

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION AT LONDON

Electronically Filed

McCREARY COUNTY
HERITAGE FOUNDATION, INC.
d/b/a BIG SOUTH FORK SCENIC
RAILWAY,

PLAINTIFF

V.

CASE NO. 6:18-CV-00249-CHB

WASATCH RAILROAD
CONTRACTORS, et al.,

DEFENDANTS

MOTION FOR ORDER CONFIRMING ARBITRATION AWARD

The plaintiff, McCreary County Heritage Foundation, Inc. d/b/a Big South Fork Scenic Railway, by counsel, moves this Court for an order and judgment confirming an arbitration award in its entirety pursuant to 9 U.S.C. § 9. The defendants are Wasatch Railroad Contractors and John E. Rimmasch.

A. Jurisdiction and Venue

This court has subject matter jurisdiction of this proceeding to confirm an arbitration award pursuant to 9 U.S.C. § 9. Venue properly is established in this judicial district pursuant to 9 U.S.C. § 9 because the arbitration hearing which resulted in the Award was held and the Award was made in Stearns, McCreary County, Kentucky. The parties agree to the entry of a judgment upon an arbitration award.¹

¹ See American Arbitration Association, Construction Industry Arbitration Rules and Mediation Procedures, Rule R-54(c) (“Parties to these Rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction hereof.”).

B. Statement of the Case

The parties agreed, in written agreements evidencing transactions involving commerce, to settle by arbitration an existing controversy or any controversy thereafter arising out of such contract between the parties, under such agreements. On May 28, 2019, the Court entered an Order Compelling Arbitration [R. 12] and Plaintiff filed a Demand for Arbitration with the American Arbitration Association, Construction Industry Rules. Thomas R. Yocum of Yocum & Neuroth, LLC was appointed arbitrator on November 11, 2019.

The arbitrator conducted a final hearing in Stearns, McCreary County, Kentucky from August 3-6, 2020. The arbitrator issued an award on September 30, 2020 (the “Award”). A copy of the Award is attached as Exhibit A. The parties agree and applicable law provides that a judgment may be entered upon the Award made pursuant to the arbitration proceeding.

C. Argument

The Movant has a statutory right to an order confirming the Award in its entirety.

The applicable statute, 9 U.S.C. § 9, states:

If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made. Notice of the application shall be served upon the adverse party, and thereupon the court shall have jurisdiction of such party as though he had appeared generally in the proceeding. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in

an action in the same court. If the adverse party shall be a nonresident, then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court.

Defendants previously filed a Motion to Compel Arbitration [R. 5], which the Court granted on May 28, 2019 [R. 12]. The Court stayed the matter “pending further proceedings to enforce any award of the arbitrator.” [R. 12, at 10]. The Award was made on September 30, 2020, following a 4-day arbitration hearing held in Stearns, Kentucky.

D. Relief Requested

For the foregoing reasons, the Plaintiff is entitled to the following relief: an order and judgment confirming the Award, which may be enforced as any other judgment or decree; and such other relief as to which Plaintiff may appear to be entitled.

Respectfully submitted,

/s/ Stefan J. Bing

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on October 5, 2020, I electronically filed the foregoing Motion to Confirm Award with the Clerk of the Court by using the CM/ECF system, and that the system will send a notice of such electronic filing to all other counsel of record.

/s/ Stefan J. Bing

ATTORNEY FOR PLAINTIFF