In the Supreme Court For the State of South Carolina

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas for the Ninth Circuit

The Honorable Mikell Scarborough, Master in Equity

RECEIVED
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SC Court of Appeals

Case No.: 2016-CP-10-02955
Ct. App. Case No. 2021-000272
App. Case No. 2025-001715

TCC OF CHARLESTON, INC.....*Petitioner-Respondent*,

v.

Concord and Cumberland, LLC, Concord & Cumberland HPR, Leo Hall, Diane Hall, Bea H. Smith, Margaret C. Pope, William D. Foster, Jr., Gene G. Foster, Mattison J. MacGillivray, Teresa MacGillivray, Pamela L. Vaughn, Nelia A. Patricio, Trustee of the Nelia A. Patricio Revocable Trust Agreement, Stuart D. Reeves, Edward T. Strom, Barbara K. Henderson, James R. Clarke, Paul A. Brim, Robert K. Seidl, Jennifer M. Seidl, Robert Kenneth Seidl, II, M. Bert Storey, Thomas R. Mather, Edward T. Strom, 304 Concord & Cumberland, LLC, Marion M. Simpson f/k/a Marion Moore McDonald Simpson, Kathy Gardner, Gregory J. Gardner, Freeman Waterfront Properties, LLC, Jo-Ann Cooper, Betty Y. Segal, Robert M. Levin, and Bonita K. Levin, Donald D. Leonard, Betty L. Beatty, Mattellen, LLC, and Thomas R. Debnam, Trustee of the Trust Agreement of Thomas R. Debnam; *of whom* Concord & Cumberland HPR and Betty L. Beatty are……..….....*Respondents-Petitioners*.

TCC OF CHARLESTON, INC.'S CONSOLIDATED RESPONSE IN OPPOSITION TO PETITIONS FOR A WRIT OF CERTIORARI OF CONCORD & CUMBERLAND HPR AND BETTY L. BEATTY

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TCC of Charleston, Inc. ("TCC") files this consolidated opposition to (i) the Petition for a Writ of Certiorari by all Defendants except Betty Beatty, including the Concord & Cumberland HPR (the "HPR's Petition") and (ii) the Petition for a Writ of Certiorari by Betty Beatty ("Ms. Beatty's Petition") (collectively "Defendants' Petitions"). Neither petition raises an issue that falls within the considerations set forth in Rule 242(b), S.C.A.C.R. Accordingly, TCC respectfully submits that Defendants' Petitions should be denied.

THE HPR'S PETITION

The HPR seeks a writ of certiorari for review by this Court of the following issues:

1. Whether the Court of Appeals erred in holding, consistent with *Renaissance Enters., Inc. v. Ocean Resorts, Inc*.,[1] that the deposit of funds into court stops contractual interest;

    a. Whether the Court of Appeals misconstrued the Arbitrators' interest award in connection with the same;

2. Whether the Court of Appeals erred in reversing the Master's award of attorneys' fees; and

3. Whether the Court of Appeals erred in failing to modify or vacate the arbitration award.

The Court of Appeals did not err with regard to any one of these issues, and none merits review by this Court.

I. Depositing Funds Into Court Does Not Halt the Accrual of Contractual Interest.

The HPR contends that the Court of Appeals' ruling that contractual interest is not halted by the deposit of money into court conflicts with this Court's decision in *Russo v. Sutton*, 317 S.C. 441, 454 S.E.2d 895 (1995). The Subject Opinion indeed held, consistent with *Renaissance*

[1] 334 S.C. 324, 326, 513 S.E.2d 617, 618 (1999) ("a deposit into court pursuant to Rule 67 does not stop the accrual of interest provided by contract").

Enters., Inc. v. Ocean Resorts, Inc.,[2] that the deposit of funds into court pursuant to Rule 67, S.C.R.C.P. does not stop the accrual of contractual interest. **Opinion** at 16. The HPR contends this holding "effectively abrogated *Russo v. Sutton* . . . by improperly extending *Renaissance* . . . beyond the narrow context of supplemental proceedings." **HPR Petition at 5.**. The HPR is incorrect.

The HPR's reliance on *Russo* is unavailing. That case—which was decided four years before the *Renaissance* case—*did not involve contractual interest*. It involved a jury verdict on claims of criminal conversion and alienation of affections, and it held only that the payment of the amount of the judgment into court stopped the accrual of post-judgment interest at the prevailing rate.

It is this Court's opinion in *Renaissance* that is dispositive, as the Court of Appeals held. In both cases, a party obtained an arbitration award on an unpaid contract amount, and in both cases the contract provided that interest was owed on late payments. In both cases, the judgment debtor sought to suspend the further accrual of that interest by depositing the amount of the award in court. This Court rejected that effort in *Renaissance*, and the Court of Appeals did so here. Accordingly, the Court of Appeals did not err.

Nevertheless, the HPR argues that the circumstances of this case differ from those of *Renaissance* because that case involved supplemental proceedings. This is an immaterial distinction and impermissibly narrows the scope of the holding of that case.

The issue presented to this Court in *Renaissance* was not concerned with the procedural posture of that case, but rather was broadly stated: "Does the payment of money into court stop the accrual of interest where the contract provides for interest to be paid on amounts past due?"

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[2] *Supra*, note 1.

Renaissance, 334 S.C. at 326, 513 S.E.2d at 618. Nor was this Court's ruling based upon the procedural posture of the case. Rather, this Court focused on parties' right to negotiate the terms of their contractual duties, stating:

> In *Turner Coleman, Inc. v. Ohio Constr. & Eng. Co*., 272 S.C. 289, 251 S.E.2d 738 (1979), we held contractual interest rates prevailed over statutory post-judgment interest rates because there was nothing in the statute providing for post-judgment interest rates to override the intent of the parties expressed in their contract regarding the appropriate interest rate. Accordingly, we concluded the post-judgment statutory rate applied only where there was no contractual interest rate; where the contract provided a rate of interest, that rate would apply to a judgment entered on the contract.
>
> Similarly, there is nothing in Rule 67 indicating a deposit into court will affect the parties' contract regarding interest. Although *Turner Coleman* involved interest *rates*, the principal is analogous in this case where the contract provides for the accrual of interest without providing accrual will stop before actual payment.
>
> Further, Rule 67 is substantially the same as the federal rule allowing a deposit into court. *See* Rule 67, Fed. R. Civ. P. Federal courts have uniformly held that **Rule 67 "cannot be used as a means of altering the contractual relationships and legal duties of the parties."** *LTV Corp. v. Gulf States Steel, Inc*., 297 U.S. App. D.C. 50, 969 F.2d 1050, 1063 (D.C. Cir. 1992*); In re: Dept. of Energy Stripper Well Exemption Litigation*, 124 F.R.D. 217, 218-19 (D. Kan. 1989); *Prudential Ins. Co. v. BMC Indus*., 630 F. Supp. 1298, 1300 (S.D.N.Y. 1986). **Stopping the contractual accrual of interest would in effect substitute the interest rate of the court's deposit account for that provided by contract which the court has no authority to do.** *LTV Corp. v. Gulf States Steel, Inc*., *supra*.

Id. at 326–27, 513 S.E.2d 618–19 (emphases added).

Here, as in *Renaissance*, the parties contracted for a particular rate of interest on late payments. Based upon that case, the Rules of Civil Procedure cannot halt or replace the mechanism or rate of interest on late payments agreed by the parties. As "a deposit into court pursuant to Rule 67 does not stop the accrual of interest provided by contract," *id*. at 326, 513 S.E.2d at 618, the Court of Appeals correctly held that TCC is entitled to continued contractual

interest notwithstanding the deposit of funds into court.

A. The Panel's Ruling Regarding Interest

The HPR contends the Court of Appeals misconstrued the Panel's ruling regarding the accrual of contractual interest, because the Panel ordered that contractual interest would accrue at a specified rate through either (i) the payment of the sum owed or (ii) the entry of judgment on the arbitrators' award. This ruling, the HPR contends, meant that contractual interest would no longer accrue following that date. Not so.

This portion of the Panel's ruling primarily concerned the *amount* of interest that would accrue on a daily basis under the contract. It ruled that, until judgment was entered, it would accrue at $112.90 per day. To rule that such amount would remain the same after entry of judgment risked exceeding the Panel's authority by limiting the courts' authority to alter or amend the judgment or to impose post-judgment interest at a higher rate upon entry of judgment.

And, an interpretation of the Panel's award as halting further accrual of contractual interest upon entry of judgment is inconsistent with South Carolina law, as the Parties' contract provides for the accrual of interest without providing accrual will stop before actual payment. *Renaissance*, 334 S.C. at 326–27, 513 S.E.2d 618–19 ("Similarly, there is nothing in Rule 67 indicating a deposit into court will affect the parties' contract regarding interest. Although *Turner Coleman* involved interest *rates*, the principal is analogous in this case where the contract provides for the accrual of interest without providing accrual will stop before actual payment.").

Even without regard to the Panel's award however, the Subject Opinion correctly held that the Master's erred in halting both post-judgment interest *and* contractual interest because, as this Court's precedent establishes, contractual interest is not halted by the payment of money into court. *Supra*.

II. The Master's Order Awarding Attorneys' Fees Did Not Permit TCC or the Appellate Courts to Determine What Amount of the HPR's and Ms. Beatty's Fees Related to the Foreclosure Cause of Action.

It is well settled that attorneys' fees under the S.C. Mechanic's Lien Statute may be awarded only to the extent they are incurred defending or prosecuting a foreclosure cause of action. *E.g.*, *Utilities Construction Co. v. Wilson,* 321 S.C. 244, 250, 468 S.E.2d 1, 4 (Ct. App. 1996). The Court of Appeals found that the Master's award of attorneys' fees to the HPR should be reversed and remanded the case for further proceedings, finding that it was impossible to determine what amount of the claimed fees related to the foreclosure cause of action because the relevant time entries were redacted and had not been provided to the Court or to TCC. **Opinion** at 18–19. This was not error.

It is inconceivable that the HPR incurred $250,553.70 in fees relating to the discrete question of foreclosure of the mechanic's lien—especially as the foreclosure action was stayed for over three years while the arbitration proceeded and, after the stay was lifted, TCC never sought to foreclose the mechanic's lien as to the HPR. That the vast majority of the HPR's counsel's billings were incurred in connection with issues unrelated to foreclosure will be born out in the HPR's fee invoices.

The Court of Appeals was unable to review the merits of this contention as neither it nor TCC were provided unredacted time records. TCC must be provided with unredacted time entries and afforded the opportunity to contest the amount of the HPR's and Ms. Beatty's claimed fees before the Master in the first instance and, if necessary, before the appellate courts. The Subject Opinion did not err in so holding.

The HPR's argument that TCC waived further trial court proceedings regarding the amount of fees is misdirection. True, TCC left it to the Master's discretion whether he felt an additional hearing on the amount of fees was necessary. Indeed, as the Master had not granted Trident's

request for unredacted fee invoices, there was no additional information or arguments TCC would be able to provide at such a hearing that had not already been raised. This is in no respect a waiver of further post-appeal proceedings now that the Court of Appeals properly held that TCC is entitled to unredacted fee invoices.

III. The Unanimous Arbitration Award Must Stand, As the Appellate and Lower Courts Have Uniformly Ruled.

The HPR contends that the award issued by the arbitration panel (the "Panel") should be modified or vacated because the Panel (i) manifestly disregarded the law, (ii) exceeded its authority by considering matters not properly before it, and (iii) failed to issue a reasoned award. None of these contentions has merit.

A. The Panel Did Not Disregard the Law. It Applied It.

The scope of review of an arbitration award is among the narrowest known in the law. *Group III Mgmt., Inc. v. Suncrete of Carolina. Inc.,* 425 S.C. 141, 149, 819 S.E.2d 781, 785 (Ct. App. 2018). Even had the Panel erred, this would not be a valid basis for overturning or modifying an arbitration award. *Id.* at 150, 819 S.E.2d at 786 (recognizing the court's function in reviewing an arbitration award is limited "the court's function is limited to determin[ing] whether the arbitrators did the job they were told to do-not whether they did it well, or correctly, or reasonably, but simply whether they did it"); *Gissel v. Hart,* 382 S.C. 235, 241, 676 S.E.2d 320, 323 (2009) ("Even a clearly erroneous interpretation of the contract cannot be disturbed." (internal quotation omitted)). However, the Panel did not err. It applied the law and reached a unanimous[3] ruling in favor of TCC. Nevertheless, the HPR challenges the Panel's award as follows.

[3] The HPR's own party-appointed arbitrator also ruled against the HPR.

i. Lien Waivers

The HPR argues that the arbitrators manifestly disregarded the law in declining to enforce the lien waiver attached to Pay Application 17 and in "wrongfully eviscerat[ing] the GMP[4]" referred to in the contract between TCC and the HPR. A review of the applicable law and of the arbitrator's final award shows the HPR's position to be untenable.

The Panel made express findings on this issue consistent with the applicable law and provided reasoning supporting those findings. Indeed, the arbitrators dedicated an entire page of their order to a discussion of why the lien waiver would not vitiate the Parties' agreement to hold certain cost items to the end of the job, stating:

> Knowing that TCC had signed Conditional Release and Waiver of Liens, HPR nonetheless agreed to PCOs; signed the Change Orders; and made payment for claims that may have otherwise been released or barred by the Conditional Release and Waiver of Liens. HPR cannot now claim that the Conditional Release and Waiver of Liens bar TCC's claims.

R. p. 11. There is no error or manifest disregard of the law in the Panel's finding. The lower court and Court of Appeals agreed and correctly declined to revisit the merits. *See also Group III Mgmt.*, 425 S.C. at 150, 819 S.E.2d at 786 (recognizing the courts' function in reviewing an arbitration award as limited "to determin[ing] whether the arbitrators did the job they were told to do—not whether they did it well, or correctly, or reasonably, but simply whether they did it").

ii. GMP Contract

With regard to the contract price, the Panel found that "[i]t is undisputed that the condition of the building was different than what TCC contemplated when it originally submitted its bid" and that certain proposed change orders "were paid on a cost-plus basis" pursuant to agreements

[4] "GMP" stands for Guaranteed Maximum Price.

between TCC and agents of the HPR. The lower court and Court of Appeals correctly found no manifest disregard of the law in the Panel's ruling that the GMP provided for in the contract was overcome by the agreement that TCC would fix out-of-scope items and be compensated for those items on a time and material basis.

The Panel, far from disregarding the law, considered and applied the law, unanimously reaching a result that the HPR simply disagrees with. The HPR has not carried its burden of showing the arbitrators manifestly disregarded the law, and this argument for vacating the arbitration award is unavailing.

B. All Matters in the Panel's Award Were Properly Before the Panel.

The HPR also argues that the award should be vacated, or in the alternative modified, because the arbitrators exceeded their authority in awarding $29,000 relating to the "Stone Tower," a portion of the exterior of the property where additional water intrusion was discovered.

As noted *supra*, arbitrators only exceed their authority when they rule on something not submitted to them. Here, the language of the referral in the arbitration agreement is very broad, applying to "certain disputes [that] have arisen regarding performance and payment on the Project," with "Project" being referred to in the agreement as "exterior repairs to Concord & Cumberland located at 175 Concord Street, Charleston, South Carolina." The Stone Tower work relates to the exterior of the building and is within the scope of the referral to the panel.

To the extent there is doubt about the scope of the referral, the doubts are to be resolved in favor of arbitration. *Zabinski v. Bright Acres Assocs*., 346 S.C. 580, 597, 553 S.E.2d 110, 118 (2001) ("Any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration."). Here, there is no doubt. As the HPR acknowledges (Respondent's Final Brief as Appellants, at 18), TCC requested this precise relief in its pretrial brief (**R. p. 2299**), the issue was tried to the Panel, the relief was again requested by TCC in its post-trial proposed order to the

Panel (**R. p. 783**), and the relief was granted by the Panel.

The award relating to the Stone Tower was therefore within the scope of the arbitrators' authority, as the Parties gave them this authority. The arbitrators did not exceed their authority and this basis for vacating or modifying the award likewise is unavailing.

C. The Panel Issued a Reasoned Award.

The HPR argues that the arbitrators' failed to deliver a "reasoned award" as required by the arbitration agreement, requiring vacating or modification of the award. A "reasoned award" falls somewhere between a standard arbitration award containing no explanation whatsoever and a thorough "findings of fact and conclusions of law." *Tully Const. Co. / A.J. Pegno Const. Co., J.V. v. Canam Steel Corp.*, No. 13-cv-0307-PGG, 2015 WL 906128, at *13–14 (S.D.N.Y. Mar. 2, 2015). An award is a "reasoned award" if it "sets out the arbitrator's key findings and, where necessary, the reasons for those findings." *Id.* at *14.

The nine-page order submitted by the arbitrators explains the basis for the amounts awarded and the grounds for the award and therefore constitutes a reasoned award.

MS. BEATTY'S PETITION

The issues raised in Ms. Beatty's Petition are as follows:

1. Whether Trident preserved for appeal the issue of the quantum of fees awarded to Ms. Beatty by the Master;
2. If it did, whether the Court of Appeals erred in holding the Master abused his discretion with regard to the quantum of fees awarded to Ms. Beatty.

None of these issues is novel, and none of the Court of Appeals' rulings on the questions presents a conflict with this Court's precedent. Rule 242(b), S.C.A.C.R. The Court of Appeals did not err with regard to either issue, and this Court should decline to issue a writ of certiorari with regard to the same.

I. TCC's Challenge to the Quantum of Ms. Beatty's Fees Was Preserved for Appeal.

Ms. Beatty argues that TCC's contention regarding the amount of fees awarded to Ms. Beatty is not preserved. Not so. On November 30, 2020, following the Master's November 5, 2020 oral ruling that he would grant Ms. Beatty's motion for summary judgment and award her fees, TCC filed a response to Ms. Beatty's fee submittals stating:

> Should she prevail on her motion for summary judgment, Ms. Beatty's request for approximately $65,000 in attorneys' fees is improper and inconsistent with the law. Caselaw limits the recovery of fees to those incurred in successfully defending a lien foreclosure action.
>
> [. . .]
>
> Ms. Beatty first filed a pleading in this matter on January 17, 2020, not previously having answered TCC's complaint filed June 10, 2016. Nevertheless, the fee affidavit submitted by Mr. Buckley includes time from 2016–2019, prior to even filing a pleading in this case. This time should be struck. Further, time entries are included for attorneys Siau Barr and Michael Molony; TCC's counsel is unaware that Mr. Barr or Mr. Molony represented Ms. Beatty, having interacted with them only in their capacity as counsel for Betty Segal (a prior unit owner TCC dismissed by agreement) and not Betty Beatty.
>
> Ms. Beatty did not move for summary judgment until May 11, 2020, after the stay had been lifted. Ms. Beatty seeks $65,000 in attorneys' fees for work over six months relating to the sole argument that Ms. Beatty was served with the lien more than 90 days after March 17, 2016, the erroneous date of last work. This Court should not allow it.

R. p. 02139. The trial court did not change its mind, and its order issued on February 16, 2021 awarding Ms. Beatty fees and costs of $76,000. **R. p. 00098**. TCC timely appealed, filing and serving its notice of appeal on March 11, 2021. TCC's arguments made to the Court of Appeals were the same as were raised on November 30, 2020 to the Master, were rejected by the Master,

and are preserved.[5]

Ms. Beatty's contention that the issue was not preserved because it was first raised in a March 12, 2021 motion under Rule 59(e), S.C.R.C.P., is unavailing. **Beatty Petition** at 13. The issue was raised to the trial court the previous November, was ruled upon, and was timely appealed. It was not first raised in Rule 59(e) motion, and no such motion was necessary to preserve the issue.

II. TCC Carried its Burden of Demonstrating an Abuse of Discretion With Regard to the Award of Fees to Ms. Beatty.

TCC argued before the Master and the Court of Appeals that it was improper to award substantial attorneys' fees to Ms. Beatty without providing TCC Ms. Beatty's unredacted time entries so that it could challenge Ms. Beatty's contention regarding what fees were related to the foreclosure cause of action. Instead, $76,000 was awarded to Ms. Beatty without Trident being provided an opportunity to challenge the amount, and without the Court of Appeals being provided a sufficient record to review the Master's determination. This was an abuse of discretion, as The Court of Appeals properly held.

CONCLUSION

For these reasons, TCC respectfully submits that Defendants' Petitions should be denied.

[signature on following page]

[5] Out of an abundance of caution, TCC did a motion on March 12, 2021 further challenging Ms. Beatty's fee award, which was denied. **R. p. 01325**.

Respectfully submitted:

EPTING & RANNIK, LLC

This 20th day of October, 2025
Canaan, New York

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PROOF OF SERVICE

I certify that I have caused to be served Plaintiff/Petitioner TCC of Charleston, Inc.'s Consolidated Response in Opposition to Petitions for a Writ of Certiorari of Concord & Cumberland HPR and Betty L. Beatty, addressed to counsel of record *via* email to the addresses below:

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