

[Cite as *Cold Harbor Bldg., Co. v. Allied Restoration & Caulking*, 2015-Ohio-2863.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102218

COLD HARBOR BUILDING CO.

PLAINTIFF-APPELLEE

vs.

ALLIED RESTORATION & CAULKING

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-14-820405

BEFORE: E.T. Gallagher, J., Celebrezze, A.J., and E.A. Gallagher, J.

RELEASED AND JOURNALIZED: July 16, 2015

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EILEEN T. GALLAGHER, J.:

{¶1} Defendant-appellant, Allied Restoration & Caulking, L.L.C. (“Allied”) d.b.a. Allied Restoration & Caulking, appeals a judgment confirming an arbitration award in favor of plaintiff-appellee, Cold Harbor Building Company (“Cold Harbor”). Allied raises the following sole assignment of error for our review:

The trial court had no jurisdiction to modify the arbitration award when no motion to vacate, modify, or correct the arbitration award was filed within three months following the arbitration award, as required by R.C. 2711.13.

{¶2} We find no merit to the appeal and affirm the trial court’s judgment.

I. Facts and Procedural History

{¶3} Cold Harbor and Allied were parties to a contract in which Cold Harbor hired Allied as a subcontractor on a construction project. Allied breached the agreement, and Cold Harbor submitted a breach of contract claim against Allied to the American Arbitration Association (“AAA”). An arbitrator heard the evidence and entered an award in the amount of \$34,781.75 in favor of Cold Harbor and against Allied. When Allied failed to pay the award, Cold Harbor filed a complaint and application to confirm the arbitration award in the Cuyahoga County Court of Common Pleas pursuant to Ohio’s Arbitration Act, R.C. 2711.01 et seq.

{¶4} In its answer, Allied admitted that (1) it participated in the arbitration proceedings, (2) the arbitrator awarded Cold Harbor \$34,781.75 in damages, and (3) it (Allied) had not paid Cold Harbor any part of the award. Allied denied, however, that

the award was binding on it and asserted as a defense that no such entity called “Allied Restoration & Caulking” exists.

{¶5} Cold Harbor subsequently filed a motion to amend the complaint to conform to the evidence pursuant to Civ.R. 15(B). Cold Harbor argued that the arbitration award is binding on Allied pursuant to the terms of the parties’ contract, which was signed by Allied’s president. According to Cold Harbor, Allied did business under the trade name Allied Restoration & Caulking, and neither the contract nor any other document indicated that Allied’s business name was Allied Restoration & Caulking, L.L.C.

{¶6} Allied opposed Cold Harbor’s motion to amend its complaint, arguing that the limitations period for filing a motion to amend the arbitration award pursuant to R.C. 2711.13 had expired and, therefore, the arbitration award was not binding on Allied. The trial court rejected this argument, granted Cold Harbor’s motion to amend the pleadings to conform to the evidence, and entered judgment confirming Cold Harbor’s arbitration award against Allied. This appeal followed.

II. Law and Analysis

{¶7} In its sole assignment of error, Allied argues the trial court lacked jurisdiction to modify the arbitration award because the limitations period for modification of an arbitration award set forth in R.C. 2711.13 had expired. R.C. 2711.13 provides that a party to an arbitration may file a motion in the common pleas court for an order vacating, modifying, or correcting the award, but the motion must be served on the adverse party or his attorney within three months after the award is delivered to the parties.

{¶8} Pursuant to R.C. 2711.13, a party may only obtain an order vacating, modifying, or correcting an arbitration award if the award was procured by fraud as provided in R.C. 2711.10, or the award resulted from a miscalculation or some other error “affecting the merits of the controversy” as provided in R.C. 2711.11. R.C. 2711.11 further states that modifications are made to “effect the intent” of the award and to “promote justice between the parties.” Thus, these provisions apply only to substantive changes to the amount of the award.

{¶9} Cold Harbor did not file a motion to modify the amount of the arbitration award pursuant to R.C. 2711.13; it sought leave to correct the defendant’s name pursuant to Civ.R. 15(B). The correction of a party’s name to conform to the evidence does not affect the merits of Cold Harbor’s claims and does not change the amount of the arbitration award. Therefore, R.C. 2711.13 does not apply to Cold Harbor’s motion to amend its complaint and did not deprive the trial court of jurisdiction to rule on its motion.

{¶10} Furthermore, R.C. 2711.09 provides that the trial court has jurisdiction to confirm an arbitration award if the motion to confirm the award is made within one year of the arbitration proceeding. It is undisputed that Cold Harbor filed its application to confirm the arbitration award within one year of the arbitration proceeding. Therefore, the trial court had jurisdiction to rule on Cold Harbor’s motion to amend its complaint.

{¶11} Allied also argues the civil rules do not apply to applications to confirm arbitration awards because they are “special proceedings,” and therefore, the court could

not amend Cold Harbor's complaint under Civ.R. 15. However, Civ.R. 1, which governs the applicability of the civil rules, provides that the civil rules do not to apply to procedural matters in special statutory proceedings only "to the extent that they would by their nature be clearly inapplicable." Civ.R. 1(C)(7). The Ohio Supreme Court has interpreted this language to mean that Civ.R. 1 is a rule of inclusion rather than exclusion.

Robinson v. B.O.C. Group, 81 Ohio St.3d 361, 370, 691 N.E.2d 667 (1998). Thus, "[t]o the extent that the issue in question is procedural in nature, the Civil Rules should apply unless they are 'clearly inapplicable.'" *Id.*, quoting *Price v. Westinghouse Elec. Corp.*, 70 Ohio St.2d 131, 132, 435 N.E.2d 1114 (1982).

{¶12} Courts have construed the term "clearly inapplicable" to mean that courts should refrain from employing a particular civil rule "only when [its] use will alter the basic statutory purpose for which the specific procedure was originally provided in the special statutory action." *Robinson* at 370, quoting *Price* at 133. Moreover, the Staff Notes to Civ.R. 1 explain that "the Civil Rules will be applicable to special statutory proceedings adversary in nature unless there is a good and sufficient reason not to apply the rules."

{¶13} "The purpose of the Ohio Arbitration Act is * * * to ensure judicial enforcement of privately made agreements to arbitrate." *Am. Gen. Fin. v. Griffin*, 8th Dist. Cuyahoga No. 99088, 2013-Ohio-2909, ¶ 10, quoting *Med. Imaging Network, Inc. v. Med. Resources*, 7th Dist. Mahoning No. 04 MA 220, 2005-Ohio-2783, ¶ 16. Cold Harbor's motion to amend its application sought to correct the defendant's name and was

necessary for the court to judicially enforce the parties' agreement to arbitrate. Therefore, because Civ.R. 15(B) advances, not alters, "the basic statutory purpose" of the Ohio Arbitration Act, Civ.R. 15(B) applied to Cold Harbor's motion.

{¶14} The trial court granted Cold Harbor's motion to amend the complaint pursuant to Civ.R. 15(B). We review the trial court's decision to grant or deny a motion to amend a pleading under Civ.R. 15 for an abuse of discretion. *State ex rel. Askew v. Goldhart*, 75 Ohio St.3d 608, 610, 665 N.E.2d 200 (1996). An abuse of discretion means that the trial court's decision was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶15} Civ.R. 15(B) provides, in relevant part:

When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment. Failure to amend as provided herein does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits.

{¶16} In *Peterson v. Teodosio*, 34 Ohio St.2d 161, 175, 297 N.E.2d 113 (1973), the Ohio Supreme Court explained that Civ.R. 15 and all the civil rules are intended to resolve cases on their merits rather than on pleading deficiencies:

Civ.R. 1(B) requires that the Civil Rules shall be applied "to effect just results." Pleadings are simply an end to that objective. The mandate of Civ.R. 15(A) as to amendments requiring leave of court, is that leave

“shall be freely given when justice so requires.” Although the grant or denial of leave to amend a pleading is discretionary, where it is possible that the plaintiff, by an amended complaint, may set forth a claim upon which relief can be granted, and it is tendered timely and in good faith and no reason is apparent or disclosed for denying leave, the denial of leave to file such amended complaint is an abuse of discretion.

{¶17} An objecting party may prevent the amendment of a pleading under Civ.R. 15 by establishing that he or she will suffer “serious disadvantage” in the presentation of its case, if the amendment were allowed. *Hall v. Bunn*, 11 Ohio St.3d 118, 122, 464 N.E.2d 516 (1984).

{¶18} Allied and Cold Harbor contractually agreed to resolve conflicts through arbitration. Despite the fact that the parties’ contract identified Allied as “Allied Restoration & Caulking” instead of “Allied Restoration & Caulking L.L.C.,” Allied’s president executed the contract and bound Allied to its terms. Indeed, the arbitrator determined that the parties’ contract was enforceable. Furthermore, Allied admitted in its answer that (1) it participated in the arbitration proceedings, (2) the arbitrator awarded Cold Harbor \$34,781.75 in damages, and (3) it (Allied) had not paid Cold Harbor any part of the award.

{¶19} Allied was represented by counsel throughout the arbitration proceedings and presented a defense. The arbitration proceedings complied with AAA rules, and a neutral and detached arbitrator awarded Cold Harbor damages based on the evidence presented. Nothing in the record suggests that Allied was subjected to a “serious disadvantage” in the presentation of its case, nor was Allied unfairly prejudiced by the amendment after the arbitrator rendered his decision. Therefore, the trial court properly

allowed Cold Harbor to amend its application to conform to the evidence presented at the arbitration. In fact, a denial of Cold Harbor's motion would have been an abuse of discretion under the facts of this case.

{¶20} The sole assignment of error is overruled.

{¶21} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

EILEEN T. GALLAGHER, JUDGE

FRANK D. CELEBREZZE, JR., A.J., and
EILEEN A. GALLAGHER, J., CONCUR