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SUPREME COURT
STATE OF WASHINGTON
2006 DEC 11 P 4:16

Supreme Court No. 78290-3

BY C. J. MERRITT

IN THE SUPREME COURT FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS,
In its own capacity and as assignee of claims of University Mechanical
Contractors, Inc., Bergelectric Corporation and Pacific Construction Systems, Inc.

Respondent/Plaintiff,

v.

FLUOR DANIEL, INC., a foreign corporation, and FIREMAN'S FUND INSURANCE
COMPANY, a foreign corporation,

Petitioner/Defendants.

SUPPLEMENTAL BRIEF OF PETITIONER

R. Miles Stanislaw, WSBA# 00529
Christopher A. Wright, WSBA# 26601
Stanislaw Ashbaugh, LLP
701 Fifth Avenue, Suite 4400
Seattle, WA 98104-7012
(206) 386-5900 / fax (206) 344-7400

Attorneys for Petitioner/Defendants

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STATUTES

RCW 7.043

I. INTRODUCTION

The Court of Appeals erred in determining that Petitioner/Defendant Fluor Daniel, Inc.'s ("Fluor") arbitration award was not a liquidated sum upon which prejudgment interest should accrue. The arbitration award was liquidated and the trial court properly awarded Fluor prejudgment interest from the date of the arbitration award.

In improperly reversing the trial court, the Court of Appeals ignored controlling authority from this Court, and interpreted the arbitration agreement at issue in violation of well established principles. The decision of this Court in Scoccolo Constr., Inc. v. City of Renton, 2006 Wash. LEXIS 826, 145 P.3d 371 (2006) does not change – and in fact bolsters – the conclusion that the Court of Appeals acted improperly. The Court of Appeals should be reversed, and the trial court's decision reinstated.

II. ARGUMENT

A. **THE COURT OF APPEALS VIOLATED WASHINGTON CASE LAW BY IGNORING THE EXPRESS LANGUAGE OF THE PARTIES' ARBITRATION AGREEMENT.**

As Fluor explained in its petition for review, the Court of Appeals ignored two general rules of contract interpretation in reaching its conclusion that Fluor's January 18, 2005 Arbitration Award was not a liquidated sum because Washington's arbitration statute generally allows

for a Superior Court to vacate and/or modify an arbitration award. First, it is well established in Washington that agreements should be interpreted, whenever possible, in a manner that gives meaning to all provisions of the Agreement. See Wagner v. Wagner, 95 Wn.2d 94, 101 (1980). Second, as this Court recently reiterated, Washington “continues to follow the objective manifestation theory of contracts,” and “thus, when interpreting contracts, the subjective intent of the parties is generally irrelevant if the intent can be determined from the actual words used.” Hearst Communications, Inc. v. Seattle Times Co., 154 Wn.2d 493, 503-04 (2005).

The Court of Appeals failed to follow both of these established rules in determining that Fluor’s January 18, 2005 Arbitration Award was not a liquidated sum. Instead of focusing on the relevant portion of the parties’ Arbitration Agreement,¹ the Court of Appeals focused upon the

¹ The relevant clause provides that:

Once the Arbitrator issues a decision, either party may submit the decision to the King County Superior Court in the action now pending. ***The parties agree the judgment to be entered will be in full and complete compliance with the decision of the Arbitrator.*** Once that judgment is entered, the judgment will be final and binding on Fluor and DOC. ***Fluor and DOC each waive any and all rights to appeal the Arbitration Award.***

CP 4, ¶8 (emphasis added).

general provisions of Washington's former Arbitration Statute (RCW 7.04, et seq. (repealed)) and gave those provisions priority over the parties' actual Agreement. In so doing, the Court of Appeals rewrote the Agreement and rendered the parties' express waiver of any and all appeal rights meaningless in violation of established Washington case law.

The Court of Appeals did so while explaining that parties are free to do exactly what Fluor and Respondent The State of Washington Department of Corrections ("DOC") did: Waive all appeal rights from the Arbitration Award. The Court of Appeals stated:

Nothing in our decision prevents parties to an arbitration agreement from mutually agreeing that interest shall run from the date of the arbitration decision.²

Put simply, to remove any question as to whether either party could appeal and/or seek changes in the Arbitration Award, Fluor and DOC expressly and clearly waived "any and all rights to appeal." The intent of DOC and Fluor is clear: The arbitration award was final and not subject to change or modification by the Superior Court. The parties' agreement made the arbitration award a liquidated sum. The parties' agreement should be upheld.

² Department of Corrections v. Fluor Daniel, Inc., 2005 Wash. App. LEXIS 3236, at *10 n.6.

B. THE COURT OF APPEALS' DECISION FAILED TO PROPERLY CONSIDER EXISTING WASHINGTON CASE LAW.

The Court of Appeals also failed to give the proper credence to Moses Lake v. International Association of Firefighters, Local 2052, 68 Wn. App. 742 (1993). In Moses Lake, Division III explained that once a non-appealable award is made, it is a liquidated amount, and prejudgment interest should begin to run. Moses Lake, 68 Wn. App. at 749. Because the parties unambiguously waived all appeal rights in the Arbitration Agreement, the award was liquidated, and interest properly began to run as of the date the arbitrator issued it.

C. RECENT PRECEDENT FROM THIS COURT CONFIRMS THAT THE TRIAL COURT'S AWARD OF PREJUDGMENT INTEREST SHOULD BE REINSTATED.

This Court reinforced the above principles on October 26, 2006 when it issued its decision affirming an award of prejudgment interest in Scoccolo Constr., Inc. v. City of Renton, 2006 Wash. LEXIS 826, 145 P.3d 371 (2006). In Scoccolo, this Court first repeated the well established rule that, "Prejudgment interest may be awarded when the claim is liquidated." Scoccolo, 2006 Wash. LEXIS at *19 (citing cases).

The Court then explained that even where a trier of fact makes an award different than that requested by the parties, prejudgment interest can still be appropriate. The Court initially observed that:

The City argues Scoccolo's claim was not liquidated because the jury did not award the damage amount requested by Scoccolo, \$ 935,433.27, or the amount argued by the City, \$ 364,904.00, but rather \$ 425,533.00. According to the City, the fact the jury awarded this sum necessarily means the jury exercised some degree of discretion, and therefore the claim is unliquidated.

Scoccolo, 2006 Wash. LEXIS at *20.

The Court then summarized its findings by observing that where, as here, the amount upon which prejudgment interest is sought is not challenged, an award prejudgment interest is appropriate:

However, as noted by the Court of Appeals, in this case the City did not challenge the reasonableness of the expenses submitted by Scoccolo. Furthermore, "the sum is still 'liquidated' . . . even though the adversary successfully challenges the amount and succeeds in reducing it." Prier, 74 Wn.2d at 33 (quoting Charles T. McCormick, *supra*, § 54). The trial court properly awarded Scoccolo prejudgment interest.

Scoccolo, 2006 Wash. LEXIS at *21.

This case presents an even more compelling situation than Scoccolo for an award of prejudgment interest. Here the DOC expressly waived DOC's right to challenge the Arbitration Award in the Arbitration Agreement. Further, DOC never attempted to challenge the amount of the Award. Under this Court's recent decision, and the parties' agreement, the arbitration award was a liquidated sum upon which prejudgment interest was properly awarded by the trial court.

III. CONCLUSION

For the above reasons, Fluor respectfully again requests that the Court reinstate the Trial Court's award of prejudgment interest.

RESPECTFULLY SUBMITTED this 11th day of DECEMBER, 2006.

STANISLAW ASHBAUGH, LLP

By 

R. Miles Stanislaw, WSBA# 00529

Christopher A. Wright, WSBA# 26601

Attorneys for Def./Respondent Fluor Daniel, Inc.

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CERTIFICATE OF SERVICE

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I certify that on the 11th day of December, 2006 I caused a true

BY C. J. MERRITT

CLERK

and correct copy of the foregoing Supplemental Brief of Petitioner,

to be served on counsel for Respondent/Plaintiff via ABC Legal

Services, Inc. at the following address:

Doug Shaftel, Assistant Attorney General
Steve E. Dietrich, Assistant Attorney General
Office of the Attorney General of Washington
Transportation & Public Construction Division
7141 Cleanwater Drive SW
Tumwater, WA 98501
P.O. Box 40113
Olympia, WA 98504-0113
Attorney for State of Washington Department of Corrections

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 11th day of December, 2006 at Seattle, Washington.



Teresa Lawrence
Assistant to Christopher A. Wright