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FIFTH DIVISION
August 11, 2017

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

| | | |
|---------------------------------------|---|------------------|
| SYLVIA LOVING, |) | Appeal from the |
| |) | Circuit Court of |
| Plaintiff-Appellee, |) | Cook County. |
| |) | |
| v. |) | No. 14 CH 11221 |
| |) | |
| AMERICAN HEARTLAND INSURANCE COMPANY, |) | The Honorable |
| |) | Rodolfo Garcia, |
| Defendant-Appellant. |) | Judge Presiding. |

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Hall and Reyes concurred in the judgment.

ORDER

¶1 *HELD:* Where defendant failed to challenge the arbitration award within the requisite 90-day time period for vacatur of such an award, the circuit court properly granted summary judgment in favor of plaintiff and confirmed and entered judgment on that award.

¶2 Defendant, American Heartland Insurance Company (American Heartland), appeals the circuit court’s order granting summary judgment in favor of plaintiff, Sylvia Loving, regarding coverage for the accident at issue and entering judgment on an

arbitration award in plaintiff's favor. Defendant contends summary judgment and the arbitration award were entered in error where the insurance policy at issue had been rescinded effectively making the policy void, thus there was nothing upon which to arbitrate and no coverage for plaintiff. Based on the following, we affirm.

¶3

FACTS

¶4 On August 2, 2012, plaintiff was involved in a vehicle accident with an uninsured motorist. At that time, plaintiff had an automobile insurance policy with defendant. The policy was to be in effect from February 25, 2012, until February 25, 2013. The policy contained uninsured motorist coverage. The policy also contained a provision stating that disputes between the parties were to be settled by arbitration. More specifically, the arbitration provision of the subject policy provided:

“If any person making claim hereunder and the Company do not agree that both the vehicle(s) and the driver(s) of the vehicles with which any person making claim has had an accident were not covered by liability insurance at the time of the accident, or do not agree that such person is legally entitled to recover damages from the owner or operator of an uninsured motor vehicle, where applicable, or do not agree as to the amount payable hereunder, then these matters shall be submitted to arbitration. Any dispute with respect to the coverage and the amount of damages shall be submitted for arbitration to the American Arbitration Association and be subject to its rules for the conduct of the arbitration hearings as to all matters except medical opinions. Alternatively, such disputes shall be determined in the following manner: Upon the insured or the Company requesting arbitration, the insured and the Company shall each select an arbitrator and the

two arbitrators so named shall select a third arbitrator. The three arbitrators shall hear and determine the questions in dispute. If such arbitrators are not selected within 45 days from such request, either party may request that the arbitration be submitted to the American Arbitration Association.”

On August 15, 2012, plaintiff made a demand for arbitration.

¶5 On November 27, 2012, American Heartland sent plaintiff a letter notifying her that, upon investigation, it learned she had failed to disclose a speeding ticket of 15-25 miles per hour above the speed limit on her application of insurance. American Heartland stated that, as a result of the omission, it had rescinded plaintiff’s insurance policy and would not pay any benefits under the policy or defend or indemnify any person in any litigation related to the rescinded policy.

¶6 Plaintiff filed a demand for arbitration with the American Arbitration Association (AAA) on December 12, 2012, after no arbitrators had been selected. American Heartland, however, notified AAA that it would not participate in an arbitration proceeding because the parties did not have a valid contract. On September 4, 2013, the arbitration was held in defendant’s absence and an award was entered in favor of plaintiff for \$8,500.

¶7 On July 8, 2014, plaintiff filed the underlying declaratory action, requesting that the circuit court confirm the arbitration award and enter judgment in her favor and against American Heartland. In her complaint, plaintiff noted that defendant had not filed an application to vacate the arbitration award within the requisite 90-day time period pursuant to section 12(b) of the Uniform Arbitration Act (Act) (710 ILCS 5/12(b) (West 2014)). In response, on July 16, 2014, defendant filed an answer, an affirmative defense,

and a counterdeclaratory action. In its affirmative defense, defendant argued that it could not be subject to the principles of estoppel because the subject policy did not exist at the time of the arbitration hearing; therefore, there was nothing that could be arbitrated. In its counterdeclaratory action, defendant again denied the existence of the insurance policy based on rescission.

¶8 Plaintiff then filed a motion for summary judgment, arguing that the arbitrator's award should be confirmed where there was no allegation of "corruption, fraud, or other undue means" in the case and where defendant failed to file a timely application to vacate the award. Plaintiff acknowledged defendant's position that her omission of a speeding ticket on the insurance application constituted a basis for rescinding coverage; however, she argued that the issue should have been raised by defendant in a declaratory action prior to the arbitration hearing or within 90 days after receipt of the arbitration award.

¶9 Defendant responded to plaintiff's motion for summary judgment and filed a cross-motion for summary judgment. According to defendant, because it has rescinded plaintiff's policy, the policy was rendered void *ab initio* and plaintiff did not have coverage on the date of her collision with the uninsured motorist. Moreover, because no policy was in place, defendant argued that it had no obligation to arbitrate or to file a declaratory action prior to the arbitration held in its absence. Defendant reasoned that, since there was no agreement to arbitrate, there was no jurisdiction to conduct the arbitration. Defendant argued in its cross-motion that it was the circuit court's duty to determine whether the subject policy had been rescinded first because that matter would establish whether the arbitrators had jurisdiction to enter the award. According to defendant, the jurisdictional question had "no time limit."

¶10 On September 29, 2016, the circuit court entered an order granting summary judgment in favor of plaintiff and against defendant and denying defendant's cross-motion for summary judgment. The circuit court confirmed the September 4, 2013, arbitration award and entered judgment on that award. This appeal followed.

¶11 ANALYSIS

¶12 Defendant contends the circuit court erred in granting summary judgment in favor of plaintiff and confirming and entering judgment on the arbitration award where (1) the arbitrator lacked authority to determine whether the subject policy was in place at the time of the accident and (2) defendant was not required to file an application to vacate the arbitration award within 90 days because the subject policy had been rescinded, thereby rendering the subject policy void *ab initio*.

¶13 Summary judgment is proper when the pleadings, depositions, and affidavits on file demonstrate that no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2014). We review an order granting summary judgment *de novo*. *Kenny v. Kenny Industries, Inc.*, 406 Ill. App. 3d 56, 62 (2010).

¶14 In entering summary judgment, the circuit court confirmed the September 4, 2013, arbitration award and entered judgment thereon. The law in Illinois is well settled that a court's review of an arbitrator's award is extremely limited. *Id.* " 'Whenever possible a court must construe an award to uphold its validity ***.' " *Id.* (quoting *Garver v. Ferguson*, 76 Ill. 2d 1, 10 (1979)). Courts must presume that the arbitrator did not exceed his authority. *Id.* In fact, the Act provides that "[u]pon application of a party, the court shall confirm an award, unless within the time limits hereinafter imposed grounds

are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in Sections 12 and 13.” 710 ILCS 5/11 (West 2014).

¶15 The Act additionally provides the limited circumstances under which a court may vacate an arbitration award. Section 12 of the Act states, in relevant part:

“(a) Upon application of a party, the court shall vacate an award where:

(1) The award was procured by corruption, fraud or other undue means;

* * *

(5) There was no arbitration agreement and the issue was not adversely determined in proceedings under Section 2 [Proceedings to compel or stay arbitration] and the party did not participate in the arbitration hearing without raising objection; but the fact that the relief was such that it could not or would not be granted by the circuit court is not ground for vacating or refusing to confirm the award.

(b) An application under this Section shall be made within 90 days after delivery of a copy of the award to the applicant, except that if predicated upon corruption, fraud or other undue means, it shall be made within 90 days after such grounds are known or should have been known.” 710 ILCS 5/12 (West 2014).

¶16 In this case, defendant argues that the arbitrator lacked jurisdiction to enter the September 4, 2013, award because there was no agreement to arbitrate where the subject insurance policy containing such agreement had been rescinded prior to the arbitration proceeding. Plaintiff responds that the circuit court properly confirmed the arbitration award and entered judgment thereon where defendant failed to allege “corruption, fraud

or other undue means” related to the award and where defendant failed to file a timely application to vacate the award.

¶17 We find *Mid-American Regional Bargaining Assoc. v. Modern Builders Industrial Concrete Co.*, 101 Ill. App. 3d 83 (1981) to be instructive. In that case, the court stated:

“It is true, as defendant contends, that under the Uniform Arbitration Act [citation], before there can be arbitration there must be a valid arbitration agreement that persons not parties to an arbitration agreement cannot be compelled to participate in arbitration. [Citations.] If there is no agreement, the court may stay a threatened arbitration proceeding [citation], or may vacate the arbitration award [citation]. But the absence of an arbitration agreement is a defense only if timely raised. [Citations.]” *Id.* at 86.

Pursuant to the language of section 11 of the Act, it is clear that “the court has no discretion but must confirm the award unless defenses are raised within ninety days from delivery of the award or, if corruption, fraud or other undue means are alleged, within ninety days after such grounds are known or should have been known.” *Id.* at 88. Where, as was the case here, defendant raised no defenses within the requisite 90-day time period, the circuit court was required to confirm the award.

¶18 We recognize defendant’s argument that the question of arbitrability was for the court; however, as the court stated in *Mid-American Regional Bargaining Assoc.*, the question of arbitrability is governed by section 12(a)(5) of the Act and can be raised before the hearing or after an award is issued. *Id.* at 87. Moreover, the determination of whether a valid contract existed in this case was not a prerequisite to proceeding with the

arbitration. *Best Coin-Op, Inc. v. Clementi*, 120 Ill. App. 3d 892, 898 (1983). Here, defendant failed to challenge the arbitrability of the subject insurance policy at *any time*. Contrary to defendant's argument, its position that there was no arbitration agreement and its lack of participation in the arbitration proceeding did not make it exempt from the 90-day limit deadline. Rather, section 12(a)(5) expressly addresses situations where one of the parties disputes the existence of the arbitration agreement and section 12(b) expressly imposes a 90-day limit on attempts to vacate an award based on one of the grounds listed in section 12(a).

¶19 Simply stated, an arbitration award was entered against defendant and defendant was required to challenge the award within 90 days of delivery or within 90 days of having knowledge of corruption, fraud, or other undue means. Defendant failed to raise a claim that there was no arbitration agreement within 90 days of the order and raised no defenses; therefore, the circuit court had no option but to confirm the arbitration order.

¶20 We find defendant's reliance on *State Farm Insurance Co. v. American Service Insurance Co.*, 332 Ill. App. 3d 31 (2002), to be misplaced where the issue here is not whether defendant was estopped from asserting coverage defenses, but whether defendant was subject to the arbitrator's award.

¶21 CONCLUSION

¶22 We affirm the judgment of the circuit court granting summary judgment in favor plaintiff and confirming and entering judgment on the arbitration award.

¶23 Affirmed.