

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAMODAR MOTEL PARTNERS, LLC,
A NEVADA LIMITED LIABILITY
COMPANY; RANJIT S. TAKHAR; AND
KARAMVIR TAKHAR,
Appellants,

vs.

JOGA MANN, INDIVIDUALLY AND
D/B/A ABS BUSINESS BROKERS,
Respondent.

No. 51674

FILED

FEB 02 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court amended judgment entered on an arbitration award. First Judicial District Court, Carson City; James E. Wilson, Judge.

Respondent Joga Mann prepared appellant Ranjit Takhar's taxes, and the two men became friends. Takhar approached Mann for help finding a business opportunity to invest in, and Mann directed Takhar to the purchase of the Days Inn Motel in Carson City, Nevada. Takhar and Mann, along with a third partner, purchased the motel in August 1999. Following the purchase of the motel, the partners formed a limited liability company called Damodar Motel Partners, LLC. The operating agreement for the newly formed LLC stated that Takhar would run the motel's daily operations. Takhar gave a portion of his interest in the LLC to his son, Karamvir Takhar, who served as manager of the motel.

Soon after beginning operations at the Days Inn, disputes arose between the Takhars and Mann. These disputes led to the Takhars and the LCC filing a complaint against Mann and, in response, Mann filing counterclaims.

Pursuant to the operating agreement, the district court referred the matter to arbitration. Following a four-day arbitration, the arbitrator issued an award ruling in the Takhars' favor on some issues and in Mann's favor on other issues. The arbitrator issued a modified award granting attorney fees and costs to Mann as the prevailing party. The district court entered judgment on the arbitration award.¹ Subsequently, the Takhars filed a notice of appeal. Thereafter, the Takhars filed a motion to correct the judgment arguing that the judgment was unclear as to the identities of the judgment debtors for the attorney fees and costs.² The district court issued an order remanding the case to the arbitrator for clarification regarding the identities of the judgment debtors. The arbitrator issued a modified final award pursuant to the district court's order. The arbitrator clarified that the award of attorney fees and costs was rendered against the Takhars and the LLC, jointly and severably. The district court entered an amended judgment on the

¹Judge William A. Maddox of the First Judicial District Court, Carson City, entered the original judgment.

²This court issued an order, pursuant to Huneycutt v. Huneycutt, 94 Nev. 79, 575 P.2d 585 (1978), remanding the case to the district court for the limited purpose of entering an amended judgment, and holding the appeal in abeyance until entry of that amended judgment. Damodar Motel v. Mann, Docket No. 51674 (Order of Limited Remand, March 27, 2009).

arbitration award, from which the Takhars filed an amended notice of appeal.³

On appeal, the Takhars argue that the arbitrator's award should be reversed as the arbitrator manifestly disregarded the law by applying California law instead of Nevada law. The Takhars further argue that because the wrong choice of law was applied, the arbitrator erred in (1) awarding damages to the wrong party, (2) improperly awarding Mann compensation for accounting purposes, and (3) improperly awarding Mann attorney fees and costs. We disagree, because we conclude that the rigorous standard of review in arbitration cases limits this court's ability to address the arbitrator's interpretation of the law. As such, we affirm the district court's amended judgment confirming the arbitration award.⁴

³The parties are familiar with the facts and we do not recount them further except as is necessary for our disposition.

⁴Preliminarily, we note that the appellate record is scant as the arbitration proceedings were not reported." Wichinsky v. Mosa, 109 Nev. 84, 87, 847 P.2d 727, 729 (1993). "[T]his court has made it clear that appellants are responsible for making an adequate appellate record." Cuzze v. Univ. & Cmty. Coll. Sys. of Nev., 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (citing Carson Ready Mix v. First Nat'l Bk., 97 Nev. 474, 476, 635 P.2d 276, 277 (1981)). According to NRAP 30(b)(3), an "appellant's appendix to the opening brief shall include . . . portions of the record essential to determination of issues raised in appellant's appeal." "When an appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court's decision." Cuzze, 123 Nev. at 603, 172 P.3d at 135 (citing Prabhu v. Levine, 112 Nev. 1538, 1549, 930 P.2d 103, 111 (1996)). The absence of arbitration transcripts inhibits our appellate review in this case.

Standard of review

“[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.” 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), overruled on other grounds by Bass-Davis v. Davis, 122 Nev. 442, 452, 134 P.3d 103, 109 (2006)). “Specifically, an arbitration award may be vacated . . . when an arbitrator has ‘manifestly disregard[ed] the law.’” Bohlmann, 120 Nev. at 546, 96 P.3d at 1157 (second alteration in original) (quoting Wichinsky v. Mosa, 109 Nev. 84, 89-90, 847 P.2d 727, 731 (1993)).

“Manifest disregard of the law goes beyond whether the law was correctly interpreted, it encompasses a conscious disregard of applicable law.” Rainbow Med., 120 Nev. at 699, 100 P.3d at 179 (citing Bohlmann, 120 Nev. at 547, 96 P.3d at 1157-58). “[E]ven if the arbitrator made an error of fact or misapplied the law . . . it would still not amount to manifest disregard of the law.” Rainbow Med., 120 Nev. at 699, 100 P.3d at 179. Similarly, “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.” Clark County Educ. Ass’n v. Clark Cty. Sch. Dist., 122 Nev. 337, 342, 131 P.3d 5, 8 (2006) (quoting Bohlmann, 120 Nev. at 547, 96 P.3d at 1158).

Here, the arbitrator applied California law to the arbitration proceedings pursuant to the parties’ LLC’s operating agreement, specifically Article 13.10(B)(9). Article 13.10(B)(9) states, in pertinent part, that:

The arbitration shall be conducted in Sacramento County, California. The Members represent that this is a convenient forum to address disputes.

....

NOTICE: BY INITIALLING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED [BY] CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL.

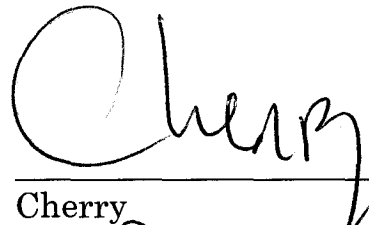
...

IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARTBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE.


Based on the heightened standard of review in arbitration cases, we conclude that there is no reversible error, as there is no indication from the record that the arbitrator's choice-of-law decision consciously and manifestly disregarded the law.⁵

In light of the foregoing, we

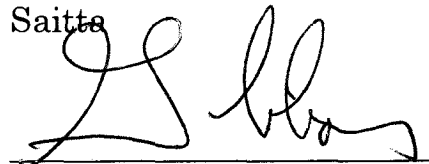
ORDER the judgment of the district court AFFIRMED.


_____, J.

Cherry


_____, J.

Saitta


_____, J.

Gibbons

cc: Hon. James E. Wilson, District Judge
Lester H. Berkson, Settlement Judge
Lemons, Grundy & Eisenberg
Walsh, Baker & Rosevear, P.C.
Carson City Clerk

⁵The Takhars also argue that Mann's answering brief is so lacking in argument and assistance to this court that it should be treated as if it was not filed, pursuant to the doctrine of confession of error. We conclude that Mann did not confess error in his answering brief.