

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

JTMCK Corporation, f/k/a
Stone Lumber Company,
Plaintiff

vs
JAMES LYNCH,
Plaintiff,

File No. 91-8724-PZ
HON. PHILIP E. RODGERS

Jeffrey J. McManus (P27706)
Attorney for Plaintiff

Thomas W. Annelin (P29695)
Attorney for Defendant

DECISION AND ORDER

Plaintiff filed a Complaint to confirm an arbitration award of March 5, 1991. Thereafter, Plaintiff filed a Motion for Summary Disposition pursuant to MCR 2.116(C)(9) and (10). Pursuant to a Pre-Hearing Order, any written response to the motion was to be filed within fourteen days of the date of the Order.

It is the finding of the Court, upon a review of the court file, that:

A timely response to the motion has not been filed and, pursuant to MCR 2.119(E)(3), the Court dispenses with oral argument.

The standard of review for a (C)(9) motion is set forth in City of Hazel Park v Potter 169 Mich App 714, 718 (1988).

"A motion for summary disposition pursuant to MCR 2.116(C)(9), ...for failure to state a valid defense tests the legal sufficiency of the pleaded defense. Such motion is tested by reference to the pleadings alone, with all well-pled allegations accepted as true. The proper test is whether defendant's defenses are 'so clearly untenable as a matter of law that no factual development could possibly deny plaintiff's right to recovery.' Hanon v

Barber, 99 Mich App 851, 854-855; 298 NW2d 866 (1980). In addition, summary disposition is improper under this rule when a material allegation of the complaint is categorically denied. *Pontiac School Dist v Bloomfield Twp*, 417 Mich 579, 585; 339 NW2d 465 (1983)."

The standard of review for a (C)(10) motion is set forth in *Ashworth v Jefferson Screw* 176 Mich App 737, 741 (1989). "A motion for summary disposition brought under MCR 2.116(C)(10), no genuine issue as to any material fact, tests whether there is factual support for the claim. In so ruling, the trial court must consider the affidavits, pleadings, depositions, admissions and other documentary evidence submitted by the parties. MCR 2.116(G)(5). The opposing party must show that a genuine issue of fact exists. Giving the benefit of all reasonable doubt to the opposing party, the trial court must determine whether the kind of record that might be developed would leave open an issue upon which reasonable minds could differ. *Metropolitan Life Ins Co v Reist*, 167 Mich App 122, 118; 421 NW2d 592 (1988). A reviewing court should be liberal in finding that a genuine issue of material fact exists. A court must be satisfied that it is impossible for the claim or defense to be supported at trial because of some deficiency which cannot be overcome. *Rizzo v Kretschmer* 389 Mich 363, 371-372; 207 NW2d 316 (1973).

The party opposing an MCR 2.116(C)(10) motion for summary disposition bears the burden of showing that a genuine issue of material fact exists. *Fulton v Pontiac General Hospital* 160 Mich App 728, 735; 408 NW 2d 536 (1987). The opposing party may not rest upon mere allegations or denials of the pleadings but must, by other affidavits or documentary evidence, set forth specific facts showing that there is a genuine issue for trial. MCR 2.116(G)(4). If the opposing party fails to make such a showing, summary

disposition is appropriate. Rizzo, p 372."

A review of the pleadings reveals that the only issues raised by Defendant's denials to Plaintiff's allegations may be answered by reference to the arbitrator's award which was attached to Plaintiff's Complaint as Exhibit A or by reference to the applicable statute or court rule. See, paragraphs 6 and 9 of Defendant's Answer.

Whether Plaintiff's Motion for Summary Disposition is considered in accordance with MCR 2.116(C)(9) or (10), it can be resolved by simply reviewing the pleadings and the arbitrator's award which is incorporated within the pleadings. The only asserted issues are whether a Judgment may now be entered and whether interest may accrue upon it. Those questions are legal and no genuine issue of material fact exists.

The procedure for confirming an arbitration award in Circuit Court is controlled by MCR 3.602(I). This court rule provides as follows:

"An arbitration award filed with the clerk of the court designated in the agreement or statute within one year after the award was rendered may be confirmed by the Court, unless it is vacated, corrected, or modified, or a decision is postponed, as provided in this rule."

The arbitrator's award has been reduced to writing and is not ambiguous. No motion to vacate, correct or modify the award is before the Court. A Judgment may be entered on the award. MCR 3.602(I) and (L).

The Defendant contests the entry of a Judgment at this time for the reason that the arbitration award does not contain a "provision for the entrance of a Judgment for purposes of accruing interest in either the arbitration award or the contract between the parties." Defendant's Answer, paragraph 9.

This issue is likewise addressed by the applicable court rule. MCR 3.602(L). This rule states as follows:

"The Court shall render judgment giving effect to the award as corrected, confirmed or modified. The judgment has the same force

and effect, and may be enforced in the same manner, as other judgments."

Once entered, the Judgment shall accrue interest and may be enforced in the same manner as other judgments. The arbitrator has entered an award against James Lynch personally in the amount of \$80,606.96. Enforcement of those portions of the award relating to the Kellwood and Circle M losses are stayed pending the conclusion of those bankruptcy proceedings.

There is no limitation on the immediate enforcement of the award as it pertains to the unauthorized sale or to the administrative fees and expenses of the American Arbitration Association and the compensation and expenses of the arbitrator.

Plaintiff's Motion for Summary Disposition, pursuant to MCR 2.116(C)(10) is granted. A Judgment consistent with this Decision and Order and the Award of Arbitrator shall be presented to this Court within fourteen days.

IT IS SO ORDERED .

HON PHILIP E. RODGERS, JR.
Circuit Judge
Dated: 6/14/91