IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No. DA 21-0140

SUTEY OIL COMPANY, INC.

Appellee/Cross-Appellant,

vs.

MONROE'S HIGH COUNTRY TRAVEL PLAZA, LLC, a Montana Limited Liability Company, and **MARVIN MONROE**

Appellant/Cross-Appellee.

On Appeal from the Montana First Judicial District Court
Lewis & Clark County, Cause No. DDV-2015-126
Before Hon. Christopher Abbott

CROSS-APPELLANT'S REPLY BRIEF

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Introduction

The District Court denied the award of attorney's fees requested by Sutey Oil stating that Monroe's duplicitous filing of hundreds of pages of new pleadings, bringing the same arguments, was not vexatious. *Order Denying Motion to Amend or Vacate Arbitration Award* at ¶ C (February 22, 2021). The basis for this denial was apparently the impression that Sutey Oil forced Monroe to file "to some degree by Sutey's choice to obtain a judgement long before the ninety-day period for challenging the arbitration award had run." *Id*. Monroe joins that position arguing that Sutey Oil's "rush to confirm the arbitration award needlessly caused additional filings." *Monroe's Resp. to Sutey's Cross Appeal* at. ¶ I (Dec. 1, 2021). The position that a court's confirmation of an arbitration award, days after receiving it, allows a party to initiate vexatious multiplication of proceedings is incorrect. The District Court's denial of costs and attorney fees should be reversed, and this single issue should be remanded.

I. No temporal limits exist for when a party may apply for confirmation of an arbitration award.

"Upon the application of a party, the district court shall confirm an award unless within the time limits imposed in this chapter grounds are urged for vacating, modifying, or correcting the award, in which case the court shall proceed as provided in 27-5-312 and 27-5-313." Mont. Code Ann. § 27-5-311. At the time which Sutey Oil filed for confirmation of the award, Monroe had not "urged for vacating,

modifying, or correcting the award." Thus, the District Court was correct in confirming the award the first time. *Confirmation of Award and Final Judgment* (Nov. 5, 2020). This confirmation did not procedurally impede Monroe from filing either motion nor did it terminate Monroe's right to challenge the award. *See* Mont. Code Ann. §§ 27-5-312, 313 (both allowing a party 90 days to file for relief). The confirmation also did not eliminate Monroe's obligation to participate in litigation in a manner that did not unnecessarily increase the time spent by the Court and parties. *See Rocky Mountains Enterprises, Inc. v. Pierce Flooring*, 286 Mont. 282, 302, 951 P.2d 1326, 1339 (1997) (increasing trial time inappropriately was conduct that "cannot be condoned"). The timing of the application for confirmation of the Arbitration Award did not create a special right for Monroe to pursue continued duplicative and vexatious litigation. Thus, the District Court's reasoning for not awarding fees and costs was incorrect. This issue should be reversed, Sutey Oil should be awarded fees and costs, and this matter be remanded to determine the amount of fees and costs to be awarded to Sutey Oil.

II. Monroe's filings include the same vexatious, duplicative, and ultimately rejected arguments that are proffered only to tax Sutey Oil for asserting its valid claims.

Since June of 2020, Monroe has presented the same defenses against paying the balance due for the five (5) loads of fuel. Monroe has asked for certain discounts and credits, not recognized during the course of dealing, to be applied retroactively

to the balance due. Every single time those defenses have been brought, they have been denied. Monroe's five separate attempts to present the same previously denied "discount defenses," and Monroe's costly extension of these proceedings, should be recognized by this Court as vexatious and duplicative.

On June 15, 2020, Monroe filed *Defs.' Brief in Support of Motion for Summary Judgment (Verified by Marvin Monroe)* which argued for certain discounts to be applied to the balance due. *Id*. at ¶ 19 (Jun. 15, 2020). Monroe's "discount defense" was rejected by the Arbitrator. *Order Re: Pending Motions for Summary Judgment* (Aug. 2, 2020) ("Defendants' Motion for Summary Judgment request[s] the following relief: … A finding, as a matter of law, that any price discounts given to defendants by Sutey, and then withdrawn by Sutey, be reinstated, and discounts that were not given to defendants -but could have been – be "credited" to defendants").

At the arbitration hearing, Monroe presented the exact same "discount defense." Monroe argued, *inter alia*, that prompt-pay discounts and other credits, which would benefit Monroe, should be retroactively added in Monroe's favor; that the unreconciled sums, where no historical records existed, should be calculated in Monroe's favor; and, that any retroactive credits which benefited Sutey Oil, should be ignored. *See Answer Brief to Appellants' Opening Brief and Cross-Appellant's Opening Brief*, Statement of Facts (Dec. 1, 2021); Arb. Transcr. 71:8-72:1, 147:7-

148-20, 149:21-150:12, 154:15-23, 155:1-156:2, 175:6-179:15, 230:12-232:14, 255:25-261:17, 346:11-347:19, 363:5-364:19 (Aug. 6-7, 2020); and, Monroe's 32-page *Closing Argument* (Aug. 28, 2020). Again, the Arbitrator denied Monroe's "discount defenses": "The testimony of expert witness, Ben Yonce… [is that] the Master Report accurately reports the unpaid invoices amount to $220,750.43, and that any errors in the record-keeping or in the report itself were not material, and do not alter the amount owed by High Country to Sutey." Arb. Determ., pgs. 6-7 (Oct. 27, 2020).

The Arbitrator similarly denied Sutey Oil's arguments to revoke discounts on transactions where a discount was not properly earned (due to delay in payments) but had been credited by Sutey Oil to Monroe during the course of dealing. The Arbitrator refused to apply discounts to the principal amount in favor of either party.

In an attempt at a third bite of the apple, Monroe set up a telephone call to the Arbitrator. During that call, Monroe made the exact same arguments for the exact same discounts, this time asserting the "discount defense" as a scrivener's error. *See Appellant's Opening Brief* at pg. 7, Statement of the Facts, ¶ C (Aug. 2, 2021). Correctly acknowledging Monroe's newest attempt to obfuscate and delay, Sutey Oil was forced to timely confirm the arbitration award with the District Court.

Instead of accepting the confirmation by the District Court, Monroe took a fourth run with the same "discount defense" by filing numerous motions, briefs, and

several hundred pages of exhibits. *See Brief in Support of Motion to Amend or in the Alternative Vacate Award* (Dec. 1, 2020). The District Court properly denied Monroe's attempts at reversing the award and rejected Monroe's "discount defense" for a fourth time.

Now, Monroe has brought the exact same "discount defense" in the present appeal. Monroe's *ad nauseum* approach to extend this litigation using the same arguments has cost the Courts and Sutey Oil an abundance of time and resources. There is no doubt that this was Mr. Monroe's plan all along:

> **And then when all of this started about him being behind, his statement to me was that he would drag it out in court. He knew he owed the money but he would draw it out in court just to make Linda mad.**

Depo. Darlene Beckett 32:11-15 (Nov. 7, 2016). "Q. Did [Marvin Monroe] mention anything about what his strategy was going to be in the lawsuit? **A. That he would drag it out as long as he could.**" Direct Examination of Linda Sutey, Arb. Transcr. 32:5-8 (Aug. 6-7, 2020).

Monroe has asserted the "discount defense" at every turn, and so far, it has been universally denied at every turn. Monroe's willingness to drag this matter out should be recognized by this Court as duplicative and vexatious with the primary intent to tax Sutey Oil for bringing its valid claims for unpaid inviovces for fuel delivered to Monroe and sold by Monroe. Sutey Oil requests that this Court overturn the District Court's denial of an award of costs and fees and remand this particular

issue back to the District Court to determine the appropriate amount of fees to be awarded to Sutey Oil for the defense of vexatious continued litigation.

DATED this 15th day of December 2021.

ORR MCDONNELL LAW, PLLC

/s/ Gregory A. McDonnell
By: _____
Gregory A. McDonnell
Attorney for Appellee/Cross-Appellant

Certificate of Compliance

Pursuant to M.R. App. P. 11(4)(e) and 12(4), I certify that. is printed with a proportionately spaced Times New Roman text typeface of 14 points and is double-spaced, except for footnotes which are single-spaced in 12-point type. The word count, calculated by Microsoft Word for Office 365, is fewer than 10,000 words, exclusive of the tables of contents and authorities.

DATED this 15th day of December 2021.

ORR MCDONNELL LAW, PLLC

/s/ Gregory A. McDonnell
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Certificate of Service

I, the undersigned, hereby certify and affirm that a true and correct copy of the foregoing was provided at Missoula, Montana this 15th day of December 2021 to all parties by electronic service. Each attorney of record is registered for electronic service through the Court's eService system.

ORR MCDONNELL LAW, PLLC

By: /s/ Gregory A. McDonnell
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CERTIFICATE OF SERVICE

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