No. 130687

IN THE
SUPREME COURT OF ILLINOIS

IRMA JORDAN, Plaintiff-Appellant, v. ESMERALDA MACEDO Defendant-Appellee.	)	Appeal from the Appellate Court of Illinois, First Judicial District No. 1-23-0079 There on Appeal from the Circuit Court of Cook County, Illinois No. 2021L009979 Hon. Daniel A. Trevino *Judge Presiding*.

RESPONSE BRIEF OF DEFENDANT-APPELLEE ESMERALDA MACEDO

ORAL ARGUMENT REQUESTED

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POINTS AND AUTHORITIES

NATURE OF THE CASE

Jordan filed a Complaint at Law seeking to recover for injuries allegedly sustained as the result of a February 26, 2020 motor vehicle accident involving the Defendant-Appellee Esmeralda Macedo ("Macedo"). The matter was referred to mandatory arbitration pursuant to Cook County Law Division's mandatory arbitration program. At the mandatory arbitration hearing, Jordan did not request her costs. Following the hearing, an award was entered in favor of Jordan, and neither party rejected the award within the time permitted by law.

At the judgment on award date, Jordan requested to enter a judgment on award order for the amount awarded at arbitration plus costs and prejudgment interest. The court instructed the parties to submit a judgment on award conforming to the arbitration award. Thereafter, Jordan filed a motion to tax costs and prejudgment interest. The trial court denied the request, and Jordan appealed.

The appellate court affirmed the portion of the trial court's order denying Jordan's motion to tax costs, finding that she failed to present a request for costs at the time of the arbitration hearing, and the circuit court lacked authority to grant her additional monetary relief. The court reversed the portion of the trial court's order denying plaintiff's motion for an award of prejudgment interest. Jordan now appeals only the portion of the appellate court's opinion affirming the trial court's order denying her motion to tax costs.

For the reasons below, this Court should affirm the appellate court and find that the circuit court properly denied Jordan's motion to tax costs.

ISSUES PRESENTED FOR REVIEW

1. Whether the trial court properly denied Plaintiff's motion to tax costs on the judgment on award of arbitration where Plaintiff did not request costs at the arbitration hearing, the arbitration award did not contain an award of costs, and Plaintiff did not timely reject the award of arbitration.

2. Whether the appellate court correctly held that a party waives the right to recovery of costs where costs were not requested at a mandatory arbitration hearing conducted pursuant to Part 25 of the Circuit Court Rules of Cook County.

STATEMENT OF FACTS

On October 12, 2021, Jordan filed a Complaint at Law seeking to recover monetary damages for personal injuries she alleges were sustained as a result of a motor vehicle accident involving Macedo. (C10-C13). The prayer for relief contained in Jordan's Complaint contained a request for costs. *Id.* On January 7, 2022, Macedo filed her Answer and Affirmative Defenses to Jordan's Complaint. (C21-C29). On April 4, 2022, the circuit court entered an referring this matter to Law Division Mandatory Arbitration. (C37-C38). Jordan filed her Answer to Macedo's Affirmative Defenses on August 26, 2022. (C59-C62). The matter ultimately proceeded to Law Division Mandatory Arbitration on October 21, 2022 before Arbitrator Alice E. Dolan. (C69-C70). In her Opening Brief, Jordan admits that she did not present a request for costs at the hearing. The case was assigned a November 21, 2022 Judgment on Award status date. (C69-C70).

On October 26, 2022, the Law Division Mandatory Arbitration Award (the "Jordan Award") was filed with the Circuit Clerk. (C69-C70). The Jordan Award in pertinent part:

Award in favor of Plaintiff, Irma Jordan, and against defendant, Esmerelda Macedo, in the amount of $13,070.00. The amount attributable solely to Plaintiff is 0%. (C69-C70). Arbitrator Dolan's award made no reference as to whether the Jordan Award included Jordan's costs. (C69-C70). After receiving notice of the Law Division Arbitration Award, neither Jordan nor Macedo rejected the Award within the time permitted by rule. (C88).

On the November 21, 2022 judgment on award date, Honorable Judge Daniel A Trevino denied Jordan's email request to enter an order entering judgment on the Joran Award plus costs and pre-judgment interest; Judge Trevino instructed the parties to submit a judgment on award order for the total amount of the Jordan Award, verbatim. (C98-C99). On November 28, 2023 the Circuit Court entered an order entering judgment on the Jordan Award. (C88). On November 28, 2022, Jordan filed a motion to tax costs and award prejudgment interest. (C71-C87) Macedo filed her response to the motion on January 9, 2023, and Jordan filed her reply brief one hour later. (C90-C95). On January 10, 2023, Judge Trevino entered an order denying Jordan's motion; Judge Trevino properly ruled the Jordan Award contained the full amount which would be reduced to judgment in the absence of a timely filed rejection. (C96). Jordan filed a Notice of Appeal on January 11, 2023. (C109-C115).

On April 5, 2024 the First District Appellate Court issued a Rule 23 Order (2024 IL App (1st). On April 19, 2024, the First District Appellate Court granted Jordan's motion to publish the Rule 23 Order, and the Appellate Court issued its opinion on May 3, 2024. Plaintiff timely filed her Petition for Leave to Appeal, which was granted on September 25, 2024.

ARGUMENT

Jordan argues that she is entitled to costs and that the judgment on award must be amended to tax costs. Stated another way, Jordan asserts that she is entitled to additional monetary compensation beyond the amount contained in the Award. However, Illinois case precedent is abundantly clear that rejection of the award is the sole remedy for contesting a mandatory arbitration award in all situations. Because Jordan did not reject the Jordan Award nor petition the court for an extension of time to reject the award, the denial of plaintiff's request to tax costs must be affirmed.

I. The circuit court correctly denied Plaintiff's motion to tax costs because the Jordan Award contained the full amount that would be reduced to judgment.

The mandatory arbitration program was first authorized by the General Assembly in 1986 and implemented the following year by the Illinois Supreme Court. *Jones v. State Farm Mut. Auto. Ins. Co.*, 2018 IL App (1st) 170710, ¶ 11. Cook County implemented the mandatory arbitration program in 1990; in 2014 Cook County proposed a mandatory arbitration program for commercial calendar cases pending in law division where damages did not exceed $75,000. *Id.* ¶¶ 12-13**.** In 2014, the Illinois Supreme Court the approved Cook County's request. *Id.*; see Ill. S. Ct., M.R. 9166 (eff. Oct. 1, 2014).

Following the approval of the program, the Cook County judges adopted local rules implementing this program; these rules were found in part 25 of the Circuit Court Rules of Cook County (hereinafter referred to as the "Local Rules"). *Id.* ¶ 14. Included in these rules was Local Rule 25.11, which provided that "[e]ither party may reject the [arbitration] award if the rejecting party does so within seven business days after receiving the notice of the award from the Administrator." Cook County Cir. Ct. R. 25.11 (Dec. 1, 2014). Local Rule

25.11 states that "[e]ither party may reject the award if the rejecting party does so within fourteen (14) calendar days after receiving the award from the Administrator. Thereafter … the case will be returned to the trial judge for further proceedings or for *entry of judgment on the award*. Further, the [f]ailure to timely and properly reject the Award … will constitute a waiver of the party's right of rejection." Cook County Cir. Ct. R. 25.11 (Apr. 1, 2021) (emphasis added). "A straightforward reading of local rule 25.11 reveals that absent rejection, the simple instruction for the circuit court is to enter 'judgment on the award.' Limiting a party's sole remedy to rejection *ensures the process will not be 'unnecessarily prolonged by attempts to dispute the minutiae of an award.*" *Chinlund v. Heffernan Builders, LLC*, 2020 IL App (1st) 191528 ¶ 24, quoting *Babcock v. Wallace*, 2012 IL App (1st) 111090, ¶ 17 (emphasis added) (internal citations omitted).

With respect to cases subject to mandatory arbitration, the Illinois Courts "have long held that rejection is 'the sole intended remedy from an award.' *Babcock*, 2012 IL App (1st) 111090, ¶ 16. Indeed, in *Cruz*, this court emphasized the limitations of the circuit court's authority in mandatory arbitration cases. In *Cruz*, the supreme court heard a pair of consolidated cases where consumers filed complaints against automobile dealers and manufacturers. *Cruz v. Northwestern Chrysler Plymouth Sales*, 179 Ill. 2d 271, 271 (1997). Both matters were referred to mandatory arbitration under the Illinois Supreme Court Rules, and, in both matters, the arbitration panel found in favor of plaintiffs. *Id*. at 273. None of the parties rejected the award. *Id*. Following entry of judgment on the arbitration award, the plaintiffs in each case filed petitions asking the circuit court for an award of reasonable attorney fees based upon the Consumer Fraud and Deceptive Business Practices Act. *Id*. In opposition, defendants argued that Illinois Supreme Court Rule 92(b) required

that the panel's award "shall dispose of all claims for relief," plaintiffs waived their right to seek fees where they failed to submit this claim for relief to the arbitration panel. *Id*. at 274-75. This court ultimately agreed with this position, noting that:

> Once the arbitration panel has made its award, the parties must accept or reject the award in its entirety. If none of the parties file a notice of rejection of the award and request to proceed to trial within the time specified under the rules, the circuit court has no real function beyond entering judgment on the award. Although the court can correct an "obvious and unambiguous error in mathematics or language", it cannot modify the substantive provisions of the award or grant any monetary relief in addition to the sums awarded by the arbitrators.

Id. at 279 (citations omitted). Further, the this court found that a claim for statutory attorney fees was as much a "claim for relief" under Rule 92(b) as a prayer for damages. *Id*.

As Justice Lyle noted in the majority opinion, this court has defined "costs" as "allowances in the nature of *incidental damages* awarded by law to reimburse the prevailing party, to some extent at least, for the expenses necessarily incurred in the assertion of his rights in court." *Jordan v. Macedo*, 2024 IL App (1st) 230079, ¶ 24 (emphasis in original), quoting *Galowich v. Beech Aircraft Corp*., 92 Ill. 2d 157, 165-66 (1982). Thus, Jordan was required to submit her request to recover these "incidental damages" to the arbitrator. In the event she felt she was entitled to additional relief beyond the amount stated in the award, her lone remedy was to reject the award. See *Cruz*, 179 Ill. 2d at 279. Because the circuit court's sole function here was to enter judgment on the award after no rejection of the award was filed by any party, it could not "grant any *monetary relief* to Jordan in addition to the sums awarded by the arbitrators. *Id.* (emphasis added).

Justice Mikva's dissenting opinion in this matter concludes that the majority erred in its application of *Cruz* to the issue of costs because it ignored the rationale for the court's holding. *Jordan*, 24 IL App (1st) 230079, ¶ 45. Indeed, the dissenting opinion notes that the court's reasons for reaching this result were (1) that awards of statutory fees could be substantial in comparison to the prevailing party's recovery of compensatory damages was small and (2) the arbitration panel, rather than the circuit court, is more equipped to rule on statutory fee requests given its knowledge of the various issues in the case. *Id.* at ¶¶ 46-48. However, while the *Cruz* court did contemplate the potential for substantial attorney fees in excess of the award, this was to highlight the broader bases for its opinion: Rule 92(b)'s requirement that the award to dispose of *all claims for relief* and the circuit court's inability to modify the substantive provisions of the award *or grant any monetary relief in addition to the sums awarded by the arbitrators*. *Cruz*, 179 Ill. 2d at 279 (emphasis added). Ultimately, the supreme court reasoned that the circuit court had no authority to consider or allow additional claims for relief where said claim for relief was not presented to the arbitration panel. *Id*. at 281. Here, Jordan did not present a claim for her incidental damages to the arbitrator, and the award subsequently did not award costs. Where she then failed to reject the award, despite disagreeing with its failure to tax costs, the circuit court had no authority to grant Jordan's request for additional monetary relief.

II. Nothing in Cook County's Local Rules prohibited Jordan from presenting evidence of her costs at the time of the mandatory arbitration hearing.

Jordan argues that she "could not" present mandatory statutory costs at the arbitration hearing under Local Rule 25.10, which states that "[t]he arbitrator will issue an award (the decision) based on the evidence presented at the hearing and prepare an Award Form." Jordan argues that because costs do not constitute evidence in support of her claim for negligence, they "could not" and "were not" presented at the hearing. While Rule 25 is silent as to costs, Local Rule 25.8 requires certain documents to be produced within thirty (30) days of the arbitration hearing, including an itemization of the damages claimed in the complaint. Cook County Circuit Ct. R. 25.8(b)(vii). This would, of course, include costs—assuming costs of suit are sought in the Complaint, as was the case here.

Further, the itemized documents in Local Rule 25.8 state which documents *must* be submitted to the arbitrator within 14 days of the arbitration hearing. Cook County Circuit Ct. R. 25.8(a). However, nothing in Local Rule 25.8 prohibits a party from submitting documents, at that party's discretion, that are not listed in Local Rule 25.8(b)(i)-(vii). Indeed, Local Rule 25.8(a) states that "the parties shall meet, confer and exchange the documents listed herein, including documents a party seeks to have presumptively admitted as provided for in 9 infra, *as well as any other documents a party intends to offer at the hearing*." Cook County Circuit Ct. R. 25.8(b) (emphasis added). While the Rule is ambiguous as to what other documents could be submitted, this would reasonably include an itemization or some other proof of a party's costs.

As the Justice Lyle notes in the majority opinion, "[p]laintiffs routinely request costs and other statutory amounts in the prayer relief so that such amounts may be awarded if they are successful." *Jordan*, 24 IL App (1st) 230079, ¶ 25. Indeed, Jordan's Complaint

here requested costs in her prayer for relief. There is no reason that Jordan could not have submitted the same request to the arbitrator that she subsequently submitted to the circuit court. See *Kolar v. Arlington Toyota,* 286 Ill. App. 3d 43, 47 (1st Dist. 1996) ("Plaintiffs proceeded to arbitration with full knowledge of their possible entitlement to statutory attorney fees. Fees were prayed for in their amended complaint, Yet, at arbitration plaintiffs did not raise the issue."). Had she done so, Macedo would be allowed to make an informed decision about whether to reject the award based on the full amount of liability, which is the procedure envisioned by the mandatory arbitration system. *Jordan,* 24 IL App (1st) 230079, ¶ 25.

III. Cook County's failure to implement an amendment to its rules similar to Amended Illinois Supreme Court Rule 92 implies that a party waives their right to recover costs where they are not presented to the arbitrator at mandatory arbitration hearings conducted pursuant to the Local Rules.

Justice Lyle's majority notes that in December 2016, this court amended Illinois Supreme Court Rule 92 to provide that: "[c]osts shall be determined by the arbitration panel pursuant to law. The failure of the arbitration panel to address costs shall not constitute a waiver of a party's right to recover costs upon entry of judgment." Ill. Sup. Ct. R. 92. The majority correctly notes that this court's adoption of amended Rule 92 implies that, prior to the amendment, a party that failed to request costs at the arbitration hearing could not later recover costs upon entry of judgment from the circuit court. *Jordan,* 24 IL App (1st) 230079, ¶ 25, n.3. Cook County's decision to not adopt a similar amendment "signifies that a party's failure to present a requests for costs to the arbitration panel constitutes a waiver of a party's right to recover costs upon entry of judgment." *Id.* The Appellate Court was correct in its analysis. While the Local Rules, rather than Illinois Supreme Court Rules 86-95, control the Law Division Mandatory Arbitration Proceedings in Cook County, the

Local Rules with respect to conduct at the hearing and evidence admitted without foundational requirements, the vast majority the Local Rules mirror Supreme Court Rules 86 through 95 in several significant areas:

- The ability of the arbitrator to administer oaths and affirmations to the witnesses, determine the admissibility of evidence and to decide the law and facts of the case. Ill. Sup. Ct. R. 90(a); Cook County Cir. Ct. R. 25.9(g); Cook County Cir. Ct. R. 25.9(e);

- Application of the Illinois Rules of Evidence, except where relaxed by other rules governing the arbitration proceedings Ill. Sup. Ct. R. 90(b); Cook County Cir. Ct. R. 25.9d;

- The requirement that any documents that a party seeking to have certain evidentiary documents, including medical records and reports, medical bills, wage loss documentation, written statements and/or deposition of witnesses, or any other document not covered by other provision, be exchanged to the opposing party at least thirty (30) days prior to the hearing. Ill. Sup. Ct. R. 90(c); Cook County Cir. Ct. R. 25.8-9;

- Permitted remote participation by a party or witness upon good cause shown. Ill. Sup. Ct. R. 90(i); Cook County Cir. Ct. R. 25.9(i);

- The failure to reject the award where a party does not participate at the hearing in good faith. Cook County Cir. Ct. R. 25.12, Ill. Sup Ct. R. 91(b), Ill. Sup. Ct. R. 93(a);

Indeed, while Cook County Law Division Mandatory Arbitration is not governed by Supreme Court Rules 86 through 95, the Circuit Court of Cook County implemented rules generally conforming to those rules. Where the Local Rules diverge from the Supreme Court Rules for mandatory arbitration – such as the reduced period in which a party may reject the arbitration award or having the hearing heard by a single arbitrator rather than a panel of three arbitrators – it is explicitly stated within the Local Rules.

Further support for this conclusion can be found in the Rules governing Mandatory Arbitration in Illinois. Illinois Supreme Court Rule 86(c) provides that "[e]ach judicial circuit court may adopt rules for the conduct of arbitration proceedings *which are consistent with these rules*." Ill. Sup. Ct. R. 86(c) (eff. Jan. 1, 1994) (emphasis added). Likewise, Illinois Supreme Court Rule 21(a) requires that local rules be "consistent with" the Illinois Supreme Court Rules. Ill. Sup. Ct. R. 21(a) (eff. Dec. 1, 2008). It is well established in Illinois that a local rule must yield to a conflicting Illinois Supreme Court Rule. *Jones*, 2018 IL App (1st) 170710, ¶ 24; see *People ex rel. Brazen v. Finley*, 119 Ill. 2d 485, 491 (1988)*;* see *Phalen v. Groeteke,* 293 Ill. App. 3d 469, 470-71 (1997). Here, the Supreme Court Rule explicitly requires the arbitration panel to determine costs in its award, and the right to recover costs upon entry of the award is not waived only where the arbitration panel fails to do so. The fact that Cook County has not adopted a similar local rule following the 2017 Amendment implies that Cook County intended its rule to be consistent with the Illinois Supreme Court Rule.

As noted above, where the Local Rules deviate from the Illinois Supreme Court Rules, those deviations are explicitly stated. Alternatively, Cook County's failure to adopt a similar local rule would necessarily render the determination of costs by the arbitrator to be optional. Given that the Supreme Court Rule states that the arbitration panel *shall* determine costs, this "optional" interpretation would provide a direct conflict between the Local Rule and the Supreme Court Rule. In either scenario, Jordan waived her right to recover costs where she failed to present that portion of her claim for relief to the arbitrator.

Jordan appears to argue that Rule 92(e) conflicts with the legislative statue governing costs, 735 ILCS 5/5-108, because it requires plaintiffs to request costs at the

time of the arbitration hearing. Where a statute expresses a public policy determination "having as its basis something other than the promotion of efficient judicial administration," the court will reconcile any conflicts between the rules of the court and the statute. *People v. Walker*, 119 Ill. 2d 465, 475 (1988). If there is an irreconcilable conflict between the statute and a rule, the rule will prevail. *People v. Felella*, 131 Ill. 2d 525, 539 (1989). There is no conflict here. Both the Supreme Court Rule and the statute permit the prevailing party to recover costs. The "procedural hurdle" of requesting costs at the time of the arbitration hearing does not preclude the award of costs to the prevailing party – it simply requires that, in cases subject to mandatory arbitration, that the parties present all claims for relief, which includes costs, at the time of the hearing. To the extent that this "conflict" is irreconcilable, the rule should prevail. *Id.*

CONCLUSION

For the reasons stated herein, Defendant-Appellee Esmeralda Macedo, respectfully requests that this Honorable Court enter an Order affirming the trial court's order denying Jordan's motion to tax costs and the appellate court's affirmation of that order, and for any other relief deemed reasonable and just.

Respectfully submitted,

ESMERALDA MACEDO

By: ***/s/ Cameron W. Ash***
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Supreme Court Rule 341(c) Certificate of Compliance

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 13 pages.

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CERTIFICATE OF FILING & PROOF OF SERVICE

The undersigned, being first duly sworn upon oath, deposes and states that the foregoing Response Brief of Defendant-Appellee Esmeralda Macedo was electronically submitted for filing to the Supreme Court Clerk's office on **December 4, 2024** and caused to be served upon:

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Via electronic mail, on **December 4, 2024.**

Under the penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statement set forth in this instrument are true and correct.

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