IN THE SUPREME COURT OF THE STATE OF NEVADA

B.L. INTERNATIONAL, INC.; AND BRAND ACQUISITIONS, LLC,
Appellants,
vs.
VNU BUSINESS MEDIA, INC.,
Respondent.

No. 48314

FILED

MAY 28 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

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

The parties are familiar with the facts, and we do not recount them except as pertinent to our disposition.

"[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 evidence, the statutory or common-law ground relied upon for challenging the award."[2]

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[1]Health Plan of Nevada v. Rainbow Med., 120 Nev. 689, 695, 100 P.3d 172, 176 (2004) (citing Bohlmann v. Printz, 120 Nev. 543, 546, 96 P.3d 1155, 1157 (2004)).

[2]Health Plan of Nevada, 120 Nev. at 695, 100 P.3d at 176 (citing E.D.S. Const. v. North End Health Center, 412 N.W.2d 783, 785 (Minn. Ct. App. 1987)).

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Appellant B.L. International, Inc. argues on appeal that the court should vacate the arbitration award because the arbitrator had refused to continue the arbitration hearing to permit B.L. International to complete further discovery. B.L. International further argues that the arbitrator exceeded his powers by adjudicating issues that were outside the scope of the arbitration provision in the licensing agreement. For the reasons set forth below, we conclude that these arguments are without merit.

Refusal to continue the arbitration hearing

While relying on NRS 38.241(1),[3] B.L. International argues that the court should vacate the arbitration award because the arbitrator's refusal to postpone the arbitration proceeding did not allow B.L. International to complete the depositions of respondent VNU Business Media, Inc.'s key witnesses, which prejudiced B.L. International to rebut VNU's theory of email fabrication. We conclude that this argument is without merit.

Specifically, B.L. International argues the depositions for VNU's key witnesses were arbitrarily limited to three hours by VNU's

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[3]In pertinent part, NRS 38.241(1) provides:

> Upon motion to the court by a party to an arbitral proceeding, the court shall vacate an award made in the arbitral proceeding if:
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> . . . .
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> (c) An arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement . . . so as to prejudice substantially the rights of a party to the arbitral proceeding.

counsel and that the arbitrator should have continued the arbitration hearing to permit further depositions of VNU's employees. Additionally, B.L. International argues that the arbitrator should have continued the arbitration hearing because substantial portions of the depositions taken for VNU's employees were consumed by obstructive discovery tactics. B.L. International also argues that the arbitrator should have continued the arbitration hearing because VNU's revelation during a deposition that it intended to claim a theory of email fabrication necessitated further discovery. Consequently, B.L. International argues that the arbitrator's refusal to postpone the arbitration hearing violated its due process rights. Lastly, B.L. International argues that the district court erred in confirming the arbitration award and that this court should now vacate the arbitration award.

As to B.L. International's arguments, we conclude that B.L. International has not met its burden to show by clear and convincing evidence that the arbitration award should be vacated under NRS 38.241(1) as a result of the arbitrator's refusal to continue the arbitration hearing.[4]

Our review of the record reveals that B.L. International had expressly agreed to VNU's proposal for scheduling depositions, which had limited the timeframe for certain VNU employees. As such, we conclude that because B.L. International had agreed to the imposed time limits, B.L. International waived review of this contention on appeal.[5] As for B.L.

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[4]See Health Plan of Nevada, 120 Nev. at 695, 100 P.3d at 176.

[5]See Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981); see also Thomas H. Oehmke, Commercial Arbitration § 92:16

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International's contention relating to obstructive discovery tactics, we conclude that B.L. International's failure to timely contest VNU's attorney-client privilege objections precludes appellate review; the record reveals that B.L. International had not contested VNU's privilege objections during the depositions and that it waited to contest the objections until nearly ten days after the depositions had taken place.[6]

With regards to B.L. International's argument relating to needing more time to undergo discovery for VNU's email fabrication theory, we conclude that the arbitrator did not err in refusing to continue the arbitration hearing; B.L. International has not provided any legal authority for this argument, and B.L. International has not demonstrated

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. . . continued

(3d ed. 2006) ("Depositions (whether for discovery or de bene esse) are allowed where agreed by the parties either in their arbitration agreement or by stipulation; the AAA rules do not allow for depositions unless otherwise agreed.").

[6]Our review of the record reveals that unlike its contest to VNU's overall privilege objections, B.L. International had sought a ruling from the arbitrator as to VNU's privilege objection relating to whether certain documents had been shown to a VNU employee. Because B.L. International did not seek an immediate ruling from the arbitrator with regards to VNU's overall privilege objections, we conclude that B.L. International's contests to these overall objections were untimely. Nevertheless, we conclude that VNU's privilege objections were not obstructive to the extent that the objections would have warranted us to vacate the arbitration award.

See Pasgove v. State, 98 Nev. 434, 435, 651 P.2d 100, 101 (1982) (holding in a criminal appeal that a "failure to make a timely objection will preclude appellate consideration").

sufficient cause with clear and convincing evidence to have the arbitration award vacated under NRS 38.241(1). Likewise, we conclude that B.L. International's argument as to due process is without merit. B.L. International's entitlement to discovery was governed by a contract, and any errors relating to discovery could not violate B.L. International's right to due process.[7]

Accordingly, we conclude that B.L. International has not demonstrated sufficient cause under NRS 38.241(1) that would require us to vacate the arbitration award.

Adjudication of issues outside the scope of the arbitration agreement

B.L. International further argues that the court should vacate the arbitration award because the arbitrator exceeded his powers by adjudicating issues outside the scope of the arbitration agreement. We conclude that this argument is also without merit.

B.L. International contends that because the arbitration provision in the licensing agreement excluded any claims for the "non-payment of sums" from arbitration, the arbitrator should have been precluded from adjudicating VNU's claim that B.L. International failed to pay minimum licensing fees. Additionally, B.L. International argues that the arbitrator should not have adjudicated certain claims that had been raised in its counterclaims, which were later withdrawn prior to the arbitration hearing—and later added as affirmative defenses.

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[7]See Pressler v. City of Reno, 118 Nev. 506, 510, 50 P.3d 1096, 1098 (2002) ("The protections of due process only attach when there is a deprivation of a protected property or liberty interest.").

We conclude that the arbitrator's adjudication of matters outside the scope of the arbitration provision in the licensing agreement does not warrant us to vacate the arbitration award. As the record reveals that B.L. International participated in the arbitration process for eleven months without raising an objection over the arbitrator's authority to adjudicate VNU's claims relating to licensing fees, we conclude that B.L. International waived its right to contest arbitrability. Further, B.L. International's argument as to the adjudication of withdrawn counterclaims is without merit because the claims at issue were again raised by B.L. International in its affirmative defenses; additionally, the record reveals that B.L. International had stated in its counterclaims that the arbitrator had jurisdiction over the subject matter of this action.[8] Consequently, we conclude that B.L. International has not demonstrated sufficient cause with clear and convincing evidence that the arbitration award should be vacated.

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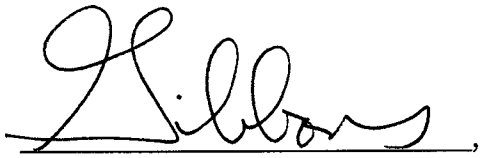
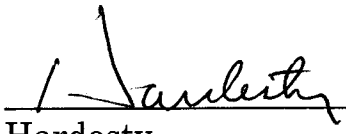
[8]See Fortune, Alsweet & Elridge, Inc. v. Daniel, 724 F.2d 1355, 1357 (9th Cir. 1983) (holding that "a party may not submit a claim to arbitration and then challenge the authority of the arbitrator to act after receiving an unfavorable result"); Jones Dairy Farm v. Local No. P-1236, 760 F.2d 173, 175 (7th Cir. 1985) (holding that "[i]f a party voluntarily and unreservedly submits an issue to arbitration, he cannot later argue that the arbitrator had no authority to resolve it"); Conntech Development Co. v. University of Conn., 102 F.3d 677, 685 (2d Cir. 1996) (holding that "[a]n objection to the arbitrability of a claim must be made on a timely basis, or it is waived").

We therefore conclude that the district court did not err in confirming the arbitration award. Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_____, C. J.
Gibbons



_____, J.
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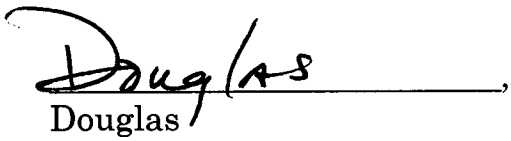

_____, J.
Douglas

cc: Hon. Kathy A. Hardcastle, District Judge
Stephen E. Haberfeld, Settlement Judge
Harrison Kemp & Jones, LLP
Morris Pickering Peterson & Trachok/Las Vegas
Eighth District Court Clerk