SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0655-21

ROBERT OTTMANN and AQUATIC TECHNOLOGIES INC.,

Plaintiffs-Appellants,

v.

CHRISTOPHER HANLON,

Defendant-Respondent.

Argued January 25, 2023 – Decided March 14, 2023

Before Judges Currier and Enright.

On appeal from the Superior Court of New Jersey, Law Division, Sussex County, Docket No. L-0116-20.

Jae H. Cho argued the cause for appellants (Cho Legal Group LLC, attorneys; Kristen M. Logar, on the briefs).

Michael J. Smikun argued the cause for respondent (Callagy Law, PC, attorneys; Michael J. Smikun and Christopher R. Miller, on the brief).

PER CURIAM

Plaintiffs appeal from two August 27, 2021 orders confirming an arbitration award under Rule 4:21A-6(b) and denying their motions for sanctions against defendant and to enforce a settlement agreement and a September 27, 2021 order denying reconsideration. Because plaintiffs' demand for a trial de novo and rejecting the arbitration award was not filed within the thirty-day time constraints under Rule 4:21A-6(b)(1), we affirm.

Plaintiff Robert Ottmann and defendant were equal owners of plaintiff Aquatic Technologies (AT). In 2019, Ottmann was injured and unable to work for a period of time. After defendant demanded a buyout of Ottmann's 50% ownership interest or a dissolution of AT, plaintiffs instituted suit, seeking damages for breach of contract and other causes of action relating to the parties' ownership of AT.

The parties were subsequently able to reach an agreement on many of the issues, memorialized in a written settlement agreement executed by counsel. However, the agreement also contained a list of ten items the parties had not resolved. The agreement stated the parties would continue to address the unresolved issues in continuing settlement discussions.

Counsel virtually attended the mandatory arbitration proceeding on June 24, 2021.[1] The arbitrator issued an oral decision at the end of the hearing, awarding plaintiffs $84,537.87. According to plaintiffs' counsel, the arbitrator told counsel he would not be submitting the award until Monday or Tuesday. The arbitrator submitted the award to the Arbitration Administrator on June 28.[2]

On June 29, 2021, the court, through the eCourts system, notified counsel that the arbitration award was filed on June 24 and attached the document for downloading. The award was dated June 24, 2021.

Plaintiffs filed a request for a trial de novo on July 28, 2021. The Civil Division manager rejected the filing as untimely under Rule 4:21A-6(b)(1). The last date to file a trial de novo was July 26.[3]

Defendant moved to confirm the award. Plaintiffs opposed the motion and cross-moved for enforcement of the settlement agreement and sanctions against defendant for violating a prior order. Plaintiffs contended that because

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[1] June 24, 2021 was a Thursday.

[2] Plaintiffs' counsel directly emailed the arbitrator asking when he submitted the award to the Arbitration Administrator.

[3] Using the award's June 24, 2021 filing date, a demand for a trial de novo was due July 24, 2021. Because that was a Saturday, plaintiff had until Monday, July 26 to file the demand. See R. 1:3-1.

they did not get a copy of the award until it was uploaded in eCourts on June 29, they had until July 29 to file a de novo demand. Plaintiffs also asserted court staff improperly "backdated" the award.

On August 27, 2021, the court issued a written decision and the accompanying two orders. In considering the motion to confirm the award, the court reviewed Rule 4:21A-6(b)(1) and found the thirty-day time period to file a trial de novo demand began to run on June 24, the day of the arbitration and the filing date stamped on the award. The court further found there were no extraordinary circumstances warranting an extension of the thirty-day deadline.

The court found the eCourts jacket and notice to the parties advised the arbitration award was filed on June 24. The court stated, "[t]he controlling document is the arbitration award, and the controlling date is the date in which the arbitration award was filed . . . ." The court also noted an email sent from plaintiffs' counsel to defense counsel on July 7, 2021 indicating plaintiffs intended to reject the arbitration award.

The court concluded, "[p]laintiff[s] ha[ve] not presented this [c]ourt with any authority to support the proposition that the thirty-day timeframe begins upon counsel receiving an electronic notification that the document is available

on eCourts, as opposed to the actual filing date." The court granted defendant's motion to confirm the arbitration award.

Plaintiffs' cross-motion requested sanctions, alleging defendant violated a December 2020 "status quo" order. The court denied plaintiffs' motion, finding there was no "evidence, authority, or basis for awarding sanctions."

The court also addressed plaintiffs' motion to enforce the settlement agreement. In denying the motion, the court found it was clear from the agreement and ensuing emails that there was no agreement regarding a number of issues as listed in the "carve-out" section of the agreement. Therefore, the court entered judgment for plaintiffs in the amount of the arbitration award.

Thereafter, plaintiffs issued a subpoena to the arbitrator. When defendant moved for relief regarding the subpoena, plaintiffs cross-moved for reconsideration of the August 27 order confirming the arbitration award. The trial judge denied the reconsideration motion in a September 27, 2021 written decision and order.

In addition to reiterating its findings in granting the initial motion, the court noted the following language on the arbitration award located below the arbitrator's digital signature: "Parties desiring to reject this award and obtain a trial de novo must file with the division manager a trial de novo . . . within thirty

(30) days of today. . . . Note that unless otherwise expressly indicated, this award will be filed today."

The court found counsel was notified of the arbitrator's decision on June 24. The arbitration award listed June 24 as the filing date. Counsel was notified by eCourts on June 29 that the arbitration award, filed June 24, was available online for downloading. As a result, counsel was on notice "that the [thirty-day] clock began to run on June 24, 2021."

On appeal, plaintiffs contend the court erred in confirming the arbitration award and denying the motions for sanctions and to enforce the settlement agreement. Plaintiffs further assert extraordinary circumstances exist to vacate the arbitration award.

Our review of an interpretation of the court rules governing mandatory arbitration, which is a question of law, is de novo. Vanderslice v. Stewart, 220 N.J. 385, 389 (2015).

Plaintiffs renew their argument that because the arbitrator did not submit the award to the Arbitration Administrator until June 28, 2021 and it was not posted in eCourts until June 29, the thirty-day time to reject the award and request a trial de novo did not begin until at least June 28 or June 29 and

therefore the demand filed July 28, 2021 was timely. Plaintiffs contend the court could not "file" the award until it had possession of it. We are not persuaded.

The parties' case proceeded to arbitration under Rule 4:21A-1. The arbitrator heard the case on June 24, 2021 and issued a decision in the virtual presence of counsel at the end of the proceeding. Plaintiffs do not dispute they were aware of the arbitrator's decision on June 24.

The arbitrator submitted the award to the Arbitration Administrator on Monday, June 28. There was no error in that action. Under Rule 4:21A-5, an arbitrator must file the written award with the Civil Division manager "[n]o later than ten days after the completion of the arbitration hearing."

The following day, the eCourts system informed counsel the award, filed on June 24, had been uploaded into the system. Counsel had access to the award on which was stamped the filing date and the instruction that a party had to file a trial de novo within thirty days of the filing date noted on the award.

The directive on the arbitration award regarding a trial de novo demand reflects the language contained in Rule 4:21A-6(b)(1):

> An order shall be entered dismissing the action following the filing of the arbitrator's award unless . . . within [thirty] days after filing of the arbitration award, a party thereto files with the civil division manager and serves on all other parties a notice of rejection of the

> award and demand for a trial de novo and pays a trial de novo fee as set forth in paragraph (c) of this rule.
>
> [(emphasis added).]

Plaintiffs cannot and do not dispute they had notice of the arbitrator's award on June 24. Indeed, plaintiffs' counsel advised his adversary on July 7 that he intended to reject the award.

There is no ambiguity in the Rule. Since its inception in 1986, a party displeased with an arbitration award has thirty days to reject it and demand a trial de novo. Although technology has certainly evolved since that time, including the implementation of eCourts in our judicial system, there has been no change in the meaning of the "filing date" of an award. Here, the date was stamped on the award, counsel was advised through eCourts that the award was filed June 24, and when counsel was able to view and download the award on June 29, the filing date on the award was June 24. There can be no doubt as to the filing date.

Plaintiffs' interpretation, that the award was not filed until the court had possession of the actual document, is illogical and would result in an inconsistent implementation of Rule 4:21A-6. The Rule does not say a party must file a trial de novo demand within either thirty days after the arbitrator files an award or thirty days after the award is entered in eCourts. That would lead

to different timeframes in every case. The Rule requires a party to reject an arbitration award within thirty days of the filing of the award. That date was clear here and conveyed to the parties both on the award itself and through the eCourts notification and on the case jacket.

The trial court did not err in granting defendant's motion to confirm the arbitration award. Plaintiffs' demand for trial de novo was untimely.

We briefly address plaintiffs' contention that the parties had executed a settlement agreement and the court erred in denying their motion to enforce the agreement and vacate the arbitration award.

Although we acknowledge this State's "strong public policy in favor of the settlement of litigation," Gere v. Louis, 209 N.J. 486, 500 (2012) (citing Brundage v. Est. of Carambio, 195 N.J. 575, 601 (2008)), we also recognize that a party moving to enforce a settlement bears the burden of demonstrating that one exists in the first place. Amatuzzo v. Kozmiuk, 305 N.J. Super. 469, 475 (App. Div. 1997). Plaintiffs have not satisfied that burden here.

For a settlement agreement to exist, the parties must first agree to the essential terms of the agreement. Cumberland Farms, Inc. v. N.J. Dep't of Env't Prot., 447 N.J. Super. 423, 438-39 (App. Div. 2016) (quoting Mosley v. Femina Fashions, Inc., 356 N.J. Super. 118, 126 (App. Div. 2002)). Essential terms are

those that go to the "heart of the alleged agreement." Satellite Ent. Ctr., Inc. v. Keaton, 347 N.J. Super. 268, 277 (App. Div. 2002).

The settlement agreement itself belies plaintiffs' argument. It contained a provision stating there were ten items the parties had not resolved. These items included Ottmann's salary during his absence from work, rent payments, life and health insurance payments, non-business-related expenses, and the valuation of AT's assets. The settlement agreement stated, "the following issues will be addressed in continuing settlement discussions between the parties." (emphasis added). And plaintiffs' counsel stated the parties did continue settlement negotiations after the arbitration. Clearly there were unresolved essential terms. "Where the parties do not agree to one or more essential terms, . . . courts generally hold that the agreement is unenforceable." Weichert Co. Realtors v. Ryan, 128 N.J. 427, 435 (1992).

Plaintiffs also contend extraordinary circumstances existed to vacate the confirmation of the award, namely that defendant violated a prior order.

"[O]nce the thirty-day period allowed by Rule 4:21A-6(b)(1) . . . for demanding a trial de novo or moving for modification or vacation of the arbitration award has expired, the award is no longer subject to challenge by the

losing party except upon a showing of extraordinary circumstances." Allen v. Heritage Court Assocs., 325 N.J. Super. 112, 118 (App. Div. 1999).

Although courts "possess the power to enlarge" the thirty-day period to file a demand for a trial de novo, "such power should be exercised only in extraordinary circumstances." Mazakas v. Wray, 205 N.J. Super. 367, 371 (App. Div. 1985). The circumstances must not arise from mere carelessness or lack of due diligence. Martinelli v. Farm-Rite, Inc., 345 N.J. Super. 306, 310 (App. Div. 2001) (citing Hartsfield v. Fantini, 149 N.J. 611, 618 (1997)).

To determine if exceptional circumstances are present, the court conducts "a fact-sensitive analysis in each case." Hartsfield, 149 N.J. at 618. The attorney must prove that circumstances for missing the filing deadline were "exceptional and compelling." Id. at 619 (quoting Baumann v. Marinaro, 95 N.J. 380, 393 (1984)).

The reasons plaintiffs proffer are neither "exceptional" nor "compelling." After defendant moved to confirm the arbitration award, plaintiffs cross-moved for sanctions because defendant had violated a prior December 2020 order. Plaintiffs had not previously sought relief from the court in the six months between the alleged violation and the arbitration proceeding. As the trial court stated, plaintiffs did not specify what sanctions they sought nor any authority or

legal basis for such an award. In any event, the cross-motion did not present extraordinary circumstances sufficient to overcome the restrictive timeframe under Rule 4:21A-6(b)(1).

Because plaintiffs' demand for a trial de novo was untimely under Rule 4:21A-6 and they have not demonstrated extraordinary circumstances, the court did not err in confirming the arbitration award or in denying plaintiffs' cross-motions and motion for reconsideration.

Affirmed.