SENECA RIDGE HOMEOWNERS ASSOC., Plaintiff v. Rustin Bergdoll and Kara Bergdoll, Erin Gallagher, Robert Cousineau & Kelly Birzes, and Robert Hessman & Jerri Hessman, Defendants

No. 2015-SU-4075-49

Motion to Quash/Strike Plaintiff's Appeal from Award of Arbitrators – Substantial Compliance

1. On May 8, 2017, Defendants filed a Motion to Quash/Strike Plaintiff's Appeal from Award of Arbitrators, arguing certain technical deficiencies with the appeal: That Plaintiff failed to pay a proper fee for the appeal and failed to provide envelopes to the Prothonotary for service of the notice of the appeal.

2. The Court held that the appeal from arbitration was properly filed, but, because a fee for the appeal was paid only for a case involving less than $10,000 in controversy, Plaintiff Homeowners Association will be limited to pursuing damages totaling less than $10,000.

IN THE COURT OF COMMON PLEAS OF YORK COUNTY PENNSYLVANIA

SENECA RIDGE HOMEOWNERS ASSOC.	:	
Plaintiff	:	No. 2015-SU-4075-49
	:	
v.	:	CIVIL DIVISION
	:	
Rustin Bergdoll and Kara Bergdoll, Erin Gallagher, Robert Cousineau & Kelly Birzes, and Robert Hessman & Jerri Hessman	:	
Defendants	:	

APPEARANCES:

ZACHARY E. NAHASS, Esquire
Attorney for the Plaintiff

KURT A. BLAKE, Esquire
Attorney for the Defendants

ORDER DENYING DEFENDANTS' MOTION TO QUASH

AND NOW, this 19th day of May, 2017, the Court hereby DENIES Defendants' request to quash or strike an appeal from arbitrators. We hold that the appeal from arbitration was properly filed, but, because a fee for the appeal was paid only for a case involving less than $10,000 in controversy, Plaintiff Homeowners Association will be limited to pursuing damages totaling less than $10,000.

Factual and Procedural History:

On or about April 4, 2017, this matter was heard before an Arbitration panel which found in favor of Defendants Rustin Bergdoll, Kara Bergdoll, Robert Cousineau, and Kelly Birzes. The Arbitration panel found in favor of Plaintiff and against Defendants Robert Hessman and Jerri Hessman in the amount of $470.00 and against Defendant Erin Gallagher in the amount of $1170.00. The award of arbitrators was docketed on April 4, 2017.

On April 26, 2017, Plaintiff filed its Notice of Appeal from Award of Arbitrators with the Prothonotary.

On May 8, 2017, Defendants filed a Motion to Quash/Strike Plaintiff's Appeal from Award of Arbitrators, arguing certain technical deficiencies with the appeal: That Plaintiff failed to pay a proper fee for the appeal and failed to provide envelopes to the Prothonotary for service of the notice of the appeal.

On that same date, Defendants filed a notice to the Court that they intended to present their motion to the Court at a session of motions court scheduled for May 18, 2017. Our local rules provide for giving at least five days of *actual* notice. YCCiv. 208.3(a)(2). Defendants apparently gave notice to Plaintiff Homeowners Association of their intent. We say "apparently" because the filings do not include a Notice of Presentation in substantially the form and containing the information required by YCCiv. 208.3(a)(2)(a). Nor do any of the filings contain a certificate by counsel presenting the motion that proper notice was given. Either a certificate *or* a notice in proper form would have contained the information needed by the Court to confirm that notice was, indeed, given as required by our local rules. Neither was provided.

We attempted to verify the date of service of the motion itself on the Homeowners Association, but, alas, upon checking the certificate of service, neither the copy provided to the Court nor the original actually filed in the Prothonotary's office had a date of service filled in.

Notwithstanding these deficiencies and others regarding the motion (lack of certificate of concurrence, YCCiv. 208.2(d); lack of cover sheet, YCCiv. 205.2(b); form generally, see YCCiv. 205.2(a);)[1] the Court, in an attempt to be accommodating to the parties, did not dismiss the motion or decline to hear it, but instead, dutifully listed it for motions court and researched the issues raised in the motion.[2] We intended to question counsel for the presenters about our concerns surrounding proper notice, but, alas, no one appeared for motions court.

The morning of our motions court session, the Court was handed an answer from Homeowners Association counsel which was filed at 4:14 p.m. the evening before. Such late filings frequently occur in the context of motions court practice. Despite such opposition to the motion, no one appeared in motions court.

Unbeknownst to the Court, an amended notice of presentment was filed by Defendants at 3:47 p.m. the day prior to motions court, withdrawing the matter from motions court on May 18 and relisting the matter for motions court on May 25.

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[1] We are not unmindful that attorneys these days are generally under time pressures and financial pressures to handle matters expeditiously. However, attorneys should be mindful that the Court is also under time pressure to handle matters which parties file for our consideration expeditiously . To that end, we have enacted state and local rules to speed our work flow and to help attorneys become aware of what the Court expects of matters filed with it.

The 19th Judicial District currently has one judicial position unfilled and this shortage is likely to continue or worsen in the foreseeable future. The Court does not control the number of matters filed or the timing of matters filed which we must consider. Attorneys, on the other hand, do have control over those variables, as well as control over the quality of the work they present to the Court. Counsel's self-imposed time pressures do not excuse noncompliance with applicable rules of procedure, *especially* when one is complaining that one's opponent is not following the applicable rules.

[2] In the future, we are not likely to be as accommodating.

Because of this late filing, the Court was handed this amended notice after our May 18 motions court session. Notwithstanding the relisting, given the time we have already invested in this matter and the fact that the motion and answer raise legal issues which we can readily dispose of, we will decide the matter on the pleadings without further considering it during another session of motions court.

Issues:

Defendants argue that an improper appeal fee was paid, because the Notice of Appeal notes that the "amount in controversy" "exceeds $25,000", but the appeal fee paid (actually, the arbitrators fees) was for a case involving less than $10,000 in controversy. Defendants contend the appeal has, therefore, not been properly perfected. Plaintiffs respond that, indeed, they paid the incorrect fee, however they have now paid an additional amount commensurate with the amount required for cases with amounts in controversy greater than $25,000. The additional payment, however, has come after the expiration of the 30 day appeal period. The original complaint requested damages in the amount of $2,676 plus interest, costs, and attorney fees, so it is difficult for us to determine what amount of damages Plaintiff is actually seeking.

Defendants further argue that the record reveals that Plaintiff failed to provide the service envelopes to the Prothonotary pursuant to Pa.R.C.P. 1308(b) and records

indicate all the envelopes were done by the Prothonotary. Defendants argue that because Plaintiff failed to comply with Rule 1308(b), the appeal should be quashed.

Discussion:

Failure to Provide Envelopes:

Pennsylvania Rule of Civil Procedure 1308(b) states that:

> (b) The appellant shall provide the prothonotary with the required notice for mailing and properly stamped and addressed envelopes. The prothonotary shall give notice to each other party of the taking of the appeal. Failure to give the notice shall not invalidate the appeal.

Id.

In *Robinson v. Yue*, 2008 WL 5544411 (Pa. Com. Pl. 2008), the Court of Common Pleas of Montgomery County, Pennsylvania, addressed the envelope issue of Pa.R.C.P. 1308(b). In this case, Defendants mailed their notice of appeal to the Montgomery County Prothonotary's Office, but failed to include the stamped and addressed envelopes. *Id.* at 492. Instead of filing the notice, the Prothonotary sent the appeal back to Defendants. *Id.* Defendants sent the notice of appeal back to the Prothonotary, and it was docketed on December 26, 2007. *Id.* The arbitration award from the previous litigation had been awarded and entered on November 21, 2007. *Id.* Plaintiffs filed a motion to quash arguing that because Plaintiff did not supply stamped and addressed envelopes with the notice of appeal, they did not comply with the

Pennsylvania Rules of Civil Procedure and their notice of appeal was untimely as it was not filed within thirty days of the entry of the judgment. *Id.*

The Court held that failing to comply with Pa.R.C.P. 1308(b) did not automatically invalidate the appeal. *Id.* at 492-94. The Court held that Plaintiff's notice of appeal was timely filed, even though it did not contain the envelopes, because it was filed within the thirty days allowed under Pa.R.C.P. 1308(a). *Id.* In addition, the Court found that if envelopes were required to perfect the appeal, the provision under Pa.R.C.P. 1308(b) would have been added as a requirement under Pa.R.C.P. 1308(a). *Id.* at 494-95. The Court supported this interpretation from Pa.R.C.P. 126, which states that the Rules of Civil Procedure "should be liberally construed to secure the just, speedy, and inexpensive determination of every action or proceeding to which they are applicable." *Id.* at 498. Therefore, the Court held that even if the Defendants committed a procedural error by not filing the envelopes, the error should be disregarded because Plaintiff's substantive rights were not affected. *Id.*

The Court finds that the *Robinson* case is persuasive and applies to the facts in the present case. Further, subsection (b) of the rule specifically states that failure to provide the notice shall *not* invalidate the appeal. It follows that failure to provide envelopes should also not invalidate the appeal.

The arbitration award was entered on or about April 4, 2017. Plaintiff filed their notice of appeal on or about April 26, 2017, before the thirty days required under Pa.R.C.P. 1308(a). Plaintiff used the form that is required under Pa.R.C.P. 1313 to file that notice of appeal. The Court agrees with the ruling in *Robinson* that failing to provide the envelopes under Pa.R.C.P. 1308(b) is not a fatal defect that requires the Court to quash the appeal.

Improper Appeal Fee:

Pennsylvania Rule of Civil Procedure 1308(a) is not so forgiving. It states that:

> (a) An appeal from an award shall be taken by
>
> (1) Filing a notice of appeal in the form provided by Rule 1313 with the prothonotary of the court in which the action is pending not later than thirty days after the day on which the prothonotary makes the notation on the docket that notice of entry of the arbitration award has been provided as required by Rule 1307(a)(3), and
>
> (2) Payment to the Prothonotary of the compensation of the arbitrators not exceeding fifty percent of the amount in controversy, which shall not be taxed as costs or be recoverable in any proceeding;

Id.

In the past, the appellate courts have addressed whether the payment provision in Pa.R.C.P. 1308(a)(2) is a mandatory provision with which failure to comply will result in quashing of the appeal, or whether the provision is directory and failure to

comply is not a fatal defect. However, the precise issue before us – proper payment of arbitrators' fees, has not been directly addressed by our appellate courts.

In *Meta v. Yellow Cab Co. of Philadelphia*, the Superior Court held that the defendant's failure to pay record costs of $17.75 did not justify quashing the arbitration award appeal, as the Court held that the requirement of making the payment was de minimis. *Id.*, 294 A.2d 898, 900-02 (Pa. Super. 1972). The Court recognized competing concerns when making their decision between strict adherence to the rules versus "the harshness created by the hypertechnical application of these procedural rules . . . [a]ffecting more injustice than serving any substantial purpose." *Id.* at 900-01.

However, three years later, in *Black & Brown, Inc. v. Home for the Accepted, Inc.*, 335 A.2d 722, 724 (Pa. Super. 1975), the Superior Court overruled the *Meta* decision and found that the payment requirement is mandatory, not merely directory. However, to address the concerns of the *Meta* decision about complying with the rules and the harshness of completely dismissing an appeal over failure to pay costs, the Court held that while the rule was mandatory, if a party substantially complied with the requirement and made an attempt to make a timely and full payment, the appeal should not be quashed. *Id.* at 724. The Court found that in this case, Defendant had not

substantially complied with the rule because he never made any attempt to make the payment, so the appeal was dismissed for noncompliance. *Id.*

Later that same year, in *James F. Oakley, Inc. v. School District of Philadelphia,* 346 A.2d 765, 766 (Pa. 1975), the Pennsylvania Supreme Court addressed the issue of nonpayment again when the Defendant appealed an arbitration award and failed to pay accrued costs of $29.50. The Court agreed with the *Black & Brown, Inc.* Court that the payment requirement was mandatory, but added a new exception that would prevent an appeal from being quashed simply for nonpayment. *Id.* at 767. The Court held that "when fraud or some breakdown in the court's operation causes the failure to comply with statutory requirements, the appeal should not be quashed." *Id.*; citing *Commonwealth v. Horner,* 296 A.2d 760 (Pa. 1972). The Court did not address the *Black and Brown, Inc.* substantial compliance exception because they found it was not applicable to the facts of the case. *Oakley,* 346 A.2d at 768. The Court found that the reason the fee was not paid was because of confusing prothonotary records. The Court interpreted this as a breakdown in the court's operation which caused the failure to pay. *Id.* Therefore, the Court did not quash the appeal. *Id.*

Finally, in *Hines v. SEPTA*, 607 A.2d 301 (Pa. Commw. Ct. 1992), the Commonwealth Court addressed Pa.R.C.P. 1308(a)(1) to determine if the filing of a

notice of appeal was a mandatory provision. In *Hines*, the Defendant appealed from an arbitration award, filed a Demand for a Jury Trial and a Praecipe to Proceed In Forma Pauperis, but did not file the Notice of Appeal required in Pa.R.C.P. 1313 within thirty days. *Id.* at 190-91. Plaintiff filed a motion to quash the appeal for noncompliance with the rule. *Id.* Defendant argued that "she made a valid and honest effort to comply with and substantially complied with the Rules of Civil Procedure in filing her appeal and, therefore . . . her appeal . . . should be reinstated." *Id.* The *Hines* Court referenced the *Oakley* decision referring to the language in the rule stating that the parties "shall" make the payments, meaning that the parties must comply with the rule perfectly. *Id.* at 195-96. The Court noted that the *Oakley* decision dealt with a payment issue rather than a forms issue and the payment of costs law had since been repealed, but held that the analysis of the statutory language was applicable to the interpretation of Pa.R.C.P. 1308(a)(1). *Id.*

The Court held that the substantial compliance argument is not applicable because the language of Pa.R.C.P. 1308(a)(1) states that a party *shall* file a notice of appeal and "to hold otherwise would be to disregard the plain language of the statute." *Id.* The Court retained the *Oakley* exception of fraud or a breakdown in the court's operations, but absent those exceptions, a failure to comply with Pa.R.C.P. 1308(a)(1) perfectly will result in the appeal being quashed. *Id.*

This Court finds that the analyses in *Oakley* and *Hines* are applicable to the present case and help guide our decision. The payment provision is mandatory, absent a breakdown in the Court's processes. However, the precise issue in the case at bar is whether there was "substantial" compliance with the requirements of the rule.

In the present case, Plaintiff Homeowner Association clearly indicated on the appeal form that the amount in controversy "exceeds $25,000." Just as clearly, Plaintiff only paid a fee for an appeal of a case in which the amount was under $10,000. The fact that an extra payment was recently made by Plaintiff after the 30 day period for filing an appeal is not "substantial compliance" with the rule and is simply too little too late, in view of the mandatory nature of the rule.

Plaintiff did file a proper notice of appeal with the proper form found in Pa.R.C.P. 1313 and did so within thirty days of the entry of the arbitration award, *but did so only for an appeal in which the amount in controversy is less than $10,000.* Plaintiff will, therefore, get what it paid for within the appeal period– an appeal with the amount in controversy less than $10,000.

Copies of this order should be sent to Zachary Nahass, Esq., Attorney for the Plaintiff and Kurt A. Blake, Esq., Attorney for the Defendants.

BY THE COURT

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Richard K. Renn, Judge

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Date