[Cite as *McGarry & Sons, Inc. v. Marous Bros. Constr. Inc.*, 2011-Ohio-6859.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

MIKE MCGARRY & SONS, INC.,	:	**O P I N I O N**
Plaintiff-Appellant,	:	
		CASE NO. 2011-L-001
- vs -	:	
MAROUS BROTHERS CONSTRUCTION, INC.,	:	
	:	
Defendant-Appellee.		

Civil Appeal from the Lake County Court of Common Pleas, Case No. 08 CV 002438.

Judgment: Affirmed.

Timothy L. McGarry, Nicola, Gudbranson & Cooper, L.L.C., Republic Building, #1400, 25 West Prospect Avenue, Cleveland, OH 44115 (For Plaintiff-Appellant).

Robert A. Simpson, 1702 Joseph Lloyd Parkway, Willoughby, OH 44094 (For Defendant-Appellee).

DIANE V. GRENDELL, J.

{¶1} Plaintiff-appellant, Mike McGarry & Sons, Inc., appeals the Judgment Entry of the Lake County Court of Common Pleas, in which the trial court granted defendant-appellee, Marous Brothers Construction, Inc.'s, Motion for Entry of Satisfaction of Judgment. The issue to be determined by this court is whether the trial court interpreted or modified a prior judgment in deciding the rate of post-judgment interest owed. For the following reasons, we affirm the decision of the trial court.

{¶2} Marous was hired as a general contractor for the multi-million dollar H.J. Heinz Loft Apartment Project in Pittsburgh, Pennsylvania. Marous contracted with McGarry in March of 2004 to provide interior and exterior painting for the project.

{¶3} A dispute arose between McGarry and Marous from various issues and events that occurred on the project. McGarry filed a mechanics' lien in Pennsylvania against the Heinz Loft property owners, Progress Street Partners, Ltd. The Pennsylvania court subsequently approved a surety bond for the mechanics' lien and ordered the discharge of the lien.

{¶4} The dispute between McGarry and Marous was referred to binding arbitration using a three member arbitration panel, pursuant to the rules of the American Arbitration Association. On July 2, 2008, after an arbitration hearing where numerous witnesses testified and voluminous documents were presented as evidence, the arbitration panel awarded McGarry $953,111.52. The panel's award stated that if payment was not made within 10 days, "post-judgment interest at the rate of 8% per year compounded monthly shall accrue until payment is made."

{¶5} Marous filed a Motion to Modify Arbitration Award, claiming that the award included "significant computational errors."

{¶6} On August 20, 2008, the panel granted Marous' motion in part and modified the award, reasoning that the panel had made a computational error and, therefore, a modification of the award was warranted. The panel stated that "given the re-computation of the awarded amount," recalculation of the interest amount was also warranted. McGarry's award was modified from $953,111.52 to $821,382.52. The modified award stated that, aside from its findings, there was "no other basis for modification of the Award" and that "the modified award is as follows: [Marous] is to pay

[McGarry] the amount of $821,382.52 along with interest at the rate of 8% from July 2, 2008 until date of payment."

{¶7} Marous then filed a Motion to Vacate, or in the Alternative, to Modify the Arbitration Award as modified, in Lake County Court of Common Pleas. McGarry filed an Application to Confirm the Arbitration Award. A hearing was held on the matter on February 6, 2009.

{¶8} In an April 21, 2009 Judgment Entry, the trial court concluded that the arbitration panel had jurisdiction and that the arbitration award was not arbitrary, capricious, or irrational. Accordingly, the court denied Marous' Application to Vacate, and granted McGarry's Application to Confirm the modified August 20, 2008 arbitration award. The Application to Confirm was denied as to the original July 2, 2008 arbitration award.

{¶9} Marous appealed the trial court's decision to this court in *Mike McGarry & Sons, Inc. v. Marous Bros. Constr., Inc.*, 11th Dist. No. 2009-L-056, 2010-Ohio-823. This court affirmed the trial court's Entry denying Marous' Application to Vacate, and granting McGarry's Application to Confirm the Arbitration Award.

{¶10} On August 2, 2010, Marous filed a Motion for Entry of Satisfaction of Judgment with the trial court. Marous asserted that it had paid McGarry $926,903.19 and that McGarry refused to provide a full satisfaction of judgment, due to a dispute over the amount of post-judgment interest owed. Marous asserted that it paid the foregoing sum based on a calculation of simple interest, using an eight percent rate from July 2, 2008 until the date of judgment of April 21, 2009, and then using a five percent interest rate from the date of judgment until the date of payment.

{¶11} On August 13, 2010, McGarry filed a Memorandum in Opposition, asserting that the arbitration award of July 2, 2008, required compound interest be paid, at a rate of eight percent, and that Marous owed a total amount of $969,782.50. McGarry asserted that the original arbitration award required that the interest be compounded and this rate was not altered in the modified arbitration award. McGarry also filed a Partial Satisfaction of Judgment, reflecting Marous' payment of $926,903.19, but asserting that there was a remaining balance of $42,879.31.

{¶12} On December 2, 2010, the trial court found that the modified arbitration award, confirmed in the April 21, 2009 Entry, awarded eight percent simple interest. The court also found that, pursuant to R.C. 1343.03, a five percent interest rate should apply from the trial court's judgment date of April 21, 2009 until the date of payment. The trial court found that "the judgment entered by this court on April 21, 2009 is fully satisfied and discharged" and granted Marous' Motion for an Entry of Satisfaction of Judgment.

{¶13} McGarry timely appeals and raises the following assignment of error:

{¶14} "The trial court erred by modifying an arbitration award which the trial court had already confirmed and which confirmation was affirmed on appeal."

{¶15} "The standard of review for judgments on arbitration awards is abuse of discretion." *Marshall v. Colonial Ins. Co. of California*, 11th Dist. No. 2007-T-0013, 2007-Ohio-6248, at ¶14. An appellate court has a "'very limited' role in reviewing a binding arbitration award." *Madison Local School Dist. Bd. of Edn. v. OAPSE/AFSCME Local 4*, 11th Dist. No. 2008-L-086, 2009-Ohio-1315, at ¶9 (citation omitted). "The arbitrator is the final judge of both law and facts and we may not substitute our judgment for that of the arbitrator. *** An arbitrator's decision is presumed valid and thus enjoys

great deference." Id. However, a reviewing court may consider the substantive merits of an arbitration award if there is evidence of "material mistake or extensive impropriety." *Advanced Tech. Incubator, Inc. v. Manning*, 11th Dist. No. 2001-P-0154, 2003-Ohio-2537, at ¶14 (citation omitted).

{¶16} Moreover, "an interpretative decision by the trial court cannot be disturbed upon appeal absent a showing of abuse of discretion." *Dvorak v. Dvorak*, 11th Dist. No. 2006-P-0003, 2006-Ohio-6875, at ¶7.

{¶17} There are two distinct issues raised in this appeal. First, McGarry asserts that the trial court erred in determining that the post-judgment interest awarded by the arbitration panel was simple, not compound. McGarry argues that Marous was prevented from raising this argument before the trial court, as such an argument is precluded by the law of the case and should have been raised in the prior appeal.

{¶18} The law of the case is a longstanding doctrine in Ohio jurisprudence. "[T]he doctrine provides that the decision of a reviewing court in a case remains the law of that case on the legal questions involved for all subsequent proceedings in the case at both the trial and the reviewing levels." *Nolan v. Nolan* (1984), 11 Ohio St.3d 1, 3. The doctrine is "necessary to ensure consistency of results in a case, to avoid endless litigation by settling the issues, and to preserve the structure of superior and inferior courts as designed by the Ohio Constitution." Id. (citations omitted). Where a court has already addressed and rejected an appellant's claims, the claims lack merit under the law of the case doctrine. *State v. Jackson*, 11th Dist. No. 2008-T-0024, 2010-Ohio-1270, at ¶29**.**

{¶19} However, "[w]hen subsequent proceedings involve an expanded record or different legal issues, the doctrine of the law of the case does not apply." *Birch v.*

Cuyahoga Cty. Probate Court, 173 Ohio App.3d 696, 2007-Ohio-6189, at ¶18, citing *Johnson v. Morris* (1995), 108 Ohio App.3d 343, 349.

{¶20} We note that Marous would have had no reason to raise this issue in the prior appeal. The issue of whether the interest was compound or simple was not in dispute at that time, nor was it obvious from the judgment that such an issue would arise in the future. The modified arbitration award, confirmed by the trial court, did not mention or require the payment of compound interest. It follows, therefore, that Marous believed it was not required to pay compound interest, especially in light of the general requirement that simple interest be used in calculating interest unless otherwise required by agreement or statutory provision. See *Berdyck v. Shinde* (1998), 128 Ohio App.3d 68, 87, citing *State ex rel. Elyria v. Trubey* (1984), 20 Ohio App.3d 8, 9 ("[s]imple interest is to be used when there is no specific agreement to compound interest or a statutory provision authorizing the compound interest"). A dispute regarding this issue arose only when Marous tendered payment and was informed by McGarry that it believed Marous was to pay compound interest, which led to the filing of the Motion for Entry of Satisfaction of Judgment.

{¶21} In addition, McGarry argues that Marous is improperly seeking to modify the arbitration award, which cannot be disturbed absent specific showing of fraud, misconduct, or certain mistakes, pursuant to R.C. 2711.11. See *Goodyear Tire & Rubber Co. v. Local Union No. 220* (1975), 42 Ohio St.2d 516, 522.

{¶22} Marous argues that it did not seek modification of the award but instead requested that the trial court interpret the award, in order to determine whether the judgment had been satisfied.

{¶23} We find that Marous did not seek modification of the prior arbitration award, nor did the trial court act to modify the award. Instead, Marous, by filing a Motion for Entry of Satisfaction of Judgment, sought to have the trial court enforce the arbitration award, which the court may properly do. *Athens Cty. Commrs. v. Ohio Patrolmen's Benevolent Assn.*, 4th Dist. No. 06CA49, 2007-Ohio-6895, at ¶47 (a confirmed arbitration award has the effect of a judgment and can be enforced by the trial court); *Edwards v. Passarelli Bros. Automotive Serv., Inc.* (1966), 8 Ohio St.2d 6, paragraph one of the syllabus (it is standard procedure in Ohio that the "party who is entitled to an entry of an order of satisfaction of a judgment previously rendered against him may obtain an order for such entry on motion and proof of payment"). In order to enforce the award in this case, the trial court had to interpret the award, which is within the court's power. See *Armco, Inc. v. United Steelworkers of Am.*, 5th Dist. No. 2002CA0071, 2003-Ohio-5368, at ¶43 ("[t]he trial court has the inherent power to interpret and enforce its own order"); *State v. Harrington*, 3rd Dist. Nos. 14-03-34 and 14-03-35, 2004-Ohio-1046, at ¶15.

{¶24} The trial court did not err by finding Marous was not required to pay compound interest. The modified arbitration award, confirmed by the trial court and affirmed by this court in *McGarry*, stated that "the modified award is as follows: [Marous] is to pay [McGarry] the amount of $821,382.52 along with interest at the rate of 8% from July 2, 2008 until date of payment." The modified award did not mention compound interest. Although McGarry argues that the modified award stated that "nothing else changed," the panel's explicit restatement of the interest and exclusion of the word "compound" supports a finding that such interest was simple. Without a statement

requiring payment of compound interest, we cannot presume that Marous was required to pay such interest. See *Shinde*, 128 Ohio App.3d at 87.

{¶25} Regarding the issue of the five percent interest rate, McGarry argues that the trial court improperly modified the arbitration award to require payment of five percent interest, instead of eight percent interest, from April 21, 2009, to the date of payment, as modification was not allowed under R.C. 2711.11.

{¶26} Marous argues that the trial court did not modify the award but instead interpreted the award.

{¶27} As noted previously, generally, a trial court can modify an arbitration award only under limited circumstances. See R.C. 2711.11. However, we hold that the trial court did not modify the arbitration award in finding that Marous was required to pay post-judgment interest at a rate of five percent. By determining the applicable interest rate, the trial court acted to interpret and enforce its own April 21, 2009 Judgment Entry, not to modify the arbitration award.

{¶28} Courts have found an arbitration award to be a liquidated amount, "due and payable on the date the award was rendered." *Hellmuth, Obata & Kassabaum v. Ratner* (1984), 21 Ohio App.3d 104, 107; *Marra Constructors, Inc. v. Cleveland Metroparks Sys.* (1993), 82 Ohio App.3d 557, 566. Such an award falls under the scope of R.C. 1343.03(B), which dictates the post-judgment interest rate that must be paid. *Hellmuth*, 21 Ohio App.3d at 107. "Except as [otherwise] provided ***, interest on a judgment, decree, or order for the payment of money rendered in a civil action ***, including, but not limited to a civil action based on tortious conduct or a contract or other transaction that has been settled by agreement of the parties, shall be computed from the date the judgment, decree, or order is rendered to the date on which the money is

paid and shall be at the rate determined pursuant to section 5703.47 of the Revised Code that is in effect on the date the judgment, decree, or order is rendered. That rate shall remain in effect until the judgment, decree, or order is satisfied." R.C. 1343.03(B).

{¶29} Since the post-judgment interest rate becomes effective on the date judgment is rendered, it is proper for the trial court to enforce its judgment by making a finding as to the percentage rate applicable on the date of judgment. In the present case, the trial court entered judgment on April 21, 2009. As of that date, the statutory post-judgment interest rate was five percent, which was properly applied when the trial court granted Marous' Motion for an Entry of Satisfaction of Judgment.

{¶30} Although the arbitration panel made the initial award in this case, post-judgment interest applies not to an award, but to a "judgment, decree, or order." This court has held that when an arbitration award has not been confirmed by a trial court, there is no judgment or order. *Davidson v. Bucklew* (1992), 90 Ohio App.3d 328, 333. See, also, *Mark L. Kaser Corp. v. Pope*, 12th Dist. No. CA98-06-073, 1998 Ohio App. LEXIS 5834, at *6-*7 ("[o]nce an arbitration award is confirmed, it is converted into a judgment by the trial court"); R.C. 2711.09 ("At any time within one year after an award in an arbitration proceeding is made, any party to the arbitration may apply to the court of common pleas for an order confirming the award. Thereupon the court shall grant such an order and enter judgment thereon ***."). Since an arbitration award is not a judgment, order, or decree, statutory post-judgment interest becomes applicable only upon the entry of a trial court's judgment of confirmation of the award. Therefore, it is for the trial court to interpret and enforce the applicable percentage rate. See *Hellmuth*, 21 Ohio App.3d at 107 (a trial court, in issuing a judgment confirming an arbitration award, must enforce interest on that judgment pursuant to R.C. 1343.03). We note that

although the issue of post-judgment interest was not before the arbitration panel in *Hellmuth*, we cite this case only for the proposition that trial courts must enforce interest on their own judgments. As discussed above, the law supports a finding that an arbitration award is not a judgment and, therefore, post-judgment interest should be enforced and interpreted by the trial court.

{¶31} While the concurrence argues that the arbitration award stated that the statutory interest rate was applied, this reference was made to the award of pre-judgment interest, not post-judgment interest, the issue in dispute in the current case. Regarding post-judgment interest, the arbitration award makes no reference to the statutory rate.

{¶32} This holding is further supported by *Napoleon Steel Contrs., Inc. v. Monarch Constr. Co.* (1982), 3 Ohio App.3d 410. In *Napoleon*, the arbitration panel awarded post-judgment interest in an amount in excess of that prescribed by R.C. 1343.03. The appellate court found that the trial court's application of a rate of interest different than the arbitrators' rate was not an improper modification, since R.C. 1343.03 requires post-judgment interest be paid as of the date of a trial court's judgment, not at the time of the arbitration award. Id. at 412 ("Our disposition of this question, then, is to allow the *** interest rate in the original award to remain in effect from the date specified in the arbitration award until the date of the lower court's confirmation of the award. The award will, from that date forward, bear interest at [a rate] in accordance with R.C. 1343.03."). Similarly, the trial court in the present case did not disturb the arbitration award as to the eight percent owed from the date of the award until the date of the trial court's judgment. As the court did in *Napoleon*, the trial court did not act to change the

arbitration award but, instead, simply to enforce the post-judgment interest as of the date of its own judgment, rendered on April 21, 2009. See Id.

{¶33} Based on the foregoing, the trial court did not err in finding that the eight percent interest rate was applicable only until the date that the court issued its judgment, on April 21, 2009, and that a five percent interest rate applied from April 21 until the date Marous tendered payment.

{¶34} The sole assignment of error is without merit.

{¶35} For the foregoing reasons, the Judgment Entry of the Lake County Court of Common Pleas, granting Marous' Motion for Entry of Satisfaction of Judgment, is affirmed. Costs to be taxed against appellant.

TIMOTHY P. CANNON, P.J., concurs,

MARY JANE TRAPP, J., concurs in judgment only with a Concurring Opinion.

MARY JANE TRAPP, J., concurs in judgment only with a Concurring Opinion.

{¶36} I concur with my colleagues and affirm the decision of the trial court. I agree with the majority's conclusion regarding the compound interest issue, and also agree with the conclusion regarding the interest rate. However, I write separately because I do not agree with the analysis, particularly in regard to the applicable interest rate. Specifically, I take issue with the majority's statement that in this case "it is for the trial court to *interpret* and enforce the applicable percentage rate." (Emphasis added.) In my view, the record before us shows that the arbitrators awarded the statutory

interest rate (which was 8% at the time), and the trial court simply gave effect to that facet of the award, making it applicable to the entire period during which the amount was due and payable, i.e., from the inception of the arbitration award until the full satisfaction.

{¶37} There was one twist, however. The trial court found that neither party disputed the use of an 8% interest rate for the period prior to the confirmation of the award, and, given the fact that the only issue before it was the correct amount of interest due under the *confirmed* award, the trial court properly and simply enforced the arbitrator's decision to use the "statutory rate," which had been reduced to 5% as of the date the award was confirmed and the judgment entered on that confirmed award. There was no "interpretation," only a review and enforcement of the arbitrators' decision.

{¶38} In ascertaining the interest rate awarded by the arbitrators, the trial court looked to paragraph three of the (modified) arbitration award. That paragraph stated, in pertinent part:

{¶39} "Given the re-computation of the awarded amount for extra work tickets, the awarded interest has been recalculated. The statutory interest rates prescribed by ORC 5703.47 were used compounding the amount annually, interest rate changed in October 2006 to 8%."

{¶40} Referring to this paragraph, the trial court explained that "[t]his paragraph indicated that the arbitrators used the *applicable statutory interest rates* and while the arbitrators mentioned compounding the interest annually, the award only specified an interest rate of eight percent." (Emphasis added).

{¶41} As previously noted, because the 8% (statutory) interest rate for the period prior to the trial court's confirmation of the arbitration award was undisputed, the only issue before the trial court was the applicable rate for the period from the trial court's confirmation of the arbitration award to the full satisfaction of the award. The trial court applied R.C. 1343.03 and held that "McGarry is entitled to interest from the inception of the award (April 21, 2009) through August 2, 2010, as provided by R.C. 1343.03." Because the statutory rate prescribed by R.C. 5703.47 on the day the trial court confirmed the arbitration award was 5%, the trial court concluded, properly, that the 5% rate was applicable from that date through the full satisfaction of the arbitration award.

{¶42} Therefore, in my view, the majority's holding that "it is for the trial court to interpret and enforce the applicable percentage rate" for an arbitration award is somewhat misleading. The record before us reflects that the trial court did nothing more than follow the well-established standard of review for trial courts reviewing an arbitration award, and enforce the arbitrators' award, which specifically determined that interest would run on the award at the statutory interest rate from the date of the award until it was paid. The majority confuses this case with others where the arbitrators either failed to address the issue of when interest should run or the issue of whether interest should run at all. See *Hellmuth, Obata & Kassabaum v. Ratner* (1984), 21 Ohio App.3d 104, 106 (the court specifically noted that "the issue of whether interest should accrue from the date of the award was not a matter presented to the arbitrators.") I believe the clarification is necessary.