IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CAPITAL MANUFACTURING, INC.,	:	
Plaintiff,	:	**CIVIL ACTION**
	:	
v.	:	
	:	
RAYCO INDUSTRIAL, INC.,	:	
Defendant.	:	**No. 05-979**

MEMORANDUM AND ORDER

Schiller, J. **May 6, 2005**

Presently before the Court are Capital Manufacturing, Inc.'s ("Capital") petition to vacate and/or modify an Arbitration Award (the "Award") entered against it and in favor of Rayco Industrial, Inc. ("Rayco") and Capital's motion to remand its petition to state court.[1] For the reasons set forth below, Capital's motion to remand is denied, the petition to vacate and/or modify is denied, and accordingly, the Award is confirmed.

I. BACKGROUND

On May 6, 2002, Capital and Rayco entered into a Subcontract Agreement ("the Subcontract") which called upon Rayco to install handrails and perform other work for a building located in Indianapolis, Indiana. (Rayco's Mot. to Confirm Ex. A.) Capital is a Pennsylvania corporation and Rayco is an Alabama corporation. (Capital's Pet. ¶¶ 1-2.) The Subcontract provided for Capital to pay Rayco within thirty days after Rayco completed the necessary work, provided that three conditions were met: 1) delivery of photographs of the completed work; 2) submission of an

[1] Rayco has also filed a related action in this Court moving to confirm the Award pursuant to the Federal Arbitration Act, 9 U.S.C. §§ 1-14 (2005) (the "FAA"). As explained *infra*, however, because this Court denies Capital's petition to vacate, it automatically confirms the Award, and hence it is unnecessary to decide Rayco's petition to confirm.

owner's certificate of completion on a form provided by Capital; and 3) a release of liens and claims in favor of Capital and the building's owner. (Rayco's Mot. to Confirm ¶ 5(a).) The Subcontract further provided that "[a]ll disputes arising out of this Agreement shall be resolved by submission to the American Arbitration Association [(the "AAA")] pursuant to its Construction Industry Rules of Arbitration then in effect. All proceedings shall be conducted at the Philadelphia Regional office of the American Arbitration Association." (*Id*. ¶ 15.)

A dispute did arise regarding the Subcontract, and the parties arbitrated their differences on January 10 and 11, 2005, before Robert C. Nicander of the AAA (the "Arbitrator"). On January 20, 2005, the Arbitrator entered an Award, finding for Rayco in the amount of $103,667.07, plus interest. (*Id*. Ex. C.) The Arbitrator further stated that "[t]his Award is in full settlement of all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are hereby[] denied." (*Id*.) It is undisputed that despite the Arbitrator's Award, Rayco has not yet been paid.

Thereafter, on February 22, 2005, Capital filed the instant action in the Philadelphia Court of Common Pleas. In its petition, Capital sought to "vacate and/or modify" the Award because the Arbitrator failed to order Rayco to deliver the photographs of the completed work and the release of liens and claims, which Capital claims is a "necessary precondition to payment." (Capital's Pet. ¶ 11.) Rayco removed the case to this Court on March 1, 2005. Capital filed a motion to remand to the Court of Common Pleas on March 11, 2005. Accordingly, the Court must now decide whether it may assert subject matter jurisdiction over this action, and if so, whether the Award should be vacated and/or modified.

II. STANDARD OF REVIEW

Federal courts may exercise diversity jurisdiction only if the parties are of completely diverse citizenship and the amount in controversy exceeds $75,000.00, exclusive of interest and costs. 28 U.S.C. § 1332(a); *see also Strawbridge v. Curtiss*, 3 Cranch 267 (1806) (requiring complete diversity of parties). "Unless the law gives a different rule, the sum claimed by the plaintiff controls . . . . It must appear to a legal certainty that the claim is really for less than the jurisdictional amount to justify dismissal." *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 288-89 (1938). When determining the amount in controversy, the Court must focus "on the time that the complaint was filed." *Suber v. Chrysler Corp.*, 104 F.3d 578, 583 (3d Cir. 1997). Where, as here, injunctive or declaratory relief is at stake, "the amount in controversy is often not readily determinable. Under those circumstances, the amount in controversy is determined by 'the value of the object of the litigation.'" *Columbia Gas Transmission Corp. v. Tarbuck*, 62 F.3d 538, 541 (3d Cir. 1995) (*quoting Hunt v. Washington Apple Adver. Comm'n*, 432 U.S. 333, 347 (1977)). The amount in controversy requirement is narrowly construed to fulfill the Congressional purpose of "keep[ing] the diversity caseload of the federal courts under some modicum of control." *Packard v. Provident Nat'l Bank*, 994 F.2d 1039, 1044-45 (3d Cir. 1993).

III. DISCUSSION

The Court must resolve two questions: First, whether the amount in controversy is satisfied, thus allowing the Court to exercise diversity jurisdiction; and second, if diversity jurisdiction is appropriate, whether the arbitrator's decision should be vacated and/or modified. "It is axiomatic that federal courts are courts of limited jurisdiction, and as such are under a continuing duty to satisfy

themselves of their jurisdiction before proceeding to the merits of any case." *Packard*, 994 F.2d at 1049. Consequently, "[a] federal court is bound to consider its own jurisdiction preliminary to consideration of the merits." *Trent Realty Assocs. v. First Fed. Sav. & Loan Ass'n of Phila.*, 657 F.2d 29, 36 (3d Cir. 1981). This Court will therefore determine whether the amount in controversy has been met before deciding whether the arbitrator's decision should be vacated and/or modified.

A. Amount in Controversy

Courts use varying approaches to determine the amount in controversy in actions challenging arbitration awards. Some courts look only to the amount of the arbitration award. *See, e.g., Baltin v. Alaron Trading Corp.*, 128 F.3d 1466 (11th Cir. 1997); *Ford v. Hamilton Invs., Inc.*, 29 F.3d 255 (6th Cir. 1994). Under this approach, "the amount in controversy is equal to the arbitration award regardless of the amount sought in the underlying arbitration." *Goodman v. CIBC Oppenheimer & Co.*, 131 F. Supp. 2d 1180, 1184 (C.D. Cal. 2001). Other courts, however, take a more expansive view: they examine not just the eventual arbitration award, but also look to the original amount sought in the underlying arbitration to determine the amount in controversy for diversity purposes. *See, e.g., Hough v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 757 F. Supp. 283 (S.D.N.Y. 1991).

As noted, Rayco removed this action from the Court of Common Pleas on March 1, 2005. Capital argues that the amount in controversy has not been met, and that its Petition must therefore be adjudicated in state court. Specifically, Capital argues that remand is appropriate here because it seeks only equitable relief and does not contest the monetary amount of the Award. This equitable relief consists of three elements: Capital wants Rayco to deliver photographs of the work that Rayco performed; it wants Rayco to provide a certificate of completion of the work; and it wants a release of liens and claims in favor of Capital. According to Capital, this relief has no monetary component,

and so the value of the relief to Capital is zero. Rayco replies that the sole purpose of Capital's motion to vacate is to defeat the entire Award, because, by insisting upon the satisfaction of conditions before paying the amount that Rayco undisputedly deserves, Capital is placing the entire amount of the arbitration in controversy.

This Court holds that the amount in controversy is met and that this action is accordingly amenable to federal diversity jurisdiction. For the amount in controversy requirement to be unfulfilled, it must appear to a "legal certainty" that Capital's Petition is for $75,000.00 or less. *St. Paul Mercury*, 303 U.S. at 289; *see also In re LifeUSA Holding*, 242 F.3d 136, 143 (3d Cir. 2001). Because Capital seeks equitable relief, the amount in controversy here is the "value of the object of the litigation." *Hunt*, 432 U.S. at 347. Under even the stricter approach to valuing the amount in controversy in arbitration actions, the object of this litigation is the amount of the Award, whether Capital seeks to vacate or to modify the Award. *See, e.g.*, *Baltin*, 128 F.3d 1466.

Capital requests one of two alternative results from this action. The first would be for this Court to vacate the Award. In *Baltin*, the Eleventh Circuit was confronted with a similar scenario. Appellees there sought to "vacate, modify or correct" an arbitration award that had been entered against them. The Court calculated the amount in controversy based on the amount of the arbitration award, because that amount was the "maximum remedy sought by appellees." *Id*. at 1472. This approach accords with the mandate of the Supreme Court in *St. Paul Mercury* that it "must appear to a legal certainty that the claim is really for less than the jurisdictional amount" to justify remand to state court. 303 U.S. at 289. Similarly, here, the "maximum remedy" Capital seeks is the vacatur of the Award, which places the amount in controversy at $103,667.07.

Alternatively, Capital's motion can be construed as one requesting that the Award be modified so that certain conditions are met before it pays Rayco. Every time Capital refers to these conditions, it describes them as "necessary preconditions" to its payment of the $103,667.07 Award to Rayco. (*See* Capital's Pet. at 2-3 (stating conditions are "necessary precondition to payment"; that they are a "condition of payment"; and that the conditions are a "perquisite [sic] to payment").) Because Capital will not satisfy the Award until *after* Rayco completes these tasks, Capital's protestation that it seeks only non-monetary adjustments to the arbitration award must fail. Even if the Award is merely modified to require the completion of certain actions as "necessary preconditions" to payment of the Award, the amount in controversy, the "object of the litigation," is nevertheless the amount of that Award, which is more than the jurisdictional threshold.

For these reasons, whether Capital's petition is viewed as a motion to vacate or a motion to modify the Award, this action is subject to diversity jurisdiction, as Capital is a Pennsylvania corporation, Rayco is an Alabama corporation, and the amount in controversy exceeds $75,000.00. Accordingly, the Court will now decide whether the Award should be vacated or modified.

B. Vacating or Modifying the Award

The parties do not dispute that Pennsylvania law is to be applied to any judicial review of the Arbitration. Pennsylvania recognizes both statutory arbitration and common law arbitration, but places strict limits on the applicability of the former. 42 PA. CONS. STAT. ANN. §§ 7301-7362 (2005). Section 7302 sets forth the scope of statutory arbitration, and states that an agreement to arbitrate "shall be conclusively presumed" to be reviewed pursuant to the standards for common law arbitration *unless* "the agreement to arbitrate is in writing and expressly provides for arbitration pursuant to [statutory arbitration] or any other similar statute, in which case" the arbitration is

reviewed pursuant to the standards for statutory arbitration. *Id*. § 7302. Thus, the default standard is that used for common law arbitration, unless the parties' agreement states otherwise. *See, e.g.*, *Runewicz v. Keystone Ins. Co.*, 383 A.2d 189, 191 (Pa. 1978) (holding that statutory arbitration "does not apply unless it is expressly or impliedly provided for by the parties and its procedures are followed"); *see also La Vale Plaza, Inc. v. R. S. Noonan, Inc.*, 378 F.2d 569, 571 (3d Cir. 1967) (stating that statutory arbitration applies "only if the agreement specifically refers to the Act or there is other evidence justifying the conclusion that both parties agreed either expressly or impliedly that the provisions of the Act should apply").

The standard of judicial review for statutory and common law arbitration differ substantially. An arbitration conducted according to statutory arbitration can be modified or corrected for several reasons, including if "the award is deficient in a matter of form, not affecting the merits of the controversy." 42 PA. CONS. STAT. ANN. § 7315(a)(3). On the other hand, the award of an arbitrator which is made pursuant to a common law arbitration "is binding and may not be vacated or modified unless it is clearly shown that a party was denied a hearing or that fraud, misconduct, corruption or other irregularity caused the rendition of an unjust, inequitable or unconscionable award." *Id*. § 7341.

Capital makes a conclusory argument in its petition that the Award should be reviewed under the "broad standard of review" for statutory arbitrations, and cites to *Popskyj v. Keystone Ins. Co.*, 565 A.2d 1184 (Pa. Super. Ct. 1989), for that proposition. (Capital's Pet. at 2.) Rayco contends, however, that the Award should be reviewed pursuant to the standards applicable to common law arbitrations.

Rayco is clearly correct. The Subcontract's sole reference to "Dispute Resolution" states, in its entirety, that

> All disputes arising out of this Agreement shall be resolved by submission to the American Arbitration Association pursuant to its Construction Industry Rules of Arbitration then in effect. All proceedings shall be conducted at the Philadelphia Regional office of the American Arbitration Association.

(Rayco's Mot. to Confirm Ex. A ¶ 15.) There is no mention whatsoever of Pennsylvania's Arbitration Act, and therefore the arbitration agreement certainly does not "expressly provide[] for" statutory arbitration. *Cf.* 42 PA. CONS. STAT. ANN. § 7302. The arbitration therefore must be reviewed according to the standards for common law arbitration. Indeed, *Popskyj*, the very (and sole) case that Capital cites, proves this point: there, the court was presented with an arbitration provision that stated the arbitration would be conducted "in accordance with the rules of the American Arbitration Association," and the court squarely held that "the rules of the AAA provide for common law arbitration of disputes." *Popskyj*, 565 A.2d at 1189. The instant case presents an identical situation, and so, from the case cited by Capital itself, it is clear that this Court's review of the Award must be limited to the extraordinarily narrow standard applicable to common law arbitrations.

As stated by the Pennsylvania Supreme Court, "an award of arbitrators in a common law arbitration is conclusive and binding and cannot be attacked unless it can be shown by clear, precise and convincing evidence that the parties were denied a hearing, or there was fraud, misconduct, corruption, or some other irregularity which caused the rendition of an unjust, inequitable or unconscionable award." *PG Metals Co. v. Hofkin*, 218 A.2d 238, 239-40 (Pa. 1966). Capital has presented no such evidence here. Instead, Capital merely argues that the arbitrator made what

amounts to a mistake of fact because he did not require Rayco to perform the conditions set forth in the parties' contract prior to Capital paying the Award. However, one of the "fundamental distinctions between common law and statutory arbitration" is that "the arbitrators are the final judges of both the facts and the law and their decision will not be disturbed for a mistake of fact or of law." *La Vale Plaza*, 378 F.2d at 572. Therefore, Capital's motion to vacate and/or modify is denied. Consequently, there being no other outstanding motions to modify the Award, this Court confirms the Award. *See Popskyj*, 565 A.2d at 1186 n.1 (holding that "[t]he court, where no further application to modify or correct the award is pending, has the obligation to enter an order confirming the award").

IV. CONCLUSION

For the foregoing reasons, Capital's motion to remand is denied, Capital's petition to vacate and/or modify the Award is denied, and the Award is hereby confirmed. An appropriate Order follows.

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v.	:	
	:	
RAYCO INDUSTRIAL, INC.,	:	
Defendant.	:	**No. 05-979**

ORDER

AND NOW, this **6th** day of **May, 2005**, upon consideration of Plaintiff's Petition to Vacate/Modify the Arbitration Award (Document No. 1), Defendant's opposition thereto (Document No. 2), Plaintiff's Motion to Remand (Document Nos. 3 and 4), and Defendant's opposition thereto (Document No. 5), and for the foregoing reasons, it is hereby **ORDERED** that:

1. Plaintiff's Motion to Remand is **DENIED**.
2. Plaintiff's Petition to Vacate/Modify the Arbitration Award is **DENIED**.
3. The Award is **CONFIRMED**.
4. The Clerk of Court is directed to close this case.

BY THE COURT:

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Berle M. Schiller, J.