E-FILED
12/12/2024 12:18 PM
CYNTHIA A. GRANT
SUPREME COURT CLERK

No. 130687

**IN THE
SUPREME COURT OF ILLINOIS**

IRMA JORDAN, *Plaintiff-Appellant*, vs. 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.

REPLY BRIEF OF PLAINTIFF-APPELLANT

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ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS

STATEMENT OF POINTS AND AUTHORITIES

Cases: **Page(s)**

Constitutional Provisions, Statutes, and Codes Provisions:

PRELIMINARY STATEMENT

This reply shall serve to address limited merits arguments. As to all of the other arguments of Esmeralda Macedo, those issues have been previously discussed at length in Plaintiff-Appellant's opening brief[1] and no further briefing on those issues is required.

As previously set forth in the opening brief, the trial court erred when it denied the plaintiff's motion seeking taxation of mandatory statutory costs (735 ILCS 5/5-108) as the prevailing party, and statutory prejudgment interest (735 ILCS 5/2-1303(c)). The appellate court correctly (and unanimously) reversed the trial court's denial of prejudgment interest. *Jordan v. Macedo*, 2024 IL App (1st) 230079, ¶¶ 1, 33. The appeal before the Supreme Court deals only with the denial of a plaintiff's statutory right to recover her court costs (735 ILCS 5/2-108) (and, implicitly, any defendant's statutory right (735 ILCS 5/2-109) too).

ARGUMENT

A. The Trial Court Erred in Denying Plaintiff's Motion to Tax Statutory Costs and the Appellate Court's Opinion That Plaintiff Lost Her Right to Seek and Obtain Mandatory Statutory Costs Is Inconsistent with Illinois Law and Should be Reversed.

Respondent incorrectly (and heavily) relies on *Cruz v. Nw. Chrysler Plymouth Sales, Inc.*, 179 Ill. 2d 271 (1997). *Cruz* is distantly different than this case. First, *Cruz* does not address mandatory statutory costs; it addresses attorneys' fees recoverable under specific statutes. Although both this case and the *Cruz* matter involved court-annexed arbitrations, here, Plaintiff's arbitration was before a single arbitrator (Alice E. Dolan)

[1] Appellant's opening brief ("AOB") and Respondent's brief ("RB").

(C0070),[2] while *Cruz* was "before a panel of arbitrators." *Cruz*, 179 Ill. 2d at 273.

Since this was a Law Division Case, Part 25 (Law Division Mandatory Arbitration, Commercial Calendar Section) applied to this case. The *Cruz* matter was not part of the Law Division Mandatory Arbitration Program. Rule 25.5(a) (Mandatory Arbitration Hearing Procedure) of the Rules of the Circuit Court of Cook County ("CIRCUIT RULE") describe that the case is assigned to a "single arbitrator". CIRCUIT RULE 25.5. As previously expressed in the opening brief, "Circuit Court Rule 25 and not Illinois Supreme Court Rules 86-95 controls timing of process, discovery and hearing in Law Division Mandatory Arbitrations. Respondent concedes this point. RB at p10 ("Cook County Law Division Mandatory Arbitration is not governed by Supreme Court Rules 86 through 95."). None of these rules (Rules 25.1 – 25.17) authorize (whether explicitly or implicitly) an arbitrator to award either statutory costs (735 ILCS 5/5-108) or prejudgment interest (735 ILCS 5/2-1303(c))." AOB p8-9.

Importantly, CIRCUIT RULE 25.9 (The Arbitration Hearing) describes the documentary evidence that may be "admitted into evidence without further foundation or other proof…." Subparagraphs (i) through (v) include the following broad categories of "evidence": health care records, medical bills, property damage bills, employer's report of lost wages, and witness statements. Subparagraph (vi) is a "catchall" for other documents "which are otherwise admissible under the rules of evidence." The Illinois Rules of Evidence do not cover the admission of evidence of filing fees, summons fees, service of process fees, etc. As such, inclusion of those receipts would violate CIRCUIT

[2] The record, which was filed with the appellate court on March 15, 2023, consists of a 1-volume Common Law Record ("C") paginated C0001-117.

RULE 25.9. Therefore, Plaintiff respectfully disagrees with Section II of the Respondent's Brief. RB at p8-9.

In *Cruz*, the issue was whether "attorneys' fees" were properly denied by the trial court when not raised at the time of the arbitration. However, attorneys' fees, unlike mandatory statutory costs, are always discretionary and reversal is proper only if there is an abuse of that discretion. *In re Estate of Callahan*, 144 Ill. 2d 32, 43-44 (1991) Further, unlike mandatory statutory costs, "statutory fee awards can be a substantial, even predominate portion of a party's ultimate recovery, excluding fee petitions from consideration by the arbitrators would make the arbitration process pointless." *Cruz*, 179 Ill. 2d at 280. This was a primary concern for Justice Mikva in her dissenting opinion. *Jordan v. Macedo*, 2024 IL App (1st) 230079, ¶¶ 46-48.

As this Court held in *Cruz*:

> "Allowing the substantive claims in a case to be heard and decided by the arbitration panel while reserving the assessment of fees for later consideration by the circuit court is improper for another reason as well. The determination as to whether fees should be awarded under the Consumer Fraud Act involves consideration of the time and labor required, the novelty and difficulty of the questions involved, the experience and ability of counsel, the skill necessary to perform the legal services rendered, the customary fees charged for such services, and the benefits resulting to the client. Virtually all of these factors require direct knowledge of the underlying litigation and counsel's performance. Where

> a matter has undergone mandatory arbitration, the body that possesses that knowledge is the arbitration panel, not the circuit court. The circuit court will know virtually nothing about the issues in the case, how difficult it was to litigate, or how effectively counsel represented his clients. The arbitration panel, not the circuit court, is therefore the proper body to rule on statutory fee requests."

Cruz, 179 Ill. 2d at 280-81.

Similar to the case *sub judice*, in *Cruz*, the plaintiff did not present evidence of her costs at the arbitration. However, in *Cruz*, although the arbitration panel did not indicate in its award that any portion represented "costs," the trial court entered judgment on the award ($3,361) "plus costs." *Cruz*, 179 Ill. 2d at 273; *see also Cruz v. Nw. Chrysler Plymouth Sales, Inc.*, 285 Ill. App. 3d 814 (1st Dist. 1996)

B. This Court Should Clarify That Mandatory Statutory Costs Can Be Addressed in Some Court-Annexed Arbitrations Involving A Panel Of Arbitrators, But Must Be Awarded In Any Final Judgment by a Trial Court and Cannot Be Waived Unless Specifically Waived and Articulated as Such By The Prevailing Party.

Supreme Court Rule 92(e) address costs as follows: "Costs 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 (emphasis added). Therefore, on its face, Rule 92(e) does not apply to court-annexed arbitrations involving a single arbitrator like in this case. If such an application were intended, then the rule would simply refer to arbitrations. Respondent concedes that the "Cook County Law Division Mandatory Arbitration is not

governed by Supreme Court Rules 86 through 95." RB at p10.

Respondent argues that "Illinois Supreme Court 21(a) requires that local rules be 'consistent with' the Illinois Supreme Court Rules." RB at p11. Then, she argues that "[t]he 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." RB at p11. An alternative interpretation of the absence of a specific rule would be that the failure to address costs in an arbitration shall not constitute a waiver of a party's right to recover costs upon entry of judgment. Therefore, this Court should clarify that mandatory statutory costs can be addressed in some court-annexed arbitrations involving a panel of arbitrators, but must be awarded in any final judgment by a trial Court and cannot be waived unless specifically waived and articulated as such by the prevailing party.

CONCLUSION

For the above-stated reasons, Plaintiff-Appellant, Irma Joran, respectfully requests this Honorable Court enter an order reversing the trial court's order denying the plaintiff's motion to tax costs and the appellate court's affirmation of that order, remand this matter to the trial court to award mandatory statutory costs, together with such other and further relief as in equity this Court deems reasonable and just.

Dated: December 12, 2024 Respectfully submitted,

By: /s/ Craig M. Sandberg

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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 or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and 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 6 pages.

By: /s/ Craig M. Sandberg
CRAIG M. SANDBERG

CERTIFICATE OF SERVICE

The undersigned, being first duly sworn upon oath, deposes and states that the foregoing **Reply Brief of Plaintiff-Appellant** was electronically submitted for filing to the Supreme Court Clerk's office on **December 12, 2024** and caused to be served upon:

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via electronic mail, on **December 12, 2024**.

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

By: /s/ Craig M. Sandberg
CRAIG M. SANDBERG