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SUMMARY
October 17, 2024

2024COA116

No. 24CA0262, *Pool Company v. MW Golden* — Courts and Court Procedure — Arbitration — Appeals

A division of the court of appeals holds, as a matter of first impression, that a party may not appeal a district court's order denying a motion to remand a case to an arbitrator for clarification of an award. This builds on case law applying section 13-22-228, C.R.S. 2024, which identifies the types of orders in cases involving arbitrations from which a party may appeal.

Court of Appeals No. 24CA0262
Arapahoe County District Court No. 21CV31374
Honorable Elizabeth Beebe Volz, Judge

The Pool Company, Inc., an Oregon corporation qualified to do business in Colorado,

Plaintiff-Appellant,

v.

MW Golden Constructors, a Colorado corporation, and Western Surety Company, a South Dakota corporation,

Defendants-Appellees.

APPEAL DISMISSED

Division I
Opinion by JUDGE J. JONES
Lipinsky and Sullivan, JJ., concur

Announced October 17, 2024

Harris, Karstaedt, Jamison & Powers, P.C., Andrew J. Carafelli, Dino G. Moncecchi, Englewood, Colorado, for Plaintiff-Appellant

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¶ 1 Plaintiff, the Pool Company, Inc. (Pool Company), appeals the district court’s order denying its motion to remand the case to the arbitrators for them to clarify their final award. Defendants, MW Golden Constructors (MW Golden) and Western Surety Company (Western), moved to dismiss the appeal for lack of appellate jurisdiction. We grant their motion and dismiss the appeal because section 13-22-228(1), C.R.S. 2024, doesn’t permit an appeal from this type of order.

I. Background

¶ 2 South Suburban Parks and Recreation District (the District) hired MW Golden to serve as the general contractor for a project to build three swimming pools and related bath houses. MW Golden, in turn, hired Pool Company as a subcontractor to install and paint the pools’ interior linings.

¶ 3 After the pools were built, a dispute arose between MW Golden and Pool Company over alleged defects in Pool Company’s work and the amount that MW Golden owed to Pool Company under their contract.

¶ 4 Pool Company filed a complaint in Arapahoe County District Court against MW Golden, the District, and Western, the surety on

the payment bond. Pool Company claimed that MW Golden owed it \$319,423.94

¶ 5 Pool Company and MW Golden asked for a stay of the district court case so that they could arbitrate their dispute, as their contract required. The district court stayed the case.

¶ 6 Before the arbitration took place, MW Golden made a claim against Pool Company's performance bond, issued by Travelers Casualty and Surety Company of America (Travelers), for \$1,214,553.24 in claimed remediation costs. MW Golden and Travelers then agreed that Travelers would pay MW Golden \$537,000 (a bit less than half of MW Golden's claimed damages) while reserving its right to contest its liability under the performance bond and MW Golden's claimed damages.

¶ 7 Pool Company and MW Golden presented their respective claims to a panel of three arbitrators. The arbitrators issued their "Final Award," finding "in favor of MW Golden Constructors, Inc. and against The Pool Company, Inc. in the amount of \$131,818.92, which includes interest through the date of [the Final Award]." They didn't explain why they found in MW Golden's favor or how they arrived at the awarded amount.

¶ 8 Pool Company and MW Golden interpreted the award differently. Pool Company maintained that the \$131,818.92 figure represented gross damages and was more than offset by the \$537,000 Travelers had already paid to MW Golden, meaning that Pool Company didn't owe MW Golden anything under the award. MW Golden viewed the awarded amount as net remaining damages in addition to the \$537,000, meaning that Pool Company owed it the full amount of the award.

¶ 9 To resolve this disagreement, Pool Company asked the arbitrators to clarify the Final Award under the American Arbitration Association's Construction Industry Arbitration Rule R-51 (2024). *See also* § 13-22-220(1)(c), C.R.S. 2024 (On motion, "the arbitrator may modify or correct an award . . . [t]o clarify the award."). MW Golden and Western objected to that request, arguing that the Final Award was "indicative of a net judgment" of an amount in addition to the \$537,000.

¶ 10 The arbitrators denied Pool Company's request for clarification, concluding that they lacked authority under Rule R-51 to clarify the Final Award.

¶ 11 The day after the arbitrators issued this order, but apparently before the parties learned of it, MW Golden filed a motion in the district court to confirm the Final Award and to enter judgment on the confirmed award under sections 13-22-222 and 13-22-225, C.R.S. 2024. MW Golden didn't ask the court to resolve the parties' dispute over what the Final Award amount represented; it only asked the court to enter "judgment in the amount of \$131,818.92."

¶ 12 Pool Company argued in its response to MW Golden's motion that the amount awarded covered all of MW Golden's damages, and because Travelers had already paid \$537,000 to MW Golden, the Final Award had been satisfied. In the alternative, Pool Company requested that, if the court deemed the award ambiguous, it should "remand the case to the arbitrators for the issuance of a modified arbitration award that clarifies the ambiguity." Pool Company expressly invoked section 13-22-220(4) as authority for the court to remand for clarification. In its reply in support of its motion, MW Golden noted that the arbitrators had already denied Pool Company's request for clarification, so Pool Company shouldn't have another bite at that apple.

¶ 13 On September 25, 2023, the court issued an order confirming the arbitration award and entering judgment. With respect to Pool Company's request for a remand to the arbitrators, the court said,

To the extent that there was any alleged ambiguity or need for clarification of the arbitration award . . . , it is the arbitration panel that should issue any amendments or clarification. The Court understands that the arbitration panel determined that no further amendment or clarification was needed. Therefore, this Court finds that it is proper for the Court to Confirm the Final Award and Entry of Judgment as set forth in this order.

¶ 14 Pool Company didn't appeal the district court's September 25, 2023, order confirming the arbitration award and denying Pool Company's request to remand for clarification. Instead, on October 20, 2023, it filed a motion for clarification under sections 13-22-220(4)(c) and 13-22-224, C.R.S. 2024, once again requesting that the court remand the matter to the arbitrators for clarification, making arguments indistinguishable from those it had raised in its response to MW Golden's motion to confirm the award. MW Golden opposed the motion, noting, in part, that Pool Company was seeking clarification for the third time and that the court had previously denied the same request when it confirmed the award.

¶ 15 On December 27, 2023, the court entered an order denying Pool Company’s motion, reiterating that any request for clarification had to be addressed to the arbitrators, and that the arbitrators had already declined to clarify the award.

¶ 16 Pool Company appeals the district court’s December 27, 2023, order denying its motion to remand for clarification.¹

II. Discussion

¶ 17 Before Pool Company filed its opening brief, MW Golden and Western moved to dismiss this appeal for lack of appellate jurisdiction under section 13-22-228(1). They argued that the district court’s December 27 order denying Pool Company’s motion requesting that the matter be remanded to the arbitrators for clarification isn’t a type of order from which a party may appeal under the statute. Pool Company filed a response opposing the motion. A motions division of this court deferred the motion to the

¹ MW Golden and Western moved to dismiss this appeal on the ground that it was untimely because Pool Company filed its notice of appeal more than forty-nine days after the entry of judgment — i.e., September 25, when the court confirmed the award. *See* C.A.R. 4(a)(1). Pool Company responded that it was only appealing the December 27 order. Based on that representation, a motions division of this court denied the motion to dismiss the appeal.

division considering the merits. We now address that motion, which the parties further addressed in the answer and reply briefs.

¶ 18 Section 13-22-228(1) “narrowly circumscribes our jurisdiction to hear appeals of arbitration-related orders.” *Tug Hill Marcellus LLC v. BKV Chelsea LLC*, 2021 COA 17, ¶ 5. It specifically identifies the types of orders that are appealable to this court.

§ 13-22-228(1)(a)-(f). The language of the statute “reveals a legislative intent to limit appeals to the listed circumstances.”

Gergel v. High View Homes, L.L.C., 58 P.3d 1132, 1134 (Colo. App. 2002) (applying a previous version of the statute). Put another way, “[b]eyond these specific enumerated circumstances, the precise language of section 13-22-228(1) ‘leaves no room for permitting appeals.’” *Turoff v. Itachi Cap., Inc.*, 2022 COA 147, ¶ 14 (quoting *J.P. Meyer Trucking & Constr., Inc. v. Colo. Sch. Dists. Self Ins. Pool*, 18 P.3d 198, 202 (Colo. 2001)). Indeed, even though the Colorado Revised Uniform Arbitration Act (the Act) authorizes parties to file a variety of arbitration-related motions with the district court,² that

² For example, a party may file a motion to compel or stay arbitration, § 13-22-207, C.R.S. 2024; a motion for provisional remedies before an arbitrator is appointed, § 13-22-208(1), C.R.S.

doesn't mean the court's ruling on any such motion is appealable: appeals are strictly limited to the types of orders listed in section 13-22-228(1). *Tug Hill*, ¶¶ 5-8.

¶ 19 Though a party may file a motion requesting remand to the arbitrator to clarify an award, see §§ 13-22-220(4), 13-22-224(1)(c), an order denying such a motion isn't one of the orders that can be appealed under section 13-22-228(1).

¶ 20 Pool Company argues, however, that the December 27 order is “tantamount to an order confirming the Award.” It isn't. The district court had already entered an order confirming the award, which Pool Company didn't appeal. And the December 27 order didn't have the effect of confirming the award; it merely denied Pool Company's request to remand the matter to the arbitrators for clarification. See *Turoff*, ¶¶ 10, 15-18 (an order vacating an award and ordering a new hearing isn't appealable and isn't tantamount to an order denying confirmation of an award); see also *J.P. Meyer Trucking*, 18 P.3d at 200, 202 (rejecting the argument that an order

2024; and a motion to consolidate arbitration proceedings, § 13-22-210, C.R.S. 2024.

denying a motion to dismiss was “tantamount” to an order denying a motion to compel arbitration).

¶ 21 Contrary to Pool Company’s assertion, it doesn’t matter that the district court “entertained” the motion. As noted, the mere fact that the Act allows for filing a particular type of motion doesn’t render a ruling on the motion appealable. *Tug Hill*, ¶¶ 8-10 (an order denying a motion to consolidate arbitration proceedings isn’t appealable even though such a motion is authorized by the Act); *Gergel*, 58 P.3d at 1135 (an order denying a motion to stay arbitration isn’t appealable even though the Act authorizes such a motion and an order granting such a motion is appealable); *Frontier Materials, Inc. v. City of Boulder*, 663 P.2d 1065, 1066 (Colo. App. 1983) (an order compelling arbitration isn’t appealable even though an order denying a motion to compel arbitration is).

¶ 22 Nor are we swayed by Pool Company’s argument that we should allow the appeal because the district court “prematurely” ruled on MW Golden’s motion to confirm the award given that the time for Pool Company to file a motion under section 13-22-224 had not yet run. We fail to see how any such error would transform the order at issue into one appealable under section 13-22-228(1). (We

also observe that Pool Company didn't ask the court to wait to decide MW Golden's motion to confirm the award until after Pool Company filed a separate motion under section 13-22-224; it asked the court, in the alternative, to wait to rule on MW Golden's motion until after the arbitrators clarified their award following the remand that Pool Company expressly requested in its response to MW Golden's motion.³)

¶ 23 In sum, we conclude that we lack jurisdiction over this appeal because the order from which Pool Company appealed isn't one from which an appeal is authorized by section 13-22-228(1).

III. MW Golden's and Western's Appellate Costs and Attorney Fees

¶ 24 MW Golden and Western request awards of their costs and attorney fees incurred on appeal. As the prevailing parties on appeal, they are entitled to their costs. C.A.R. 39(a). Attorney fees,

³ Contrary to Pool Company's representation in its reply brief, it didn't tell the court in responding to MW Golden's motion that it would later file a motion under section 13-22-224, C.R.S. 2024. Rather, it mentioned that a party can file such a motion and argued that, in the alternative, the court should grant relief that can be sought through such a motion — remand for clarification of an award. The court denied that relief in its order confirming the award. Pool Company's later motion did nothing more than mimic the request in its response to MW Golden's motion to confirm the award.

however, are another matter. MW Golden and Western invoke section 13-22-225(3), which provides that “[o]n the application of a prevailing party to a contested judicial proceeding under section 13-22-222, 13-22-223, or 13-22-224, the court may” award attorney fees and other reasonable expenses of litigation and add such fees and expenses to a judgment confirming an award. It isn’t clear that this provision applies to appeals to this court. But we will assume that it does. Any award under this statute is, as the word “may” indicates, discretionary. *See* Unif. Arb. Act § 25 cmts. 3, 5 (revised 2000), 7 pt. IA U.L.A. 90 (2009); *see also* *A.S. v. People*, 2013 CO 63, ¶ 21. Though a close call, we deny MW Golden and Western’s request.⁴

IV. Disposition

¶ 25 The appeal is dismissed with prejudice.

JUDGE LIPINSKY and JUDGE SULLIVAN concur.

⁴ MW Golden and Western also cite section 13-17-102(4), C.R.S. 2024, in the portion of their answer brief requesting fees. But they don’t explain the legal and factual basis for any request under this statute as C.A.R. 39.1 requires. Therefore, we don’t address it. *See* *Herbst v. Univ. of Colo. Found.*, 2022 COA 38, ¶ 20.