STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	CA. No. 2023-CP-23-00189
	)	
Icon Custom Masonry, Inc.,	)	
	)	
Plaintiff,	)	**ORDER**
	)	
v.	)	
	)	
The Settlement, LLC; Levi Grantham, LLC; and Atlantic Specialty Insurance Company,	)	
	)	
Defendants.	)	

This matter comes before the Court on two motions: (1) Defendants The Settlement, LLC ("The Settlement") and Levi Grantham, LLC's ("Levi Grantham") (collectively, the "Defendants") Motion to Vacate, or in the alternative, Modify or Correct Arbitration Award (the "Motion to Vacate"); and (2) Plaintiff Icon Custom Masonry, Inc.'s ("Icon") Motion to Confirm Arbitration Award. The Court addresses the two motions in turn.

I. Defendants' Motion to Vacate

Defendants' Motion seeks two separate forms of relief that require application of two separate and distinct standards of review. S.C. Code Ann. § 15-48-130 provides that the court shall vacate an arbitration award where:

> (1) the award was procured by corruption, fraud or other undue means; (2) there was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party; (3) the arbitrators exceeded their powers; (4) the arbitrators refused to postpone the hearing upon sufficient cause being shown therefore or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of Section 15-48-50, as to prejudice substantially the rights of a party; or (5) there was no arbitration agreement and the issue was not adversely determined in proceedings under Section 15-48-20 and the party did not participate in the arbitration hearing without raising an objection.

In addition to these statutory grounds, our courts have held that an arbitration award may only be vacated upon a showing of "manifest disregard or perverse misconstruction of the law by the arbitrator." *Weimer v. Jones*, 364 S.C. 78, 80, 610 S.E.2d 850, 852 (Ct. App. 2005). This "manifest disregard" standard may be "established only where the arbitrator understands and correctly states the law, but proceeds to disregard the same." *Group III Mgmt. v. Suncrete of Carolina, Inc.*, 425 S.C. 141, 155, 810 S.E.2d 781, 788 (Ct. App. 2018) (*quoting Patten v. Signator Ins. Agency, Inc.*, 441 F.3d 230, 234 (4th Cir. 2006) (internal quotations omitted)). "The focus is on the conduct of the arbitrator and **presupposes something beyond a mere error in construing or applying the law**." *Gissel v. Hart*, 382 S.C. 235, 241-42, 676 S.E.2d 320, 323 (2009) (emphasis in original) (internal citations omitted). The standard is met "*only* when the award is the product of an *intentional* or *reckless* flouting of the law..." *Waldo v. Cousins*, 442 S.C. 662, 665, 901 S.E.2d 276, 278 (2004) (emphasis added) (citing *Gissel v. Hart*, 382 S.C. 235, 241, 676 S.E.2d 320, 323 (2009)).

Defendants contend the Arbitrator, Franklin J. Smith (the "Arbitrator") manifestly disregarded the law in three respects: (1) by awarding damages under the South Carolina mechanic's lien statute for work that was not lienable thereunder; (2) by determining Icon was the "prevailing party" under the South Carolina mechanic's lien statute; and (3) by awarding attorney's fees to Icon which Defendants contend were not actually paid by Icon.

A. Amounts not lienable

Defendants contend the Arbitrator manifestly disregarded the law by awarding damages for two specific components of Icon's claim which Defendants contend was not lienable work. First, Defendants point to an award of $3,000 for permitting and engineering fees performed at the subject project. Defendants contend these fees were invoiced for services performed related to the

construction of five columns and that, at best, Icon should have been awarded $2,400 for this component of its claim because only four of the five columns were actually constructed at the subject project. In support of their position, Defendants' Motion makes the bald assertion that "Defendants never benefited from anything Plaintiff alleges to have done to the fifth column."

Next, Defendants contend the Arbitrator manifestly disregarded the law by awarding Icon $4,000 for materials it delivered to the project site to be used for said fifth column. Again, Defendants contend that the absence of construction of the fifth column renders this component of the award a manifest disregard of the law.

Defendants' primary legal authority is *Kitchen Planners, LLC v. Friedman*, 432 S.C. 267, 851 S.E.2d 724 (Ct. App. 2020), *aff'd as modified*, 440 S.C. 456, 892 S.E.2d 297 (2023). Defendants contend this case imposes an "actual use" requirement for lienable work; in other words, Icon cannot recover damages for the fifth column materials or engineering work because the fifth column was not built. It appears the Arbitrator determined that when the engineering work was performed and materials delivered, Defendants had not yet decided to abandon the fifth column.

I find Defendants' reliance on *Kitchen Planners* is misplaced. *Kitchen Planners* was modified by the Supreme Court to remove any discussion of an "actual use" requirement; thus, there is no bright-line "actual use" requirement in the law that the Arbitrator could have disregarded. Moreover, the Arbitrator clearly and correctly addressed Defendants' arguments on this issue:

> "All of Icon's work was performed with the understanding that Icon was to install five monuments. Therefore, all of these labors and materials were provided for the improvement of the owner's property including the materials left on site to construct the fifth monument. Since Levi [Grantham] later decided not to install the fifth monument, the estoppel doctrine prohibits Levi from arguing that the materials for the fifth monument were not provided for the improvement of its property."

Defs. Motion to Vacate, Ex. B.

In summary, Defendants fail to identify any controlling law that the Arbitrator understood and chose to disregard. To the contrary, it appears the Arbitrator's ruling was well based in applicable law and reason. Therefore, the Court has no choice but to deny Defendants' request for vacatur on these grounds.

B. The "prevailing party" determination

Defendants next contend the arbitrator manifestly disregarded the law by awarding Icon, and not Defendants, attorney's fees under the "prevailing party" provision of the South Carolina mechanic's lien statute, S.C. Code Ann. § 29-5-10 *et seq*. To paraphrase Defendants' arguments, they contend Icon incorrectly made an Offer of Settlement under S.C. Code Ann. § 29-5-10 whereas Icon's Offer of Settlement should have been made pursuant to § 29-5-20. The basis for this argument is that the real property where the project took place was owned by The Settlement, whereas Icon's contract was with Levi Grantham. Therefore, according to Defendants, Icon's Offer of Settlement could only properly be made under § 29-5-20 because its contract was with some entity other than the owner of the real property. Defendants further contend that, because the incorrect statute was cited by Icon, its Offer of Settlement was invalid and should not have been used by the Arbitrator in determining the prevailing party under the Mechanic's Lien statute.

Defendants' arguments ignore the following language of § 29-5-10(a): "[a] person to whom a debt is due for labor performed or furnished or for materials furnished and actually used in the erection, alteration, or repair of a building or structure upon real estate . . . by virtue of an agreement with, *or by consent of*, the owner of the building or structure, *or a person having authority from, or rightfully acting for*, the owner in procuring or furnishing the labor or materials shall have a lien upon the building or structure. . . ." (emphasis added).

I find the Arbitrator carefully considered this issue when initially raised by Defendants in arbitration and concluded that Icon's work was performed with the consent of The Settlement. Thus, Icon satisfied the requirements of § 29-5-10 and properly filed its offer of settlement thereunder. Defendants fail to demonstrate manifest disregard, and a review of their arguments reveal the Arbitrator in fact reached the proper result.

C. The award of "unpaid" attorney's fees.

Defendants next contend that the Arbitrator's award of attorney's fees that had not yet been paid at the time of the issuance of the Arbitrator's Final Award was a manifest disregard of the law. I find Defendants have failed to identify any controlling precedent that the Arbitrator could have knowingly disregarded. Defendants appear to rely on a single case that is clearly inapplicable and irrelevant here. And for the second time in its Motion, the language cited by Defendants is found in a Court of Appeals opinion later modified by the South Carolina Supreme Court, with the modification removing the operative language.

Nonetheless, the case cited by Defendants provides that a trial court erred by awarding attorney's fees where "there was no evidence introduced to show that [Plaintiff] actually incurred costs, that he had paid any costs or expected to be billed in the future. There were no time records, invoices or any other documentation to justify the award of attorney fees." *Blumberg v. Nealco, Inc.*, 307 S.C. 537, 538-39, 416 S.E.2d 211, 212, (Ct. App. 1992) *aff'd as modified by* 310 S.C. 492, 427 S.E.2d 659 (1993). The facts of *Blumberg* simply do not apply here. The Arbitrator was provided both an Affidavit from Icon's counsel outlining and explaining the fees that had and would be billed, and the Arbitrator reviewed counsel's invoices *in camera*. It appears that, based on the Arbitrator's orders, he was thoughtful and exercised great care in identifying the fees that

were recoverable by Icon. Once again, Defendants fail to identify any controlling law that was manifestly disregarded.

II. Defendants' Motion to Modify or Correct

Turning to the alternative relief sought by Defendants' Motion, S.C. Code Ann. § 15-48-140 provides the grounds upon which this Court may modify or correct an arbitration award. Defendants rely solely upon § 15-48-140(a)(1), which allows for modification where "[t]here was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award."

An "evident miscalculation of figures" occurs where an arbitrator commits a mathematical error in computing the total amount of the award, not when an arbitrator makes a conscious decision as to the amount to be awarded. *See e.g., Lauro v. Visnapuu*, 351 S.C. 507, 570 S.E.2d 551 (Ct. App. 2002) ("Even if the arbitrator's decision in this regard [in applying the law] was erroneous, it does not constitute an evident miscalculation of figures envisioned under § 15-48-140. That is, the arbitrator did not commit a mathematical error in computing the total amount of the award."). Defendants contend such a miscalculation occurred in three respects: (1) in calculating Icon's damages; (2) in determining the prevailing party under the lien statute; and (3) in determining the amount of an award of reasonable attorney's fees.

The Defendants fail to identify a single mathematical error. For the reasons set forth below, I decline to disturb the Arbitrator's rulings.

A. Calculation of Icon's Damages

Defendants contend that the Arbitrator's Interim Award determined Icon's work on four columns was about 75% complete, therefore the damages awarded to Icon could not have exceeded 75% of Icon's contract price for the four columns. Instead, the Arbitrator awarded Icon its full

contract price for the four columns, then reduced it by the amounts paid by Defendants to complete the columns.

Although they do not acknowledge it, Defendants do not take issue with the Arbitrator's mathematical computations. Instead, they challenge the *method* used by the Arbitrator to calculate Icon's damages. Even if this Court disagreed with the methodology employed by the Arbitrator, which I do not, no grounds would exist to modify the award as no mathematical computation error occurred. Moreover, I find the Arbitrator's damages calculation method was reasonable given that Defendants, and not Icon, breached the parties' contract. The Arbitrator endeavored to give Icon the full benefit of its bargain, with a credit given to Defendants for their completion costs. In conclusion, no grounds exist which would allow this Court to modify the Arbitrator's award in this respect.

B. Calculation to Determine Prevailing Party

Defendants' arguments here go hand-in-hand with those discussed above. Defendants contend that a modification of the award using their own damages calculation methodology, rather than the Arbitrator's, would result in an award of $89,550.00 (i.e., 75% of Icon's contract price for four columns). Defendants further contend that the Arbitrator miscalculated the Interim Award by awarding $600 in engineering fees for the fifth column and $4,000 for materials for the fifth column. Thus, the Interim Award should be further reduced to $84,950. Such a reduction would render Defendants the prevailing party under the South Carolina Mechanic's Lien statute, based on the parties' respective offers of settlement.

While Defendants do not clearly state why the inclusion of damages related to the fifth monument by the Arbitrator can be grounds for *either* vacatur of the award *or* modification of the award, the grounds they put forth appear to be one and the same (i.e., that such damages were not

lienable and should not have been awarded). As discussed above, it appears the Arbitrator was justified in awarding damages related to the fifth column. And again, Defendants' arguments here amount to a legal issue rather than an actual computation error. In the absence of an evident miscalculation of figures, no grounds exist on which this Court can modify or correct the Arbitrator's findings.

C. Calculation of Icon's Attorney's Fees

Defendants' arguments are twofold: (1) that Icon was billed fees that are in excess of what Defendants were billed; and (2) that an attorney fee award of one-third of the total award is customary. I address these arguments in turn.

First, Defendants contend that the Arbitrator incorrectly applied the six-factor test in determining the reasonableness of an attorney's fee award as set forth in *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997); specifically, customary legal fees for similar services.

Defendants offer one sole data point supporting their contention Icon's fees were excessive in comparison to customary legal fees for similar services, which is their own fees billed to Defendants. Defendants offer no precedent to support the notion that Icon cannot recover more fees than what has been billed to the opposing and non-prevailing party, and I accordingly reject their argument. And as discussed above, no mathematical calculation error has been identified by the Defendants; instead, they argue for the imposition of a non-existent legal principle. Therefore, the Court has no grounds upon which it is permitted to modify the Arbitrator's award.

Second, Defendants contend our courts have recognized that a fee equal to one third the total award is customary, citing *Global Protection Corp. v. Halsberg*, 332 S.C. 149, 503 S.E.2d 483 (Ct. App. 1998). While it would be accurate to represent that the trial court in *Global Protection Corp*. awarded attorney's fees of one-third an award in spite of a contingency

agreement providing for a 40% contingency fee, *Global Protection Corp.* does *not* support the premise that a one-third fee is customary as Defendants contend. Instead, the trial court in that case recognized that "the typical range of such contingency fees was one-third to one-half the recovery," and that sufficient evidence in the record existed to support the trial court's conclusions as to the propriety of an award of one-third. *Id.*, at 161, 489.

Defendants also ask this Court to impose statutory attorney fee limitations that are not applicable to this matter. I decline to do so. The South Carolina Mechanic's Lien Statute has its own fee limitation provisions, and limits recovery of reasonable attorney's fees and costs to the amount of the lien. S.C. Code Ann. §§ 29-5-10, -20. Even if Defendants identified a computational error justifying modification, which they do not, I decline to impose an attorney fee limitation imposed by other inapplicable statutes.

WHEREFORE, based on the foregoing, Defendants' Motion to Vacate or Modify the Arbitration Award is **DENIED.**

III. Plaintiff's Motion to Confirm

Having rejected each of Defendants' arguments in its Motion, I now turn to Plaintiff's Motion to Confirm the Arbitration Award. "Upon application of a party, the court *shall* confirm an [arbitration] award, unless within the time limits hereinafter imposed grounds are urged for vacating modifying or correcting the award." S.C. Code Ann. § 15-48-120 (emphasis added). "[T]he provision for judicial confirmation carries no hint of flexibility and the statement the court must grant the application unless the award is vacated, modified, or corrected is one which unequivocally tells courts to grant confirmation in all cases, except when one of the prescribed exceptions applies." *Henderson v. Summerville Ford-Mercury, Inc.*, 405 S.C. 440, 454, n. 7, 748 S.E.2d 221, 229, n. 7 (2013) (quoting *Hall St. Assocs. v. Mattel, Inc.*, 552 U.S. 576, 587 (2008).

WHEREFORE, based on the foregoing, and in the absence of any grounds to vacate, modify, or correct the arbitration award, Plaintiff's Motion is **GRANTED**.

The Clerk of Court is hereby directed to enter judgment in favor of Plaintiff and against Defendants Levi Grantham, LLC and The Settlement, LLC in the amount of **$245,157.94.** This Order shall not adjudicate Plaintiff's claims against Defendant Atlantic Specialty Insurance Company.

IT IS SO ORDERED.

ELECTRONIC SIGNATURE PAGE OF JUDGE FOLLOWING
[South Carolina Electronic Filing Policies and Guidelines § 6(a)]

Greenville Common Pleas

Case Caption: Icon Custom Masonry Inc vs. Settlement LLC , defendant, et al

Case Number: 2023CP2300189

Type: Order/Vacate Judgment

So Ordered

William C. McMaster, III