

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 FLATIRON-ZACHRY, A JOINT)
 VENTURE,)
)
 Plaintiff,)
)
 v.)
)
 CIVIL ENGINEERING CONSULTING)
 SERVICES, INC. D/B/A CIVIL)
 ENGINEERING CONSULTANT)
 SERVICES, INC., ECS SOUTHEAST,)
 LLP F/K/A ECS CAROLINAS, LLP,)
 MEAD AND HUNT, INC., STANTEC)
 CONSULTING SERVICES, INC., AND)
 T.Y. LIN INTERNATIONAL,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FOR THE THIRTEENTH JUDICIAL CIRCUIT
 CASE NO.: 2018-CP-23-04740

**PLAINTIFF’S AMENDED
 MOTION TO RECONSIDER**

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SC Court of Appeals

INTRODUCTION

Pursuant to Rule 59(e), SCRCP, Plaintiff Flatiron-Zachry, a Joint Venture (“FZJV”) respectfully requests that the Court reconsider its Order dated October 6, 2022 (the “Order”) and reverse the Order as set forth below.

BACKGROUND

A Rule 59(e) motion is proper when a party “believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider...it.” *Elam v. South Carolina Department of Transportation*, 361 S.C. 9, 24, 602 S.E.2d 772 (2004). The instant matter was before the Court on FZJV’s Motion to Vacate an arbitration award granting summary judgment in favor of Defendant Stantec Consulting Services, Inc.

(“Stantec”) in the underlying arbitration between the parties. Pertinent procedural history is below:

Stantec filed its first dispositive motion on January 11, 2021, which was deemed premature by the Panel in an Order dated February 9, 2021, requiring close of discovery before being brought again. Ignoring that Order, and more than a year before discovery actually closed, Stantec filed its second dispositive motion on September 13, 2021, arguing (with respect to the MSE Wall claims, which are at issue in this instant motion), that FZJV’s claims against Stantec related to the MSE Walls should be dismissed because “Stantec did not have responsibility for MSE Walls in the Pre-Award phase” – in other words, contractual responsibility for design services dictated liability for professional negligence and satisfaction of a professional engineer’s standard of care. On November 5, 2021, the Panel issued its Order granting Stantec summary judgment on the MSE Wall issues, stating that “it is undisputed by the evidence provided that Stantec was not retained by CECS to provide input” on a particular piece of the MSE Wall design. Despite expert opinion to the contrary, the Panel found there was no dispute of material fact “relating to Stantec’s services since there is no evidence to suggest that Stantec was required to provide this input” under its contract with CECS. FZJV immediately sought clarification and reconsideration from the Panel, which was summarily denied without further explanation. A Motion to Vacate this November 5th Order was filed with this Court and ultimately denied.

Two months after its November 5th Order, on January 19, 2022, the Panel issued an order on yet another dispositive motion by Stantec based, again, on its contractual duties during the Pre-Award phase as to another discrete claim item. This time, however, the Panel ruled that summary judgment was improper because whether Stantec performed work that CECS requested and nothing more was not dispositive of whether that work was performed with the proper standard of care. Two dispositive motions by Stantec based on an identical argument, yet two opposite and inconsistent rulings from the Panel. Importantly, the Panel's basis for subsequently denying summary judgment undermined its prior ruling granting summary judgment – if material facts exist regarding performance of engineering services, then summary judgment is improper regardless of whether a party is performing a task which it was contracted to perform. FZJV pointed this fundamental inconsistency out for the Panel and again requested clarification and/or reconsideration.

In response, the Panel issued an Order on March 24, 2022, *removing* the MSE Wall claims from those it previously deemed to be undisputed by the evidence – i.e. the Panel now stated that it was no longer undisputed that Stantec did not have Pre-Award obligations to provide certain services pertinent to FZJV's MSE Wall claims. Not only did this March 24th Order not clarify the prior November 5th Order, it completely reversed the legal grounds for the November 5th Order. FZJV filed a Motion to Vacate the March 24th Order, which was denied by this Court on October 6, 2022, resulting in this Motion for Reconsideration.

ARGUMENT¹

FZJV understands the narrow grounds upon which an arbitration award may be vacated under the Federal Arbitration Act (“FAA”) and applicable South Carolina law; however, vacatur was intended to prevent awards being issued by arbitration awards in violation of applicable law or without providing evidence to be heard to resolve claims fully and finally. This Court has the power and opportunity to ensure arbitrators’ actions are within the bounds of the law and the parties’ agreement and ensure that arbitrations are conducted with some semblance of legal checks and balances. There can be no better example of an opportunity for a court to step in and determine an arbitration panel refused to hear material evidence, exceeded its powers, and manifestly disregarded black letter summary judgment law then being presented with three orders on identical issues with inconsistent and contradictory rulings on the same legal principles.

The Panel’s November 5th and January 9th Orders contradict each other in terms of whether satisfaction of contractual obligations is sufficient for a third-party professional negligence claim, and the Panel’s March 24th Order completely undermines the legal basis for its November 5th grant of summary judgment – that there were no disputed material facts as to the MSE Wall claims. Allowing such orders to stand would be a gross injustice which this Court alone is able to remedy. To be clear, FZJV is not asking this Court to find Stantec liable for damages. It is

¹ For brevity, FZJV references and incorporates as if stated herein the legal bases for vacatur applicable to this Motion that were previously briefed to this Court on June 22, 2022.

merely asking for the opportunity to actually present the evidence of the material factual disputes acknowledged by the Panel at a hearing in the underlying arbitration.

For these reasons, along with the legal support provided by FZJV in its June 22, 2022, Motion to Vacate, FZJV respectfully requests this Court vacating the Panel's November 5th and March 24th Orders.

This 18th day of October, 2022.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 18, 2022, a true and correct copy of the preceding document was served on the parties by e-filing with the Greenville County Clerk of Court to the following attorneys of record:

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