

Mississippi Supreme Court Reaffirms Narrow Role of Courts in Modifying Arbitration Awards

By Christopher D. Meyer

June 2018

The Mississippi Supreme Court recently considered the narrow role of courts in amending arbitration awards and the applicability of federal and state statutes in a choice-of-law conflict. See *D.W. Caldwell, Inc. v. W.G. Yates & Sons Construction Company* 2017-CA-00116-SCT (Miss. 2018). The Court ultimately held that the miscalculations alleged by Yates & Sons Construction Company (“Yates”) regarding the arbitration award given to D.W. Caldwell, Inc. (“Caldwell”) were not evident or apparent, and therefore the original arbitration award should be confirmed. Additionally, the Court found that the trial court judge erred by allowing both parties to present witness testimonies, rather than focusing on the record from arbitration.

Yates and Caldwell agreed to enter into a construction subcontract in which Caldwell was to install roofing on a dormitory at Auburn University in Auburn, AL. Upon discovering that there were structural issues with the building, Caldwell and Yates agreed Caldwell would repair them before proceeding with the roofing. Instead of amending the existing contract, Yates advised Caldwell to bill the additional work toward “unperformed work.”

Upon completion of the work, Caldwell was never fully compensated, and filed a claim for the breach of the agreement. As previously agreed, the parties sought arbitration to resolve the dispute. Following a thirteen-page award in favor of Caldwell, Yates filed a motion for clarification and/or correction of the award. The arbitrator denied Yates’s motion; Caldwell subsequently requested that the circuit court confirm the award. A month later, Yates moved for the trial court to amend the award, and in anticipation of Yates providing oral argument at the hearing, Caldwell requested limitation of proof presentation. On December 1, 2016, the circuit court overruled Caldwell’s request for limitation of proof presentation, and allowed the parties to introduce evidence and witness testimony. The court ultimately determined that there was an evident miscalculation in the original award, and reduced it accordingly by \$104,507.00. Caldwell appealed.

As an initial matter, because the facts of this case influence interstate commerce, it was deemed necessary that the Federal Arbitration Act (the “FAA”) be applied in the Mississippi Supreme Court’s analysis of the issues. The FAA states that “when a commercial transaction involving interstate commerce includes an agreement to arbitrate disputes, federal law controls the enforcement of the arbitration agreement.” However, it also provides, “Where . . . parties have agreed to abide by state arbitration rules, enforcing those rules according to the terms of the agreement is fully consistent with the FAA . . .” *Volt Info. Sci., Inc. v. Bd. of Tr. of Leland Stanford Junior Univ.*, 489 U.S. 468, 469 (1989). The agreement between Yates and Caldwell clearly stated that Mississippi state law would apply, thereby inducing the Court to analyze the issues under Mississippi Code Sections 11-15-101 through 143, entitled “Arbitration of Controversies Arising from Construction Contracts and Related Agreements.”

In consideration of its review of the arbitrator's award, the Court leaned on the analysis of a recent case that stands for the proposition that neither "a mistake of fact or misinterpretation of law by an arbitrator" would satisfy the element of an evident miscalculation; instead, only finding a "mathematical error on the face of the award" would satisfy that definition. In *City of Hattiesburg v. Precision Constr., LLC*, 192 So.3d 1089 (Miss. Ct. App. 2016), the Mississippi Court of Appeals was asked to review the circuit court's ruling, which denied modification of an award based on a miscalculation. In the case at hand, the Court utilized the same approach in determining if a miscalculation was evident in the award given to Caldwell.

The first issue addressed by the Supreme Court was whether the trial court erred in finding an "evident miscalculation" in the arbitrator's award, which the Court summarized as follows: "Can Yates identify evidence from which a different, but correct calculation could be made and if not, can it identify an evident miscalculation of figures?" In responding, the Court ruled that without looking outside the undisputed facts or relying upon a witness's testimony, Yates would be unsuccessful in doing either of those things. It was also determined that by reviewing the witness testimonies, the trial court "exceeded its jurisdiction." Relying on precedent from the Mississippi Court of Appeals and Fifth Circuit, the Court could not review the witness testimony from the trial court's hearing because that would put the Court into a "fact-finding position." The Court stated that arbitration is meant to "supplant litigation, not supplement it," and that its purpose is to avoid the expensive and time-consuming issues during a trial. For this reason, the Court tries to refrain from modifying arbitration awards unless it is absolutely necessary.

Next, the Court considered whether Caldwell was entitled to attorney's fees and costs of appeal, pursuant to Mississippi Code Section 11-15-137, which provides that "upon granting of an order confirming, modifying, or correcting an award, a judgment or decree shall be entered and be enforced as any other judgment or decree. . . ." Miss. Code Ann. § 11-15-137 (Rev. 2004). However, the Court pointed to the terms of the original subcontract, which provided that if a financial dispute occurred, "each party shall be solely responsible for its respective costs, expenses, and attorney's fees. . ." For that reason, the Court held each party responsible for its individual costs.

In summary, the Mississippi Supreme Court reaffirmed that a court's authority in modifying an arbitration award should be limited, as it would be counterproductive to allow the constant amendment of awards issued after they have already been evaluated under appropriate conditions. This case served as another reminder of a court's narrow role in modifying arbitration awards.

If you would like more information, please contact:

[Christopher D. Meyer](mailto:cmeyer@burr.com) in Jackson at cmeyer@burr.com or (601) 709-3455 or the Burr & Forman attorney with whom you regularly work.

No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers.