

IN THE COURT OF APPEALS OF IOWA

No. 6-329 / 05-1699
Filed June 14, 2006

CACV OF COLORADO, L.L.C.,
Plaintiff-Appellant,

vs.

MARY L. CROY,
Defendant-Appellee.

Appeal from the Iowa District Court for Linn County, Thomas Koehler,
Judge.

CACV of Colorado, L.L.C. appeals the district court's order denying its
application to confirm an arbitration award. **REVERSED AND REMANDED
WITH DIRECTIONS.**

Charles Litow of Litow Law Office, Cedar Rapids, for appellant.

Mary Croy, Cedar Rapids, pro se.

Considered by Mahan, P.J., and Hecht and Eisenhauer, JJ.

MAHAN, P.J.

CACV of Colorado, L.L.C. (CACV) appeals the district court's order denying its application to confirm an arbitration award. It claims the district court erred both in inquiring into the merits of the dispute sua sponte and in failing to confirm the award. We reverse and remand with directions.

I. Background Facts and Proceedings

On September 29, 2004, CACV was awarded \$23,391.82 as a result of arbitration with Mary Croy. There is no evidence Croy actually participated in the arbitration.¹ On June 10, 2005, CACV petitioned the district court to confirm the award pursuant to Iowa Code section 679A.11 (2005). CACV attached to the petition a copy of the award letter and a brief in support of the petition. The award letter indicated that a copy of the award letter was sent to Croy by first class mail. On June 30, 2005, CACV filed a motion to confirm the arbitration award noting that the time in which Croy had to vacate the award had expired. An affidavit was attached to that motion indicating that on June 12, 2005, Croy was served with the original petition to confirm.

On September 1, 2005, the district court denied CACV's petition. The district court cited four failures in CACV's petition. First, CACV failed to include in its filings "the relevant written agreement (the terms and conditions) which provide for arbitration and which the arbitrator found to be appropriate." Second, the court determined CACV failed to comply with Iowa Code section 679A.8(1), which requires the service of the award on the defendant by registered mail.

¹ Mary Croy has not participated in any of the proceedings at either the district court or appellate court level.

Third, the court found there was no evidence in the record that indicated Croy was served with notice of the arbitration hearing as required by section 679A.5(1). Finally, the court could not determine whether the arbitration award was made within thirty days. CACV appeals the district court's ruling.

II. Standard of Review

We take an appeal from an order denying confirmation of an arbitration award pursuant to Iowa Code sections 679A.17(1)(c) and 679A.17(2). Accordingly, our review is for correction of errors at law. Iowa R. App. P. 6.4.

III. Merits

A. Sua Sponte Inquiry

CACV alleges the district court erred in inquiring into the merits of the dispute sua sponte. We disagree. Our supreme court discussed this issue in *\$99 Down Payment, Inc. v. Garard*, 592 N.W.2d 691 (Iowa 1999). In this regard, our supreme court stated:

Although section 679A.11 contemplates the court will vacate or correct an arbitration award in response to grounds urged by a party, it does not prohibit the court from raising these grounds on its own. Furthermore, district courts are permitted, under certain circumstances to raise issues and take action sua sponte. This includes the power to dismiss cases. Nevertheless, when courts proceed sua sponte, any action taken must be done with restraint. Considering the limited judicial role in the arbitration process, this restraint would require sua sponte action by a court in an arbitration proceeding to be based on more than mere speculation.

\$99 Down Payment, 592 N.W.2d at 695 (citations omitted).

Therefore, we conclude the district court did not err on this issue.

B. Confirmation of Arbitration Award

According to section 679A.11,

Upon the application of a party, the district court shall confirm an award, unless within the time limits imposed under sections 679A.12 and 679A.13 grounds are urged for vacating, modifying, or correcting the award, in which case the district court shall proceed as provided in sections 679A.12 and 679A.13.

As stated previously, Croy did not challenge the arbitration award. Instead, the district court proceeded sua sponte to review the award. As outlined in section 679A.11, the district court's review is conducted under sections 679A.12 and 679A.13. However, this review is limited. Arbitration is viewed favorably as an alternative to civil litigation. *Humphreys v. Joe Johnstion Law Firm, P.C.*, 491 N.W.2d 513, 514 (Iowa 1992). In addition:

Our law also indulges every reasonable presumption in favor of the legality of an arbitration award. Consequently, judicial involvement in arbitration is very limited. To allow courts to "second guess" an arbitrator by granting a broad scope of judicial review would nullify the very advantages of arbitration. Moreover, limited judicial review gives the parties what they bargain for in agreeing to binding arbitration, not merely arbitration which is binding if a court agrees with the arbitrator's award.

\$99 Down Payment, 592 N.W.2d at 693 (citations omitted).

Section 679A.12 provides that, upon application of a party, the district court "shall vacate an award" if (a) the award was a result of corruption, fraud, or other illegal means; (b) the arbitrator was somehow corrupt, or there was misconduct prejudicing a party's rights; (c) the arbitrators exceeded their power; (d) the arbitrators refused to postpone a hearing even after good cause was shown, refused to hear evidence, or conducted the hearing in contrast with the provisions of the Code; (e) there was no arbitration agreement; or (f) substantial

evidence does not support the award. According to section 679A.13, the district court shall modify an award if (a) there is an evident mistake in the award; (b) the arbitrators have made an award on an issue not submitted to them and the award can be modified without affecting the merits of the rest of the decision; or (c) the award is imperfect as a matter of form.

The district court analysis cites four grounds to support denial of the application and motion to confirm the arbitration award. The only ground conceivably included in either section 679A.12 or section 679A.13 is CACV's failure to file "in conjunction with its motion" a copy of the arbitration agreement. However, chapter 679A does not require such a filing with the application and motion to confirm. Section 679A.12(e), instead, contemplates the nonexistence of such an agreement. It is clear from the arbitrator's decision of September 29, 2004, and CACV's motion to reconsider that such a document existed. Therefore, the denial under this ground must fail.

The other three grounds stated by the district court are not included in either section 679A.12 or section 679A.13 as supporting denial of the application or motion to confirm. In addition, the notice requirements of chapter 679A are not as restrictive as outlined by the district court. We note further that the arbitrator found sufficient notice for the hearing to proceed. We fully understand that the district court had reservations about confirming this award and was attempting to safeguard Croy's rights, who did not participate in any proceedings. However, our reading of the law concerning limited review of arbitration awards and the admonition that every reasonable presumption in favor of the legality of

the award is to be indulged leads us to conclude the case must be reversed and remanded for an entry of an order confirming the award.

REVERSED AND REMANDED WITH DIRECTIONS.