

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION—CIVIL

GINA SCOTOLATI, ARK, INC.	:	January Term, 2005
	:	
v.	:	Case No. 02244
	:	DOCKETED
ANN HOFFMAN, ARK, INC. and ARK CREATIVES, INC.	:	
	:	AUG 8 2012
	:	C. HART
v.	:	CIVIL ADMINISTRATION
	:	
GINA SCOTOLATI and MARK SCOTOLATI and	:	
	:	Commerce Program
MEDIA MARK, INC., MEDIA MARK SPOTLIGHT, INC. and	:	
	:	
JANE DOE and JUDY DOE	:	Control No. 12022886
	:	
<i>Additional Defendants</i>	:	

ORDER

And Now, this 3rd day of August, 2012, upon consideration of the Motion for Post Trial Relief of Plaintiff, Gina Scotolati, the response in Opposition of Defendant, Ann Hoffman, the respective briefs, and after a hearing held on July 23, 2012, it is **Ordered** that the Motion for Post Trial Relief is **Granted as follows**:

- I. The Order of this Court dated February 8, 2012, is **Vacated**;
- II. The Findings-of-Fact and Conclusions-of-Law entered contemporaneously with the Order dated February 8, 2012, are **Withdrawn**; and,
- III. The Arbitral Award made by Thomas B. Rutter, J.D., dated September 18, 2007, is confirmed in its entirety and Judgment entered on the award.

By The Court,

Gina M Scotolati Ark In-ORDOP



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Patricia A. McInerney, J.

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MEMORANDUM OPINION

The Motion for Post Trial Relief asks this Court to enter an Order vacating a prior Order dated February 8, 2012, and withdraw the Findings-of-Fact and Conclusions-of-Laws entered contemporaneously with that Order. For the reasons below, the Motion for Post Trial Relief is granted.

Background

In January 2005, plaintiff Gina M. Scotolati (“Scotolati,”) filed a “Complaint in Equity” against defendants Ann Hoffman (“Hoffman,”) and Ark, Inc., (Ark, Inc.,) a corporation owned on a 50-50 basis by Scotolati and Hoffman. On February 4, 2005, Hoffman filed an Answer with New Matter and Counterclaim to the Complaint in Equity of Scotolati. On March 28, 2005, defendants Hoffman and Ark, Inc. filed a Complaint against “Additional Defendant” Scotolati and other individuals and entities (the “Additional Defendants’ Complaint.”).

On November 23, 2005, Scotolati filed a “Second Amended Complaint.”

In March 2007, Scotolati and Hoffman entered into an “Arbitration Agreement,” whereby the parties stipulated that their contentions should be decided by “binding” and “final” arbitration.¹ An arbitration hearing was conducted over a period of two days, and the arbitrator had before him all the issues contained in Hoffman’s Answer with New Matter and Counterclaim, as well as Hoffman’s Additional Defendants’ Complaint. Specifically, these pleadings contained allegations that Scotolati had engaged in conversion and fraudulent transfer of funds. On September 18, 2007, the arbitrator issued an “Arbitral Opinion and Award.”

On October 12, 2007, Hoffman filed a Motion to Vacate or Modify Arbitration Award (the “First Motion.”). The Honorable Judge Albert W. Sheppard, Jr. denied the First Motion. On November 7, 2007, Hoffman filed a Petition to Strike or Modify Judgment (the “Second Motion.”) On July 17, 2008, Judge Sheppard granted the Second Motion and thereafter held a trial on July 22, 2011. Tragically, Judge Sheppard unexpectedly died before he could issue a verdict. In late November, 2011, the matter was reassigned to the Honorable Judge Patricia McInerney, and on December 13, 2011, the parties agreed that Judge McInerney should review the record and make a decision standing in the shoes of Judge Sheppard.

On February 8, 2012, this Court issued its Order and Findings-of-Fact and Conclusions-of-Law. In the Findings-of-Fact and Conclusions-of-Law, this Court found that Scotolati had fraudulently transferred assets of MediaMark, Inc. (“MediaMark,”) an entity owned by Scotolati and Hoffman on a 50-50 basis, to MediaMark Spotlight, Inc.

¹ Arbitration Agreement, Exhibit A to the Motion for Post Trial Relief of defendant Scotolati.

(“Spotlight,”) an entity owned solely by defendant Scotolati.²

On February 17, 2012, defendant Scotolati filed a Motion for Post Trial Relief. In the Motion, Scotolati asserted that this “court erred in admitting any evidence on the question of whether a fraudulent transfer was made from MediaMark [to Spotlight].”³ Scotolati asserted that Judge Sheppard never should have granted the Second Motion and in any event, any claim of fraudulent transfer should have been asserted by Hoffman in the course of arbitration. Failure to do so, notwithstanding the existence of factual allegations of fraudulent transfers in the pleadings and record before the arbitrator, precluded this Court from ruling in a separate subsequent proceeding that Scotolati had engaged in fraudulent transfers.

A hearing on the Motion for Post Trial Relief was held on July 23, 2012. In the course of that hearing, and upon further briefing by the parties, it is clear that the issue of fraudulent transfers was before the arbitrator and the Second Motion was erroneously granted. Specifically, this Court reviewed Hoffman’s Answer, New Matter and Counterclaim to Scotolati’s original Complaint in Equity, as well as Hoffman’s subsequently-filed Additional Defendants’ Complaint.⁴ Review of these pleadings revealed that sufficient factual allegations of fraudulent transfers had indeed been presented to the arbitrator.

Discussion

Under the Pennsylvania Rules of Civil Procedure, “[a]fter trial and upon written Motion for Post-Trial Relief filed by any party, the court may ... affirm, modify or change

² Finding-of-Fact, Conclusions-of-Law, ¶ 41.

³ Motion for Post Trial Relief, ¶ 9.

⁴ Answer, New Matter and Counterclaim of defendant Hoffman, ¶¶ 32-43; Additional Defendants’ Complaint of defendant Hoffman, ¶¶ 11-17.

the decision.”⁵

In Pennsylvania, the law on modifying arbitration awards is well settled:

the award of an arbitrator in a common law arbitration is binding and may not be ... modified unless it is clearly shown that a party was denied a hearing or that fraud, misconduct, corruption or other irregularity caused the rendition of an unjust, inequitable or unconscionable award.⁶

In this context, irregularity refers to the process employed in reaching the result of the arbitration, not the result itself.⁷

In this case, Scotolati’s Motion for Post Trial Relief asks this Court to vacate its Order dated February 8, 2012, withdraw the contemporaneously-entered Findings-of-Fact and Conclusions-of-Law, and enter judgment on the Arbitral Opinion dated September 18, 2007. The Motion prays for such relief because all the allegations that could have stated a cause of action for fraudulent transfer were presented to the arbitrator, yet were never asserted by Hoffman as actual claims.⁸ The Motion concludes that the arbitrator’s decision was final and binding, and the Court was precluded at the subsequent hearing on the Second Motion from ruling that Scotolati had engaged in fraudulent transfers.

It is impossible to know the reasons why Judge Sheppard granted Hoffman’s Second Motion to Strike or Modify the Arbitral Award and decided to hold a trial.

⁵ Pa. R.C.P. 227.1(a)(4).

⁶ Hade v. Nationwide Ins. Co., 519 Pa. 227, 230-231; 546 A.2d 615, 616-17 (Pa. 1988) (citing 42 Pa. § 7341).

⁷ Gargano v. Terminix Int’l Co., L.P., 2001 Pa. Super 282, P9; 784 A.2d 188, 193 (Pa. Super. 2001).

⁸ Brief in Support of the Motion for Post Trial Relief, pp. 4, 8-9. The Motion for Post Trial Relief also asserts that Hoffman’s Second Motion should have been denied by the late Judge Sheppard as untimely because it was filed more than thirty (30) days from the entry of the Arbitral Award. See 42 Pa. C.S.A. § 7342(b) which states: “On application of a party made more than 30 days after an award is made by an arbitrator ... the court shall enter an order confirming the award and shall enter a judgment or decree in conformity with the order.” Review of the record shows indeed that the Arbitrator entered an award on 18 September 2007, and Hoffman filed her Second Motion (Petition) to Strike or Modify the Award on 7 November 2007, more than 30 days after entry of the Arbitral Award. Thus, the late Judge Sheppard could have denied as untimely Hoffman’s Second Motion (to Strike or Modify the Arbitral Award).

Presumably because it was discovered post-arbitration that MediaMark was “insolvent” and unable to satisfy the arbitration award to Ark. Unfortunately, it is clear from the record that his decision was erroneous because Hoffman had an opportunity to assert the claims of fraudulent transfer, apparently chose not to pursue such claims, and lost her right to re-litigate them thereafter; notwithstanding Scotolati’s failure to inform the arbitrator, that MediaMark, Inc. had long been insolvent. ⁹

This Court’s Order dated February 8, 2012 is vacated; the Findings-of-Fact and Conclusion-of-Law entered contemporaneously therewith is withdrawn. Judgment is entered on the Arbitral Opinion and Award dated September 18, 2012.

By The Court,

A handwritten signature in black ink, appearing to read "Pat McInerney", written over a horizontal line.

Patricia A. McInerney, J.

⁹ It is more likely than not that the arbitration process would have revealed MediaMark, Inc.’s insolvency if Hoffman had pressed her claim of fraudulent transfer in the course of arbitration. The Court neither condones Scotolati’s failure to timely inform the arbitrator of MediaMark, Inc.’s insolvency, nor the sudden diversion of revenues from sales of promotional items which should have been deposited in the account of MediaMark, Inc., but were inexplicably deposited in the account of Spotlight. Unfortunately, Hoffman’ failure to assert the claim of fraudulent transfer throughout the arbitration process prevents this Court from rectifying Scotolati’s improper conduct, and precludes modification of the Arbitral Award.