

ARBITRATION BETWEEN
LAWRENCE TERRY
AND
CARMAX AUTO SUPERSTORES, INC.

NAM ID# 218738

RECEIVED
MAY 15 2019
SC Court of Appeals

MAY 10, 2019, ORDER ON PENDING MOTIONS

On May 9, 2019, Claimant Terry submitted "Plaintiff's Motion for Clarity on Order and Additional Reconsideration." The motion is Claimant's second motion for reconsideration of the Arbitrator's April 30, 2019, Order Granting Summary Judgment to Respondent CarMax. Claimant's motion does not present any factual matter or applicable law that was previously overlooked or misconstrued. Claimant continues to insist that individual co-workers and supervisors intended to harm him, yet (1) none of those individuals can be considered the alter ego of CarMax and (2) in any event, Claimant has failed to establish the essential elements of any claim against anybody. Claimant's exclusive remedy against CarMax for his alleged "mental/physical injuries" is his pending claim before the South Carolina Workers' Compensation Commission. Claimant's motion is denied.

In "Respondent's Motion for Sanctions and Award of Costs and Attorneys' Fees," CarMax argues it is entitled to reimbursement of its attorneys' fees related to summary judgment motions. Citing Rule 13.b of the CarMax Dispute Resolution Rules and Procedures ("DRRP") ("The Arbitrator is authorized to award attorney fees in accordance with applicable law"), CarMax invokes the sanctions of the South Carolina Frivolous Civil Proceedings Sanctions Act. While the frivolous litigation statute applies to all litigants (including pro se litigants) in state courts, I have some concerns about sanctioning Claimant in this manner in this arbitration. One concern is that there has been no showing that Claimant Terry was warned that sanctions might be sought pursuant to the statute for asserting frivolous claims in arbitration. Rule 1 of the

Page 1 of 2 | LT

DRRP cites that "These Dispute Resolution Rules and Procedures are written to guide an Associate through the arbitration process . . ." The only provision for sanctions in the DRRP is Rule 11.b, which allows for sanctions "for failure to comply with these Dispute Resolution Rules and Procedures or with an order of the Arbitrator," and such sanctions, while including costs, do not provide for the recovery of attorneys' fees. The DRRP guides this arbitration, and any ambiguity in the DRRP should be interpreted in favor of the non-drafting party. I believe it would be an abuse of discretion to sanction Claimant under the circumstances.

CarMax also seeks reimbursement of its deposition costs as "incidental costs" pursuant to Rule 13 of the DRRP, and also as costs pursuant to Rule 54(d) of the South Carolina Rules of Civil Procedure. South Carolina court rules do not apply to this arbitration; rather, this arbitration is governed by the DRRP. Rule 13 of the DRRP provides that "Incidental costs include such items as photocopying or the costs of producing witnesses or proof." Rule 8.b.ii more specifically addresses deposition costs: "The party taking the deposition shall be responsible for all costs associated therewith, such as the cost of a court reporter and the cost of a transcript." I find the latter, specific provision of the DRRP would lead an associate to believe that he should not expect to have to pay the costs of his own deposition. I conclude it would be an abuse of discretion to shift the deposition costs to Claimant under the circumstances.

Accordingly, the parties' motions are denied.


Kathryn Thomas, Arbitrator

Columbia, South Carolina
May 10, 2019