

IN THE SUPREME COURT OF THE STATE OF NEVADA

INNOVATIVE CONSTRUCTION
SYSTEMS, INC.,
Appellant,
vs.
CLARK COUNTY,
Respondent.

No. 44663

MEADOW VALLEY CONTRACTORS,
INC.,
Appellant,
vs.
CLARK COUNTY,
Respondent.

No. 44671

FILED

MAY 10 2007

WYNNE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

These are consolidated appeals from a district court order confirming an arbitration award in a contract matter. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

Appellants argue that the arbitration panel's award should be vacated because (1) the panel manifestly disregarded the law, and (2) the award violates public policy by not enforcing the implied covenant of good faith and fair dealing.

"[T]he scope of judicial review of an arbitration award is limited and is nothing like the scope of an appellate court's review of a trial court's decision."¹ "The party seeking to attack the validity of an arbitration award has the burden of proving, by clear and convincing

¹Health Plan of Nevada v. Rainbow Med., 120 Nev. 689, 695, 100 P.3d 172, 176 (2004).

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evidence, the statutory or common-law ground relied upon for challenging the award.”² Questions of law are reviewed de novo.³

Manifest disregard of the law is a common-law basis for vacating an arbitration award.⁴ “Manifest disregard of the law goes beyond whether the law was correctly interpreted, it encompasses a conscious disregard of applicable law.”⁵ An arbitration panel consciously disregards the law when it recognizes that the law absolutely requires a given result and nonetheless refuses to apply the law correctly.⁶ Therefore, we must first determine the controlling law and, second, conclude whether the arbitration panel manifestly disregarded the law.

With respect to the controlling law in this case, every Nevada contract contains an implied covenant of good faith and fair dealing.⁷ This is so, in part, because otherwise a party to a contract could “refrain from cooperation in a contract, or . . . act in bad faith, calculated to destroy the benefit of that contract to the other contracting party.”⁸ “[W]hether the

²Id.

³Id. at 695, 100 P.3d at 177.

⁴Id.

⁵Id. at 699, 100 P.3d at 179.

⁶Bohlmann v. Printz, 120 Nev. 543, 547, 96 P.3d 1155, 1158 (2004).

⁷A.C. Shaw Construction v. Washoe County, 105 Nev. 913, 914, 784 P.2d 9, 10 (1989).

⁸Id. at 915, 784 P.2d at 10.

implied covenant of good faith and fair dealing is applicable” depends on the terms of the contract in question.⁹

“Where the terms of a contract are literally complied with but one party to the contract deliberately countervenes the intention and spirit of the contract, that party can incur liability for breach of the implied covenant of good faith and fair dealing.”¹⁰ In such a situation, the non-breaching party must prove that the other party acted “in a manner that is unfaithful to the purpose of the contract [such that] the justified expectations of the [non-breaching] party are thus denied.”¹¹ “Whether the controlling party’s actions fall outside the reasonable expectations of the dependent party is determined by the various factors and special circumstances that shape these expectations.”¹²

With respect to whether the arbitration panel manifestly disregarded the law, we conclude that it did not. In this case, the arbitration panel made findings relating to the applicability of the implied covenant of good faith and fair dealing. Specifically, the arbitration panel determined that Clark County did not breach the express terms of the contract. More importantly, however, the panel found that appellants’

⁹See id. at 916, 784 P.2d at 11.

¹⁰Hilton Hotels v. Butch Lewis Productions, 107 Nev. 226, 232, 808 P.2d 919, 922-23 (1991).

¹¹Id. at 234, 808 P.2d at 923.

¹²Id. at 234, 808 P.2d at 923-24.

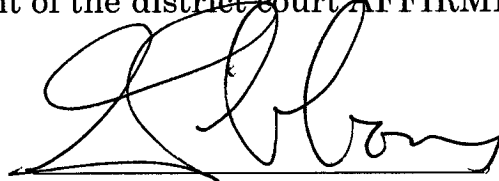
justified expectations were not denied because the appellants could not have reasonably expected Clark County to approve their proposed methods of performance. The effect of the panel's determination, therefore, was that under the terms of the contract, "the implied covenant of good faith and fair dealing [was] [in]applicable."¹³ Finally, nothing in the record indicates that the panel was aware that the law dictated a certain outcome and that it consciously refused to reach that outcome. Accordingly, we conclude that the district court did not err in denying appellants' request to vacate the arbitration award.

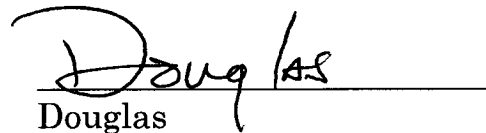
We next address appellants' assertion that the arbitration panel's award should be vacated as being violative of public policy. This argument is basically the same as appellants' first argument. Accordingly, it fails for the same reasons; *i.e.*, the arbitrators found that (1) there was no breach of contract and (2) appellants' justified expectations were not denied. Without a breach of contract or denied justified expectations, a claim for breach of the implied duty of good faith fails. Thus, the arbitration panel could not have violated public policy by not awarding appellants damages for breach of the implied duty of good faith. For these

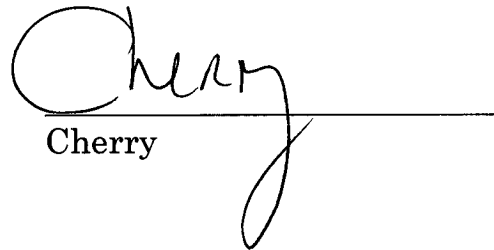
¹³A.C. Shaw Construction, 105 Nev. at 916, 784 P.2d at 11.

reasons, we conclude that the district court did not err in denying appellants' request to vacate the arbitration award. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Mark R. Denton, District Judge
Carolyn Worrell, Settlement Judge
Ellsworth Moody & Bennion Chtd
Fennemore Craig, P.C./Las Vegas
Fennemore Craig, P.C./Phoenix
Rooker Mohrman Rawlins & Bailey LLP
Eighth District Court Clerk