

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

WILLIAM B. CHANDLER III
CHANCELLOR

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Date Submitted: June 25, 2009
Date Decided: August 18, 2009

Michael J. Isaacs
Seth A. Niederman
Fox Rothschild LLP
Citizens Bank Center
919 N. Market Street, Suite 1300
Wilmington, DE 19801

Peter J. Walsh, Jr.
Meghan M. Dougherty
Potter Anderson & Corroon LLP
Hercules Plaza, 6th Floor
1313 N. Market Street
P.O. Box 951
Wilmington, DE 19899

Re: *World-Win Marketing, Inc. v. Ganley Management Co.*
D/B/A Ganley Dodge West
Civil Action No. 3905-CC

Dear Counsel:

Plaintiff World-Win Marketing (“World-Win”) seeks to partially vacate an arbitration award so that plaintiff can recover attorneys’ fees allegedly owed pursuant to an agreement between the parties. Plaintiff contends that the award of the arbitrator should be vacated because it contradicts language of the agreement that provides that if either of the parties initiates proceedings to enforce the agreement “the prevailing party shall be entitled to recover all reasonable costs incurred in connection therewith, including attorneys’ fees.”

Before me are cross motions for summary judgment. For the reasons set forth briefly below, and because the arbitrator did not exceed his authority, I grant summary judgment in favor of defendant.

I. BACKGROUND

Plaintiff World-Win provides consulting, advertising, marketing, and related services to automobile dealerships. Defendant Ganley Management Co. (“Ganley”) is an automobile dealership located in Cleveland, Ohio. In early 2007, World-Win and Ganley entered into a contract (the “Agreement”) whereby World-Win would conduct a sales promotion for Ganley. Shortly thereafter a dispute arose between the parties.

In August 2007, plaintiff filed a demand for arbitration with the American Arbitration Association, seeking damages for breach of contract in the amount of \$46,396.52. In early 2008, arbitration was conducted before Donald Greene. In April 2008, the arbitrator issued a decision concluding that World-Win and Ganley “were equally negligent in the performance of the Agreement, and in the breach of numerous provisions of said Agreement. Therefore, the Parties shall incur damages equally.” Accordingly, the arbitrator awarded World-Win \$23,198.26 in damages, representing half of the damages sought by World-Win. The arbitrator did not award attorneys’ fees to either party, and concluded that “[e]ach party shall be solely responsible for their costs incurred to bring about this Arbitration, and they shall be equally responsible for fees due and payable to the American Arbitration Association.”

On July 21, 2008, plaintiff filed a Complaint in this Court seeking to partially vacate the award because “[t]he arbitrator[] exceeded [his] powers, or so imperfectly executed them that a final and definite award upon the subject matter submitted was not made.”¹ Plaintiff argues that the arbitrator exceeded his authority by not awarding attorneys’ fees to plaintiff, which plaintiff contends is required by paragraph 13 of the Agreement, which provides as follows:

In the event either of the Parties initiates proceedings to enforce this Agreement, the prevailing party shall be entitled to recover all reasonable costs incurred in connection therewith, including attorneys’ fees, in addition to any damages or other relief awarded.

Plaintiff contends (1) that the term “prevailing party” was not at issue during the arbitration, (2) that “World-Win was obviously the prevailing party,”² and (3) that the arbitrator failed to enforce the “plain and unambiguous” terms of the

¹ 10 *Del. C.* § 5714(a)(3); 9 U.S.C. § 10(a)(4).

² Opening Br. in Support of Pl.’s Mot. for Summ. J. (“Pl.’s Opening Br.”) 2.

Agreement by failing to award attorneys' fees to plaintiff.³ Thus, plaintiff argues, the arbitrator exceeded his authority, and the portion of the award denying attorneys' fees to plaintiff must be vacated. I disagree, and conclude that the arbitrator did not exceed his authority.

II. ANALYSIS

Under Court of Chancery Rule 56(c), summary judgment is appropriate where there is no dispute as to material facts and the moving party is entitled to judgment as a matter of law.⁴ The Court views the facts in the light most favorable to the non-moving party, and the moving party bears the burden of demonstrating that there is no genuine issue as to any material fact.⁵ If the facts presented are properly supported, then the burden shifts to the non-moving party "to dispute the facts by affidavit or proof of similar weight."⁶ Uncontroverted facts in the record are assumed to be true.⁷

"In considering an application to vacate an arbitration award, the Court is limited to a determination of whether there exists any of the five statutory grounds for vacating an award, as set forth in 10 *Del. C.* § 5714."⁸ Here, plaintiff alleges that the arbitrator exceeded his authority by declining to award plaintiff attorneys' fees in direct contradiction of the Agreement.⁹ To succeed on such a claim, plaintiff "must show by strong and convincing evidence that the Arbitrator clearly exceeded his authority."¹⁰

The scope of the authority of the arbitrator is defined by "the mutual assent of the parties to the terms of the submission."¹¹ "If the Arbitrator decides an issue outside of those contained in the submission, or if his actions are in direct contradiction to the express terms of the agreement of the parties, he has exceeded his authority."¹² This Court, however, "does not sit as an appellate court reviewing

³ Pl.'s Opening Br. 4.

⁴ See *Gilbert v. El Paso Co.*, 575 A.2d 1131, 1142 (Del. 1990).

⁵ *Tanzer v. Int'l Gen. Indus., Inc.*, 402 A.2d 382, 385 (Del. Ch. 1979).

⁶ *Id.*

⁷ *Id.* at 386.

⁸ *Malekzadeh v. Wyshock*, 611 A.2d 18, 21 (Del. Ch. 1992).

⁹ See 10 *Del. C.* 5714(a)(3).

¹⁰ *Malekzadeh*, 611 A.2d at 21.

¹¹ *Fagnani v. Integrity Fin. Corp.*, 167 A.2d 67, 73-74 (Del. Super. 1960).

¹² *Malekzadeh*, 611 A.2d at 21.

the arbitrators' legal findings and procedural actions.”¹³ Indeed, “parties electing to arbitrate generally waive their right to judicial review of the case’s substantive merits.”¹⁴ Even if the arbitrator did not state the grounds for a grant or denial of relief, the grant or denial of relief will be deemed to be within the scope of the arbitrator’s authority “[i]f grounds for the award can be inferred from the facts of the case.”¹⁵

Plaintiff contends that “[i]n reinterpreting the term ‘prevailing party’ contrary to its traditional and legal meaning, the arbitrator failed to enforce the agreement in accordance with its plain and unambiguous terms. Accordingly, the arbitrator’s decision on attorneys’ fees should be vacated and World-Win awarded its fees and costs.”¹⁶ According to plaintiff, “[t]he definition of ‘prevailing party’ is firmly established in tradition and Delaware law”¹⁷ and the arbitrator’s purported “reinterpretation” of that provision resulted in a decision in direct contradiction of the Agreement. This argument, while clever, does not change the general principle that the Court of Chancery is not an appeals Court for decisions of an arbitrator, and will not review the substantive merits of the arbitrator’s decision.

Under Delaware law, the Court generally evaluates “the substance of a litigation to determine which party predominated.”¹⁸ Thus, “in the usual case, whether a party prevailed is determined by reference to substantive issues, not damages.”¹⁹ Here, the arbitrator did not exceed his authority in deciding to not award attorneys’ fees to either party. The arbitrator ruled that World-Win and Ganley “were *equally negligent* in the performance of the Agreement, and in the breach of numerous provisions of said Agreement. Therefore, the Parties shall incur damages *equally*.”²⁰ As a practical matter, the effect of this decision—that World-Win and Ganley were equally negligent and equally liable for damages—

¹³ *Kuhn v. Hess*, 2000 WL 1336780, at *1 (Del. Ch. Aug. 16, 2000) (ORDER).

¹⁴ *Id.*

¹⁵ *Malekzadeh*, 611 A.2d at 22 (“An Arbitrator need not state the grounds for a grant of relief, and it is normally inappropriate for a court to direct an Arbitrator to disclose the reasoning of his decision.”)

¹⁶ Pl.’s Opening Br. 4.

¹⁷ *Id.* at 6.

¹⁸ *Ivize of Milwaukee, LLC v. Complex Litig. Support, LLC*, 2009 WL 1111179, at *14 (Del. Ch. Apr. 27, 2009); *W. Willow-Bay Court, LLC v. Robino-Bay Court Plaza, LLC*, 2009 WL 458779, at *8 (Del. Ch. Feb. 23, 2009); *Brandin v. Gottlieb*, 2000 WL 1005954, at *28 (Del. Ch. July 13, 2000).

¹⁹ *W. Willow-Bay*, 2009 WL 458779, at *9.

²⁰ (Emphasis added).

was that Ganley was to pay World-Win \$23,198.26. This figure represents a midpoint between World-Win and Ganley's positions: World-Win believed it was entitled to full payment under the underlying contract, and Ganley believed World-Win was entitled to nothing. Although the arbitrator did not expressly say as much in the award, I am able to infer that the arbitrator concluded that neither party was the prevailing party and thus neither party was entitled to attorneys' fees.²¹ In making this determination, the arbitrator did not exceed his authority.

Plaintiff argues that *Comrie v. Enterasys Networks, Inc.*²² "can be distilled to the reasonable proposition that if a plaintiff brings an action for breach of contract and the fact-finder awards any amount of damages, the plaintiff is the 'prevailing party.'"²³ Thus, plaintiff argues, it is the prevailing party because it brought a breach of contract action and was awarded damages. Plaintiff's argument fails for at least two independent reasons.

First, I do not read *Comrie* as standing for any such rule. The "prevailing party" under Delaware law is the party that predominates in the litigation.²⁴ Thus, damages are not necessarily determinative on the issue of which party prevailed. In *Comrie*, the Court rejected the argument that a party was not a prevailing party because it recovered a lesser amount in damages than it originally sought.²⁵ Rather than establishing a general principle based on a plaintiff in a contract action being awarded damages, the Court in *Comrie* determined "that the plaintiffs were predominate in the main issue in the case—the interpretation of the Agreement."²⁶

Second, plaintiff is not entitled to vacate an arbitrator's award merely because the arbitrator interpreted Delaware case law differently than a Delaware Court may have. Plaintiff's challenge to the arbitrator's allegedly incorrect interpretation of the term "prevailing party" invites this Court to review the substantive merits of the arbitrator's decision. As I explained above, this Court does not sit as a Court of appeals to review arbitrator's decisions. "By agreeing to

²¹ *Malekzadeh*, 611 A.2d at 22 ("An Arbitrator need not state the grounds for a grant of relief If grounds for the award can be inferred from the facts of the case, the award is deemed to be within the scope of the Arbitrator's authority and must be affirmed.") (citations omitted).

²² 2004 WL 936505 (Del. Ch. Apr. 27, 2004).

²³ Pl.'s Opening Br. 6-7.

²⁴ *Comrie*, 2004 WL 936505, at *2.

²⁵ *Id.* at *2-3.

²⁶ *Id.* at *3.

arbitrate, the parties voluntarily relinquish their right to a formal proceeding with strict adherence to court rules complete with precise findings of law and fact.”²⁷ This Court cannot vacate an arbitrator’s award on the grounds that the arbitrator exceeded its authority merely because this Court disagrees with the arbitrator’s decision on the merits of the claim.²⁸ This is true even where the issue is a contractual term that has an established meaning under Delaware case law.

Plaintiff’s argument that “neither party briefed the issue of attorneys’ fees or argued the issue of attorneys’ fees” and that “the arbitrator’s decision did not reference attorneys’ fees as it relates to the contract”²⁹ does not convince me that the award should be vacated. As explained above, the arbitrator need not state the grounds for a grant or denial of relief. The issue of attorneys’ fees was properly before the arbitrator, and plaintiff’s request for attorneys’ fees was mentioned during arbitration.³⁰

In any event, plaintiff’s failure to make arguments to the arbitrator is not grounds for vacating the arbitrator’s decision. Indeed, it appears that plaintiff’s failure to brief and argue the issue before the arbitrator may have been a conscious decision, as indicated by plaintiff’s statement that “the language of the contract was so explicit in stating that the prevailing party ‘shall’ be entitled to attorneys’ fees that it was not necessary to attempt to litigate these terms before the arbitrator.”³¹ Whether plaintiff’s failure to make certain arguments to the arbitrator

²⁷ *Kuhn*, 2000 WL 1336780, at *1.

²⁸ *See id.* (“This Court realizes that ‘[c]ompound interest is the standard form of interest in the financial market.’ Simple interest does not adequately compensate an aggrieved party for the loss of their funds. In fact, it is this Court’s understanding that simple interest is not even generally available in the marketplace. Nonetheless, the arbitrator elected to use simple interest in this case. That choice was not the product of a miscalculation, but was the arbitrator’s informed decision on a matter properly submitted to him. While this Court indeed considers simple interest to be an anachronism, that view alone is insufficient grounds to modify or vacate the arbitrator’s decision.”) (citations and internal quotation marks omitted).

²⁹ Pl.’s Reply to Def.’s Resp. to Pl.’s Mot. for Summ. J. & Pl.’s Resp. to Def.’s Mot. for Summ. J. (“Pl.’s Reply Br.”) 4.

³⁰ Even plaintiff seems to admit that the issue was before the arbitrator and decided by the arbitrator. For example, plaintiff states that “[i]n reinterpreting the term ‘prevailing party’ contrary to its traditional and legal meaning, the arbitrator failed to enforce the agreement in accordance with its plain and unambiguous terms.” Pl.’s Opening Br. 4. Plaintiff also states that “the arbitrator was expected to simply apply the plain terms of the contract.” Pl.’s Reply Br. 4.

³¹ Pl.’s Reply Br. 4.

was intentional or not, such failure does not provide this Court a reason to vacate the award of the arbitrator.

III. CONCLUSION

After reviewing the record in this case, I conclude that there is no genuine issue as to any material fact. I also conclude that the arbitrator did not exceed his authority in declining to award attorneys' fees to plaintiff. Defendant is therefore entitled to judgment as a matter of law, and summary judgment is hereby entered in favor of defendant.

IT IS SO ORDERED.

Very truly yours,

A handwritten signature in cursive script that reads "William B. Chandler III". The signature is written in black ink and includes a horizontal line under the "III" at the end.

William B. Chandler III

WBCIII:jmb