

STATE OF MICHIGAN
COURT OF APPEALS

SAVORY ENGINEERS, INC.,

Plaintiff-Counter Defendant-
Appellee/Cross-Appellant,

v

UNPUBLISHED
February 7, 1997

No. 189070
Oakland Circuit
LC No. 94-487246-CK

P.R.S. CONTRACTING, INC.,

Defendant-Counter Plaintiff-
Appellant/Cross-Appellee,

and

REPUBLIC WESTERN INSURANCE COMPANY,

Defendant-Appellant/Cross-Appellee.

Before: M.J. Kelly, P.J., and Hood and H.D. Soet*, JJ.

PER CURIAM.

Defendants appeal as of right from an order granting plaintiff's motion for summary disposition on its claim for a declaratory judgment regarding arbitration and an order confirming the \$80,000 arbitration award to plaintiff. Plaintiff appeals as of right from that portion of the arbitration award order that grants interest only from the date the judgment was entered. We affirm in part and reverse in part.

Plaintiff entered into a subcontract with defendant P.R.S. Contracting, Inc. (defendant) to supply labor and material for a construction project. Some time after plaintiff had begun work on the contract, defendant ordered it to cease all work. Plaintiff sued defendant for breach of contract, alleging that the subcontract incorporated by reference the project documents and defendant's contract with the owner of the project. Plaintiff asserted, therefore, that as provided in defendant's contract with the

* Circuit judge, sitting on the Court of Appeals by assignment.

project owner, plaintiff's subcontract provided that any dispute between the parties would be settled either by commencement of a suit or by compulsory arbitration, with defendant having thirty days to elect between the options.

Plaintiff sought payment for materials and labor it supplied, but defendant failed to pay. Plaintiff advised defendant of the dispute and demanded that defendant elect within thirty days between arbitration or litigation. Defendant failed to elect within thirty days, and plaintiff, taking this as a waiver of defendant's right to elect, filed a demand for arbitration with the American Arbitration Association. The trial court found that the subcontract did contain a valid and enforceable arbitration provision and ordered the parties to submit the controversy to binding arbitration. Defendant did not appeal the declaratory judgment, but stipulated the entry of the order requiring submission of the matter to arbitration. Plaintiff sought recovery of \$215,011, but was awarded \$80,000, which was "inclusive of all claims, interest, cost and attorney fees." Plaintiff then filed a motion for entry of a judgment confirming the arbitration award. Defendant filed a motion to vacate or modify the arbitration award to \$61,078. The trial court granted plaintiff's motion and ordered that judgment be entered on the arbitration award with no modifications and that interest be paid to plaintiff from the date of the judgment until it was paid. This appeal and cross-appeal followed.

Defendant first argues that no valid arbitration agreement existed between the parties because the arbitration clause in the project documents and contract was valid only between the owner and defendant and was not incorporated into its subcontract with plaintiff. Therefore, defendant contends, the trial court's declaratory judgment that the subcontract contained an arbitration agreement was clearly erroneous.

This is not a case in which defendant vigorously contested arbitrability in the trial court. *Detroit Demolition v Burroughs*, 45 Mich App 72; 205 NW2d 856 (1973). Rather, this was a declaratory judgment action, in which defendant stipulated to the entry of declaratory judgment, participated fully in the arbitration proceedings, and then vigorously contested the amount of the arbitration award.

"Declaratory judgments have the force and effect of, and reviewable as, final judgments." MCR 2.605(E). Because the claim regarding whether the parties' contract provided for arbitration and whether it could be invoked by plaintiff in the event defendants failed to elect between arbitration and litigation was resolved by declaratory judgment, defendants were required to appeal this issue within twenty-one days of the entry of the order. MCR 7.204(A)(1)(a). The order was entered on January 13, 1995. Defendants' appeal from this order, which was filed on September 13, 1995, was untimely. We therefore decline to review this issue.

Plaintiff cross-appeals, arguing that the trial court erred in denying its request for interest from the date the arbitration award was rendered, allowing only interest from the date the judgment was entered until the judgment was satisfied. Statutory interpretation is a question of law subject to de novo review on appeal. *Saraski v Dexter Davison Kosher Meat & Poultry*, 206 Mich App 347, 351; 520 NW2d 383 (1994).

In *Wiselogle v Michigan Mut Ins Co*, 212 Mich App 612; 538 NW2d 98 (1995), this Court held that prejudgment interest on arbitration awards conducted pursuant to an arbitration agreement was controlled by MCL 438.7; MSA 19.4¹ from the date the arbitration award was rendered until the winning party filed a motion to confirm the award. *Wiselogle, supra* at 621. The rate of interest under this statute is the general legal rate established in MCL 438.31; MSA 19.15(1),² which is five percent. *Gordon Selway, Inc v Spence Bros, Inc*, 438 Mich 488, 511; 475 NW2d 704 (1991). MCL 600.6013; MSA 27A.6013³ governs the award of interest from the filing of the motion to confirm the award until the judgment is paid, and the rate is twelve percent. *Wiselogle, supra*, 212 Mich App 618-619, 621. We therefore reverse the trial court's decision regarding interest and remand for an award of interest consistent with the statutory mandates.

Affirmed in part, reversed in part. We do not retain jurisdiction.

/s/ Michael J. Kelly

/s/ Harold Hood

¹ MCL 438.7; MSA 19.4 provides:

In all actions founded on contracts express or implied, whenever in the execution thereof any amount in money shall be liquidated or ascertained in favor of either party, by verdict, report of referees, award of arbitrators, or by assessment made by the clerk of the court, or by any other mode of assessment according to law, it shall be lawful, unless such verdict, report, award, or assessment shall be set aside, to allow and receive interest upon such amount so ascertained or liquidated, until payment thereof or until judgment shall be thereupon rendered; and in making up and recording such judgment, the interest on such amount shall be added thereto, and included in the judgment.

² MCL 438.31; MSA 19.15(1) provides in pertinent part:

The interest of money shall be at the rate of \$5.00 upon \$100.00 for a year, and at the same rate for a greater or less sum, and for a longer or shorter time, except that in all cases it shall be lawful for the parties to stipulate in writing for the payment of any rate of interest, not exceeding 7% per annum. . . .

³ MCL 600.6013; MSA 27A.6013 provides in pertinent part:

(1) Interest shall be allowed on a money judgment recovered in a civil action, as provided in this section

(5) For complaints filed on or after January 1, 1987, if a judgment is rendered on a written instrument, interest shall be calculated from the date of filing the complaint to the date of satisfaction of the judgment at the rate of 12% per year compounded annually . .

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