

IN THE SUPREME COURT OF MISSISSIPPI

PHILVESTER AND JOYCE WILLIAMS

APPELLANTS

VS.

CAUSE NO: 2009-CA-01107

AMERICA'S HOME PLACE, INC.

APPELLEE

APPELLEE'S BRIEF

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that Justices in this Court may evaluate possible disqualifications or recusal.

1. Philvester and Joyce Williams, Appellants;
2. Sanford Knott, counsel for Appellants;
3. America's Home Place, Appellee;
4. James D. Bell, counsel for Appellee;
5. Jerry Gaggini, former counsel for Appellee;
6. Honorable Houston J. Patton, County Court Judge;
7. Honorable William R. Barnett, County Court Judge, and
8. Honorable William F. Coleman, Circuit Court Judge

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STATEMENT OF ISSUES

ISSUE NO. 1: The Circuit Court properly reversed the County Court, because the County Court Erred in refusing to confirm the arbitration award, and in setting the case for trial by jury, because;

A: The permissive scope of arbitration review is extremely narrow;

B: The arbitrators award did not evidence partiality, corruption, or misconduct by the arbitrator; and

C: Even if the arbitrator's award was erroneous and re-litigation was necessary, the County Court should have ordered a new arbitration, not a jury trial.

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SUMMARY

Appellee, America's Home Place (Defendant in the lower Court), built a beautiful home for Mr. and Mrs. Williams (Appellants here and Plaintiffs below). As in any major construction, there were a few items that needed correction or adjustment when the job was substantially completed. The Plaintiffs would not permit America's Home Place to make corrections, and instead filed suit. America's Home Place moved to dismiss because the Williamses are bound by an arbitration agreement.

In two prior rulings in this same case, The Honorable Judge Barnett of the Hinds County Court found as a matter of adjudicated fact that an enforceable arbitration agreement exists between the parties. Accordingly, Judge Barnett issued Orders on

September 15, 2005 and May 11, 2006,¹ each time ordering the parties to proceed with arbitration and dismissing the Williams' claims against America's Home Place **With Prejudice.**

The Plaintiffs delayed prosecuting their claim, but on May 16, 2007, an arbitration hearing was conducted at the Williams' home. After which, a well-respected arbitrator issued a fair and well-reasoned award, granting to the Williamses a judgment in the amount of \$12,500.² Thereafter, the Williamses moved to set aside the arbitration award. At the hearing on the motion, no evidence was offered or received³ By Order dated January 17, 2008⁴, the Honorable County Judge Patton, who had been recently assigned to the case, vacated the award and announced that he would set the case for jury trial in the County Court, even though the case has been twice dismissed with prejudice.⁵

The Appellant filed motions to Reconsider, to Confirm the Award, or, in the alternative, to Amend or Correct the award, or, to Refer the Case Back to Arbitration. The Appellant also filed simultaneous Petitions for Interlocutory Appeal before the Circuit Court and the Supreme Court. The Supreme Court denied the Petition for Interlocutory Appeal. The Circuit Court did not rule on the Petition.

¹ R 224 - 227

² R 228 - 230

³ T P6 L25 - P7 L9

⁴ T P7 L 10 - 17

⁵ R 231 - 232

By Order dated February 26, 2008⁶, the County Court denied the Motions to Reconsider, to Confirm the Award, to Amend or Correct the Award, or to Refer the Case for Further Arbitration. Two days later, the Appellant filed an appeal in the Circuit Court of Hinds County pursuant to Miss Code Ann. § 11-15-141, which permits appeal when the lower court fails to enforce an arbitration agreement or award.

On March 30, 2009, the Circuit Court of the First Judicial District of Hinds County, Judge William F. Coleman presiding, reversed the County Court order vacating the arbitration award and entered an order confirming the award.⁷ After a motion to reconsider was denied, the Appellants filed this appeal.

ISSUES

The County Court (Judge Barnett) twice declared the arbitration agreement between these parties to be binding and enforceable, ordered the parties to arbitrate their dispute and twice dismissed the Plaintiff's lawsuit against America's Home Place **with prejudice**. Nothing transpired to justify the County Court (Judge Patton) in later disregarding the County Court's own arbitration mandates.

1. The Circuit Court properly reversed the County Court, because the County Court Erred in Refusing to Confirm the Arbitration Award, in Vacating the Arbitration Award, and in Setting the Case for Trial by Jury.

THE ARBITRATION TRIAL

The trial was held at the home of Mr. and Mrs. Williams on May 16, 2007. Expert witnesses appeared for each side. Documents were submitted as exhibits. The

⁶ R 233

⁷ R 30 - 31

arbitrator personally examined the house, the exhibits and the witnesses. Questions arose concerning the sewage treatment system and the heat and air vents, and the arbitrator directed that independent repair estimates be given on those items.

Although the Williamses sued claiming \$125,000 in damage to the house (nearly mirroring the original total cost of the home), roughly about \$100,000 of their complaints were withdrawn during the trial. By the end of the trial, the remaining complaints of the Williamses had a total value of about \$25,000, if the arbitrator found in their favor on every single remaining item.⁸

On the other hand, America's Home Place's position was that not every item on the Plaintiffs' list was its responsibility. Furthermore, America's Home Place disputed the amount of damage claimed by the Plaintiffs on several of the items. America's Home Place's position was that, at most, it would cost about \$6,000 to fix the remaining items.⁹ America's Home Place expressed its willingness to pay that amount to the Williamses.

The arbitrator recessed the hearing to provide an opportunity to receive additional estimates of repair, then ruled that the Williamses were entitled to a judgment of \$12,500. This is more than twice the amount that America's Home Place believed was owed, and half the amount of damages claimed by the Williamses. Quite obviously then, the arbitrator had studied the issues astutely and decided that a fair compromise verdict was appropriate, and he issued a reasonable award that justly respected the

⁸ R 113, 239 - 248

⁹Each party was permitted to summarize their positions after the trial. America's Home Place's summary, setting forth the issues and itemizing the damage claims can be found at R 239 - 248

arguments of each party.

THE COUNTY COURT IMPROPERLY VACATED THE ARBITRATION AWARD

The County Court granted the Williamses Petition to Vacate Arbitration Award without explanation and without receiving any testimony or any evidence of any kind. Miss. Code Ann. § 11-15-133(b), necessitates a finding of "partiality," "corruption," or "misconduct" by an arbitrator in order to vacate an arbitration award. This was not done.

There is no factual basis at all in the record supporting the County Court's Order. Most importantly, the code provisions cited by the Plaintiffs and the Court do not allow a Court to vacate an arbitration award lightly, simply because a party disagreed with the outcome, or because the Court would have ruled differently in a bench trial. Rather, as set forth below, the well-known judicial presumption in favor of arbitration mandates that courts uphold arbitration awards except in rare, extreme, and unusual circumstances, which simply are not present in this case.

A. The Permissive Scope Of Arbitration Review Is Extremely Narrow

Vacation of an arbitration award can only be done under very limited circumstances, controlled by statute.

§ 11-15-133. Vacation of award

(1) Upon application of a party, the court shall vacate an award where:

(a) The award was procured by corruption, fraud or other undue means;

(b) There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party. The fact that the relief was such that it could not or would not be granted

by a court of law or equity is no ground for vacating or refusing to confirm the award.

(2) An application under this section shall be made within ninety (90) days after receipt of a copy of the award to the applicant, except that, if predicated upon corruption, fraud or other undue means, it shall be made within ninety (90) days after such grounds are known or should have been known.

(3) In vacating the award on such grounds, the court may order a rehearing before new arbitrators chosen as provided in the agreement or provision for arbitration or, in the absence thereof, by the court in accordance with section 11-15-107. The time within which the agreement or provision for arbitration requires the award to be made is applicable to the rehearing and commences from the date of the order.

(4) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

As articulated in Craig v. Barber, 524 So.2d 974, 978 (Miss. 1988), “the *only* bases in our law for refusal to enforce an arbitration award are: (a) the award was procured by corruption, fraud or other undue means; (b) there was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of the parties.” (quoting Miss. Code Ann. § 11-15-133(1)) (emphasis in original).

The Mississippi Supreme Court in Johnson Land Co. v. C.E. Frazier Constr. Co., Inc., 925 So.2d 80 (Miss. 2004) recognized that a “court simply cannot go outside the stated grounds in the statute for challenging an arbitration award, absent a contrary provision in the contract.” Id. at 83 (further explaining that in controversies arising from construction contracts, the provisions of §§ 11-15-133 through 135 represent the only way a court is allowed to overturn the award of an arbitrator”).

There was no evidence offered at any hearing in the County Court to even

suggest that there was “evident partiality” or that “the award was procured by corruption, fraud or other undue means.” On appeal, the Circuit Court noted in its opinion:

The Order Vacating the Award makes no findings of fact and states no reason for vacation. Further, Appellees have made no attempt to explain to this court what evident partiality existed; counsel only states that because there is nothing in the record to suggest that the trial court applied the wrong legal standard or abused its discretion, this court cannot set aside the decision. This court finds no evidence of evident partiality on the part of Arbitrator Meyers.¹⁰

To date, the Williamses have still failed to show what “evident partiality” existed, or what “corruption, fraud or undue means” existed. Such allegations should be specifically pled and proven. They were not, because they do not exist.

The Circuit Court was correct in reversing the lower court by vacating the Order Setting aside the award and was correct in confirming the award.

B. The Arbitrator’s Award Did Not Evidence Partiality, Corruption, or Misconduct By The Arbitrator

Every reasonable presumption will be indulged in favor of the validity of the arbitration proceedings. Craig, 524 So.2d at 977 (quoting Hutto v. Jordan, 36 So.2d 809, 812 (1948)). In addition, the requirements for showing “evident partiality” are quite strict. In order to vacate an award on the grounds of “evident partiality”, a reviewing court must find some personal interest on the part of the arbitrator. The party must show a direct monetary interest in the proceedings or some form of actual relationship with one of the parties. Herrin v. Milton M. Stuart, Inc., 558 So.2d 863, 865 (Miss.

¹⁰ R 31

1990). The partiality “must be direct, definite and capable of demonstration rather than remote, uncertain, or speculative.” Id.

The courts have analogized inquiries into arbitrator “evident partiality” to attacks against judges upon the grounds of partiality – e.g., a request for a judge to recuse himself. See Cantrell v. State, 507 So.2d 325, 328 (Miss. 1987). When such a matter is appealed, “we do not on review inquire regarding the legal and factual basis for the trial court’s decision on the merits. Rather, we review what was before the trial court on the motion to recuse. By analogy the same principle applies here.” Craig, 524 So.2d at 978.

The Williamses have failed to present any evidence, either direct or indirect, that suggests the Honorable Arbitrator Mers had some “personal interest” in the outcome, maintained an actual relationship with one of the parties, or was otherwise biased or corrupt. Personal bias of an arbitrator cannot be shown by means other than pecuniary interest or some other actual relationship of the parties. Id. The Williamses contentions of “evident partiality” by the arbitrator were simply too remote, uncertain, and speculative to serve as the basis for setting aside the award.

The County Court’s January 17, 2008 Order Vacating the Arbitration Award does not find that the Honorable Arbitrator Mers was biased, corrupt or engaged in misconduct. It could not, since; 1) he was not, and 2) no evidence of bias was presented. The County Court simply ruled “that the award should be set aside and that the case should be set for trial.”¹¹ America’s Home Place respectfully urges that the Circuit Court was correct when it reversed the County Court, as there was no adequate

¹¹ R 232

evidence in the record to support the County Court's Orders vacating the award and refusing to confirm the award.

C. **Even If The Arbitrator's Award Was Erroneous And Re-Litigation Was Necessary, The County Court Should Have Ordered A New Arbitration, Not A Jury Trial**

Finally, in vacating the arbitration award, the County Court abused its discretion in ordering that the case be set for a new trial outside of the arbitral setting. Mississippi law states that in the event an arbitration award is vacated, the Court "may order a rehearing before new arbitrators chosen as provided in the agreement or provision for arbitration" Miss. Code. Ann. § 11-15-133(3). The County Court did not have authority to order that this case be set for trial by jury. Accordingly, if any re-litigation was necessary (which it was not), such re-litigation should have occurred before another arbitrator, not the County Court or a jury.

CONCLUSION

The Circuit Court was correct when it set aside the County Court Order vacating the arbitration award and when it confirmed the arbitration award. The Circuit Court should be affirmed.

Respectfully submitted,
America's Home Place, Inc.

By:


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CERTIFICATE OF SERVICE

I, James D. Bell, do hereby certify that I have caused to be mailed, via United States mail, a true and correct copy of the foregoing instrument to:

**Mr. Sanford Knott, Esquire
Post Office Box 1208
Jackson, Mississippi 39215**

**Honorable Houston Patton
Hinds County Court
Post Office Box 327
Jackson, Mississippi 39205**

**Honorable William F. Coleman
Circuit Court Judge
1843 Springridge Drive
Jackson, Mississippi 39211**

SO CERTIFIED, this, the 2 day of July, 2010


James D. Bell