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DEC 17 2015
SC Court of Appeals

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2014CP4007229

Group III Management Inc

Suncrete Of Carolina Inc

Crystal Pools

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRCP; Rule 41(a), SCRCP (Non-suit); Rule 43(k), SCRCP (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRCP; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other _____

2015 NOV 13 AM 9:19
 JEANETTE W. MCBRIDE
 CLERK OF COURT
 RICHLAND COUNTY

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the 12 day of Nov, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 13 November 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Alan Ross Belcher Jr.

John C. Bruton Jr.

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

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Clerk of Court

Jeanette W McBride

DEC 17 2015

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Group III Mgt., Inc.,

Claimant/Plaintiff,

v.

Suncrete of Carolina, Inc. d/b/a Crystal Pools,

Respondent/Defendant.

IN THE COURT OF COMMON PLEAS

Case No. 2014-CP-40-007229

**ORDER GRANTING GROUP III MGT.,
INC'S MOTION TO ALTER OR AMEND
JUDGMENT PURSUANT TO RULE 59(e)
S.C.R.C.P. AND GRANTING GROUP III'S
MOTION TO CONFIRM ARBITRATION
AWARD**

RICHLAND COUNTY
FILED
2015 NOV 12 AM 9:53
EANNETTE W. HOSBRIE
C.C.P. & S.

This matter is before the Court on Plaintiff Group III Mgt., Inc.'s ("Group III's") Motion To Alter or Amend Judgment Pursuant to Rule 59(e) SCRC.P.

This matter originated from an arbitration proceeding and subsequent award under the Federal Arbitration Act and came on for hearing before The Honorable J. Ernest Kinard, Jr., Judge for the Fifth Judicial Circuit, on February 6, 2015, on two motions filed by the parties: (1) Suncrete of Carolina, Inc., d/b/a Crystal Pools, (hereinafter referred to as "Crystal Pools") motion to vacate arbitration award or in the alternative to modify arbitration award and, (2) Group III's motion to confirm arbitration award. By an Order signed April 23, 2015, (hereinafter referred to as "the Order"), Judge Kinard granted Crystal Pools' motion and reduced the award of attorney's fees contained in the arbitration award in favor of Group III from the sum of \$116,165.86 to \$0. No Order was entered with respect to Group III's motion to confirm arbitration award. The Order, although apparently signed by Judge Kinard on April 23, 2015, was not filed by the Clerk of Court until May 18, 2015, and May 26, 2015 (there are two filing date stamps on the Order) and was received by Group III's attorney by mail from the Richland County Clerk of Court on June 3, 2015. Group III filed its motion to alter or amend judgment on June 12, 2015. Judge Kinard died on May 19, 2015 and was, obviously, unable to issue a final order in this matter.

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1 *JAG*

DEC 17 2015

SC Court of Appeals

The undersigned has been assigned as successor judge in the above proceedings due to the death of Judge Kinard pursuant to Rule 63, SCRPC. In that regard, a hearing was held on Group III's Rule 59(e) motion before me on October 2, 2015. The file contained previously submitted legal memoranda, copies of case and statutory law as well as several exhibits from the underlying arbitration. Additional copies of case law and statutory law were provided to the Court at the hearing. I have reviewed the record and determined that I can complete the proceedings in this matter by hearing and ruling on Group III's motion to alter or amend judgment.

Factual and Procedural Background

On October 18, 2012, Group III entered into a construction contract with the Army Corps of Engineers, Charleston Division, for the construction of repairs, renovations, and upgrades to the Legion Pool Complex located at Fort Jackson in Richland County, South Carolina. The work provided for in this contract required removal of an existing swimming pool, the construction of a new swimming pool and deck in its place, and the construction of a building and other improvements in connection therewith. By contract dated November 8, 2012 ("Contract"), Group III subcontracted a portion of its work to Crystal Pools, specifically the construction of the new swimming pool and deck area. A copy of the written Contract was submitted as an Exhibit by both parties. Article 14.1 of the Contract contains an agreement to arbitrate all claims arising out of or related to the Contract in accordance with the construction industry arbitration rules of the American Arbitration Association ("AAA") pursuant to the Federal Arbitration Act ("FAA"). Pursuant to Article 15.2 of the Contract, North Carolina law applies to the Contract.

Subsequent to the aforementioned Contract date and after the work commenced, the parties became entangled in a variety of disputes which could not be resolved.

On September 19, 2013, Group III filed a demand for arbitration with the AAA seeking to recover the excess of Group III's costs to complete Crystal Pools' work over the remaining

balance due on the Contract. On November 11, 2013, Crystal Pools responded to Group III's demand for arbitration and asserted a counterclaim against Group III alleging a balance due under the Contract. C. Allen Gibson, Esquire, a Charleston attorney with extensive experience in the field of construction law and practice, as well as experience in conducting arbitrations, was selected by the parties as the arbitrator. Mr. Gibson held hearings in Columbia, South Carolina for three consecutive days, July 8, 9, and 10, 2014, with a follow up hearing via telephone on July 14, 2014. During the course of the 3 ½ days of hearings all parties were provided an opportunity to present testimony and evidence. At the conclusion of the arbitration hearing, Group III and Crystal Pools expressly submitted to the arbitrator the issue of determining the "prevailing party" and the amount of reasonable attorneys' fees that should be awarded to that party pursuant to the Contract. The parties subsequently submitted Affidavits regarding attorneys' fees on July 18, 2014, and the arbitration hearing was declared closed on July 23, 2014.

On or about August 18, 2014, the arbitrator entered an award in favor of Group III against Crystal Pools in the total amount of \$197,304.09, of which amount \$116,165.86 was for attorneys' fees and costs associated with the prosecution of Group III's claim and the defense of Crystal Pools' counterclaim. No amount was awarded to Crystal Pools on its counterclaim. On September 8, 2014, Crystal Pools filed a motion with the arbitrator to modify the award so as to limit or eliminate the attorneys' fees portion of the award. The arbitrator denied the motion in a written order. Crystal Pools then filed a motion with the Circuit Court requesting the same relief, *i.e.*, to vacate or in the alternative modify the arbitration award. On or about the same time Group III filed its motion with the Circuit Court to confirm the arbitration award.

Legal Standard

By the terms of the Contract, and agreement of the parties, the Federal Arbitration Act governs this dispute. Thus, the FAA applies to the standard of review the Court must consider in

whether to vacate or modify the arbitration award. “In order to advance the underlying purposes of arbitration, the scope of judicial review is necessarily restricted.” *Trident Technical College v. Lucas & Stubbs, Ltd.*, 286 S.C. 98, 104, 333 S.E.2d 781, 785 (1985) (citing 9 U.S.C. §§ 9-11). “Consequently, a court ‘may vacate or modify an arbitration award only if one of the grounds specified in 9 U.S.C. §§ 10 and 11 is found to exist!’” *Id.* (quoting *Diapulse Corp. of Am. V. Carba, Ltd.*, 626 F.2d 1108, 1110 (2d Cir. 1980)). Indeed, “the scope of judicial review for an arbitrator’s decision is among the narrowest known at law because to allow full scrutiny of such awards would frustrate the purpose of having arbitration at all—the quick resolution of disputes and the avoidance of the expense and delay associated with litigation.” *Henry M. Jackson Found. for the Advancement of Military Med., Inc. v. Norwell, Inc.*, 596 Fed. Appx. 200, 201 (4th Cir. 2015) (internal quotation and citation omitted).

A request for *vacatur* of an arbitration award under the FAA 9 U.S.C. § 10 requires the movant to show (1) “the award was procured by corruption, fraud, or undue means;” (2) “evident partiality or corruption in the arbitrators;” (3) “misconduct in refusing to postpone the hearing” or “refusing to hear evidence pertinent and material to the controversy;” or (4) “where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.” 9 U.S.C. § 10(a). A request for *modification* of an arbitration award under the FAA 9 U.S.C. § 11 requires the movant to show that (1) “there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property;” that (2) “the arbitrators have awarded upon a matter not submitted to them;” or that (3) “the award is imperfect in matter of form not affecting the merits of the controversy.” 9 U.S.C. § 11.

Although not recognized by some federal circuits, in limited and strictly circumscribed situations, the Fourth Circuit has said a reviewing court may also consider whether the arbitrator

“manifestly disregarded” the law as an additional common law ground for vacating an arbitration award. *Wachovia Sec., LLC v. Brand*, 671 F.3d 472, 483 (4th Cir. 2012). However, “[t]he FAA notably does not authorize a district court to overturn an arbitral award just because it believes, however strongly, that the arbitrators misinterpreted the applicable law.” *Id.* at 478 n.5.

**The requested vacatur or modification is not allowed under
the FAA or the theory of manifest disregard.**

The gist of Crystal Pools’ argument as contained in the Order of Judge Kinard is the contention that the arbitrator misapplied the law or, stated differently, applied South Carolina law instead of North Carolina law in regard to attorneys’ fees, and it appears that the arbitration award was modified by the Order of Judge Kinard on those grounds.

However, with all due respect to the Order of Judge Kinard, there is no indication in the record that the arbitrator did any such thing. Nonetheless, even if the arbitrator misapplied the law, Crystal Pools must point to more than an incorrect application of law because “proving manifest disregard require[s] something beyond showing that the arbitrators misconstrued the law, especially given that arbitrators are not required to explain their reasoning.” *Wachovia Sec.*, 671 F.3d at 481; *see also Trident Technical*, 286 S.C. at 109, 333 S.E.2d at 787 (“[T]he nonstatutory ground of ‘manifest disregard’ of the law as a basis for vacating arbitration awards ... presuppose[s] something beyond and different from a mere error of law or failure on the part of the arbitrators to understand or apply the law.”) (internal citations and quotations omitted). I see nothing that supports a manifest disregard argument. Instead, the only evidence in the record is that the arbitrator heard all arguments regarding the facts, the appropriate law and its application and thereafter made his decision. It appears that not only did he hear these arguments once, the arbitrator considered the same arguments again in ruling on Crystal Pools’ request to modify the arbitration award.

In addition to the state appellate courts and the federal circuit courts, the United States

Supreme Court has addressed the issue of limited judicial review of an arbitrator's decision on several occasions. In one of its more recent decisions on the issue, *Oxford Health Plans, LLC v. Sutter*, 133 S. Ct. 2064, 186 L. Ed. 2d 113 (2013), the Supreme Court pointed out that "Under the FAA, courts may vacate an arbitrator's decision 'only in very unusual circumstances.'" (internal citation omitted). *Id.* at 186 L. Ed. 2d at 119. The Court in *Oxford* goes on to say: "It is not enough to show that the arbitrator committed an error – or even a serious error." *Id.* (internal citation omitted). If parties could take "full-bore legal and evidentiary appeals," arbitration would become "merely a prelude to a more cumbersome and time-consuming judicial process." *Id.* (internal quotation and citation omitted). The "heavy burden" as required by the U.S. Supreme Court to vacate or modify an arbitration award has simply not been met by Crystal Pools in this matter.

Conclusion

Group III in its legal memoranda and during its presentation to the Court vigorously argues that Crystal Pools and the Order of Judge Kinard misconstrues North Carolina law as to the finding of "prevailing party" and entitlement to attorney's fees. However, I do not need to reach the merits of the correct application of North Carolina case and statutory law in this matter because the standard of review under the provisions of the FAA to include the theory of manifest disregard do not allow the arbitration award in this case to be reviewed and modified by the Circuit Court. The arbitration award outlines the facts and arguments made by the parties, discusses the monetary amounts claimed by each party, and the basis therefore. The arbitrator in his award states that he has considered all of the evidence and arguments of counsel and then makes his findings including who is the prevailing party and the amount of attorney's fees awarded. The arbitrator's findings are clear and unambiguous.

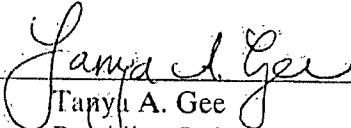
I find that the arbitrator's award was made in accordance with the terms and provisions of the parties' written agreement as well as in accordance with the parties' request to determine who was the prevailing party and the amount of reasonable attorney's fees to be awarded. However, even if there were errors of law or fact, or an erroneous decision of matters submitted to the judgment of the arbitrator, that is insufficient to vacate or modify an arbitration award fairly and honestly made. Courts may vacate an arbitrator's decision only in very unusual circumstances and these circumstances do not exist in this case.

Based on the foregoing, it is herein ORDERED that the Order of Judge Kinard in this matter dated April 23, 2015, is altered and amended such that the Motion of Defendant Crystal Pools to modify or vacate the arbitration award is denied and the Arbitration Award dated August 18, 2014, is hereby confirmed in all respects, and that judgment be entered in conformity therewith.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Arbitration Award dated August 18, 2014, in favor of Plaintiff, Group III Mgt., Inc. against Defendant Suncrete of Carolina, Inc. d/b/a Crystal Pools is hereby confirmed and judgment is entered against said Defendant in the amount of \$197,304.09.

The Richland County Clerk of Court is directed to register the arbiter's award of \$197,304.09 as the judgment of this Court in the Richland County Clerk of Court's office.

AND IT SO ORDERED.



Tanya A. Gee
Presiding Judge
Fifth Judicial Circuit

Dated: November 12, 2015
Columbia, South Carolina