

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

PITNEY ROAD PARTNERS, LLC T/D/B/A
REDCAY COLLEGE CAMPUSES I

Appellant

v.

HARRISBURG AREA COMMUNITY
COLLEGE

Appellee

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 2231 MDA 2011

Appeal from the Judgment Entered January 8, 2013
In the Court of Common Pleas of Lancaster County
Civil Division at No(s): CI-11-12678

BEFORE: OLSON, J., OTT, J., and FITZGERALD, J.*

MEMORANDUM BY OTT, J.:

Filed: February 4, 2013

Pitney Road Partners, LLC t/d/b/a Redcay College Campuses I (Pitney) brings this appeal from the judgment¹ entered on the December 8, 2011 order of the Court of Common Pleas of Lancaster County, that denied its Petition to Vacate the Corrected and Clarified Final Award of Arbitrators (Corrected Final Award), in this dispute between Pitney and Harrisburg Area

* Former Justice specially assigned to the Superior Court.

¹ Pursuant to this Court's January 3, 2013 order, Pitney, on January 8, 2013, entered judgment on the trial court's order denying the petition to vacate, in order to perfect this appeal.

Community College (HACC) that went to arbitration.² The Corrected Final Award was entered after the arbitration panel acted to correct errors in its Final Award of Arbitrators (Final Award). Pitney, in support of its claim that the trial court erred in denying its petition, raises two questions: (1) Whether the arbitration panel had authority to correct the Final Award, and (2) Whether the trial court erred in refusing to permit Pitney to conduct discovery. **See** Pitney's Brief at 4. Based upon the following, we affirm.

The present action arises from a dispute between Pitney and HACC involving HACC's Lancaster Campus. Previously, HACC was Pitney's tenant at the Lancaster Campus, pursuant to several different lease agreements. Each lease contained an option to purchase that allowed HACC to buy the Lancaster Campus.

In October, 2003, Pitney and HACC entered into a lease agreement, by which Pitney agreed to construct, and HACC agreed to lease, additional facilities on the Lancaster Campus, generally referred to as Phase II. After the Phase II project was completed in 2004, disputes arose between Pitney and HACC. Pitney commenced an action against HACC in the Lancaster County Court of Common Pleas in 2006. However, the parties subsequently

² We note Pitney filed related appeals at 331 MDA 2012 and 708 MDA 2012, which were consolidated and listed at J-A26017-12, consecutive to this appeal.

agreed to submit their claims to common law arbitration. **See** 42 Pa.C.S. § 7341 *et seq.*

On June 14, 2011, after 18 days of hearings, the arbitrators issued their Interim Award of Arbitrators (Interim Award). The arbitrators awarded Pitney damages for rent HACC had failed to pay from July through December of 2004 (\$754,769), as well as damages for forbearance fees (\$253,804), and bank legal fees (\$694,549), totaling \$1,703,122. The arbitrators also determined that HACC was entitled to purchase the Lancaster Campus by December 15, 2011. The arbitrators directed the parties to provide the panel with additional information to enable the panel to calculate the purchase price. On September 29, 2011, the arbitrators issued their Final Award, wherein the purchase price for the Lancaster Campus was determined to be \$52,787,096.

On October 7, 2011, HACC wrote to the arbitrators to inform the panel that there was a computational error in the Final Award, resulting in a double assessment against HACC. Specifically, HACC stated that Exhibit C of the Final Award, "Purchase Price For the Lancaster Campus Inclusive of Assessed Damages," set forth three line items due from HACC — rent payments from July to December 2004, forbearance fees, and bank legal fees — that had already been considered in calculating the purchase price for

Lots 3, 4, 5, 6 and Millennium Drive at \$32,483,350.³ In this regard, HACC referred the panel to Exhibit A of the Final Award, which showed that the ultimate project costs figure for Lots 3 and 4 included these three line items, i.e., rent for July through December, 2004, the forbearance fees, and the bank legal fees.⁴ HACC noted that the Interim Award, which identified the

³ Exhibit C, reads, in part, as follows:

<u>Component of Purchase Price</u>	<u>Award [Finding]</u>	<u>Price</u>
Purchase Price For Phase I (Lot 2 & Campus Drive)	SD(2)	\$16,633,366
Purchase Price For Phase II (Lots 3, 4, 5, 6 & Millennium Drive)	SD(2)	32,483,350
Rent Owed by HACC for July - December 2004	SC(1)	754,769
Forbearance Fees Owed by HACC	SC(4)	253,804
Bank Legal Fees Owed by HACC	SC(4)	694,549
	
Total Purchase Price	\$ A(4)/D(4)	<u>\$52,787,096</u>

Final Award, 9/29/2011, Exhibit "C" (emphasis added).

⁴ Exhibit A, titled "Revised Calculation of Ultimate Project Costs & Additional Rent Due as Landlord's Equity For Lots 2, 3 and 4 (Final Rent)," reflects the following relevant entries for "Phase 2":

...Rent (July-December 2004)		754,769
	
Forbearance Fees		253,804
Bank Legal Fees		694,549
	
Net Total Project Costs		\$27,230,552

Final Award, *supra*, Exhibit "A" (emphasis added). The rent (July through December, 2004), forbearance fees and bank legal fees total \$1,703,122.

purchase price for Lots 3 and 4, used the same figure as on Exhibit A.⁵ **See** HACCC's Letter, 10/7/2011.⁶

On October 20, 2011, the Panel issued the Corrected Final Award, which adjusted the double assessment in the amount of \$1,703,122, and thereby reduced the purchase price of the Lancaster Campus from \$52,787,096 to \$51,083,974.⁷ On October 31, 2011, Pitney filed a Petition

⁵ Section D(3) of the Interim Award states, in relevant part:

The total purchase price for Lots 3, 4, 5, 6 and Millennium Drive is **\$32,483,350**, and we arrive at this value based upon the following calculation: . . .

Purchase Price [for Lots 3 & 4] before tax ³¹	27,230,552
+ Transfer Tax (1%)	272,306
Total Purchase Price for Lots 3 & 4	27,502,858
. . . .	
Total Purchase Price for Lots 5 & 6	4,810,327
. . . .	
Total Purchase Price for Millennium Drive	170,165
. . . .	
Total Purchase Price for Lots 3,4,5,6 & Millennium Dr.	<u>\$32,483,350</u>

³¹ See Exhibit A hereto; this is the value for the Phase 2 Net Total Project Cost.

Interim Award, 6/14/2011, at 34 (emphasis added).

⁶ HACCC's letter is attached to Pitney's Petition to Vacate as Exhibit "D."

⁷ The Panel specifically noted: "... We do not believe that either of the Parties had the ability to appreciate how the rulings of the Interim Award and the rulings of the Final Award would fit together until the issuance of our Final Award and the calculation of the total purchase price in its attached Exhibit C on September 29, 2011," Corrected Final Award, 10/20/2011, at 5 n.2.

to Vacate the Corrected Final Award. On December 8, 2011, following a hearing, the trial court denied the petition to vacate, and this appeal followed.⁸

Preliminarily, we state our standard of review:

[O]ur standard of review in the context of common law arbitration is limited:

The award of an arbitrator ... is binding and may not be vacated or modified unless it is clearly shown that a party was denied a hearing or that fraud, misconduct, corruption or other irregularity caused the rendition of an unjust, inequitable or unconscionable award. The arbitrators are the final judges of both law and fact, and an arbitration award is not subject to reversal for a mistake of either. Furthermore, Appellant bears the burden to establish both the underlying irregularity and the resulting inequity by "clear, precise and indubitable evidence". In this context, irregularity refers to the process employed in reaching the result of the arbitration, not the result itself. In addition, as the arbitrator's authority is restricted to the powers the parties have granted them in the arbitration agreement, we may examine whether the common law arbitrator exceeded the scope of his authority. Finally, we note that a trial court order confirming a common law arbitration award will be reversed only for an abuse of discretion or an error of law.

Stack v. Karavan Trailers, Inc., 864 A.2d 551, 555 (Pa. Super. 2004) (citation omitted), *appeal denied*, 878 A.2d 865 (Pa. 2005).

Pitney first contends that the arbitrators did not have authority to correct the Final Award, and in doing so, created an "irregularity" in the

⁸ Pitney timely complied with the order of the trial court to file a statement of errors complained of on appeal, pursuant to Pa.R.A.P. 1925(b).

arbitration process, which required the trial court to vacate the Corrected Final Award.⁹

It is well settled that once an arbitrator renders a final decision with regard to the issues submitted by the parties, the arbitrator becomes *functus officio* – that is, “his authority is exhausted and he ... can do nothing more in regard to the subject matter of the arbitration.” *Stack, supra* at 556. However, there are three limited exceptions to this general rule:

- (1) an arbitrator can correct a mistake which is apparent on the face of his award;
- (2) where the award does not adjudicate an issue which has been submitted, then as to such issue the arbitrator has not exhausted his function and it remains open to him for subsequent determination; and
- (3) where the award, although seemingly complete, leaves doubt whether the submission has been fully executed, an ambiguity arises which the arbitrator is entitled to clarify.

Id. Therefore, an arbitration panel may correct a mistake in computation or clerical error that is apparent on the face of the award. *See id.* at 557.

Pitney maintains that the panel’s mistake “was not a clerical or computational error, but rather an error in judgment as to how these items should be treated in calculating the total funds due Pitney upon the sale of

⁹ *See* 42 Pa.C.S. § 7341 (providing that an award from a common law arbitration proceeding must be vacated or modified upon a clear showing that “a party was denied a hearing or that fraud, misconduct, corruption or **other irregularity** caused the rendition of an unjust, inequitable or unconscionable award”) (emphasis added).

the Lancaster Campus.” Pitney’s Brief at 11. Further, Pitney contends that it was not apparent from the face of the Final Award that the amounts separately itemized as damages for unpaid rent, forbearance fees, and bank legal fees, were also included within the purchase price calculation for Phase II. Specifically, Pitney asserts:

In their [Corrected Final Award], the arbitrators state that the inclusion of the unpaid rent, forbearance fees, and bank legal fees in both the Phase II purchase price calculation and the assessment of damages against HACC was an error that was apparent on the face of their Final Award. But an examination of the Final Award demonstrates that this is clearly not the case. In Exhibit C to the Final Award, the amounts for unpaid rent, forbearance fees, and bank legal fees are included as items of assessed damages being awarded to Pitney. Nowhere does the Final Award explicitly state that these three amounts are being included in the Phase II purchase price calculation. Exhibit A [which includes the same three line items] is simply a worksheet for calculating the ultimate project costs and landlord’s equity in the Project. It is certainly not apparent on the face of Exhibit A that these amounts are being included in the calculation of the Phase II purchase price as there is no reference to the Phase II purchase price in Exhibit A. Rather, to understand how the inclusion of these amounts on Exhibit A fit into the Phase II purchase price calculation, one would have to go back and review other documents, testimony and arguments, and one would have to have a detailed understanding of how rent is calculated based on debt service payments on taxable revenue bonds and how project costs relate[] to the purchase option calculations.

Pitney’s Brief at 20–21.¹⁰

¹⁰ Pitney relies on *Colonial Penn Insurance Company v. The Omaha Indemnity Company*, 943 F.2d 327 (3d Cir. 1991), wherein the Third Circuit Court of Appeals declined to find a clear mistake on the face of the (Footnote Continued Next Page)

Having reviewed the Final Award, we are not persuaded by Pitney's argument. Rather, we agree with the apt analysis of the trial court:

An arbitrator is permitted to "correct a mistake which is apparent on the face of his award." *Stack v. Karavan Trailers, Inc.*, 864 A.2d. 551, 556 (Pa. Super. 2004). That is precisely what the arbitration panel did in this case. A computational error was corrected and clarified. Specifically, the panel mistakenly double assessed some damages against HACC. Even Pitney, in its own Petition, recognized that the panel assessed the same damages twice. Pitney would have the Court believe that this was a mistake of judgment and not a computational error. The Court, however, disagrees. The panel mistakenly assessed HACC twice in regards to some damages and issued the Corrected and Clarified Award to correct that simple computational error. Correcting this type of mistake is clearly within an arbitration panel's jurisdiction.

Trial Court Opinion, 2/21/2012, at 2.

Exhibit A of the Final Award includes three items — rent from July through December of 2004 (\$754,769), forbearance fees (\$253,804), and bank legal fees (\$694,549), totaling \$1,703,122 — in the project costs calculation for Phase II, which, in turn, formed the principal component of the Phase II purchase price. *See* Interim Award, 6/14/2011 at 34 (Section D(3)).¹¹ Exhibit C of the Final Award, titled "Purchase Price For the

(Footnote Continued) _____

award. In *Colonial Penn*, the award mentioned "reserves" which Colonial Penn did not actually have, and the question regarding reserves could not be determined without reference to extraneous testimony. *Id.* at 332–333.

¹¹ The conclusions of the Interim Award are adopted in the Final Award except as specifically amended. *See* Final Award, 9/29/2011, at 17 and Exhibit D, p. iii.

Lancaster Campus Inclusive of Assessed Damages," lists the Phase II purchase price, as well as the same three items of damages. Consequently, it was apparent on the face of the Final Award that the three items of damages totaling \$1,703,122 were assessed against HACC twice, once in Exhibit A, as incorporated into the purchase price for Phase II listed on Exhibit C, and then again as separate line items on Exhibit C, and this error was clearly a computational mistake.

We note that the arbitrators, in explaining their analysis following receipt of HACC's letter of October 7, 2011, agreed with HACC that the error was "apparent upon examination of the information contained in, and summarized by, Exhibit A and Exhibit C to the Final Award."¹² The panel further stated, "[i]t was the Panel's intent to assess the Damages in Question against HACC *once*, not twice,"¹³ and concluded that the "double assessment" was "an error, a blunder ... and we simply did not recognize this computational error until it was brought to our attention[.]"¹⁴ Our review

¹² Corrected Final Award, 10/20/2011, at 5.

¹³ *Id.* (emphasis in original), citing Sections (C)(1) and (C)(4) of the Interim Award. Under Section (C)(1), HACC is found obligated to pay rent for the period of July through December 2004, including interest, in the amount of \$754,769. Under Section (C)(4) of the Interim Award, HACC is found obligated to pay \$253,804 in forbearance fees and \$694,549 in bank legal fees. **See** Interim Award, 6/14/2011, at 23, 27.

¹⁴ Corrected Final Award, *supra*, at 5 (emphasis in original) (internal quotations and citation omitted).

confirms the panel's assessment, and, therefore, we reject Pitney's first claim.

Nor do we find merit in the argument of Pitney that the trial court erred in not permitting Pitney to take discovery from the arbitrators in support of its petition to vacate. As the trial court properly stated: "Generally, an arbitrator's testimony cannot be used to impeach an award of arbitrators." Trial Court Opinion, *supra*, at 2, citing ***Jackson v. Government Employees Ins. Co.***, 612 A.2d 1071, 1075 (Pa. Super. 1992), *appeal denied*, 636 A.2d 634 (Pa. 1993). Moreover, as discussed, the panel provided its rationale, reasoning and process for correcting and clarifying the Final Award. Accordingly, we affirm the decision of the trial court that denied Pitney's petition to vacate.

Judgment affirmed.