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Award of Attorneys' Fees in Construction Dispute Founded Solely on AAA Rules

On Tuesday, April 21, 2015, the Missouri Court of Appeals issued its decision in *City of Chesterfield v. Frederich Construction Inc., et al.* The Court of Appeals confirmed an arbitration award that included the payment of attorneys' fees despite the lack of contractual provision or statutory authority for such an award. The court held that the arbitrators had the authority to award fees because the AAA rules were incorporated into the parties' contract.

City of Chesterfield v. Frederich Construction, Inc., et al.

The owner and contractor in this construction dispute were parties to a contract that contained a provision stating that all disputes between the parties would be subject to arbitration under the Construction Industry Arbitration Rules of the American Arbitration Association (AAA). The AAA rules provide that arbitrators may award attorneys' fees "if all parties have requested such an award or it is authorized by law or their arbitration agreement." R-45(d)(ii).

When disputes arose on the construction project, the parties submitted the disputes to the AAA for arbitration in accordance with the contract. The contractor's demand for arbitration requested an award of attorneys' fees. The owner also requested attorneys' fees in its amended answer and also in its counterclaim. The owner argued that the prayers for attorneys' fees were merely boilerplate and that they did not constitute prayers for fees that would trigger R-45(d)(ii).

In the final award, the arbitrators found in favor of the contractor and awarded the contractor attorneys' fees of just under \$280,000. The arbitrators noted that there was no contractual provision authorizing the award of attorneys'

fees, no statutory authority to award attorneys' fees, and no "special circumstances" that would justify the award of attorneys' fees. The arbitrators reasoned that they were authorized to award attorneys' fees because the parties' contract incorporated the AAA rules, which state that the arbitrators may award attorneys' fees if all parties request them. On review, the trial court confirmed the award, and on appeal, the Court of Appeals affirmed.

The Court of Appeals held that in light of its standard of review, the only question it can resolve is: Did the arbitrators decide an issue that was within the scope of the parties' agreement? In this instance, the Court of Appeals decided that it did.

The Court of Appeals held that, by incorporating the AAA rules into their agreement, the parties made the rules as much a part of the contract as any other provision. The parties' requests of attorneys' fees was sufficient to trigger the application of R-45(d)(ii). The decision is then up to the arbitrators to decide if the conditions of the rule were met. The Court of Appeals noted that even if it were permitted to review the arbitrators' decision on the application of R-45(d)(ii), it would agree that the award of attorneys' fees was proper.

What This Means to You

When a construction contract contains a provision that all disputes between the parties will be subject to arbitration under the Construction Industry Arbitration Rules of the AAA, caution needs to be exercised when filing a dispute with the AAA. As this case demonstrates, a party can unintentionally trigger the award of attorneys' fees even when such relief is absent from the contract and is not provided by statute. While this case happened in Missouri, the outcome is not necessarily state-specific given the national application of the AAA arbitration rules.

Contact Information

For more information concerning this or other issues construction contracts and arbitrations, please contact your Husch Blackwell attorney or an attorney in our Construction & Design group.