

NO. A05-0446

STATE OF MINNESOTA
IN COURT OF APPEALS

All Metro Supply, Inc.,

Respondent,

vs.

Keith Werner,

Defendant,

vs.

Green Gardens Nursery and Landscape, Inc.,

Appellant.

APPELLANT'S REPLY BRIEF

BRIGGS AND MORGAN, P.A.
Philip R. Schenkenberg (#260551)
Jeffrey A. Abrahamson (#338187)
IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402
Tel: (612) 977-8400
Fax: (612) 977-8650

*Attorneys for Appellant Green Gardens
Nursery and Landscape, Inc.*

NEVEAUX & ASSOCIATES
Jack Neveaux (#160660)
1421 East Wayzata Boulevard
Wayzata, Minnesota 55391
Tel: (952) 473-2521
Fax: (952) 473-7863

*Attorney for Respondent All Metro
Supply, Inc.*

TABLE OF CONTENTS

	Page
ARGUMENT	1
I. Standard of Review	1
II. The Arbitration Award Cannot Be Both "Ambiguous" and Contain an "Evident Mistake"	2
III. An Arbitration Award Cannot Be Remanded For Clarification After Twenty Days Have Passed	3
IV. The Arbitration Award Did Not Need Clarification	5
V. The Amended Award Was Much More than a Clarification	6
CONCLUSION	7
CERTIFICATE OF COMPLIANCE	

TABLE OF AUTHORITIES

STATE CASES

<u>Altona v. Electric Mfg. Co.,</u> 172 N.W. 212 (Minn. 1919).....	2
<u>Bollenbach v. Bollenbach,</u> 175 N.W.2d 148 (Minn. 1970).....	6
<u>Crosby-Ironton Federation of Teachers, Local 1325 v. Independent School Dist. No. 182,</u> <u>Crosby-Ironton,</u> 285 N.W.2d 667 (Minn. 1979).....	4
<u>Unique Sys. Dev. v. Star Agency,</u> 500 N.W.2d 144 (Minn. Ct. App. 1993).....	2
<u>Hibbing Educ. Ass'n v. Public Employment Relations Bd.,</u> 369 N.W.2d 527 (Minn. 1985).....	2
<u>International Union of Elec. And Mach. Workers, Local 1140 v. Portec, Inc.,</u> 228 N.W.2d 239 (Minn. 1975).....	6
<u>Menahga Education Assoc. v. Menahga Indep. School Dist.,</u> 568 N.W.2d 963 (Minn. App. 1997).....	4
<u>Minnesota Licensed Practical Nurses Ass'n v. Bemidji Clinic, Ltd.,</u> 352 N.W.2d 65 (Minn. App. 1984).....	6
<u>State ex rel. Remick v. Clousing,</u> 285 N.W. 711 (Minn. 1939).....	6

STATE STATUTES

Minn. Stat. Ch. 572	1
Minn. Stat. § 572.16.....	3, 4
Minn. Stat. § 572.18.....	6, 7
Minn. Stat. § 572.19.....	7
Minn. Stat. § 572.20	1, 2, 7

MISCELLANEOUS

Minn. R. Evid. 201(b).....	6
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ARGUMENT

Appellant Green Gardens Nursery and Landscape, Inc. ("Green Gardens") presents this reply to the brief of Respondent All Metro Supplies, Inc.¹ ("All Metro"). All Metro was able to obtain a second arbitration hearing and a substantially different award without seeking clarification or modification within 20 days, and without demonstrating evident mistake under Minn. Stat. § 572.20, subd. 1. This is not how Chapter 572 is intended to work. The initial Arbitration Award was clear and it should have been confirmed. This Court should follow the clear mandates of the Legislature, and accordingly, reverse the District Court's confirmation of the Amended Arbitration Award.

I. Standard of Review

Green Gardens identified the appropriate standard of review in its initial Brief. App. Br., p. 7. All Metro identified a different standard of review, suggesting that this Court review the Arbitrator's decision rather than the District Court's action. Resp. Br., p. 8. This argument misses the mark and attempts to skew the issue before this Court. Green Gardens' claim in this case is that the District Court failed to follow clear statutory directives by: 1) failing to confirm the initial Arbitration Award; 2) remanding the case to the Arbitrator; and 3) confirming a second, substantively different award. This is not a case that can be resolved by analyzing the Arbitration Awards and giving deference to the Arbitrator, it is a case that must be resolved by examining whether the District Court

¹ Respondent noted in its brief that its correct legal name is "All Metro Supplies, Inc.," not "All Metro Supply, Inc." as noted in the caption in this matter.

followed the law in disposing of post-arbitration motions. This is a question of law that is to be reviewed by this Court *de novo*. Unique Sys. Dev. v. Star Agency, 500 N.W.2d 144, 146 (Minn. Ct. App. 1993); see also Hibbing Educ. Ass'n v. Public Employment Relations Bd., 369 N.W.2d 527, 529 (Minn. 1985).

II. The Arbitration Award Cannot Be Both "Ambiguous" and Contain an "Evident Mistake"

The District Court erred in this case by failing to limit itself to the statutory requirements for confirming, modifying, or vacating arbitration awards. In attempting to create a justification for the District Court's actions, All Metro characterizes the initial Arbitration Award in two, mutually-exclusive ways. All Metro relies on Minn. Stat. § 572.20, subd. 1(1), which allows the District Court to correct or modify an award for "evident mistake." Resp. Br., p. 8. This was the statute under which All Metro's post award motion was brought. Resp. Br., p. 6, n. 10. However, All Metro then goes on to argue that the District Court's remanding of the matter to the Arbitrator was appropriate because the award was "ambiguous." Resp. Br., p. 7.

This Court should recognize that an ambiguity is the opposite of an evident mistake. An evident mistake is one that is obvious and that can be corrected by the court without need for further inquiry. See Altona v. Electric Mfg. Co., 172 N.W. 212 (Minn. 1919) (correcting evident mistake in amount of verdict). The statute recognizes this – an evident mistake is to be corrected by the Court, with no provision for remand. Minn. Stat. § 572.20, subd. 1. The resolution of an ambiguity, on the other hand, is by definition not "evident."

All Metro sought modification of the award for evident mistake. Resp. Br., p. 6. The District Court made no finding of evident mistake, nor would such a finding have been justified. Even All Metro admits that its proposed re-write of the initial Arbitration Award could only be achieved by remanding the case to the Arbitrator. Resp. Br., pp. 8-9. In the absence of evident mistake, the initial Arbitration Award should have been confirmed, and All Metro's motion to modify the Arbitration Award based on evident mistake should have been denied.

III. An Arbitration Award Cannot Be Remanded For Clarification After Twenty Days Have Passed

By arguing that the initial Arbitration Award was "ambiguous" and needed "clarification," All Metro is seeking relief that could only be obtained under Minn. Stat. 572.16, subd. 1(2) or subd. 2. However, All Metro failed to seek this clarification from the Arbitrator within the 20 day limit commanded by the statute. By remanding the matter to the Arbitrator for "clarification" of the award after the 20 day limit set forth in Minn. Stat. § 572.16, subd. 3, the District Court exceeded the authority granted to it by the Legislature.

The deadlines established by the Legislature in Minn. Stat. § 572.16 are clear. A party has two routes to obtain clarification of an arbitration award. Under Subdivision 1, the party may make application to the arbitrator. Under Subdivision 2, the party may file a motion to vacate or modify an award and seek a court order requiring the arbitrator to clarify the award. Subdivision 3 could not be more clear: "For purposes of subdivision 1

or 2, the application shall be made within 20 days after delivery of the award to the applicant." Minn. Stat. § 572.16, subd. 3.

The Minnesota Supreme Court has held definitively that a court's ability to direct an arbitrator to clarify or modify an award is strictly limited by the 20 day provision in Minn. Stat. § 572.16, subd. 3. Crosby-Ironton Federation of Teachers, Local 1325 v. Independent School Dist. No. 182, Crosby-Ironton, 285 N.W.2d 667, 669-70 (Minn. 1979). All Metro's half-hearted attempt to read this explicit provision as meaningless ignores this binding case law.²

The interpretation proposed by All Metro would also subvert the State's underlying policy for submitting disputes to arbitration – to encourage the speedy and relatively inexpensive resolution of commercial disputes. Id. at 669. Under All Metro's proposed interpretation, a party could simply ignore the 20 day requirement set forth in Minn. Stat. § 572.16, subd. 3, and wait until the 90th day before asking a judge to remand a case back to the arbitrator to clarify or modify the award. Such a delay would severely undermine the very purpose of arbitration proceedings, which is why the legislature created a limited 20 day window to seek this relief.

All Metro had 20 days to seek clarification of the award from the Arbitrator, or to preserve its rights to do so by bringing the matter to the District Court. All Metro failed

² All Metro appears to concede that this timing issue was not addressed in Menahga Education Assoc. v. Menahga Indep. School Dist., 568 N.W.2d 963 (Minn. App. 1997). Resp. Br., pp. 11-12.

to do so, and thus accepted the award as written. There is neither legal nor policy support for allowing All Metro to obtain relief it has waived through the passage of time.

IV. The Arbitration Award Did Not Need Clarification

The fundamental problem with All Metro's position is that the initial Arbitration Award was not unclear. The initial award did resolve the parties' dispute and could – and should – have been implemented as written. For that reason, All Metro has tried to create uncertainty where none existed. The initial Arbitration Award provides that All Metro would receive \$100,000 conditioned upon its delivery of a bill of sale for the "inventory, equipment, office furnishings, trade fixtures, and good will." (App. 0010.)³ The initial Arbitration Award excludes from this list "all vehicles identified in Claimant's Exhibit 12." (App. 0010.) It is undisputed that Claimant's Exhibit 12 includes some vehicles. It is also clear that Claimant's Exhibit 12 includes a pulverizer and conveyer that are not vehicles.⁴ The only question that is even arguable is whether the Volvo payloader and Princeton forklift are "vehicles" or "equipment." This is answered definitively by All Metro's own hearing exhibit, which identifies the payloader and forklift as equipment. (App. 0023.)⁵ Because the initial Arbitration Award is abundantly clear, there is no basis to find any clarification necessary or appropriate.

³ As used herein, "App. ____." refers to Appellant's Appendix and "Resp. App. ____." refers to Respondent's Appendix.

⁴ All Metro appears to concede (as it must) that a pulverizer and conveyer are not vehicles. Resp. Br., p. 4.

⁵ Additionally, All Metro describes the Volvo payloader as a "piece of commercial equipment" (Resp. Br., p. 4, n. 7) and the Volvo web page that All Metro attached to its brief classifies the payloader as "construction equipment." (Resp. App. 0009.)

V. The Amended Award Was Much More than a Clarification

Finally, as Green Gardens noted in its initial Brief, the Amended Arbitration Award is a significantly and substantively different document than the initial Arbitration Award. App. Br., p. 6. It is structured differently, was based on a different evidentiary record, and even includes new categories of damages. It is blatantly wrong for All Metro to suggest that the Arbitrator, with pinpoint precision, clarified only those latent ambiguities that would otherwise have prevented implementation of the initial award. To the contrary, the Amended Arbitration award is an entirely new award.

This Court should find that the District Court was without power to hold All Metro's motion to confirm the initial Arbitration Award in abeyance while the Arbitrator conducted a new hearing. Minn. Stat. § 572.18 mandates that an award be confirmed except in limited circumstances – none of which were present in this matter. The District Court's authority to act on Arbitration Awards comes from statute alone, not from common law, and not from laws of equity. See International Union of Elec. And Mach. Workers, Local 1140 v. Portec, Inc., 228 N.W.2d 239, 241 (Minn. 1975); Minnesota

All Metro's feeble attempt to describe the Princeton forklift as a "moveable motor vehicle" should also be summarily dismissed by this Court. (Resp. Br., p. 4, n. 7.) It is evident that a forklift, which by All Metro's own words is "used to push, lift and tier resources in a manufacturing, retail, agricultural or warehouse environment" qualifies as a piece of "equipment" rather than a "vehicle" under any common understanding of these two terms. Moreover, Respondent improperly, via a casual reference in a footnote, asks the Court to take judicial notice of its descriptions of the Volvo payloader and Princeton forklift. (Resp. Br., p. 4, n. 7.) Judicial notice is reserved for those facts which are incapable of reasonable dispute. Minn. R. Evid. 201(b). See also State ex rel. Remick v. Clousing, 285 N.W. 711, 714 (Minn. 1939); Bollenbach v. Bollenbach, 175 N.W.2d 148, 156 (Minn. 1970). It would not be proper for a party to use this process to contradict its own characterizations previously made on its own hearing exhibit.

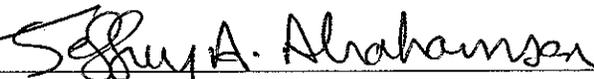
Licensed Practical Nurses Ass'n v. Bemidji Clinic, Ltd., 352 N.W.2d 65, 67 (Minn. App. 1984). If a District Court – without making findings under Minn. Stat. §§ 572.19 or 572.20 – can simply send a case back to an arbitrator for a "re-do," Minn. Stat. § 572.18 will be meaningless, parties will be deprived of their rights to definitively resolve claims through the arbitration process, and courts will be allowed to overstep their authority and meddle in every award that can be construed as ambiguous by any party to the dispute.

CONCLUSION

For the above reasons, Green Gardens respectfully requests that the Court reverse the District Court and order that the initial Arbitration Award should have been confirmed as issued.

Dated: May 12, 2005

BRIGGS AND MORGAN, P.A.

By 

Philip R. Schenkenberg (MN 260551)

Jeffrey A. Abrahamson (MN 338187)

2200 IDS Center

80 South Eighth Street

Minneapolis, Minnesota 55402

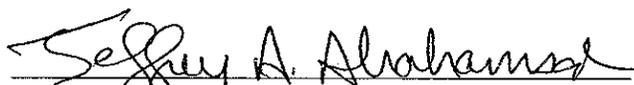
(612) 977-8400

ATTORNEYS FOR APPELLANT

CERTIFICATE OF COMPLIANCE

The undersigned counsel for Appellant Green Gardens Nursery and Landscape, Inc. certifies that this brief complies with the requirements of Minn. R. App. P. 132.01, subds. 1 and 3, in that it is printed in a 13-point, proportionately spaced typeface utilizing Microsoft Word 2002 and contains 1896 words, excluding the Cover, ~~Table of Contents~~, Table of Authorities, and this Certificate.

Dated: May 12, 2005

A handwritten signature in cursive script that reads "Jeffrey A. Abrahamson". The signature is written in black ink and is positioned above a horizontal line. A large, thin black line loops from the right side of the signature down and back up to the right side of the text below.

Philip R. Schenkenberg (#260551)

Jeffrey A. Abrahamson (#338187)