

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANNETTE L. LEXIS,
Appellant,
vs.
BELLACERE, LLC, AND
CHRISTOPHER HOMES,
Respondents.

No. 46959

FILED

DEC 04 2007

BY WANSY TE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order confirming an arbitration award. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Appellant Annette L. Lexis appeals from an order confirming an arbitration award and entering judgment in favor of respondents Bellacere, LLC and Christopher Homes. Lexis argues that the district court erred in confirming the arbitration award because the arbitrators manifestly disregarded the law and that the arbitration award is arbitrary and capricious. The parties are familiar with the facts, and we do not recount them here except as necessary for our disposition.

“There are two common-law grounds recognized in Nevada under which a court may review private binding arbitration awards: [to determine] (1) whether the award is arbitrary, capricious, or unsupported by the agreement; and (2) whether the arbitrator manifestly disregarded the law.”¹ The first standard “ensures that the arbitrator does not

¹Clark Cty. Educ. Ass’n v. Clark Cty. Sch. Dist., 122 Nev. 337, 341, 131 P.3d 5, 8 (2006).

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disregard the facts or the terms of the arbitration agreement,” while the second standard “ensures that the arbitrator recognizes applicable law.”²

The arbitration award is not arbitrary and capricious

“[T]he arbitrary-and-capricious standard limits a reviewing court’s consideration to whether the arbitrator’s findings are supported by substantial evidence.”³ Substantial evidence is “evidence that a reasonable person could accept as adequately supporting a conclusion.”⁴

Lexis argues that the arbitrators arbitrarily and capriciously disregarded the plain terms of the Offer and Acceptance Agreement and Earnest Money Receipt (Agreement) and the Optional Feature Price Addendum (Addendum). We disagree. Both the Agreement and the Addendum clearly explain that the quoted prices were subject to adjustment if Lexis made additional modifications or chose additional upgrades. Moreover, Lexis had the capacity to understand the Agreement and Addendum because she had nearly twenty-five years of business experience when she signed both documents.

Lexis argues that the arbitrators arbitrarily and capriciously disregarded her testimony and the documentation she submitted. We disagree. The arbitrators received other evidence to support the award, namely that Lexis insisted upon certain design features and refused to adjust the design plans, that Lexis remained steadfast even when

²Id.

³Id. at 342, 131 P.3d at 9.

⁴Flamingo Hilton v. Gilbert, 122 Nev. ___, ___, 148 P.3d 738, 740 (2006).

Christopher Homes' staff reminded her of her initial budget and warned her that her selections would considerably increase the cost of the house, and Lexis's testimony conceding that the Addendum does not state that the new contract price of \$1,997,456 would include all the upgrades she eventually chose. Substantial evidence supports the arbitration award in favor of Bellacere and Christopher Homes and therefore it was not arbitrary or capricious.

The arbitrators did not manifestly disregard the law

Under the manifest-disregard-of-law standard, "the issue is not whether the arbitrator correctly interpreted the law, but whether the arbitrator, knowing the law and recognizing that the law required a particular result, simply disregarded the law."⁵

Lexis makes five arguments with regard to her contention that the arbitrators manifestly disregarded the law. We reject each of Lexis's contentions.

Lexis contends first that the arbitrators manifestly disregarded the law by relying on the doctrine of mutual mistake and failing to consider the doctrine of unilateral mistake. Nevada law does not require arbitrators to consider and make specific findings as to every potentially applicable legal principle, and the arbitrators reasonably limited their consideration to the doctrine of mutual mistake as a basis for rescission. Because Lexis failed to establish that the doctrine of unilateral

⁵Clark Cty. Educ. Ass'n, 122 Nev. at 342, 131 P.3d at 8 (quoting Bohlmann v. Printz, 120 Nev. 543, 547, 96 P.3d 1155, 1158 (2004), overruled on other grounds by Bass-Davis v. Davis, 122 Nev. 442, 134 P.3d 103 (2006)).

mistake required a certain outcome in this case and that the arbitrators recognized this fact but improperly disregarded the law, we conclude that the arbitrators did not manifestly disregard the law.

Lexis contends second that the arbitrators manifestly disregarded the law by determining that Lexis had anticipatorily breached the Agreement and that she owed liquidated damages to Bellacere and Christopher Homes. An anticipatory repudiation of the duties arising under an agreement must be “clear, positive, and unequivocal.”⁶ Lexis repudiated the contract by refusing to pay the Addendum contract price of \$1,997,458 despite clear language requiring her to pay that amount plus the costs of any upgrades. In light of Lexis’s unequivocal repudiation, the arbitrators properly invoked the liquidated damages provision of the Agreement. The arbitrators did not manifestly disregard the law.

Lexis contends third that the arbitrators manifestly disregarded the law by concluding that Lexis’s \$448,778 deposit qualified as liquidated damages. The Agreement states that Bellacere and Christopher Homes are entitled to keep any deposits of earnest monies and additional funds for upgrades as liquidated damages in the event of a breach. The Agreement called for a \$30,000 deposit and the Addendum called for a \$418,778 deposit, both of which Lexis paid. Accordingly, Bellacere and Christopher Homes received \$448,778 in deposits, which, under the terms of the Agreement, they are entitled to keep as liquidated damages subsequent to a breach by Lexis. The arbitrators awarded

⁶Zhang v. Dist. Ct., 120 Nev. 1037, 1040, 103 P.3d 20, 23 (2004) (quoting Covington Bros. v. Valley Plastering, Inc., 93 Nev. 355, 360, 566 P.2d 814, 817 (1977)).

exactly \$448,778 to Bellacere and Christopher Homes, and thus the arbitrators did not manifestly disregard the law governing contract interpretation and liquidated damages by concluding that Lexis's \$448,778 deposit qualified as liquidated damages.

Lexis contends fourth that the arbitrators manifestly disregarded the law by forfeiting Lexis's rights to the house and lot and by awarding the house, lot, and total deposit to Bellacere and Christopher Homes. Regardless of whether Lexis has equitable ownership rights in the land, Lexis has not established that such rights would mandate a specific outcome in this case, that the arbitrators recognized this, and that the arbitrators simply disregarded the corresponding law. Therefore, the arbitrators did not manifestly disregard the law.

Lexis contends fifth that the arbitrators manifestly disregarded the law by denying Lexis damages and attorney fees. Lexis has not cited any authority under which she should recover attorney fees or costs. The arbitrators did not manifestly disregard the law by declining to grant her attorney fees and costs because there appears to exist no law requiring such an award.

NRAP 38(b) attorney fees

Bellacere and Christopher Homes seek attorney fees under NRAP 38(b) on the grounds that Lexis's appeal was frivolous and vexatious. We disagree.

Under NRAP 38(b), this court may award attorney fees:


[W]hen an appeal has frivolously been taken or been processed in a frivolous manner; when circumstances indicate that an appeal has been taken or processed solely for purposes of delay, when an appeal has been occasioned through respondent's imposition on the court below; or


whenever the appellate processes of this court have otherwise been misused.


There is no indication that Lexis filed this appeal for frivolous reasons or in a frivolous manner, in order to occasion delay, or in any way misused the appellate processes of this court. Bellacere and Christopher Homes have failed to demonstrate that Lexis filed this appeal in any manner or for any purpose that would justify an award of attorney fees and costs under NRAP 38(b).

We determine that the arbitration award was supported by substantial evidence and that the arbitrators did not arbitrarily and capriciously disregard the plain terms of the Agreement and Addendum or the clear testimony and documentation presented during the arbitration. Further, we determine that the arbitrators did not manifestly disregard the law. Finally, we conclude that Bellacere and Christopher Homes are not entitled to attorney fees and costs under NRAP 38(b). Accordingly, we affirm the district court's judgment and deny respondents' request for attorney fees under NRAP 38(b).

It is so ORDERED.


_____, C.J.
Maupin


_____, J.
Hardesty


_____, J.
Douglas

cc: Hon. Valerie Adair, District Judge
Jerry J. Kaufman, Settlement Judge
John Peter Lee Ltd.
Kummer Kaempfer Bonner Renshaw & Ferrario/Las Vegas
Eighth District Court Clerk