court rendered judgment confirming the October 9, 2008 award of the arbitrator and making the award a judgment of the district court. Additionally, the judgment rendered by the district court provided “that in addition to the total fees and expenses assessed by the [a]rbitrator, namely \$2,048.30, judgment is hereby rendered against [the Cailliers] in the sum of \$4,360.50 plus legal interest on all amounts due ... from date of judicial demand ... until paid, and for all court costs of these proceedings.” From this judgment, the Cailliers have appealed.

On appeal, the Cailliers contend that the district court erred in: (1) confirming the arbitration award because the arbitration award did not contain an option allowing the Cailliers to submit a plan for a landscaped enclosure, and (2) awarding arbitration and court costs and attorney fees.

II. LAW AND DISCUSSION

Louisiana Revised Statutes 9:4209 provides that, upon a timely motion for an order confirming an arbitration award, a district court shall grant the order unless the arbitration award is vacated, modified, or corrected as provided by La. R.S. 9:4210 and 9:4211. Louisiana Revised Statutes 9:4210 provides:

In any of the following cases the court in and for the parish wherein the award was made shall issue an order vacating the award upon the application of any party to the arbitration.

A. Where the award was procured by corruption, fraud, or undue means.

B. Where there was evident partiality or corruption on the part of the arbitrators or any of them.

C. 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 controversy, or of any other misbehavior by which the rights of any party have been prejudiced.

D. 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.

Where an award is vacated and the time within which the agreement required the award to be made has not expired, the court may, in its discretion, direct a rehearing by the arbitrators.

Additionally, La. R.S. 9:4211 provides:

In any of the following cases the court in and for the parish wherein the award was made shall issue an order modifying or correcting the award upon the application of any party to the arbitration.

A. Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.

B. Where the arbitrators have awarded upon a matter not submitted to them unless it is a matter not affecting the merits of the decision upon the matters submitted.

C. Where the award is imperfect in matter of form not affecting the merits of the controversy.

The order shall modify and correct the award so as to effect the intent thereof and promote justice between the parties.

Essentially, the Cailliers contend that because the restrictive covenants provide that a boat and trailer may be stored behind a "fenced or landscaped enclosure" approved by the DACC, the arbitrator's failure to allow the Cailliers the option to construct a landscaped enclosure was in manifest disregard of the law, and therefore should be modified or vacated. We find no merit to the Cailliers contention in this regard. Although the restrictive covenants suggest that a boat and/or trailer may be kept on the property if it is enclosed behind either a fenced or landscaped enclosure, the restrictions are clear that the enclosure must be approved

by DACC. DACC did not approve the Cailliers' proposed landscaped enclosure, and instead, informed them that they would need to construct a six-foot wooden fenced enclosure, as DACC had required of other residents of Dominion. Accordingly, the arbitrator determined that the Cailliers would have to either construct a six-foot wooden enclosure approved by DACC or remove their boat until they complied. Considering the restrictive covenants and the arbitrator's ruling, we can find no basis in the record to vacate or modify this award. Therefore, the April 23, 2009 judgment of the district court confirming the arbitration award in favor of DBD and DACC and making the arbitration award a judgment of the district court is affirmed.

With regard to the award of fees and expenses in favor of DBD and DACC, the by-laws of DSHA provide, in pertinent part, as follows:

ARTICLE 8

ARBITRATION

With the exception of dues, assessments, and collection of dues and assessments, which are excluded from arbitration, any dispute between or among the property owners arising out of the administration of the subdivision property shall be resolved by the Association acting through its Board of Directors. Should any owner contest the decision reached by the Association then the Association, through its Directors, shall select an arbitrator, and the matter or matters in dispute shall be submitted to: the arbitrator for arbitration in accordance with the rules adopted by the American Arbitration Association. The decision of the arbitrator shall be binding on all lot owners and the Association. *All costs of any such arbitration shall be borne equally by the lot owners involved on a pro-rata basis unless the award of the arbitrators is entirely against one lot owner, in which case said lot owner shall be solely responsible for all costs of said arbitration.*

(Emphasis added.)

In accordance with this provision of the by-laws, the arbitrator cast the Cailliers with the costs of arbitration, which totaled \$2,048.30 (\$1,600.00 for the fees and expenses of the arbitrator and \$448.30 for the cost of the transcript of the arbitration hearing). Considering the above provision in the by-laws, we find no

error in the district court's judgment confirming the arbitrator's award in this regard. However, the district court's judgment further provided "that in addition to the total fees and expenses assessed by the [a]rbitrator, namely \$2,048.30, judgment is hereby rendered against [the Cailliers] in the sum of \$4,360.50 plus legal interest on all amounts due ... from date of judicial demand ... until paid, and for all court costs of these proceedings."

This additional sum of \$4,360.50, awarded in favor of DBD and DACC, was derived from a statement for services rendered by counsel for DBD and DACC and was itemized as follows: \$2,800.00 for professional services rendered (*i.e.* attorney fees), \$33.00 for travel to and from the Cailliers' deposition, \$812.50 for costs for the depositions of the Cailliers, and \$715.00 in clerk of court charges. While we find no error in the district court's confirmation of the assessment of arbitration costs made by the arbitrator or in the district court's determination that the Cailliers should be assessed with costs or legal interest,¹ it is well settled that attorney fees are not recoverable unless expressly authorized by statute or by a contract between the parties. See Huddleston v. Bossier Bank and Trust Co., 475 So.2d 1082, 1085 (La. 1985); Tassin v. Golden Rule Ins. Co., 94-0362, p. 14 (La. App. 1st Cir. 12/22/94), 649 So.2d 1050, 1058.

In this case, there is no applicable statutory provision for the award of attorney fees and neither the by-laws for DSHA nor the restrictive covenants for Dominion contain a provision allowing for attorney fees. Therefore, to the extent that the district court's award of \$4,360.50 in favor of DBD and DACC included an award of \$2,800.00 in attorney fees, the court erred. Therefore, we amend the judgment of the district court that awarded DBD and DACC the additional sum of \$4,360.50 to \$1,560.50 (\$4,360.50 minus \$2,800.00 in attorney fees).

¹ See La. C.C.P. art. 1920 or 1921.

III. CONCLUSION

For all of the above and foregoing reasons, the judgment of the district court is hereby amended and as amended, is affirmed. Each party is to bear their own costs of this appeal.

AMENDED, AND AS AMENDED, AFFIRMED.