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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2466-15T2

THE OCEAN COUNTY UTILITIES AUTHORITY,

Plaintiff-Respondent,

v.

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED-INDUSTRIAL, AND SERVICE WORKERS INTERNATIONAL UNION AFL-CIO Local 1-149, a/k/a UNITED STEEL WORKERS, Local 4-149, and PAUL GUDZAK,

Defendants-Appellants.

Argued May 17, 2017 – Decided July 12, 2017

Before Judges Alvarez, Accurso and Lisa.

On appeal from Superior Court of New Jersey, Chancery Division, General Equity Part, Ocean County, Docket No. C-0006-14.

David Tykulsker argued the cause for appellants (David Tykulsker & Associates, attorneys; Mr. Tykulsker, on the briefs).

Richard S. Haines argued the cause for respondent (Haines & Yost, attorneys; Jerome C. Landers, on the brief).

PER CURIAM

On October 16, 2009, the Ocean County Utilities Authority (Authority) fired one of its employees, Paul Gudzak, who was represented by United Steel Workers Local 4-149 (Union) as his collective bargaining representative. The Union filed a grievance, which did not result in resolution of the dispute, and the parties filed for arbitration with the State Board of Mediation, which was provided for in the Collective Bargaining Agreement (CBA). The arbitration resulted in an award reversing the Authority's action and reinstating Gudzak with back pay, after serving a thirty-day suspension.

On January 9, 2014,[1] the Authority filed a Chancery Division action seeking to vacate the arbitrator's award as untimely under the CBA, and thus void. This was because the CBA required that the award be rendered within thirty days of closing the hearing, and the arbitrator did not issue the award for approximately six

[1] This long delay resulted in substantial part from an action the Authority filed challenging the timeliness of the filing of the arbitration. After an adverse trial court determination, the Authority appealed. We affirmed, Ocean Cty. Utils. Auth. v. United Steel, Paper & Forrestry [sic], Rubber, Mfg., No. A-5794-10 (App. Div. June 25, 2012), thus returning the matter for arbitration on the merits.

months after the hearing was concluded. On cross-motions for summary judgment, the court agreed with the Authority, and on February 28, 2014, issued an order vacating the award as untimely and remanding the matter to the State Board of Mediation for a new arbitration before a different arbitrator.

For reasons that are not entirely clear from the record, and which are not dispositive, a long period of inactivity ensued. Although the February 28, 2014 order was sent to the State Board of Mediation, no new arbitrator was appointed, no hearing was held, and no action occurred. On June 30, 2015, the Authority moved to dismiss the new arbitration for failure to prosecute. The court denied this motion on September 18, 2015, and again ordered that the matter proceed to arbitration.

The Union then filed a motion seeking reconsideration of the February 28, 2014 order that had vacated its winning arbitration award on grounds that the court's decision had been palpably incorrect for automatically vacating the award because it was issued beyond the thirty-day limit. The Union contended that the February 28, 2014 order was interlocutory in nature and therefore could be reconsidered at any time in the court's discretion.

The court rejected the Union's argument that the February 28, 2014 order was interlocutory. The court held that, under Rule 2:2-3(a), an order compelling arbitration is deemed final, as a

result of which a reconsideration motion had to be filed within twenty days pursuant to Rule 4:49-2, the time limit for which is non-relaxable pursuant to Rule 1:3-4(c). The court therefore entered an order on January 8, 2016 denying the reconsideration motion. The effect of this order was to leave in effect the February 28, 2014 order compelling re-arbitration of the dispute.

The Union appeals denial of the reconsideration motion. It argues (1) that in ordering re-arbitration because the thirty-day deadline was not met, the court's February 28, 2014 decision was based on plainly incorrect reasoning and misapplication of the controlling legal principles; and (2) that in denying its motion for reconsideration filed twenty-one months later, the court wrongly concluded that the February 28, 2014 order was a final order and acted arbitrarily when it failed to reconsider the palpably incorrect order compelling re-arbitration.

We reject the Union's second argument. We agree with the trial court that the February 28, 2014 order was a final order, not subject to reconsideration by the trial court unless a motion was filed within twenty days. We therefore conclude that the reconsideration motion was properly denied as untimely. Because of this conclusion, we need not consider the substantive issues raised in defendant's first argument. We therefore affirm the January 8, 2016 order.

The sole issue before us is whether an order compelling arbitration (in this case re-arbitration after the initial award was vacated by the court) is a final order. Rule 2:2-3(a) provides that "any order either compelling arbitration, whether the action is dismissed or stayed, or denying arbitration shall also be deemed a final judgment of the court for appeal purposes." The Union argues that an order compelling arbitration is, by its nature, interlocutory. The Union contends that the dispute in such a case has obviously not been resolved at the time of the order compelling arbitration, and the parties can and often do return to court seeking relief, such as an order enforcing an arbitration award or an order vacating it. Indeed, that was done in this case after the initial award was rendered. The Union argues that the qualifying language, "for appeal purposes," bolsters its argument by reflecting that such orders are not actually final, but only treated as such to allow an appeal without requiring leave to appeal from an interlocutory order. See Rule 2:2-4.

By the Union's reasoning, when an order compelling arbitration is entered, the party who had resisted arbitration would have several choices. It could file a timely appeal within forty-five days in the Appellate Division pursuant to Rule 2:2-3(a). It could file a timely reconsideration motion within twenty days pursuant to Rule 4:49-2. It could go through with the

arbitration proceeding and, if the award is unfavorable and the trial court denies its motion to vacate the award, it could then file a plenary appeal. It would then argue in the Appellate Division that the order compelling arbitration was substantively infirm and should be reversed, the result of which would be to render the arbitration award void for lack of jurisdiction. Or, as occurred in this case, it could wait much longer than the twenty-day non-relaxable time limit for reconsideration of final judgments or orders and file a motion to reconsider an "interlocutory" order. Under this option, the court would have the authority to decide the motion because interlocutory orders "may be reconsidered and revised 'at any time before the entry of a final judgment in the sound discretion of the court in the interest of justice.'" Bender v. Walgreen E. Co., 399 N.J. Super. 584, 593 (App. Div. 2008) (quoting R. 4:42-2).

We reject this reasoning. A review of the cases in which our Supreme Court implemented the provision in Rule 2:2-3(a) with respect to orders compelling arbitration reveals an opposite intent and purpose. This specific issue first came before the Court in 2008, in Wein v. Morris, 194 N.J. 364 (2008). The Court held that upon the issuance of an order compelling arbitration and dismissing the complaint, "that decision ended the litigation in the Superior Court." Id. at 379. Therefore, "[t]here was nothing

left for the trial court to decide between the parties," as a result of which "the order of the trial court was a final judgment subject to an immediate appeal." Ibid.

The Court went on to state that

> there should be a uniform approach with respect to the right to appeal an order for arbitration. When the parties are ordered to arbitration, the right to appeal should not turn on whether a trial court decides to stay the action or decides to dismiss the action. Rather, the same result should apply in either case.
>
> [Ibid.]

This uniform procedure would "provide uniformity, promote judicial economy, and assist the speedy resolution of disputes." Id. at 380. The Court therefore invoked its rulemaking authority and directed the amendment of Rule 2:2-3(a) "to add an order of the court compelling arbitration to the list of orders that shall be deemed final judgments for appeal purposes." Ibid.

The Rule and its application were further refined three years later in GMAC v. Pittella, 205 N.J. 572 (2011). In that case, the trial court entered orders compelling arbitration between some, but not all of the parties, allowing the claim against the party for which arbitration was not ordered to proceed in court. Id. at 574. When the litigation in court concluded one year later, an appeal was taken from the orders compelling arbitration. Id.

at 575. This court rejected the argument that the appeal was untimely, addressed the merits of the appeal, and reversed the orders compelling arbitration. Id. at 577.

Because the split order entered in Pittella was not contemplated in Wein, the Supreme Court determined that the "difference requires us to again consider basic principles regarding finality." Id. at 583. It concluded:

> A reference to arbitration, unlike most interlocutory orders, terminates the role of the court altogether. The policy behind Wein applies irrespective of whether other claims or parties remain in the trial court, and—as already noted—the Uniform Act expressly permits appeals from orders denying arbitration.
>
> We, therefore, now hold that Rule 2:2-3(a) be further amended to permit appeals as of right from all orders permitting or denying arbitration. Because the order shall be deemed final, a timely appeal on the issue must be taken then or not at all. A party cannot await the results of the arbitration and gamble on the results.
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> [Id. at 586 (emphasis added).]

Again referring to policies of uniformity and expedition in resolving disputes in cases in which arbitration is an issue, the Court also directed the amendment of Rule 2:11-1(a), to automatically confer expedited status in the Appellate Division to appeals of orders compelling or denying arbitration, in the

same manner as with appeals by leave granted from interlocutory orders. Id. at 586 n.12.

The Court concluded that the novel question before it, which had not been addressed in Wein, "and its resolution are now crystal clear: orders compelling or denying arbitration are deemed final and appealable as of right as of the date entered." Id. at 587. Therefore, the Court warned that

> as of today, litigants and lawyers in New Jersey are on notice that all orders compelling and denying arbitration shall be deemed final for purposes of appeal, regardless of whether such orders dispose of all issues and all parties, and the time for appeal therefrom starts from the date of the entry of that order.
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> [Ibid.]

The trial court applied these principles correctly in this case. The reconsideration motion was from a final order and was grossly out of time. That reconsideration motion was therefore properly denied. As we have stated, because of our determination on the timeliness issue, we do not reach the substantive issues the Union raised in its reconsideration motion.

Accordingly, the February 28, 2014 order compelling arbitration remains in effect, and the parties will take the necessary steps to arrange for the appointment of an arbitrator

and proceed as expeditiously as possible with the re-arbitration of this dispute.

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.

CLERK OF THE APPELLATE DIVISION