

Filed 12/9/25 Garrett & Tully v. Aliso Properties CA2/3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

GARRETT & TULLY, P.C.,

B332463

Plaintiff and Respondent,

(Los Angeles County
Super. Ct. No. 22STCV22751)

v.

ALISO PROPERTIES, LLC, et al.,
Defendants and Appellants.

APPEAL from a judgment of the Superior Court of Los Angeles County, Daniel M. Crowley, Judge. Reversed in part, affirmed in part, and remanded.

Greenspoon Marder, Alan G. Tippie and Steve Burnell for Defendants and Appellants.

Garrett & Tully, Atkinson, Andelson, Loya, Ruud & Romo, Ryan C. Squire, Jennifer R. Slater, and Brian W. Ludeke for Plaintiff and Respondent.

Defendants and appellants Aliso Properties, LLC and James Corrigan (the Aliso parties) appeal from a judgment confirming an arbitration award in favor of plaintiff and respondent Garrett & Tully, P.C. The Aliso parties challenge the judgment's award of prejudgment interest and costs.

We reverse with respect to the judgment's award of costs and the award of interest accruing before the issuance of the arbitration award. Garrett & Tully's requests for pre-award interest and costs were included in the issues submitted to arbitration. The trial court could not add pre-award interest or costs in subsequent confirmation proceedings. However, we affirm the trial court's judgment to the extent it awarded interest accruing during the post-arbitration award, prejudgment period. The trial court properly awarded such interest under Civil Code section 3287 in proceedings to confirm the arbitration award.

FACTUAL AND PROCEDURAL BACKGROUND

In 2019, Corrigan retained Garrett & Tully to represent the Aliso parties in an arbitration. Garrett & Tully's retainer agreement required "any dispute arising out of or related to the nature, quality or competency of our services or fees, including but not limited to claims of professional negligence, malpractice, and breach of fiduciary duty," to be submitted to the Los Angeles County Bar Association for arbitration. The arbitration provision provided that any award would be final and binding, and it authorized any court with jurisdiction to enter judgment on the award.

The attorney-client relationship between Garrett & Tully and the Aliso parties broke down within three months. Garrett & Tully withdrew as counsel.

In July 2022, Garrett & Tully sued the Aliso parties for failing to pay the firm's invoices. The complaint asserted causes of action for breach of contract, unjust enrichment, quantum meruit, and declaratory relief. The complaint prayed for compensatory damages, "interest thereon as allowed by law at the legal rate per annum," and "costs of suit incurred herein."

In September 2022, the court accepted the parties' stipulation for binding arbitration pursuant to the retainer agreement. In January 2023, the matter proceeded to a month-long arbitration before a three-member arbitration panel.

On February 21, 2023, the panel issued an arbitration award. It concluded that Garrett & Tully terminated its representation for "good cause," as required under the retainer, and the Aliso parties failed to pay the fees and costs Garrett & Tully had incurred during the representation. After striking duplicative and excessive fees, the panel issued Garrett & Tully an award of \$65,492.84, "plus interest in the amount of ten percent per annum from the 30th day after the date of service of this Award." On February 27, 2023, the award was served on the parties.

On March 17, 2023, Garrett & Tully filed a form petition to confirm the award and enter judgment. Garrett & Tully checked a box requesting an award of interest from April 1, 2020, at the statutory rate. It also requested costs in the amount of "\$901.99 (filing of complaint and service fees)."¹

On March 21, 2023, Corrigan sent two checks to Garrett & Tully totaling \$65,492.84, post-dated to March 29, 2023. In an attached letter, Corrigan stated that funds would not "be

¹ Garrett & Tully did not request any costs incurred after the arbitration panel issued the award.

available for these checks until March 29, 2023, the date before interest would start to accrue[] if the payment was not paid in full.”

The Aliso parties opposed Garrett & Tully’s petition to confirm the award and enter judgment. They asserted Garrett & Tully was not entitled to interest because the Aliso parties had tendered full payment before the award’s deadline for interest to start accruing. Copies of Corrigan’s March 21 letter and the post-dated checks were attached to the opposition. The Aliso parties further contended the court should deny the petition because their payment rendered it moot; Garrett & Tully had not requested, and the arbitrators had not awarded, “retroactive interest” from April 1, 2020; and any award should be limited to interest accruing between the date the award was served and the date the Aliso parties paid it in full.

In subsequent hearings, Garrett & Tully argued that the trial court had the authority to award prejudgment interest and costs that Garrett & Tully had requested in its complaint because the arbitration award did not address these requests. The Aliso parties maintained that only the arbitration panel could award prejudgment interest and costs, and, alternatively, that any award of interest should be limited to the period between the issuance of the award and the Aliso parties’ full payment. The court took the matter under submission.

In June 2023, the court granted Garrett & Tully’s petition to confirm the arbitration award and found the firm was entitled to interest and costs. On June 26, 2023, the court entered judgment awarding Garrett & Tully “pre-judgment interest at the rate of 10% per annum from April 1, 2020[,] to March 29, 2023[,] totaling \$25,510.92.” The judgment awarded Garrett &

Tully \$901.99 in costs. Four days later, Corrigan paid Garrett & Tully via check for the full amount of prejudgment interest and costs. The Aliso parties then timely appealed.

DISCUSSION

I. Legal Principles and Standard of Review

Under the California Arbitration Act (CAA), “[a]ny party to an arbitration in which an award has been made may petition the court to confirm, correct or vacate the award.” (Code Civ. Proc., § 1285.) “As our Supreme Court has explained, ‘it is the general rule that parties to a private arbitration impliedly agree that the arbitrator’s decision will be both binding and final.’ (*Moncharsh v. Heily & Blase* (1992) 3 Cal.4th [1,] 9.) To enforce the finality of arbitration, the CAA minimizes judicial intervention.

(*Moncharsh*, at p. 10.) Once a petition to confirm an award is filed, the superior court has only four courses of conduct: to confirm the award, to correct and confirm it, to vacate it, or to dismiss the petition. [Citation.] The trial court is empowered to correct or vacate the award, or dismiss the petition, upon the grounds set out in the pertinent statutes; ‘[o]therwise courts may not interfere with arbitration awards.’ [Citations.]” (*Cooper v. Lavelay & Singer Professional Corp.* (2014) 230 Cal.App.4th 1, 11; Code Civ. Proc., § 1286.) The trial court may not “‘review the merits of the dispute, the sufficiency of the evidence, or the arbitrator’s reasoning, nor may we correct or review an award because of an arbitrator’s legal or factual error, even if it appears on the award’s face.’” (*EHM Productions, Inc. v. Starline Tours of Hollywood, Inc.* (2018) 21 Cal.App.5th 1058, 1063–1064.)

“On appeal from an order confirming an arbitration award, we review the trial court’s order . . . under a de novo standard.” (*Lindenstadt v. Staff Builders, Inc.* (1997) 55 Cal.App.4th 882,

892, fn. 7, citing *Advanced Micro Devices, Inc. v. Intel Corp.* (1994) 9 Cal.4th 362, 376, fn. 9.)

II. Preliminary Issues

A. Garrett & Tully has not met its burden to dismiss the appeal

Garrett & Tully moves to dismiss the appeal, contending that the Aliso parties waived their right to appeal by voluntarily satisfying the judgment in full, including prejudgment interest and costs. The Aliso parties argue there are no grounds to dismiss because their payment of prejudgment interest and costs was not voluntary but was instead made in response to Garrett & Tully's "threat of collections." We deny the motion.

"[W]hen there has been a payment of the judgment by the appellant, he does not lose his right to appeal if it is compulsory, such as under execution or other coercion." (*Reitano v. Yankwich* (1951) 38 Cal.2d 1, 3 (*Reitano*).) Payment of a judgment is presumed compulsory unless the payment was made "by way of compromise and settlement or under an agreement not to appeal or under circumstances leaving only a moot question for determination.' [Citation.]" (*Id.* at p. 4; see also *Retzloff v. Moulton Parkway Residents' Assn., No. One* (2017) 14 Cal.App.5th 742, 748 (*Retzloff*).) A respondent, as the moving party, has the burden to demonstrate that the parties entered into a compromise and settlement or an agreement not to appeal. (*Coldwell Banker & Co. v. Department of Insurance* (1980) 102 Cal.App.3d 381, 401.)

Garrett & Tully has not made this showing. The motion does not argue that the parties reached a settlement or an agreement not to appeal, or that the payment reflected the Aliso parties' intent to waive the prosecution of an appeal. (See

Retzloff, supra, 14 Cal.App.5th at p. 748 [no dismissal where respondent did not offer arguments or evidence that appellants satisfied judgment and agreed not to appeal].)

Moreover, the Aliso parties contend that they paid the interest and costs now challenged on appeal because Garrett & Tully indicated it would otherwise pursue a judgment lien. The Aliso parties included with their opposition a June 26, 2023 e-mail from Garrett & Tully's counsel informing the Aliso parties that if they paid the postjudgment interest and costs "within 15 days," Garrett & Tully would not "proceed with recording an abstract of judgment." In a supporting declaration, Corrigan attests that Aliso Properties, as "a small 'mom and pop' landlord, could not risk the recording of an adverse judgment lien, especially when the recording of an involuntary encumbrance against its property interests may trigger adverse actions by Aliso's lenders." This uncontested evidence supports the conclusion that the Aliso parties' payment was not voluntary and therefore did not eliminate their right to appeal, or moot the issues presented in the appeal. (See *Security Pacific Nat. Bank v. Lyons* (1994) 25 Cal.App.4th 706, 710 [appeal not moot where payment of judgment made "under threat of execution or other judgment debtor proceedings initiated by" the respondent]; *Reitano, supra*, 38 Cal.2d at pp. 2, 4 [dismissal denied where no indication payment of judgment was agreement not to appeal and defendant had threatened to levy execution of judgment].)

B. The trial court did not err by failing to find that the Aliso parties' payment mooted the petition to confirm the arbitration award

The Aliso parties paid the full amount of the arbitration award in March 2023, before interest was set to accrue under the

terms of the award. They argued that, under these circumstances, the trial court should have found Garrett & Tully's petition asking the court to confirm the award and impose interest was moot. The trial court properly rejected the argument.

Because the court must “‘decide actual controversies by a judgment which can be carried into effect, . . . [i]t necessarily follows that when . . . an event occurs which renders it impossible for [the] court, if it should decide the case in favor of [a party], to grant him any effectual relief whatever, the court will not proceed to a formal judgment . . .’ [Citations.]” [Citation.]” (*Parkford Owners for a Better Community v. County of Placer* (2020) 54 Cal.App.5th 714, 722.) If a party complains of an ongoing harm “redressable or capable of being rectified by the outcome the [party] seeks,” then the court can render effective relief. (*In re D.P.* (2023) 14 Cal.5th 266, 276.)

The Aliso parties' payment did not moot Garrett & Tully's petition. The petition requested prejudgment interest and costs not included in the arbitration award and therefore not covered by the Aliso parties' March 2023 payment of that award. Even after the payment, the petition's requests for costs and interest remained a live controversy remediable by the judgment Garrett & Tully sought from the trial court. The trial court did not err by failing to dismiss the petition as moot.

III. The Trial Court Erred by Adding Costs and Pre-Award Interest in the Judgment Confirming the Arbitration Award

The Aliso parties contend that the trial court improperly granted Garrett & Tully \$901.99 in costs and \$25,510.92 in interest from April 1, 2020, to March 29, 2023. We agree in part.

Garrett & Tully's requests for pre-award interest and costs were submitted to arbitration. Whether to grant those requests and in what amounts were issues reserved for the arbitration panel to determine. The trial court could not decide those issues in a subsequent trial court proceeding.

Arbitrators decide all issues submitted for arbitration under the arbitration agreement. (*Pierotti v. Torian* (2000) 81 Cal.App.4th 17, 25 (*Pierotti*); see also *Corona v. Amherst Partners* (2003) 107 Cal.App.4th 701, 705 (*Corona*) [“the scope of the arbitration and the powers of the arbitrator are defined in accordance with the agreement”].) “‘Absent an express and unambiguous limitation in the contract or the submission to arbitration, an arbitrator has the authority to find the facts, interpret the contract, and award any relief rationally related to his or her factual findings and contractual interpretation.’ [Citation.]” (*Heimlich v. Shivji* (2019) 7 Cal.5th 350, 358 (*Heimlich*).) When the arbitration agreement does “not limit the issues to be resolved through arbitration, the issue of [a party’s] entitlement to attorney fees and costs, . . . [is] subject to determination in arbitration proceedings.” (*Corona*, at p. 706; see *Heimlich*, at p. 358.)

Courts have applied the same rationale to parties' requests for interest accruing before the issuance of an arbitral award. In *Maaso v. Signer* (2012) 203 Cal.App.4th 362 (*Maaso*), the parties stipulated to submit medical malpractice claims to arbitration. (*Id.* at p. 366.) The plaintiff prevailed, and the arbitrators awarded costs and fees “‘in accordance with the arbitration agreement.’” (*Id.* at p. 369.) The agreement established that each party would bear its own arbitration fees and costs. (*Id.* at p. 377.) The trial court confirmed the award but denied costs

under Code of Civil Procedure section 998 and interest under Civil Code section 3291, concluding that such relief was “within the sole purview of the arbitrators and not the court.” (*Maaso*, at p. 369.)

The Court of Appeal affirmed. In relevant part, the court held that by seeking damages, costs, “‘and all proper relief’” in the complaint, and subsequently stipulating to the submission of “‘the claims and controversies alleged in this action’” to arbitration, the plaintiff had submitted the issues of costs, interest, and fees to the arbitrators. (*Maaso, supra*, 203 Cal.App.4th at p. 377.) As such, in a petition to confirm the award, the plaintiff could not ask the court to correct the award by “add[ing] costs and interest not awarded by the panel” (*Id.* at p. 378.) Adding costs and interest would make “‘a revision in substance, adding an element of damages not covered . . . in the award as rendered.’” [Citation.]” (*Ibid.*)

Applying these principles here, we conclude the trial court erred by ordering the Aliso parties to pay pre-award interest and costs not conferred by the arbitration award. The arbitration provision in the retainer agreement did not limit the issues the parties were required to submit to arbitration. Garrett & Tully’s complaint alleged a fee dispute and requested “interest at the legal rate” on damages stemming from the Aliso parties’ breach and “costs of suit incurred herein.” On the parties’ stipulation, the trial court subsequently assigned “the matter” to arbitration without limitation. As the complaint prayed for interest and costs, and neither the retainer agreement nor the parties’ stipulation limited the issues to be resolved in arbitration, Garrett & Tully’s requests for pre-award interest and costs were “squarely before” the arbitration panel for final and conclusive

determination. (*Heimlich, supra*, 7 Cal.5th at p. 357; see *Maaso, supra*, 203 Cal.App.4th at p. 377 [submission of “‘claims and controversies’” in litigation to arbitration “included the issue of costs and interest”]); *Corona, supra*, 107 Cal.App.4th at p. 706 [notice indicating contract “‘call[ed] for disputes to be settled by binding arbitration’” encompassed fees and costs]; cf. *Moshonov v. Walsh* (2000) 22 Cal.4th 771, 776 [arbitrator had final authority to decide attorney fee issue where parties prayed for fees in pleadings and submitted “matter” to binding arbitration].)

To the extent Garrett & Tully argues that the trial court could award pre-award interest and costs because the arbitration award was silent on these issues, we disagree. “Arbitrators, unless specifically required to act in conformity with rules of law, may base their decision upon broad principles of justice and equity, and in doing so may expressly or impliedly reject a claim that a party might successfully have asserted in a judicial action. [Citations.] The claim must be expressly raised at some time before the award. If it can only be implied from the facts alleged, the failure to consider it is only an error of judgment that in the absence of fraud or gross misconduct is not subject to judicial review. ‘Even if the omission to find as to those items was due to a mistake on the part of the arbitrators, nevertheless *the omission was in effect a disallowance of those items*, which became final and conclusive when the award was made and proper notice thereof given to the interested parties.’ [Citations.]” (*Sapp v. Barenfeld* (1949) 34 Cal.2d 515, 523 (*Sapp*), italics added; see also *Griffith Co. v. San Diego College for Women* (1955) 45 Cal.2d 501, 516 [“It must be presumed “[t]hat all matters within . . . a submission to arbitration were laid before the arbitrators and passed upon by them.”’ ”].)

Here, the arbitration panel made no findings as to pre-award interest or costs. Irrespective of whether the panel's omission was intended to implicitly deny Garrett & Tully's request for pre-award interest or simply reflected the panel's oversight, the award's silence effectively disallowed these forms of relief. The trial court was not permitted to modify the panel's findings. (*Sapp, supra*, 34 Cal.2d at p. 523.)

IV. The Trial Court Did Not Err In Granting the Petition's Request for Post-Award Interest Under Civil Code Section 3287

The Aliso parties argue that Garrett & Tully's entitlement to interest, if any, is limited to the period between the issuance of the award and the date the Aliso parties paid the award in full. We agree.

Civil Code section 3287 "provides a right to prejudgment interest when a person 'is entitled to recover damages certain, or capable of being made certain by calculation' (§ 3287(a)), and the right to recover is vested in the person on a particular day." (*Glassman v. Safeco Ins. Co. of America* (2023) 90 Cal.App.5th 1281, 1294.) "[Civil Code] Section 3287 applies to arbitration awards." (*Tenzera, Inc. v. Osterman* (2012) 205 Cal.App.4th 16, 21 (*Tenzera*).) An arbitration award results "in a new and fixed liability" from which interest under Civil Code section 3287 accrues. (*Britz, Inc. v. Alfa-Laval Food & Dairy Co.* (1995) 34 Cal.App.4th 1085, 1107 (*Britz*).) Courts may award interest under Civil Code section 3287 as part of proceedings to confirm an arbitration award. (*Britz*, at p. 1106; see, e.g., *Tenzera*, at pp. 22–23 [reversing trial court's denial of interest between date of award through judgment after remand]; *Pierotti, supra*, 81

Cal.App.4th at pp. 27–28 [trial court required to award interest accruing between award and judgment confirming award].)

“A prevailing party in arbitration is entitled to prejudgment interest as of the date of the final award to entry of judgment.” (*Tenzera, supra*, 205 Cal.App.4th at p. 21.) Courts impose post-award, prejudgment interest to ensure prevailing parties are not punished for electing to resolve disputes in arbitration. (*Britz, supra*, 34 Cal.App.4th at p. 1107.) The trial court did not err by granting Garrett & Tully interest accruing from the date the award was issued on February 21, 2023, to the date of the Aliso parties’ payment on March 29, 2023.² (*Pierotti, supra*, 81 Cal.App.4th at p. 28.)

However, Civil Code section 3287 did not entitle Garrett & Tully to obtain pre-award interest from the trial court, even though it requested, but did not receive, pre-award interest in the arbitration. *Britz, supra*, 34 Cal.App.4th 1085, does not aid Garrett & Tully’s argument to the contrary. *Britz* concerned only “interest from the date of the award through entry of judgment.” (*Id.* at pp. 1093, 1106–1107.) The court specifically noted that the interest at issue “was awarded *not* upon the unliquidated contract claims . . . but solely upon the arbitration award from the date of the award. As of the date of the award, respondents were entitled to ‘recover damages certain’ through entry of judgment confirming the award.” (*Id.* at p. 1106, italics added.) Nothing in *Britz* suggests the trial court could have granted pre-

² Typically, a prevailing party is entitled to prejudgment interest from the date the award was issued to entry of judgment. Here, however, the Aliso parties paid the judgment in full on March 29, 2023. Garrett & Tully accordingly asked for and received post-award interest accruing only up to that date.

award interest to the prevailing party under Civil Code section 3287. Garrett & Tully has not identified, and we are unaware of, any authority extending Civil Code section 3287 to pre-award interest under circumstances similar to those presented here.

DISPOSITION

The judgment is reversed as to costs and interest accruing before the date the arbitration award was issued. We remand the matter to the trial court to recalculate interest in accordance with this opinion. The judgment is otherwise affirmed. Appellants to recover their costs on appeal.

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ADAMS, J.

We concur:

EDMON, P. J.

HANASONO, J.