2013 IL App (3d) 120595-U

Order filed July 19. 2013
Modified upon denial of rehearing filed August 22, 2013

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2013

LRN HOLDING, INC., f/k/a L.R. NELSON CORPORATION,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
	)	Peoria County, Illinois,
Plaintiff-Appellant,	)	
	)	
v.	)	Appeal No. 3-12-0595
	)	Circuit No. 09-MR-129
ROBERT BOSCH TOOL CORPORATION, and U.S. BANK NATIONAL ASSOCIATION, as Escrow Agent,	)	
	)	
	)	Honorable
	)	Michael E. Brandt,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justice O'Brien concurred in the judgment.
Justice Holdridge dissented.

ORDER

¶ 1 *Held:* Trial court did not err in denying plaintiff's motion for summary judgment and granting judgment in favor of defendants for full amount of escrow account, plus postjudgment interest.

¶ 2 Plaintiff LRN Holding, Inc. (LRN) filed a complaint against defendants, Robert Bosch Tool Corp. (Bosch) and U.S. Bank National Association. Bosch filed a counterclaim against LRN and

a motion to compel arbitration. The trial court ordered that the parties participate in arbitration. The arbitrator determined that LRN owed Bosch $2,372,000. The trial court entered an order confirming the arbitrator's decision and entered judgment against LRN for $2,372,000, plus 9% interest per year until satisfied. LRN appeals, arguing that the trial court erred in (1) denying its motion for summary judgment; (2) confirming the arbitrator's award; (3) awarding judgment to Bosch in excess of the escrow funds; and (4) ordering it to pay postjudgment interest. We affirm.

¶ 3 On September 17, 2008, LRN Holding, Inc. and Robert Bosch Tool Corp. entered into a global purchase agreement, pursuant to which Bosch agreed to purchase certain assets from LRN. Bosch agreed to pay a base price of $50 million for the assets, calculated pursuant to a pre-closing estimate of the amount of inventory and receivables LRN was to transfer to Bosch at closing. Section 1.4 of the global purchase agreement provided that $2,000,000 would be withheld from the purchase price at the closing in an escrow account at U.S. Bank National Association.

¶ 4 Section 1.7 of the global purchase agreement addressed disputes regarding the closing statement. It provided that the seller could object to the closing statement by providing written notice to the buyer within 30 days after receipt of the closing statement. The buyer then had 30 days to review and respond to the seller's objections. If the parties were unable to resolve their differences, the agreement provided:

> "[E]ither Party may refer the remaining differences to a nationally recognized firm of independent public accountants as to which the Parties mutually agree." "The CPA Firm shall make a determination only with respect to the accounting-related differences which are submitted by the Parties for resolution. The determination of the CPA Firm shall be final and binding on the Parties."

¶ 5 Section 1.9 of the global purchase agreement provided, in part, as follows:

"Section 1.9 Adjustment Payments

(a) If the final Assumed Payables as derived from the Closing Statements are greater than Estimated Assumed Payables, then Seller shall cause the payment to Buyer from the Escrow Account, within ten (10) business days of final determination of the Closing Statement, of an amount equal to the difference between (i) Estimated Assumed Payables, and (ii) final Assumed Payables as derived from the Closing Statement. If final assumed Payables as derived from the Closing Statement are less than Estimated Assumed Payables, Buyer shall pay to Seller, within ten (10) business days of final determination of the Closing Statement, an amount equal to the difference between (x) final Assumed Payables as derived from the Closing Statement, and (y) Estimated Assumed Payables.

(b) If the final Net Book Value Adjustment as derived from the Closing Statement is less than the estimated Net Book Value Adjustment, then Seller shall cause the payment to Buyer from the Escrow Account, within ten (10) business days of the final determination of the Closing Statement, of an amount equal to the difference between (i) the Estimated Net Book Value Adjustment, and (ii) the final Net Book Value Adjustment as derived from the Closing Statement. If the final Net Book Value Adjustment as derived from the Closing Statement is greater than the Estimated Net Book Value Adjustment, Buyer shall pay to Seller, within ten (10) business days of final determination of the Closing Statement, an amount equal to the difference between (x) the final Net Book Value Adjustment."

¶ 6 On September 18, 2008, LRN, Bosch and U.S. Bank entered into an escrow agreement. Pursuant to the global purchase agreement and escrow agreement, $2,000,000 was deposited into an escrow account, with U.S. Bank as escrow agent. Section 1.5 of the escrow agreement provided: "The Escrow Amount shall be the sole source for the satisfaction of any obligation of Seller to Buyer under Section 1.9 and Article 7 of the Purchase Agreement." Section 2.1 of the escrow agreement addressed purchase price adjustments and stated as follows:

> "No later than five (5) Business Days following the final determination of all Purchase Price adjustments pursuant to Section 1.9 of the Purchase Agreement, in the event a payment is due from Seller to Buyer as a result of such determination, Buyer and Seller shall deliver to the Escrow Agent a joint written notice in substantially the form of Exhibit A (the "Determination Notice"). Within three (3) Business Days of the date of Escrow Agent's receipt of the Determination Notice (with receipt of such notice deemed accomplished in accord with Section 6.2), the Escrow Agent shall release to Buyer the sum set forth in the Determination Notice."

¶ 7 Pursuant to section 3.1 of the escrow agreement, Bosch was required to give written notice to LRN and U.S. Bank of any indemnity claims on or before March 31, 2009. Section 3.2 of the escrow agreement provided:

> "3.2 Final Release of Escrow Funds. As promptly as practicable following (and in no event later than the second (2^{nd}) Business Day after) the Indemnity Cut-Off Date, the Escrow Agent shall release from the Escrow Account and pay to Seller any remaining balance of funds in the Escrow Account; provided, however, that if, at 5:00 p.m. (New York City time) on the Indemnity Cut-Off Date, any portion of the

> Escrow Amount is subject to one or more pending indemnification claims that have been timely asserted in accordance with Article 7 of the purchase Agreement and have not been paid in full or otherwise finally settled or adjudicated, or are subject to appeal or further proceedings, than an amount equal to the portion of the Escrow Amount attributable to such claims shall be retained in the Escrow Account until Buyer and Seller deliver a joint written notice notifying the Escrow Agent that such claims are paid in full or otherwise finally settled or adjudicated and no longer subject to appeal or further proceedings. "

¶ 8 On November 14, 2008, Bosch filed a purchase price adjustment claim against LRN in the amount of $2,478,000. On December 12, 2008, LRN acknowledged receipt of Bosch's claim but rejected the adjustment amount and asserted that an adjustment of only $622,000 in favor of Bosch was warranted.

¶ 9 On April 2, 2009, LRN sent a letter to Bosch and U.S. Bank, asserting that LRN was entitled to the full balance of the escrow account. The next day, Bosch sent a letter to U.S. Bank, objecting "to any disbursement of escrow funds to Seller" because Bosch had a purchase price adjustment claim pending against LRN in the amount of $2,478,000, which "is payable from the escrow funds at U.S. Bank." Bosch further explained that it was trying to the resolve the claim with LRN, to no avail. On April 10, 2009, U.S. Bank informed LRN that it would not be disbursing any funds from the escrow account in light of the dispute between the parties.

¶ 10 On April 15, 2009, LRN filed a four-count complaint against Bosch and U.S. Bank. Count I alleged a claim for declaratory judgment, seeking declarations that (1) LRN had the sole right to the funds in the escrow account, and (2) U.S. Bank had a duty to deliver the escrow account funds

to LRN. Count II alleged a breach of contract action against U.S. Bank, for failing to deliver the escrow funds to LRN, as required by section 3.2 of the escrow agreement. Count III alleged breach of fiduciary duty against U.S. Bank by failing to deliver escrow funds to LRN. Count IV alleged tortious interference against Bosch, alleging that Bosch objected in bad faith to LRN receiving the escrow funds.

¶ 11 On May 5, 2009, Bosch filed a three-count counterclaim against LRN. Count I sought a declaration to compel LRN to arbitrate the purchase price adjustment dispute. Count II alleged breach of contract against LRN for failing to cooperate with Bosch, as required by the global purchase agreement. Count III alleged breach of warranty. Later, Bosch amended its counterclaim to add a fraud claim and an additional breach of contract claim.

¶ 12 On May 14, 2009, Bosch filed a motion to compel arbitration of its purchase price adjustment claim. The trial court denied the motion without prejudice and permitted LRN to first pursue a motion for summary judgment. LRN then filed a motion for summary judgment, arguing that it was entitled to the full $2,000,000 in escrow because Bosch allowed the indemnity cut-off date to pass without providing notice of an indemnity claim. The trial court denied LRN's motion for summary judgment and found that the escrow funds were available to satisfy Bosch's unresolved price adjustment claim.

¶ 13 Thereafter, Bosch filed a second motion to compel arbitration. The trial court granted the motion. The parties selected CBIZ MHM, LLC, an accounting firm, to resolve the purchase price adjustment dispute. CBIZ concluded that Bosch was entitled to a purchase price adjustment of $2,372,000, and found that LRN should have the right to collect on accounts deemed uncollectible and liquidate any inventory deemed obsolete that LRN had transferred to Bosch. Bosch filed a

motion to confirm CBIZ's findings. The trial court granted the motion with respect to CBIZ's finding that Bosch was entitled to a post-closing adjustment of $2,372,000 but found that the other relief granted (giving LRN the right to collect accounts and liquidate inventory) was beyond the scope of CBIZ's duties.

¶ 14 LRN filed an objection to CBIZ's findings, arguing that CBIZ "failed to follow contractually agreed upon accounting protocols" and that CBIZ's award exceeded the scope of the matters submitted. Bosch filed a motion for entry of judgment based on CBIZ's findings. The trial court granted Bosch's motion and entered judgment in favor of Bosch and against LRN in the amount of $2,372,000, and $243 for cost of suit, with interest of 9% per year until the judgment is satisfied. The court directed U.S. Bank to disburse to Bosch all funds held in the escrow account, less unpaid costs and expenses, "as full and final satisfaction of the judgment against LRN."

¶ 15 I

¶ 16 LRN first argues that the trial court erred in denying its motion for summary judgment. LRN contends that section 3.2 of the escrow agreement required U.S. Bank to disburse the escrow funds to LRN on April 2, 2009, because Bosch did not file an indemnity claim on or before March 31, 2009.

¶ 17 The basic rules of contract interpretation are well settled. *Thompson v. Gordon*, 241 Ill. 2d 428, 441 (2011). In construing a contract, the primary objective is to give effect to the intention of the parties. *Id*. A court will first look to the language of the contract itself to determine the parties' intent. *Id*. A contract must be construed as a whole, viewing each provision in light of the other provisions. *Id*. The parties' intent is not determined by viewing a clause or provision in isolation. *Id*. A court will not interpret a contract in a manner that would nullify or render provisions

meaningless, or in a way that is contrary to the plain and obvious meaning of the language used. *Id*. at 442.

¶ 18 In this case, section 2.1 of the escrow agreement addressed purchase price adjustment claims, while section 3.2 of the escrow agreement addressed indemnification claims. LRN argues that section 3.2 of the escrow agreement required U.S. Bank to distribute the escrow funds to LRN on April 2, 2009, because Bosch did not raise an indemnification claim on or before March 31, 2009. However, this argument ignores section 2.1 of the escrow agreement. Here, Bosch made a purchase price adjustment claim in November 2008, triggering the provisions of section 2.1 of the escrow agreement. Pursuant to sections 1.5 and 2.1 of the escrow agreement, the escrow funds were to be used to satisfy any purchase price adjustment claims. Because a purchase price adjustment claim was pending and had not yet been resolved as of April 2, 2009, U.S. Bank properly refused to release the escrow funds to LRN at that time.

¶ 19 We view the contract as a whole, giving effect to all of its provisions. See *id*. at 441. To read the agreement as LRN contends would render section 2.1 meaningless. Since we cannot interpret a contract in a manner that would nullify or render provisions meaningless, we must reject LRN's interpretation. See *id*. at 442. The interpretation of the agreement espoused by LRN would violate basic rules of contract interpretation; thus, the trial court did not err in denying LRN's motion for summary judgment.

¶ 20 II

¶ 21 Next, LRN argues that the trial court erred in confirming the award issued by CBIZ because CBIZ exceeded the scope of its authority and interpreted the global purchase agreement in an unreasonable manner.

¶ 22 Judicial review of an arbitration award is more limited than the review of a trial court's decision. *Galasso v. KNS Companies, Inc.*, 364 Ill. App. 3d 124, 130 (2006). Because the parties have agreed to have their dispute settled by an arbitrator, it is the arbitrator's view that the parties have agreed to accept, and the court should not overrule an award simply because its interpretation differs from that of the arbitrator. *Id*.

¶ 23 There is a presumption that the arbitrators do not exceed their authority and a court must construe an award, if possible, so as to uphold its validity. *Id*. A court cannot overturn an award on the ground that it is illogical or inconsistent. *Id*. An arbitrator's award will not even be set aside because of errors in judgment or a mistake of law or fact. *Id*. As long as the arbitrator is even arguably construing or applying the contract, its decision must not be overturned. *Cook County v. American Federation of State, County & Municipal Employees, Dist. Counsel 31, Local 3315, AFL-CIO*, 294 Ill. App. 3d 985, 988-89 (1998).

¶ 24 When an arbitrator makes an error in an arbitration award, the award may be modified or vacated. 710 ILCS 5/12(a), 13(a) (West 2010). A court may modify or correct an award where (1) there was an evident miscalculation or an error in description; (2) the arbitrator ruled on a matter not submitted to him, and the court is able to correct the award without affecting the merits of the decision upon the issues submitted; or (3) the award is imperfect in form. 710 ILCS 5/13(a) (West 2010). A court can vacate an award only if (1) the award was obtained by corruption or fraud; (2) the arbitrator was partial; (3) the arbitrator exceeded his powers; (4) the arbitrator unreasonably refused to postpone the hearing or hear material evidence; or (5) there was no arbitration agreement. 710 ILCS 5/12(a) (West 2010).

¶ 25 A court may vacate an arbitration award where a gross error of law or fact appears on the face

of the award, or where the award fails to dispose of all matters properly submitted to the arbitrator. *Galasso*, 364 Ill. App. 3d at 131. To vacate an award based on gross error of law, a reviewing court must be able to conclude, from the face of an award, that the arbitrator was so mistaken as to the law that, if apprised of the mistake, he would have ruled differently. *Sloan Electric v. Professional Realty & Development Corp.,* 353 Ill. App. 3d 614, 621 (2004). The party moving to vacate the award must prove by clear and convincing evidence that the award was improper. *Id.*

¶ 26 A

¶ 27 LRN argues that the trial court should have vacated CBIZ's award in its entirety because CBIZ exceeded its authority by ordering Bosch to turn over to LRN certain accounts receivable and inventory, in addition to finding a purchase price adjustment in favor of Bosch in the amount of $2,372,000.

¶ 28 Here, the parties agreed to have purchase price adjustment disputes resolved by a mutually-agreed-upon CPA firm to "make a determination only with respect to the accounting-related differences." The parties further agreed that the CPA firm's decision would be "final and binding on the Parties."

¶ 29 Pursuant to the plain language of the parties' agreement, CBIZ was to resolve only "accounting-related differences." Thus, the portion of CBIZ's decision ordering Bosch to return certain accounts and inventory to LRN was improper. However, that does not mean that CBIZ's entire decision was improper and must be vacated. Modification, rather than vacation, is appropriate if the court is able to correct the award without affecting the merits of the decision upon the issues submitted. See 710 ILCS 5/12(a) (West 2010). Here, the portion of CBIZ's order requiring Bosch to return certain accounts and inventory to LRN was separate and distinct from CBIZ's resolution of

the parties' "accounting-related differences" and could be removed without affecting the merits of the decision. Thus, the trial court properly modified, but did not vacate, the arbitrator's decision.

¶ 30 B

¶ 31 LRN also argues that the trial court should not have confirmed CBIZ's decision because CBIZ interpreted the global purchase agreement in an "unreasonable" manner. If all fair and reasonable minds would agree that the construction of the contract made by the arbitrator was not possible under a fair interpretation of the contract, then the arbitrator exceeded his powers, and the court must vacate or refuse to confirm the award. *Water Pipe Extension, Bureau of Engineering Laborers' Local 1092 v. City of Chicago*, 318 Ill. App. 3d 628, 635 (2000). However, if it is even arguable that the arbitrator reasonably construed or applied the contract, its decision must not be overturned. *Cook County*, 294 Ill. App. 3d at 988-89.

¶ 32 Here, both LRN and Bosch presented CBIZ with their interpretations of the global purchase agreement with respect to resolving their accounting-related differences. CBIZ accepted the interpretation suggested by Bosch and rejected LRN's interpretation of the agreement. That CBIZ accepted Bosch's interpretation over LRN's interpretation does not make CBIZ's interpretation "unreasonable." Thus, we affirm the trial court's decision to confirm CBIZ's determination that LRN owes Bosch a $2,372,000 purchase price adjustment.

¶ 33 III

¶ 34 Next, LRN argues that the trial court erred in awarding judgment to Bosch in excess of the escrow funds.

¶ 35 Courts must give effect to the plain and unambiguous language of a contract. *Thompson*, 241 Ill. 2d at 441. A court may not interpret a contract in a manner that would nullify or render provisions

meaningless, or in a way that is contrary to the plain and obvious meaning of the language used. *Id*. at 442.

¶ 36 Section 1.5 of the escrow agreement provided: "The Escrow Amount shall be the sole source for the satisfaction of any obligation of Seller to Buyer under Section 1.9 and Article 7 of the Purchase Agreement." In order to give meaning to this provision, the trial court was required to enter an order that would preclude LRN from seeking payment from LRN in excess of the escrow amount.

¶ 37 Here, the trial court entered a judgment in favor of Bosch and against LRN in the amount of $2,372,000, plus $243 for costs of suit, and postjudgment interest. The judgment further directed U.S. Bank to disburse to Bosch all funds held in the escrow account, less all unpaid costs and expenses "as full and final satisfaction of the judgment against LRN." Because the trial court's order expressly provided that the escrow account serves as "full and final satisfaction of the judgment against LRN," it is proper. Thus, we affirm the judgment.

¶ 38 IV

¶ 39 Finally, LRN argues that the trial court erred in ordering it to pay postjudgment interest to Bosch.

¶ 40 Section 2-1303 of the Illinois Code of Civil Procedure (Code) provides: "Judgments recovered in any court shall draw interest at the rate of 9% per annum from the date of the judgment until satisfied ***." 735 ILCS 5/2-1303 (West 2010). The language of this section is "mandatory, positive, and self-executing." *Niemeyer v. Wendy's International, Inc*. 336 Ill. App. 3d 112, 114 (2002).

¶ 41 Interest on a judgment does not arise from a contract between the parties but through the statute's operation. *Tri-G, Inc. V. Burke, Bosselman & Weaver*, 222 Ill. 2d 218, 256 (2006). Postjudgment interest is neither a penalty nor a bonus; instead, it protects the value of an award from

diminution caused by delays in payment. *Eclipse Manufacturing Co. v. U.S. Compliance Co.*, 381 Ill. App. 3d 127, 140 (2007).

¶ 42 Here, the trial court ordered LRN to pay Bosch interest of 9% per year until the judgment is satisfied. Since section 2-1303 of the Code is mandatory, the trial court did not abuse its discretion in ordering LRN to pay postjudgment interest to Bosch in addition to the funds in the escrow account.

¶ 43 The judgment of the circuit court of Peoria County is affirmed.

¶ 44 Affirmed.

¶ 45 JUSTICE HOLDRIDGE, dissenting.

¶ 46 I would hold that the trial court erred in granting summary judgment to Bosch. I would, therefore, reverse the judgment of the trial court and remand for entry of summary judgment for LRN.

¶ 47 The facts here are clear and undisputed. LRN sold assets to Bosch pursuant to an agreement requiring $2,000,000 to be placed in an escrow account. The escrow account was subject to an escrow agreement. Under the terms of the escrow agreement, the escrow agent (U.S. Bank) was to release "any remaining balance of funds" in the escrow account to LRN "in no event" later than April 2, 2009, if no indemnity claim had been filed with the escrow agent by March 31, 2009. On April 2, 2009, the sum of $2,000,000 plus interest remained in the escrow account and no indemnity claim had been filed with the escrow agent. When LRN demanded turnover of the funds on April 2, 2009, the escrow agent refused. On April 3, 2009, Bosch sent a communication to the escrow agent objecting to the funds being turned over to LRN. It is undisputed that this was the first communication by Bosch to the escrow agent objecting to a turnover of the funds.

¶ 48 The escrow agreement clearly provided that U.S. Bank was required to release the funds "in no event later than the second business day after the indemnity cut-off date" if no indemnity claims were pending. The facts establish that no indemnity claims were pending; thus, the funds should have been released. When the language of a contract is clear and unambiguous, courts should not alter that language to achieve a different result. *Gallagher v. Lenart*, 367 Ill. App. 3d 293, 296 (2006). Here, despite the mandate that courts not alter the language of an agreement, the majority accepts Bosch's claim that, while no "indemnity claim" was pending, a "purchase price adjustment claim" was pending and that was sufficient to prevent disbursement of the escrow funds. The majority expands the term "indemnity claim" to include "purchase price adjustment claim" even though the two terms are separately identified and discussed in the purchase agreement and the escrow agreement. LRN's motion for summary judgment should have been granted.

¶ 49 I would also reverse the trial court's award of judgment to Bosch on the arbitration award, as well as its order of postjudgment interest. The escrow agreement clearly provided that "[t]he Escrow Amount shall be the sole source for the satisfaction of any obligation of Seller to Buyer under Section 1.9 and Article 7 of the Purchase Agreement." Thus, it was incumbent upon Bosch to raise all claims against LRN under the terms of the escrow agreement. Bosch's failure to assert its claim against the escrow fund within the time frame established under that agreement time barred all claims against LRN. This was the clear intent of the agreements of the parties. Since the escrow fund should have been promptly turned over to LRN at the expiration of the claim period, any claims by Bosch against LRN were time barred. It was error, therefore, for the trial

court to order the parties to arbitrate Bosch's claims after the expiration of the time for claims provided in the escrow agreement.