

Circuit Court for Montgomery County
Case No. 281531V

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 532

September Term, 2020

MARIO BAZAN, ET AL.

v.

PREFERRED GENERAL CONTRACTING,
INC., ET AL.

Graeff,
Zic,
Tang,

JJ.

Opinion by Zic, J.

Filed: December 19, 2022

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This case arises from a contract dispute for home renovation services between appellants, Mario Bazan and Erin Finn (“Owners”), and appellee, Preferred General Contracting, Inc. (“Preferred”).¹ Following arbitration, the Circuit Court for Montgomery County confirmed an award in favor of Owners. The circuit court denied Owners’ motion to alter or amend judgment to include interest from the time of the award to judgment.

Owners present a single issue for our review: whether the circuit court erred in holding that Owners had no right to post-award, prejudgment interest. For the reasons set forth below, we shall affirm.

BACKGROUND

On October 22, 2002, the parties entered into a fixed price written contract for the renovation of Owners’ home located in Bethesda, Maryland. Preferred agreed to renovate Owners’ existing home and add a second floor to the home at a cost of \$289,545.00. The contract provided for substantial completion of the work within 120 days of the date of commencement. The court identified February 5, 2004 as the date of Substantial Completion as defined in the contract. Preferred did not dispute that it had failed to substantially complete the work within the contract period. In January 2004, a punch list was created detailing outstanding items to be completed by Preferred. As of April 13, 2004, Preferred had stopped working on Owners’ home, the punch list items

¹ Marvin E. Goode, owner of Preferred, was an original defendant in this action, but the arbitrator’s award, which was later confirmed by the circuit court, directed that Preferred, not Mr. Goode, pay the award amount to Owners.

had not yet been completed, and the value of the punch list work was \$1,775.00. Owners refused to make final payment to Preferred, asserting that they had incurred approximately \$20,000.00 in additional rent, storage and parking expenses due to the delayed completion of the renovation work. The parties stipulate that the contract balance is \$21,449.87.

On April 9, 2007, Owners filed a complaint against Preferred in the Circuit Court for Montgomery County for breach of contract and related claims, seeking over \$60,000.00 in damages, plus costs and attorneys' fees.² In July 2007, the court stayed the litigation pending arbitration.

On November 20, 2009, the arbitrator issued a decision awarding Owners damages and attorneys' fees in the amount of \$15,385.67.³ Following the award, Preferred made three payments to the Owners totaling \$5,182.08.

On October 25, 2019, Owners petitioned the circuit court for confirmation of the arbitration award. The court entered an order on March 9, 2020, confirming the arbitrator's award in the amount of \$15,545.62 to be paid to Owners by Preferred.⁴

² The Complaint alleged breach of contract (Count 1); breach of contract, express warranty (Count 2); negligence (Count 3); violation of Maryland Consumer Protection Act (Count 4). The arbitrator found that the breach of contract, negligence, and Maryland Consumer Protection Act claims were time barred. Breach of warranty was the only timely filed claim.

³ Within this decision, the arbitrator noted that Owners asserted over \$80,000 of damages.

⁴ The arbitrator awarded Owners \$33,285.00 in damages, but that was offset by the outstanding contract price of \$21,449.87 to amount to \$11,835.13. The arbitrator further awarded \$3,550.54 in attorneys' fees. The total amount to be paid to Owners by Preferred, therefore, was \$15,385.67.

On January 13, 2020, Owners filed a Motion to Alter or Amend Judgment, requesting that the judgment be amended to include post-award, prejudgment interest. The arbitrator did not in his award, and Owners did not request interest in their petition to confirm the arbitration award. On June 25, 2020, following a hearing, the court denied Owners’ Motion to Alter or Amend Judgment. Owners the timely noted this appeal.

STANDARD OF REVIEW

In an action tried without a jury, we review the trial court’s decision “on both the law and the evidence,” and we “will not set aside the judgment of the trial court on the evidence unless clearly erroneous.” Md. Rule 8-131(c). When the issue before us requires the interpretation and application of Maryland law, including the Maryland Rules, we must determine whether the trial court was legally correct under a *de novo* standard of review. *Nationwide Prop. & Cas. Ins. Co. v. Selective Way Ins. Co.*, 473 Md. 178, 188-89 (2021) (reviewing *de novo* a circuit court’s decision awarding prejudgment interest); *see also Saint Luke Inst., Inc. v. Jones*, 471 Md. 312, 329 (2020) (“When a trial court’s order involves an interpretation and application of statutory and case law, we must determine whether the lower court’s conclusions are legally correct under a *de novo* standard of review.”) (citing *Nesbit v. Gov’t Emps. Ins. Co.*, 382 Md. 65, 72 (2004)).

DISCUSSION

The procedural requirements governing the right to recover prejudgment interest are set forth in the Maryland Rules. *Nationwide*, 473 Md. at 188. Maryland Rule 2-604(a) requires that “[a]ny pre-judgment interest awarded by a jury or by a court sitting

without a jury shall be separately stated in the verdict or decision and included in the judgment.”

“Prejudgment interest falls into one of two distinct categories—that which is discretionary and that which is awarded as of right.” *Nationwide*, 473 Md. at 189. Under Maryland law, “whether a party is entitled to pre-judgment interest generally is left to the discretion of the fact finder.” *Ver Brycke v. Ver Brycke*, 379 Md. 669, 702 (2004) (citation and internal quotation marks omitted). The general rule, which encompasses the majority of contract cases, is that “prejudgment interest is left to the discretion of the trier of fact.” *Nationwide*, 473 Md. at 193.

An award of prejudgment interest as a matter of right is the exception rather than the rule. *Id.* Prejudgment interest is a matter of right where “the obligation to pay and the amount due had become certain, definite, and liquidated by a specific date prior to judgment so that the effect of the debtor’s withholding payment was to deprive the creditor of the use of a fixed amount as of a known date.” *Buxton v. Buxton*, 363 Md. 634, 656 (2001) (citations and internal quotation marks omitted).

Prejudgment interest as a matter of right applies to “written contracts to pay money on a day certain, . . . in actions on bonds or under contracts providing for the payment of interest, in cases where the money claimed has actually been used by the other party, and in sums payable under leases as rent.” *Id.* Prejudgment interest is not available in cases involving unliquidated claims, such as tort claims for bodily harm or emotional distress involving “intangible elements of damage not easily susceptible of precise measurement.” *Id.* In “a contract case that falls ‘somewhere in between’ the[se]

two extremes,” the general rule applies and “interest lies at the discretion of the fact finder.” *Tricat Indus., Inc. v. Harper*, 131 Md. App. 89, 123 (2000).

Owners contend that they were entitled to prejudgment interest as a matter of right because Preferred’s obligation to pay became “certain, definite, and liquidated” as of the date of the arbitrator’s decision. Under Maryland’s long-standing rule, prejudgment interest as of right is allowable only where the obligation to pay and amount due was payable on a date certain, prior to judgment. *See Buxton*, 363 Md. at 656 (“[T]he right to pre-judgment interest as of course arises under written contracts to pay money on a day certain, such as bills of exchange or promissory notes.”); *see also Atl. States Constr. Co. v. Drummond & Co.*, 251 Md. 77, 85 (1968) (awarding prejudgment interest as of right where payment of a liquidated contract claim was due, without demand, within thirty days of general contractor’s payment by property owner); *Mullan Contracting Co. v. Int’l Bus. Machs. Corp.*, 220 Md. 248, 262 (1959) (concluding IBM was entitled to prejudgment interest as a matter of right from the date it made demand for payment of the balance due on its claim).

Here, the award did not provide a date on which Preferred was obligated to pay Owners. The arbitrator’s decision awarded Owners \$15,385.67 “in damages and attorneys’ fees” and determined that Owners were “only responsible for thirty percent (30%) of the AAA fees incurred for [Preferred’s] breach of warranty.” Accordingly, in the absence of a specific date on which payment was due, Owners were not entitled to prejudgment interest on the arbitration award as a matter of right.

In Maryland, “arbitration is favored and encouraged . . . because it ‘provides an informal, expeditious, and inexpensive alternative to conventional litigation.’” *Shailendra Kumar, P.A. v. Dhandra*, 426 Md. 185, 208 (2012) (quoting *RTKL Assocs. Inc. v. Baltimore County*, 147 Md. App. 647, 655 (2002)). In furtherance of the policy of encouraging voluntary dispute resolution, the General Assembly adopted the Maryland Uniform Arbitration Act (“MUAA”), which governs arbitration procedures and awards. Md. Code, Cts. & Jud. Proc. Art., § 3-201 *et seq.* (2020 Repl. Vol.). In adopting the MUAA, “the General Assembly has severely restricted the role the courts play in the arbitration process.” *Mandl v. Bailey*, 159 Md. App. 64, 85 (2004). In fact, under the MUAA, the scope of the circuit court’s review of an arbitrator’s decision is “tightly restricted” such that “factual findings by an arbitrator are virtually immune from challenge and decisions on issues of law are reviewed using a deferential standard on the far side of the spectrum away from a usual, expansive *de novo* standard.” *Id.* at 92.

The MUAA specifically provides that a party may petition the arbitrator “to modify or correct an award within 20 days after delivery of the award to the applicant.” Cts. & Jud. Proc. § 3-222(a). A party may also seek modification or correction of an award from the trial court “within 90 days after delivery of a copy of the award to the applicant.” Cts. & Jud. Proc. § 3-223(a). If a party has not filed an application to vacate, modify or correct an award within 90 days, “[t]he court *shall* confirm the award.” Cts. & Jud. Proc. § 3-227 (emphasis added). The time limits provided in the MUAA are mandatory requirements. *Brzowski v. Md. Home Improvement Comm’n*, 114 Md. App. 615, 636 n.9 (1997). Unless an award is challenged within the applicable time limits, a

trial court is required to confirm the award. *Bd. of Educ. of Charles Cnty. v. Educ. Ass’n of Charles Cnty.*, 286 Md. 358, 365-66 (1979). A court confirming, modifying, or correcting an arbitration award “may award costs of the petition, the subsequent proceedings, and disbursements.” Cts. & Jud. Proc. § 3-228(b). The MUAA does not authorize the court to award post-arbitration, prejudgment interest to an award.

In this case, the parties elected to submit their dispute to arbitration under the MUAA and to be bound by the arbitrator’s decision. The parties submitted both questions of fact and law to the arbitrator, which the arbitrator addressed in the findings of the decision. In calculating the total amount of the award, the arbitrator included an award of reasonable attorneys’ fees, based on a provision in the contract between the parties that provided for an award of reasonable attorneys’ fees, costs, and expenses to the prevailing party. The award stated that it was “in full settlement of all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are hereby denied.” The award included no provision for interest because no request for interest had been submitted. The arbitrator’s decision awarding damages and costs to Owners was a final and complete determination of all issues submitted by the parties, in resolution of their claims. *See Mandl*, 159 Md. at 93-94 (determining that award was “final and complete” when it assessed fees and expenses “in full settlement of all claims” and left no issue submitted to the arbitrator undecided).

We conclude that Owners were not entitled to prejudgment interest as of right on the arbitration award. We also conclude that the trial court’s decision, and the facts upon

which it based that decision, were not clearly erroneous. Accordingly, the trial court did not err in denying Owners' request to modify the judgment to include post-award interest.

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANTS.**