IN THE SUPREME COURT OF THE STATE OF NEVADA

MARCO CASTELLANOS AS MANAGING AGENT ACTING ON BEHALF OF THE CASTELLANOS FAMILY TRUST, Appellant, vs. LA FUENTE, INC., Respondent.	No. 49386 FILED SEP 04 2008 TRACIE K. LINDEMAN CLERK OF SUPREME COURT BY [signature] DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order confirming an arbitration award in a real property matter. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

Respondent La Fuente, Inc. operates a men's cabaret club, called Cheetahs, in Las Vegas, Nevada. Jack Galardi is the sole shareholder of La Fuente, although his son, Mike Galardi, was a shareholder for part of the relevant time period.

Since 1986, La Fuente has continually leased the Cheetahs premises from the Castellanos family and prior owners. The first lease between the Castellanos family and Jack dates back to 1992. In 2002, the Trust leased the premises to "Mike Galardi" as lessee to use the leased premises solely for the specified purpose of conducting the Cheetahs business ("lease"). In 2002, the Trust also entered into a separate "lease option/purchase agreement" ("option agreement") with "La Fuente/Mike Galardi." Appellant Marco Castellanos signed both the 2002 lease and the option agreement on behalf of the Trust, as its managing agent. Mike signed the option agreement "individually and on behalf of La Fuente, Inc."

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The lease required monthly rental payments of $21,500 from January 1, 2002, through December 31, 2006. The option agreement indicated that monthly rent under the lease was to be paid through December 2006, but added that upon the termination of the lease, "La Fuente/Mike Galardi" had the right to purchase the property by paying $900,000. At the end of 2004, La Fuente attempted to exercise the option and buy out the remaining term of the lease. Castellanos, however, refused to sell, and La Fuente filed a district court complaint for specific performance and declaratory relief.

The parties then entered into private binding arbitration. After a hearing, at which Castellanos argued that the option agreement was void because Mike had breached the lease by transferring his ownership in the corporation back to the company, the arbitrator ruled that La Fuente was entitled to specific performance of the option, under which La Fuente owed $900,000 plus 60 monthly rental payments of $21,500 each. Additionally, the arbitrator awarded La Fuente attorney fees and costs.

In a detailed seven-page decision, the arbitrator found that, although Mike told Castellanos that he was making arrangements to buy his father's interest in La Fuente to become its sole shareholder, Mike had pending legal problems that required him to relinquish all interest, which he did through an assignment on October 28, 2003. The arbitrator also found that it was not credible or reasonable that Castellanos would withhold consent to the transfer of stock back to the corporation because (1) the initial lease in 1992 was with Jack; (2) Castellanos knew that Jack was still involved with La Fuente; (3) it was not logical for Castellanos to refuse to consent to the stock transfer when Jack was the original tenant and, inferentially, had a better reputation than Mike; (4) nothing in the option agreement indicated that a lack of consent to the stock transfer would be a sufficient breach to defeat enforcement of the option and the option agreement contained a severability clause stating that the remaining terms continued in full force and effect if any of its terms was held to be invalid, void, or unenforceable; and (5) La Fuente's failure to advise the Trust of the transfer was not a material breach of the option agreement since the tenant's identity was irrelevant when lease payments were being made in advance and the option fee was being paid to purchase the property.

Thereafter, the district court entered an order confirming the arbitration award. Castellanos, on behalf of the Trust, has appealed.

Discussion

An arbitrator enjoys broad, but not unlimited, discretion.[1] In an appeal from an order confirming a private arbitration award, we review the award to determine, under common law principles, whether it is arbitrary, capricious, or unsupported by the agreement and whether the arbitrator manifestly disregarded the law.[2] As we explained, the first principle ensures that the arbitrator does not disregard the facts or the arbitration agreement's terms, while the second principle ensures that the arbitrator recognizes applicable law.[3]

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

[2]Id.

[3]Id. Although the Trust urges us to review the arbitrator's legal conclusions de novo, the common law principles do not permit an

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Arbitrary and capricious standard

The common law arbitrary and capricious standard limits our review to whether substantial evidence in the record supports the arbitrator's findings.[4] When, as here, the arbitration proceedings are not reported, we necessarily rely, to some extent, upon the arbitrator's award.[5] Further, we defer to the fact-finder's sound discretion in making credibility determinations.[6]

In this case, Castellanos challenges the arbitrator's finding that the transfer of Mike's La Fuente stock back to the corporation, giving Jack sole ownership, was not a material breach of the lease's requirement that the Trust's prior written consent be obtained to transfer ownership. Castellanos claims that, based on Mike's misrepresentations that he was making arrangements to buy his father's interest to become La Fuente's sole shareholder, Castellanos was materially induced to enter into the lease and option with Mike and that he had no prior knowledge of and would not have consented to the transfer of stock.

. . . continued

independent review of the arbitrator's interpretation of the law. Id. at 342, 131 P.3d at 9.

[4]Id.

[5]Wichinsky v. Mosa, 109 Nev. 84, 87, 847 P.2d 727, 729 (1993); see also Gittings v. Hartz, 116 Nev. 386, 393 n.6, 996 P.2d 898, 902 n.6 (2000) (suggesting that an arbitrator's detailed factual findings might be sufficient to support a finding even without a transcript of the arbitration hearing or an NRAP 9(d) type of statement).

[6]See Castle v. Simmons, 120 Nev. 98, 103, 86 P.3d 1042, 1046 (2004) (deferring to trial court's findings).

Based on the lease, the option agreement, and the arbitrator's findings and credibility determinations, we conclude that substantial evidence supports the arbitrator's finding that the stock transfer was not a material breach. Thus, the district court did not err in confirming the arbitrator's award, as it was not arbitrary or capricious.

Manifest disregard of the law standard

Judicial inquiry under the manifest disregard of the law standard is extremely limited; we are not concerned with the correctness of an arbitrator's decision or the merits of the dispute.[7] Instead, we look only for error that is "obvious and capable of being readily and instantly perceived by the average person qualified to serve as an arbitrator."[8] Only if the arbitrator appreciated the significance of clearly governing legal principles and nevertheless consciously ignored or missed the law, will we find a manifest disregard of the law.[9]

On appeal, Castellanos makes the following legal arguments.[10] First, he claims that the lease and option were not separate agreements, as the arbitrator had found, and should have been construed together, so

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[7]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).

[8]Id. at 547, 96 P.3d at 1157 (citations omitted).

[9]Clark Cty., 122 Nev. at 342, 131 P.3d at 8.

[10]We find no merit to Castellanos's other arguments on appeal that the arbitrator improperly reformed the parties' contract by removing the lease's prior consent requirement and that Mike's alleged misrepresentation that he would take exclusive control of La Fuente requires rescission of the lease.

that La Fuente's breach of the lease's prior consent requirements would have relieved the Trust of its obligation to sell the property under the option agreement. Second, he alleges that the arbitrator erred as a matter of law in applying a reasonableness test because the lease's unambiguous consent provision gave the Trust the absolute right to terminate the lease if La Fuente attempted to transfer it without the Trust's written consent, and an assignment was defined as including the sale of majority interest in La Fuente.

Our review of the arbitrator's decision and the record, however, reveals no manifest disregard of the law by the arbitrator. The option agreement merely required La Fuente, Inc./Mike to pay the monthly rent through December 2006, and to pay $900,000 upon its termination, to buy the premises. Nothing in the option agreement stated that a breach of the lease would invalidate or constitute a breach of the option agreement.

In any case, the arbitrator found that La Fuente had not breached the lease's prior consent requirement. The lease contained an assignment provision that acknowledged the importance of the "Tenant creating and maintaining a successful and profitable retail operation in the Premises" and, thus, required the Trust's written consent to a transfer "for a period of two (2) years from the date on which Tenant opens for business to the public in the Premises[.]" After two years, the lease recognized that the Trust's consent to a proposed assignment could be withheld, only if reasonable, and it gave specific examples of how the Trust could reasonably withhold its consent. As Cheetahs had been open for public business for more than two years before the transfer, the arbitrator did not err in applying a reasonableness test or manifestly disregard the law in concluding that the Trust could not have reasonably withheld its consent to Mike's transfer of his stock to La Fuente.

Accordingly, we conclude that the arbitrator did not act arbitrarily or capriciously and did not manifestly disregard the law. Therefore, we affirm the district court's order confirming the arbitration award.

It is so ORDERED.

_______________, C.J.
Gibbons

_______________, J.
Maupin

_______________, J.
Hardesty

_______________, J.
Parraguirre

_______________, J.
Douglas

_______________, J.
Cherry

_______________, J.
Saitta

cc: Hon. Mark R. Denton, District Judge
Stephen E. Haberfeld, Settlement Judge
R. Clay Hendrix, P.C.
Jocelyne R. Uy
Marquis & Aurbach
Eighth District Court Clerk