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"Case Evaluation Sanctions Be Damned!" – It Does Not Matter When Case Evaluation Occurred if the Matter Was Still Pending When the Amendments to MCR 2.403 Took Effect

By Jeffrey Bullard, Jr. **September 12, 2023**

SECREST WARDLE NOTES

The *Davis* decision further cements that case evaluation sanctions are long gone and ultimately makes the important point that if a matter was pending at the time the amendments to MCR 2.403 came into effect, case evaluation sanctions cannot be awarded.

In *R.A.D. Constr., Inc. v Davis*, ___ Mich App ___; ___ NW2d ___ (2023) (Docket No.s. 361177 and 363142), the Michigan Court of Appeals addressed the issue of case evaluation sanctions and whether they should be awarded to a party when trial occurred after the Supreme Court's amendments to MCR 2.403 took effect, but case evaluation took place before said amendments were implemented. Our Supreme Court amended MCR 2.403 and among other things eliminated Subpart (O). Simply put, by eliminating Subpart (O), the sanctions penalty for a party who rejects the case evaluation award and fails to improve their position by at least 10 percent at the time of trial is no longer applicable. The amendments to MCR 2.403 became effective January 1, 2022. MCR 1.102 requires applying the court rules to all pending cases. Therefore, given that the *Davis* matter was still pending when the amendments to MCR 2.403 took effect, the Court of Appeals found that case evaluation sanctions could not be awarded to parties Chase Bank, Integrity, and Boyd.

This action arises from the settlement of an insurance claim following a kitchen fire at a home owned by Defendants Delrice and Latisha Davis. The Davises had a homeowner's insurance policy with Defendant State Farm Fire and Casualty Company ("State Farm"). After the fire, Delrice Davis ("Davis") entered into a contract with Defendant Integrity, which is solely owned by Defendant Boyd, "to assist in the preparation, presentation and adjusting of insurance claim" with State Farm. Davis agreed to pay Integrity a fee of 10% of the insurance proceeds obtained in settlement of the loss. Davis also entered into a contract with RAD to make all necessary repairs caused by the fire. The contract allowed RAD to negotiate with State Farm and instructed State Farm to send all structural proceeds to RAD. Davis also "irrevocably assign[ed] to the Contractor, its successors or assigns, all insurance proceeds due the Owner as a result of the fire ...." Davis signed a "Certificate of Completion & Satisfaction" on August 19, 2019, for the work performed by RAD. Also on August 19, 2019, RAD submitted a final invoice for $17,246.26 for packing, storing, and cleaning the Davises' belongings.

On August 23, 2019, State Farm issued two checks in settlement of the insurance claim: one issued to "Delrice Davis & Integrity First Adjusting Co & Associates & R.A.D. Construction, LLC," in the amount of $36,915.01

for personal property loss, and the other issued to "Delrice Davis & M T Bank Its Successors and or Assigns & Integrity First Adjusting Co & Associates & R.A.D. Construction, LLC," in the amount of $9,776.70, for "Recovery Cost Benefit for the Structure." Both checks were sent to Boyd. According to Boyd, she sent the checks to Davis and asked him to obtain the endorsements of the other named payees. Davis thereafter returned the checks with the endorsements to Boyd, who added Integrity's endorsement and then deposited the checks into Integrity's account at Chase Bank. The first check was endorsed with three signatures and a stamp by M&T Bank. The second check was also endorsed with three signatures and a stamp by M&T Bank. After deducting Integrity's 10% fee, Boyd disbursed the remaining proceeds to Davis via two cashier's checks, in the amounts of $32,723 and $8,953, respectively.

RAD filed a claim of lien against the Davises' property. RAD claimed that the Davises owed a total amount of $90,822.66 and paid RAD $43,750, so it claimed a lien amount of $47,072.66. RAD also filed this action against the Davises, Integrity, Boyd, Warren Williams, M&T Bank, Chase Bank, XYZ Bank, N.A., and State Farm. RAD alleged that Davis breached his contract with RAD, and alleged that Chase Bank, Integrity, and Boyd were liable for common-law and statutory conversion respecting RAD's interest in the two checks. The Davises failed to defend and the trial court entered a default judgment against them in favor of RAD in the amount of $54,303.66, plus costs of $748.62 and statutory interest. The case proceeded to trial on the conversion claims against Chase Bank, Integrity, and Boyd. The parties agreed to submit the case for a bench trial on briefs.

Ultimately, the trial court dismissed RAD's claims against Chase Bank, Integrity, and Boyd, "because [RAD] has not proven a cause of action." This appeal followed. For the purposes of this newsletter, only the issue regarding case evaluation sanctions (Docket No. 363142) is relevant. Here, RAD argues that the trial court erred by awarding case evaluation sanctions to Chase Bank, Integrity, and Boyd because the trial in this case occurred after our Supreme Court amended MCR 2.403 effective January 1, 2022, eliminating the case evaluation sanctions provision. The Court of Appeals agreed.

The record indicates that the parties engaged in case evaluation during January 2021 and RAD rejected the case evaluation award on February 9, 2021. MCR 2.403 then provided in Subpart (O)(1) that if "a party has rejected an evaluation and the action proceeds to verdict, that party must pay the opposing party's actual costs unless the verdict is more favorable to the rejecting party than the case evaluation." This case went to trial and RAD did not obtain a more favorable verdict when the trial court rendered its opinion and order on April 12, 2022, dismissing RAD's claims against Chase Bank, Integrity, and Boyd. The trial court entered its orders granting Chase Bank, Integrity, and Boyd case evaluation sanctions on September 7, 2022.

However, as noted above, our Supreme Court amended MCR 2.403 and among other things eliminated Subpart (O). The amendments became effective January 1, 2022. As stated above, MCR 1.102 requires applying the court rules to all pending cases. Amended court rules apply to pending actions unless there is a reason to apply the old rules. *Reitmeyer v Schultz Equip & Parts Co, Inc*, 237 Mich App 332, 337 (1999). As such, the Court of Appeals found no reason to apply the old rule in this case. The Court of Appeals opined that because the provision authorizing case evaluation sanctions had been eliminated, the trial court had no authority to sanction RAD after January 1, 2022. The Court of Appeals reversed the trial court's decisions granting Chase Bank's, Integrity's, and Boyd's respective motions for case evaluation sanctions, and vacated the trial court's case evaluation sanction orders.

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