

IN THE SUPREME COURT OF THE STATE OF NEVADA

BELLACERE, LLC, A NEVADA
LIMITED LIABILITY COMPANY,

Appellant,

vs.

JOHN R. BAILEY, AN INDIVIDUAL;

AND TERI A. THOMAS, AN

INDIVIDUAL,

Respondents.

No. 47551

FILED

JAN 28 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Appeal from a district court order confirming an arbitration award and subsequent order entering judgment on that award. Eighth Judicial District Court, Clark County; David Wall, Judge.

In April of 2003, appellant Bellacere, LLC and respondents John Bailey and Teri Thomas (“the Baileys”) entered a contract wherein the Baileys agreed to purchase a parcel of real property and to have a custom home built on that parcel by Bellacere. The contract separately listed a “lot price” of \$399,000, and “base [home] price” of \$698,000, for a total contract price of approximately \$1.1 million. Pursuant to the agreement, the Baileys tendered to Bellacere \$10,000 earnest money for purchase of the lot, and \$20,000 for the construction of a base model home.

After selecting a lot and base model home, the Baileys began to work with Bellacere for nearly a year to customize their home design, making significant changes to the floorplan and layout. When the Baileys learned that this custom home would cost approximately \$1.75 million to construct, they requested that Bellacere build the originally selected “base

model” home on the lot. Bellacere expressed reluctance to do so, stating that construction costs had significantly increased during the time the Baileys spent designing their custom home. Due to this reluctance, the Baileys offered to purchase only the lot from Bellacere, without a home constructed on it, but the parties could not agree on a price.

While the parties dispute numerous details regarding the subsequent events, the Baileys ultimately filed the underlying lawsuit for breach of contract, and Bellacere filed several counterclaims. The parties proceeded to arbitration under an arbitration clause contained in the contract. In its findings and award, the arbitration panel did not clearly state whether either party breached the original contract, but ordered partial specific performance of the contract, directing Bellacere to sell the Baileys their selected lot for \$432,000. The district court confirmed the award.

On appeal, Bellacere primarily argues that the arbitration panel exceeded its powers under the governing contract, that the arbitration panel acted arbitrarily and capriciously in awarding specific performance to the Baileys, and that the arbitration panel manifestly disregarded the law. We address each of these arguments below.

The arbitration panel did not exceed its powers

NRS 38.241(d) dictates that a court shall vacate an arbitration award if the arbitrator exceeded its powers. As we have explained, the purpose of this provision is to ensure that an arbitrator does not “address issues or make awards outside the scope of the governing contract.”¹

¹Health Plan of Nevada v. Rainbow Med., 120 Nev. 689, 697, 100 P.3d 172, 178 (2004).

Generally, this court will presume that an arbitrator is acting within the scope of his authority.² Therefore, parties challenging an arbitration award pursuant to NRS 38.241(d) must demonstrate “by clear and convincing evidence” that the arbitrator exceeded his authority.³

As established in Health Plan of Nevada v. Rainbow Medical, “[a]rbitrators exceed their powers if they address issues or make awards outside . . . the governing contract.”⁴ However, “[a]rbitrators do not exceed their powers if their interpretation of an agreement, even if erroneous, is rationally grounded in the agreement.”⁵ Thus, an arbitration award “should be enforced so long as the arbitrator is arguably construing or applying the contract.”⁶

Bellacere contends that by awarding the Baileys partial specific performance, the arbitration panel exceeded its authority, because the contract between Bellacere and the Baileys did not contemplate that the Baileys would ever purchase the lot without an accompanying residence. We disagree. In this, we note that the contract between the parties clearly contemplates that Bellacere will construct a residence upon a lot chosen by the Baileys. However, instead of listing a single purchase price for the entire project, the contract separately listed a “base price” of \$698,000 and a “lot price” of \$399,000. The contract also required a

²Id. at 697, 100 P.3d at 178.

³Id.

⁴Id.

⁵Id. at 698, 100 P.3d at 178.

⁶Id.

separate \$10,000 earnest money deposit for the lot, and a \$20,000 earnest money deposit for the “base price” home. Based on this separate pricing, we conclude that it is reasonable to interpret these terms of the contract as severable. Accordingly, we conclude that the arbitration panel did not exceed its authority by awarding partial specific performance.⁷

The arbitration award was not arbitrary or capricious, and the arbitration panel did not manifestly disregard the law

In addition to the statutory mandate of NRS 38.241(d), Nevada also recognizes two common-law grounds under which this court may vacate private binding arbitration awards: when the award is arbitrary, capricious, or unsupported by the agreement, and when the

⁷We have also examined Bellacere’s argument that the arbitration panel exceeded its powers by awarding relief without first finding a default or failure to perform, and determine that this argument lacks merit. The arbitration clause included in the contract between Bellacere and the Baileys provided that:

All disputes and disagreements between the parties arising out of this contract or any provision thereof shall be submitted to and settled by arbitration. . . . If the decision and award of the Arbitrators includes a finding of default or failure to perform on the part of either party, costs and expenses of the arbitration shall be assessed against such party

Use of the term “[i]f” indicates that in some situations, the parties contemplated that the arbitration panel might issue a decision and award that does not include a finding of default. Therefore, we conclude that the arbitration panel did not exceed its powers by awarding partial specific performance without a formal finding of default.

arbitrator manifestly disregarded the law.⁸ The first of these common law standards “ensures that the arbitrator does not disregard the facts or the terms of the arbitration agreement,” while the second standard “ensures that the arbitrator recognizes applicable law.”⁹

Recently, in Clark County Education Association v. Clark County School District, we clarified that this court’s review under the “arbitrary and capricious” standard is limited to: (1) whether the arbitrator’s findings are supported by substantial evidence, and (2) whether the subject matter of the arbitration is within the scope of the arbitration agreement.¹⁰ As indicated above, the award of the arbitration panel was within the scope of the parties’ contract and arbitration agreement, which specified that “all disputes” related to the parties’ contract were to be resolved by arbitration. In formulating the arbitration award, the arbitration panel relied on statements and testimony by both parties, including documentation provided by Bellacere regarding typical profit made on lot sales. Therefore, we conclude that the arbitration panel’s findings were also supported by substantial evidence, indicating that the arbitration award was not arbitrary, capricious, or unsupported by the parties’ agreement.

As a final basis for vacating the arbitration award, Bellacere contends that the decision of the arbitration panel constituted a manifest

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

⁹Id.

¹⁰Id. at 339, 131 P.3d at 8.

disregard of the law. Under the manifest-disregard-of-law standard, this court's review is "extremely limited."¹¹ A party seeking to vacate an arbitration award due to manifest disregard of the law must do more than disagree with the results of the arbitration.¹² Rather, in applying the manifest-disregard 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."¹³

The written findings and award of the arbitration panel demonstrate that the arbitration panel appropriately relied on Nevada case law, the Commercial Arbitration Rules of the American Arbitration Association, and the Restatement (Second) of Contracts in awarding partial specific performance to the Baileys without a formal finding of default or breach. As indicated by the comment to § 358 of the Restatement (Second) of Contracts, specific performance may be appropriately awarded without a formal finding of breach and default in some circumstances.¹⁴ The decision to sever the contract and award partial specific performance was also supported by Nevada law, which provides that provisions of a contract may be severable if the language and

¹¹Id. 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)).

¹²Id.

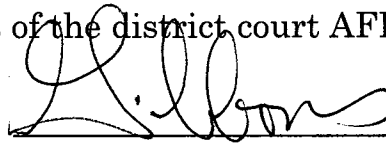
¹³Id. (quoting Bohlmann, 120 Nev. at 547, 96 P.3d at 1158).


¹⁴Restatement (Second) of Contracts § 357 cmt. a (1981).

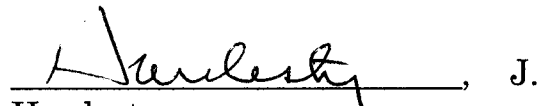
subject matter of the contract indicate that the parties intended its terms to be severable.¹⁵ Therefore, we conclude that the arbitration panel did not manifestly disregard the law in severing the contract and awarding partial specific performance.

For the reasons stated above, we

ORDER the judgment of the district court AFFIRMED.¹⁶


_____, C.J.
Gibbons


_____, J.
Maupin


_____, J.
Hardesty

¹⁵Sprouse v. Wentz, 105 Nev. 597, 605, 781 P.2d 1136, 1140 (1989).

¹⁶We have considered the remainder of Bellacere's claims, including its arguments that this court should adopt a new standard of review for arbitration awards, and that the district court erred in confirming the final arbitration award, and conclude that they lack merit.

In affirming the arbitration award in favor of the Baileys, we recognize that this case differs significantly from Lexis v. Bellacere, LLC., in which this panel affirmed an arbitration award of damages to Bellacere. Lexis v. Bellacere, LLC., Docket No. 46959 (Order of Affirmance, December 4, 2007). While the homebuyer in Lexis also argued that Bellacere's upgrade and pricing scheme was unfair, unlike the Baileys, she specifically approved revised plans including options and upgrades, and signed an addendum to the original purchase contract accepting the new, substantially higher, purchase price.

cc: Hon. David Wall, District Judge
William F. Buchanan, Settlement Judge
Marquis & Aurbach
Bailey Kennedy
Eighth District Court Clerk