

**ENTERED**

AUG 30 2006

**K.R.W.**

IN RE:

Natubhai G. Patel,

Debtor.

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

Case No. 03-00132-W

Chapter 11

**JUDGMENT**

**FILED**  
10 o'clock & 11 AM  
AUG 30 2006  
United States Bankruptcy Court  
Columbia, South Carolina (9)

Based upon the Findings of Fact and Conclusions of Law set forth in the attached Order of the Court, the Motion to Confirm Claim filed by Robert L. Belk is granted.

  
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina  
August 30, 2006

**ENTERED**

AUG 30 2006

K.R.W.

IN RE:

Natubhai G. Patel,

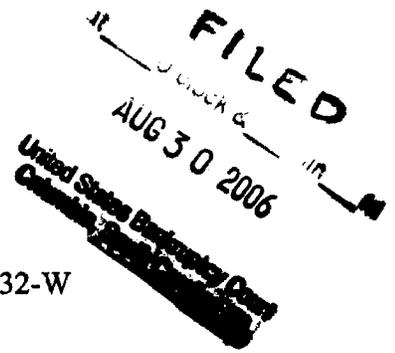
Debtor.

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

Case No. 03-00132-W

Chapter 11

**ORDER**



This matter comes before the Court on Motion to Confirm Claim (“Motion”) filed by Robert L. Belk (“Belk”). Belk seeks to “confirm” his claim against the bankruptcy estate of Natubhai G. Patel (“Debtor”) by having the Court recognize an arbitration award, entered April 14, 2006 (as amended) (“Award”), establishing the validity and amount of Belk’s claim against the bankruptcy estate. Debtor opposes the Motion on grounds that the arbitrator’s award violates certain provisions of Title 11. Pursuant to Fed. R. Civ. P. 9019(c), the Court makes the following Findings of Fact and Conclusions of Law.<sup>1</sup>

**FINDINGS OF FACT**

1. Prior to the petition, Belk performed work on a building owned by Debtor pursuant to the terms of a contract dated April 12, 2002. The contract entered into by Debtor contained an arbitration provision and the following notice on the first page of the contract **“THIS CONTRACT IS SUBJECT TO ARBITRATION PURSUANT TO THE SOUTH CAROLINA ARBITRATION ACT.”**<sup>2</sup>

2. Debtor failed to pay Belk amounts due under the contract and filed a petition for relief under Chapter 11 of the United States Bankruptcy Code on January 3, 2003.

3. On March 5, 2003, Belk filed a proof of claim in the amount of \$14,089.00, not

<sup>1</sup> To the extent any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such, and to the extent any Conclusions of Law constitute Findings of Fact, they are also adopted as such.

<sup>2</sup> South Carolina law requires this language, in capital, underlined lettering, to appear on this first page of a contract. See S.C. Code. Ann. § 15-48-10. The inclusion of this language makes the agreement to arbitrate under South Carolina law enforceable under the South Carolina Uniform Arbitration Act.

including interest and attorneys fees. The claim was filed as secured,<sup>3</sup> with the collateral described as real estate.

4. Debtor's Chapter 11 Plan of Reorganization was confirmed on August 24, 2004 ("Plan").

5. Debtor asserts that the Plan treats Belk as an unsecured Class 10 creditor and sets forth the following treatment of claims in Class 10:

**Unsecured Claims Not Entitled To Priority**

Class 10 shall include the unsecured Claims of General Creditors. In full satisfaction, release, and discharge of all Class 10 Claims against the debtor, each General Creditor shall be paid, in cash, an amount equal to 100% of the amount of such claim as allowed . Interest shall accrue on the unpaid distributions to General Creditors under Class 10 commencing as of the effective date of confirmation at a rate of 4.5% a.p.r. Payments will be made semiannually for a period of 5 years, commencing 6 months after the effective date of confirmation. This claim is impaired. Claimants in this class will be given promissory notes to evidence the payments required by this plan.

6. The Plan provides that confirmation "shall be effective the tenth business day following entry of an order by the Court confirming the Plan."

7. Belk did not appeal the confirmation order.

8. Belk acknowledges in his Motion that his claim is an unsecured Class 10 claim.

9. On December 30, 2004, Debtor filed an objection to Belk's claim. Belk filed a return to the objection in which he requested that the dispute be submitted to arbitration, as required by the contract.

10. A hearing on Debtor's objection to Belk's claim was set for February 14, 2005.

11. On February 10, 2005, without a hearing by the Court, Debtor and Belk submitted a proposed consent order to resolve Debtor's objection to Belk's claim whereby each party agreed to

---

<sup>3</sup> Belk's claim may have been secured at the time it was filed due to a mechanics lien, though Belk may have lost the ability to be secure his claim post-petition because he did not bring an action on the lien pursuant to applicable state law.

submit the matter to "binding arbitration" to determine the "amount and validity of the claim" for all purposes in the bankruptcy case.

12. The Court entered the proposed consent order, thereby canceling the hearing on Debtor's objection to Belk's claim based upon Debtor's agreement to submit the matter to binding arbitration.<sup>4</sup> The language of the consent order clearly indicates the intent of the parties and the Court to be bound by the result of the arbitration, determining the amount and validity of Belk's claim, "for all purposes of this bankruptcy case."

13. The consent order does not refer the matter to a particular arbitrator nor does it specify whether the parties were arbitrating Debtor's objection under the Federal Arbitration Act ("FAA"),<sup>5</sup> the South Carolina Uniform Arbitration Act ("SCUAA"),<sup>6</sup> or the Alternative Dispute Resolution Act ("ADRA").<sup>7</sup>

14. On March 9, 2005, the final decree was issued in Debtor's case and the case was closed.

15. On April 14, 2006, the arbitrator issued the Award. The Award established Belk's claim against Debtor's estate in the amount of \$32,635.00. The Award includes Belk's claim for interest at the contract rate and attorneys' fees.<sup>8</sup>

---

<sup>4</sup> The undersigned was assigned the case in which this matter now arises matter on March 1, 2006, following the retirement of the former judge.

<sup>5</sup> See 9 U.S.C. § 1 *et seq.*

<sup>6</sup> See S.C. Code Ann. § 15-48-10 *et seq.* (2005).

<sup>7</sup> See 28 U.S.C. § 651 *et seq.* One nexus between the ability of the court to use ADR in bankruptcy is found in Fed. R. Bankr. P. 7016, which incorporates Rule 16 of the Federal Rules of Civil Procedure. Rule 16(c)(9) allows the Court to use alternative dispute resolution as a means to settle a matter when such procedure is authorized by statute or by local rule. However, Rule 7016 may not be applicable in this instance because this is a contested matter and Fed. R. Bankr. P. 9014(c) does not incorporate Rule 7016 in contested matters. This interpretation of Rule 9014(c) is supported by the ADRA, which, by its terms, only appears to apply to adversary proceedings in bankruptcy. See 28 U.S.C. § 654(a). It appears that Debtor could seek a *de novo* review of the arbitrator's findings if this matter was governed by local rule or by the ADRA. See 28 U.S.C. § 657(c)(1). However, *de novo* review does not appear to have been the intent of the parties as their consent order states that they agreed to be bound by the results of the arbitration and "the amount shall be adopted and used by both parties for all purposes of this bankruptcy case." Thus, the Court finds that the authority of the parties to enter into binding arbitration must be founded upon other authority.

<sup>8</sup> Belk's attorneys' fees appear to be a combination of pre-petition and post-petition attorneys' fees.

16. Debtor filed an application with the arbitrator to modify the Award. On May 5, 2006, the arbitrator modified the Award. The modification affirmed the amount of Belk's claim but deferred to this Court to confirm and implement the Award.<sup>9</sup>

17. Belk filed the Motion on July 11, 2006.

18. Debtor filed an objection to the Motion on August 14, 2006 and sought a modification of the Award by this Court based upon alleged errors of law committed by the arbitrator.

19. Debtor's application to modify the Award, set forth in his objection, is untimely. Debtor did not move in this Court to modify the Award within 90 days of the date Debtor received the Award.<sup>10</sup>

Although the parties do not precisely set forth the date that Debtor received the Award, as modified, the Court finds that Debtor's application to modify the Award is untimely given that Debtor did not dispute, at the hearing on the Motion, that he did not move in this Court to modify the Award within 90 days after receiving a copy of the Award. The Court also infers that Debtor received notice of the Award within seven days of the date it was issued by the arbitrator.

### **CONCLUSIONS OF LAW**

#### **A. Jurisdiction**

The determination of claims against Debtor's estate arises in and relates to Debtor's bankruptcy estate. 28 U.S.C. § 1334 thus confers jurisdiction in this Court to confirm and enforce the Award notwithstanding the fact that this case closed. See In re Green, C/A No. 03-05607-W, slip op. at 2 (Bankr. D.S.C. Mar. 31, 2005) (discussing the jurisdiction of the bankruptcy court after a chapter 11 case is closed). The Court also has jurisdiction over this matter pursuant to 11 U.S.C. § 1142 and the order confirming the plan, which each provide that the Court retains jurisdiction over matters involving

---

<sup>9</sup> The Award previously required Debtor to pay the Award within thirty days.

the implementation and carrying out of provisions of the confirmed plan.

**B. Applicable Law**

The Court must first determine the applicable law. The determination of the validity and amount of a claim is a core matter over which this Court has exclusive jurisdiction. See 28 U.S.C. § 157(b)(2)(B) and (O). Ordinarily, the determination of a core matter may not be referred to an arbitrator, based solely upon a contractual arbitration provision, absent the Court compelling the parties to arbitrate the matter or the agreement of the parties. See Heiser v. Woodruff, 327 U.S. 726, 741, n. 1, 66 S.Ct. 853, 860, n. 1 (1946) (Rutledge, J., concurring) (noting that the allowance of claims is a judicial act); Moore v. Green Tree Financial Corp. (In re Moore), C/A No. 97-04050-W, Adv. Pro. No. 97-80311-W (Bankr. D.S.C. Jun. 13, 1999) (declining to enforce an arbitration provision in a core matter but enforcing an arbitration provision in a non-core matter); In re GWI, Inc., 269 B.R. 114 (Bankr. D. Del. 2001) (finding that a bankruptcy court has discretion to enforce an arbitration clause regarding a matter within the court's core jurisdiction).

Fed. R. Bankr. P. 9019(c) allows parties to enter into final and binding arbitration regarding any controversy. This right to arbitrate appears to be in addition to any contractual right of arbitration to which the parties agreed pre-petition. See In re Interactive Video Resources, Inc., 170 B.R. 716, 721 (S.D. Fla. 1994) (finding the bankruptcy court may compel parties to arbitrate pursuant to a contractual agreement to arbitrate even if the parties did not agree to arbitrate pursuant to Rule 9019(c)). The agreement made by Debtor in the consent order is consistent with both Rule 9019(c) and the parties' contractual agreement to arbitrate. In the contract, the parties agreed to arbitrate pursuant to the SCUAA. Notwithstanding the fact that this matter arises in a federal bankruptcy case, the FAA does not

---

<sup>10</sup> As discussed herein, Debtor's receipt of the Award is the critical date for determine Debtor's right to seek modification of the Award.

prevent enforcement of agreements to arbitrate under different rules than those set forth in the FAA so long as long as the rules do not undermine the goals and policies of the FAA. See Volt Information Sciences, Inc. v. Board of Trustees, 489 U.S. 468, 476-479, 109 S.Ct. 1248, 1254-12555 (1989) (finding “[t]he FAA contains no express pre-emptive provision, nor does it reflect a congressional intent to occupy the entire field of arbitration.”), Osteen v. T.E. Cuttino Const. Co., 315 S.C. 422, 434 S.E.2d 281, 283 (S.C. 1993) (finding federal arbitration law does not necessarily need to be applied to resolve matters involving interstate commerce if the parties intended to arbitrate under state law). Arbitration under SCUAA also does not appear to be inconsistent with the FAA or Rule 9019(c) and their underlying policy of preserving judicial resources by allowing the parties to resolve disputes through arbitration. Thus, for these reasons, the Court finds that the procedure set forth by SCUAA governs the parties’ agreement to arbitrate pursuant to the consent order.<sup>11</sup>

### **C. Standard of Review**

An arbitration award is presumptively correct and South Carolina courts generally will refuse to review the merits of an arbitration award. See Trident Technical College v. Lucas & Stubbs, Ltd., 386 S.C. 98, 333 S.E.2d 781 (S.C. 1985). When courts review an award, review is limited in scope and the decision of the arbitrator should be vacated only under certain grounds provided by statute, or upon the non-statutory ground of manifest disregard or perverse misconstruction of the law. See Lauro v. Visnapuu, 351 S.C. 507, 570 S.E.2d 551 (S.C. Ct. App. 2002). “If an issue is within the scope of the arbitration agreement, the court need not review the merits of the decision.” See Harris v. Bennett, 332 S.C. 238, 503 S.E.2d 782, 785 (S.C. Ct. App. 1998). “Factual and legal errors by arbitrators do not

---

<sup>11</sup> The result of this Order would not change if the FAA was applied, as the deadline for Debtor to contest the findings in the Award has lapsed under the FAA. See 9 U.S.C. §§ 9-11. It appears, based upon the Award, that the parties were in fact proceeding under the SCUAA as the arbitrator and Debtor supplied a state court caption to the pleadings filed in

constitute an abuse of their powers, and the court is not required to review the merits of the decision so long as the arbitrators do not exceed their powers.” See id. at 785-786. In this case, the parties, by agreement, further narrowed their ability to seek review of the Award in this Court. Debtor agreed in the consent order that the arbitrator’s decision would be binding for all purposes in this bankruptcy case; thereby indicating a clear intent to limit his right to seek a review of that decision. It is also illogical for the matter to be tried twice given that the parties agreed to be bound by the arbitrator’s decision as to the amount and validity of Belk’s claim.

**D. Deadline to Review the Award Has Lapsed**

Debtor asserts that the deadline for him to move to modify the award does not begin until the Award is entered as a judgment, which occurs after the Award is confirmed by the Court. See S.C. Code Ann. § 15-48-150. This position is contrary to the plain language of the SCUAA and existing case law. See id. §§ 15-48-100; 15-48-130(b), and 15-48-140(a). The issuance of a judgment, based upon the Award, does not provide Debtor with a new appeal time but rather S.C. Code Ann. § 15-48-140(a) sets forth the applicable limitations period as beginning on the date that Debtor received the Award. See Eatman's, Inc. v. Martin Engineering, Inc. 311 S.C. 282, 428 S.E.2d 736, 737 (S.C. Ct. App. 1993) (interpreting the SCUAA and finding “[t]he case law clearly prohibits attempts to vacate, modify, or correct an arbitration award once the statutory ninety-day limit has expired.”). The Award became the law of this case 90 days after Debtor received a copy of the Award, even if the arbitrator exceeded his powers or decided a matter not submitted to him. See Sentry Eng'g and Constr., Inc. v. Mariner's Cay Dev. Corp., 287 S.C. 346, 354, 338 S.E.2d 631, 634 (1985); See also, S.C. Code Ann. § 15-48-120 (mandating that the court confirm an award if the deadline to modify or vacate the award

---

arbitration and Debtor moved to modify the award pursuant to the procedure set forth in S.C. Code Ann. § 15-48-100. Debtors also cited state arbitration law in support of his position at the hearing on the Motion.

has passed).

A similar provision for modifying an arbitration award is found in the FAA. See 9 U.S.C. § 12. The Fourth Circuit has interpreted the limitations period in this provision as commencing on the date the party receives the award. See Taylor v. Nelson, 788 F.2d 220, 225 (4th Cir.1986) (interpreting the FAA). Though a party may later bring an action to confirm the award, and thus have a judgment entered on the award, the Fourth Circuit found that “once the three-month period has expired, an attempt to vacate an arbitration award could not be made even in opposition to a later motion to confirm.” See id. (emphasis added). The critical date under each of these arbitration schemes is the date the Award was received by the Debtor, not the date the Award is confirmed and entered as a judgment. At the hearing, Belk asserted the deadline had passed for Debtor to move to modify the Award. Debtor did not refute this assertion. It is also reasonable to infer notice of that the Award was received within seven days of its issuance, even if the Award was served by mail. Therefore, the Court finds that the applicable deadline to modify the Award has lapsed and Debtor cannot now seek to modify the Award because Debtor’s request to modify the Award was made more than ninety days after Debtor received the Award.<sup>12</sup>

**E. Arbitrator Did Not Commit a Manifest Error of Law**

Since the Award may not be modified under the statutory grounds set forth in § 15-48-140, Debtor may only seek modification the Award if he can demonstrate that there was a manifest disregard or perverse misconstruction of the law. See Weimer v. Jones, 364 S.C. 78, 610 S.E.2d 850 (S.C. Ct. App. 2005) (setting forth non-statutory grounds to set aside an arbitration award). The deadline for

moving to modify or set aside the Award under this non-statutory ground is not well defined in South Carolina law; however, it appears that South Carolina courts would not modify an arbitration award after the statutory deadline to modify the award has lapsed. See Eatman's, 428 S.E.d at 737. Assuming such a deadline has not lapsed, the Court finds that Debtor has not demonstrated that the arbitrator committed a manifest disregard for the law.

To demonstrate that there was a manifest disregard for the law, Debtor must demonstrate that “the arbitrator knew of a *governing* legal principle yet refused to apply it, *and* the law disregarded was well defined, explicit, and clearly applicable to the case.” See id. (internal citations omitted). Belk contends, and Debtor does not refute, that Debtor did not raise the issue of the arbitrator’s alleged lack of authority under the Bankruptcy Code to award post-petition interest and attorneys’ fees until after the arbitrator initially issued the Award. The arbitrator could not have modified the Award, on bankruptcy law grounds now urged by Debtor, based upon the arbitrator’s limited ability to modify the Award under South Carolina law. See S.C. Code Ann. § 15-48-100 (allowing arbitrator to only modify award if there is a miscalculation of figures or if the award is imperfect as a matter of form).

Debtor also asserted at the hearing on the Motion that he believed, under the consent order, that the arbitrator would determine only the issues raised in his objection to Belk’s claim and would not determine the impact of this bankruptcy on Belk’s claim. This position is inconsistent with the consent order and Debtor’s agreement to allow the arbitrator to determine the amount of Belk’s claim and the agreement to be bound by that determination for all purposes in this case. Debtor failed to present persuasive evidence at the hearing on the Motion that the arbitrator knew of any governing legal

---

<sup>12</sup> The result of this order would not change if the Court considered the statutory grounds to modify the Award. South Carolina courts do not normally review an arbitration award for errors of law unless the arbitrator exceeded the scope of his power. See Harris, 503 S.E.2d at 785-786. In this case, the arbitrator was vested with the power to determine the validity

principal that would prohibit him from awarding Belk attorneys' fees and the contractual rate of interest prior to the time that the arbitrator initially issued the Award. The arbitrator's decision appears to have followed the general principles for contract construction in South Carolina and thus the Court does not find that the arbitrator committed a manifest error of law.

**F. The Award is Confirmed**

S.C. Code Ann. § 15-48-120 sets forth a summary process for confirming an arbitration award and provides that “[u]pon application of a party, the court shall confirm an award, unless with the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award....” (emphasis added). As the statutory time limits have passed for Debtor to challenge the Award and Debtor lacks evidence to modify the Award on non-statutory grounds, the Award is confirmed and shall be deemed to be an amendment to Belk's timely filed proof of claim to be paid by Debtor's estate under the schedule established by the confirmed plan.<sup>13</sup>

**CONCLUSION**

Based upon the foregoing, Debtor's objections to the Motion are overruled and the Motion is granted.

**AND IT IS SO ORDERED.**

  
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina  
August 30, 2006

---

and amount of Belk's claim. The arbitrator did not exceed the scope of his power by determining Belk has a valid claim for interest and attorneys' fees against Debtor's estate.

<sup>13</sup> The language of the consent order further supports this determination and the summary nature of this Court's confirmation of the arbitrator's award.