

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Milton Jones, Jr., Walter Davis, and
Angela Webb,

Plaintiffs,

v.

CertusBank N.A. and CertusHoldings, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C/A NO.: 2015-CP-23-05554

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SC Court of Appeals

OPINION AND ORDER

This matter comes before the Court on the motions of Defendants CertusBank, N.A. and CertusHoldings, Inc., now doing business through the successor corporation CBSUB, Inc. (hereafter, "CertusBank"), and Prospective Defendant-Intervenor Federal Deposit Insurance Corporation (FDIC). CertusBank moved the Court to vacate a judgment entered March 29, 2017 (hereafter, the "Judgment"), claiming the Judgment (1) was mistakenly entered by the Court, (2) should be vacated on account of newly discovered evidence, and (3) that the judgment is unenforceable. FDIC's motion seeks (1) leave to intervene, (2) to modify the Judgment and hold it unenforceable pursuant to FDIC determination letters concluding payment of the Judgment is barred by federal law. Plaintiffs Milton Jones, Jr., Walter Davis, and Angela Webb (collectively, "Plaintiffs") oppose both motions and all relief sought.

Having considered the memoranda submitted by the litigants and the arguments presented during the August 7, 2017 hearing, the Court **GRANTS** the motion of FDIC to intervene and **DENIES** the motions of CertusBank and the FDIC to vacate or modify the Judgment. The Court also finds the issue of unenforceability of the Judgment not properly before it, and therefore **DENIES** the relief requested.

RELEVANT PROCEDURAL HISTORY

On March 17, 2017, Thomas W. Traxler, Esquire, as Arbitrator, held that CertusBank, N.A., CertusHoldings, Inc., and CBSUB, Inc. were liable to Plaintiffs under the terms of certain employment agreements. Plaintiffs thereafter moved to enroll the arbitration award. On March 29, 2017, the Court granted that motion and entered an Order/Judgment and Form 4 against the Defendants and CBSUB, Inc. The Clerk of Court caused the denominated March 29 Judgment to be entered against the Defendants and CBSUB, Inc. for \$965,000.00. CertusBank did not move the Court to alter or amend the Judgment, nor did it notice an appeal.

Instead, on April 13, 2017, CertusBank moved for a protective order to allow it to file FDIC determination letters, which it claimed prohibited it from making the payment of monies to Plaintiffs. On May 24, 2017, the Honorable William H. Seals, Jr., Circuit Court Judge, heard argument from the parties. By Order dated May 26, 2017, Judge Seals denied CertusBank's motion for a protective order, explaining:

While Defendants would offer the FDIC determination letter to challenge that [arbitration] award, they did not ask Judge Gravely to reconsider his March 29 Order, nor have they notice[d] appeal. Thus, there is no reason for the Court to grant a protective order to allow the FDIC letters to be filed.

Order Den. Mot. Prot., 2.

On May 23, 2017, the FDIC moved to intervene and asked the Court to modify the Judgment and render it unenforceable. On May 30, 2017, CertusBank moved to vacate the Judgment. On June 28, 2017, the Court granted a joint motion by Plaintiffs and CertusBank requesting the Clerk of Court hold funds in escrow for the satisfaction of the Judgment pending a ruling on the motion to vacate. Pursuant to this Court's Order, CBSUB paid \$965,000.00 in escrow to the Clerk of Court on or before July 19, 2017.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having carefully considered the submissions of the litigants and the arguments of counsel, the Court makes the following findings of fact and conclusions of law:

I. FDIC intervention.

A non-party can seek to intervene either as a matter of right or with permission from the court. See Rule 24, SCRCF. Upon timely application, permissive intervention is appropriate under two circumstances: “(1) when a statute confers a conditional right to intervene; or (2) when an applicant’s claim or defense and the main action have a question of law or fact in common.” Rule 24(b), SCRCF. The rule also explains that permissive intervention can be appropriate where a claim turns on a federal agency determination. See id. Thus, the Court finds that permissive intervention under Rule 24(b) is appropriate and FDIC’s motion to intervene is granted.

Plaintiffs challenge FDIC’s right to intervene under any theory. The Court has considered those arguments, including Plaintiffs’ claim that FDIC’s motion is untimely, but nevertheless finds permissive intervention appropriate. “In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.” Rule 24(b), SCRCF. The Court has weighed these considerations here and finds no prejudice in considering FDIC’s arguments in support of vacating the Judgment alongside CertusBank’s motion. As explained below, the Court rejects FDIC’s arguments in support of vacating the Judgment, but allows permissive intervention for anticipated supplemental proceedings.

II. Rule 60 Relief.

CertusBank and FDIC ask the Court to vacate or modify the Judgment. Rule 60(a) authorizes relief from a judgment or order to correct clerical mistakes or oversights. Rule 60(a), SCRCF. Rule 60(b) authorizes a court to relieve a party from a final judgment or order, in relevant

part, because of mistake, inadvertence, surprise, or excusable neglect; newly discovered evidence; or where the judgment is void. Rule 60(b)(1), (2) & (4), SCRCP. The decision to grant relief under Rule 60(b) is a matter of discretion not to be disturbed unless the circuit court's decision turns on an error of law or factual finding without evidentiary support. Ware v. Ware, 404 S.C. 1, 10–11, 743 S.E.2d 817, 822 (2013). The Court declines to grant relief from the Judgment to either CertusBank or FDIC because neither movant meets the requirements for relief under Rule 60.

Citing subsections (a) and (b)(1), movants claim the Judgment is the product of a clerical mistake or the result of mistake, inadvertence, surprise, or excusable neglect. CertusBank also cites subsections (b)(2) and (b)(4), which authorize relief on account of newly discovered evidence or a void judgment. None of these arguments warrant vacating or modifying the Judgment because movants' theories turn on the same claim: that determination letters filed by FDIC undermine its finality and efficacy. As Judge Seals explained in his Order of May 26, 2017, authorizing CertusBank to file the determination letters would be a futile act because the Judgment became final after it was enrolled on March 29, 2017 and CertusBank failed to move the Court to reconsider its order or notice an appeal.

The same reasoning applies here. Based on movants' submissions, CertusBank "filed its applications with the FDIC on or about April 21, 2016 seeking a determination of whether the severance payments owed to Plaintiffs ... constitute prohibited golden parachute payments under applicable federal banking law." Defs.' Mot. Prot. Order, 1. FDIC's determination letters issued on April 7, 2017. See FDIC Mot. at Exs. 2–4. Thus, FDIC had almost a year to make a determination or seek intervention before the Judgment became final. Likewise, CertusBank had sufficient time to move the Court to reconsider its Order entering Judgment or take appeal of that decision. The Judgment became final upon expiration of time in which to take either action.

CertusBank and FDIC argue that the March 29 Order does not reflect the decision reached by the Arbitrator and pursuant to Rule 60 should be vacated or modified to reflect the Arbitrator's determination. CertusBank and FDIC assert that the Arbitrator only determined that CertusBank contractually owed the severance payments to Plaintiffs pursuant to their Employment Agreements but made no determination on whether CertusBank could lawfully pay the severance under the FDIC golden parachute rules as that question was not before the Arbitrator. Plaintiffs argue the various Rule 60 subsections cited by the movants are not applicable here. The Court agrees. The Court finds that subsections (a) and (b)(1), concerning clerical error or mistake do not apply as the Judgment is not the product of error or a mistake. Generally, an arbitration award is conclusive and courts will refuse to review the merits save for very limited circumstances. C-Sculptures, LLC v. Brown, 403 S.C. 53, 56, 742 S.E.2d 359, 360 (2013) (quoting Gissel v. Hart, 382 S.C. 235, 241, 676 S.E.2d 320, 323 (2009)). Absent a statutory exception, a circuit court is required to confirm an arbitration award and reduce it to judgment. See S.C. Code Ann. § 15-48-120; see also id. §§ 15-48-130 & -140 (defining grounds to challenge an award). Here, CertusBank and FDIC did not allege, much less show, any statutory exception warranting a departure from the Court's mandate to confirm the arbitration award and the Court enrolled the Judgment pursuant to its statutory duty under § 15-48-120. Accordingly, the Court finds there has been no clerical error or mistake concerning entry of the Judgment.

Plaintiffs also argue Rule 60(b)(2)'s newly discovered evidence provision is inapplicable here. The Court agrees. Evidence is not "newly discovered" if it is known at trial or can be resolved within 10 days of judgment. See Se. Hous. Found. v. Smith, 380 S.C. 621, 637, 670 S.E.2d 680, 688-89 (Ct. App. 2008). For reasons explained, movants had ample time to raise these issues prior to entry of Judgment.

Plaintiffs argue the judgment is not “void” as contemplated by Rule 60(b)(4), because the rule is limited to circumstances where it is necessary to grant relief because the afflicted party has not been afforded due process or the court lacked jurisdiction. The Court agrees. See Linda Mc Co. v. Shore, 390 S.C. 543, 552, 703 S.E.2d 499, 503 (2010). While CertusBank claims a due process violation, the Court declines to find one here as CertusBank has not pointed to any such defect in the arbitration proceeding or proceedings before this Court concerning entry of Judgment.

Having considered all grounds for relief under Rule 60, the Court finds CertusBank and FDIC’s claims for relief are factually and legally unsupported and thus denies both motions seeking to vacate or modify the Judgment.

III. Determination letters and enforceability of the Judgment.

The Court denies FDIC’s request to issue an order finding that CertusBank’s obligation to make the proposed severance payments is unenforceable on account of the FDIC determination letters because that issue is not before the Court. As explained, the Judgment is valid and all motions to vacate or modify have been denied. The Court has authorized FDIC intervention to participate in supplemental proceedings where they may raise arguments that payment of severance to Plaintiffs is prohibited and cannot be made based on the FDIC determination letters. The money being held by the Clerk of Court in escrow shall remain in escrow pending final resolution of this action.

With respect to the determination letters, FDIC characterizes them not as “evidence” but rather “a ruling of the FDIC,” that justifies modifying the Judgment. This concession appears to reinforce the Court’s finding that the letters are not newly discovered “evidence” that justifies vacating the Judgment. To the extent the letters constitute a ruling by FDIC, the Court notes that they do not appear to be signed by the Deputy Director of FDIC who purportedly has authority to

issue such a determination. Nevertheless, these issues, along with any other arguments in support of or opposition to recognizing the determination letters, do not, and cannot undermine the Judgment.

In short, both FDIC and CertusBank argue payment of monies by CBSUB in satisfaction of the Judgment is prohibited, but the Court has not made a determination of validity, binding effect, or enforceability of the FDIC determination letters. The issue is not properly before the Court, therefore, the relief requested is **DENIED** without prejudice. The money being held by the Clerk of Court in escrow shall remain in escrow until any supplemental proceedings or appeals have been resolved.

CONCLUSION

In summary, FDIC's motion to intervene is **GRANTED**, CertusBank and FDIC's motions to vacate and modify the March 29, 2017 Judgment is **DENIED**, and all motions seeking to give effect to FDIC's determination letters are **DENIED** without prejudice.

IT IS SO ORDERED.

Perry H. Gravely
Circuit Court Judge, Greenville County

January ____, 2018
Greenville, South Carolina.



Greenville Common Pleas

Case Caption: Milton Jones Jr , plaintiff, et al vs. CertusBank NA , defendant, et al
Case Number: 2015CP2305554
Type: Order/Set Aside Judgment

So Ordered

s/ Honorable Perry H. Gravely, #2755

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