Court of Appeals, State of Michigan

ORDER

Harry Ronald Frans v Harleysville Lake States Insurance Co.

Docket No. 255091

LC No. 03-003376-GK

William B. Murphy
Presiding Judge

David H. Sawyer

Patrick M. Meter
Judges

The Court orders that the motion for reconsideration is GRANTED, and this Court's opinion issued January 12, 2006, is hereby VACATED. A new opinion is attached to this order.

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

MAR 0 7 2006
Date

Sandra Schultz Mengel
Chief Clerk

STATE OF MICHIGAN

COURT OF APPEALS

HARRY RONALD FRANS, d/b/a RAINBOW'S END, Plaintiff/Counterdefendant-Appellee,	UNPUBLISHED January 12, 2006
V HARLEYSVILLE LAKE STATES INSURANCE COMPANY, Defendant/Counterplaintiff-Appellant.	No. 255091 Schoolcraft Circuit Court LC No. 03-003376-GK

Before: Murphy, P.J., and Sawyer and Meter, JJ.

PER CURIAM.

Defendant appeals by leave granted from the trial court's order denying its motion for an appraisal in this insurance claim case. We affirm.

A fire damaged plaintiff's business property in May 2001. Defendant is the insurer. In December 2002, defendant gave notice of its intent in invoke the appraisal clause of the policy because the parties were unable to agree on the value of the property. Plaintiff thereafter unilaterally revoked the appraisal clause and filed the instant lawsuit, seeking damages.

Defendant filed a motion to compel an appraisal of the property. After a hearing, the trial court denied that motion, ruling that the appraisal clause constituted a common-law arbitration agreement that plaintiff could unilaterally revoke.

Defendant argues on appeal that the appraisal clause is not a common-law arbitration agreement. Defendant asserts that because the inclusion of the clause in the policy is statutorily mandated, both parties are bound by the clause.

This issue involves a question of law, and this Court reviews questions of law de novo. *Westchester Fire Ins Co v Safeco Ins Co*, 203 Mich App 663, 667; 513 NW2d 212 (1994).

Defendant acknowledges in its appellate brief that there are several cases that treat an appraisal clause as if it were a common-law arbitration agreement. Defendant claims, however,

that these cases essentially deal with the appropriate standard of review and are inapplicable to the instant case. This Court disagrees and affirms the trial court's order.

The insurance code at MCL 500.2833(1)(m) provides for a mandatory provision to be placed in all fire insurance policies allowing both parties to seek an appraisal if they are unable to agree on the value of the property damaged. The process allows either party to seek an appraisal and provides that, if this occurs, each party shall hire a separate appraiser to determine the value of the property. If the appraisers cannot agree on a value, then an umpire, either chosen by the two appraisers or by the circuit court if the appraisers cannot agree on the umpire, reviews the appraisal process. The statutorily mandated language states that a "[w]ritten agreement signed by any 2 of these 3 shall set the amount of the loss."

The policy issued by defendant included language substantially the same as that required by the statute.

This Court dealt with an appraisal issue in *Emmons v Lake States Ins Co*, 193 Mich App 460; 484 NW2d 712 (1992). The plaintiff argued "that the trial judge erred in refusing to set aside the appraisal award and in refusing to remove the umpire-appraiser." *Id.* at 466. The Court stated that

> [a]n appraisal process used to settle a homeowner's insurance claim is a substitute for a judicial determination of a dispute concerning the amount of the loss. . . . *The appraisal process is a common law arbitration agreement* rather than a statutorily mandated arbitration. Therefore, it is not subject to as strict a standard of review." [*Id.* at 466 (emphasis added).]

In *Manausa v St Paul Fire & Marine Ins Co*, 356 Mich 629; 97 NW2d 708 (1959), our Supreme Court dealt with an issue involving an appraisal clause. In that case, the appellants argued that the lower court had not complied with the Michigan Arbitration Statute. *Id.* at 632-633. The Court stated, "The portion of appellants' second question dealing with the arbitration statutes . . . will not be discussed here because *this case involves a common law arbitration agreement* . . . ." *Id.* at 633 (emphasis added).

While these cases did not deal with the identical issue involved in this case, they nonetheless make clear that an appraisal clause constitutes a common-law arbitration agreement. It follows, therefore, that the law regarding common-law arbitration should apply in this case. See, generally, *Davis v National American Ins Co*, 78 Mich App 225, 232; 259 NW2d 433 (1977).

Moreover, whereas the uniform arbitration act at MCL 600.5001 provides that an agreement to settle a controversy by arbitration under the act is valid, enforceable, and irrevocable if the agreement provides that a circuit court can render judgment on the arbitration award, a provision with regard to the rendering of judgment is not included in the language of MCL 500.2833(1)(m) and was not included in the clause at issue here. If an arbitration agreement does not provide that judgment may be entered on the award, the agreement is one for common-law arbitration, and either party may unilaterally revoke the agreement at any time before the announcement of the award. *Hetrick v David A Friedman, DPM, PC*, 237 Mich App

264, 268-269; 602 NW2d 603 (1999); *Tony Andreski, Inc v Ski Brule, Inc*, 190 Mich App 343, 347-348; 475 NW2d 469 (1991).

Accordingly, the trial court did not err in concluding that the provision at issue was a common-law arbitration agreement that could be unilaterally revoked. The fact that the language of the provision was statutorily mandated does not somehow transform the language into something other than a common-law arbitration agreement.

Affirmed.

/s/ David H. Sawyer
/s/ Patrick M. Meter