IN THE SUPREME COURT OF THE STATE OF NEVADA

DONNA CASTANEDA AND LUIS CASTANEDA, INDIVIDUALS,
Appellants,
vs.
PALM BEACH RESORT CONDOMINIUMS, A NEVADA LIMITED LIABILITY COMPANY,
Respondent.

No. 55135

FILED

JUL 05 2011

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

ORDER OF AFFIRMANCE

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

I.

Appellants Donna Castaneda and Luis Castaneda and respondent Palm Beach Resort Condominiums entered into a contract, whereby the Castanedas agreed to purchase a unit in Boca Raton Condominiums from Palm Beach. The Castanedas placed $52,367.90 earnest money into escrow. Two years and one day after the effective date of the agreement, the Castanedas accepted the condo by executing a Certificate of Inspection and Acceptance, which certified that the residence satisfied the conditions of the purchase agreement. Shortly thereafter, however, the Castanedas asked Palm Beach to return their earnest money instead of closing on the home. When Palm Beach refused, the Castanedas filed a claim with the American Arbitration Association arguing that Palm Beach had breached the contract in several ways. The Castanedas sought rescission of the contract and return of their earnest money.

After conducting some discovery, both parties filed motions for summary judgment with the arbitrator. The arbitrator reviewed the supporting evidence and the parties' briefs and held a telephonic hearing on the motions. He concluded that Palm Beach had not breached the contract and awarded summary judgment in its favor, allowing it to keep the deposit as liquidated damages. A short time later, he issued attorney fees and costs in excess of $17,000 to Palm Beach in accordance with Nevada's offer of judgment statute, NRS 17.115.

The Castanedas then sought to vacate the award. Addressing the Castanedas' concerns, the district court remanded the matter to the arbitrator and instructed him to enlarge his original award to include findings of fact. The arbitrator did as requested. The Castanedas renewed their motion to vacate, while Palm Beach moved to confirm. The district court confirmed the award and this appeal followed.

II.

We review a district court's confirmation of an arbitration award de novo. Thomas v. City of North Las Vegas, 122 Nev. 82, 97, 127 P.3d 1057, 1067 (2006). In reviewing an award, we must consider that "[s]trong public policy favors arbitration because arbitration generally avoids the higher costs and longer time periods associated with traditional litigation." D.R. Horton, Inc. v. Green, 120 Nev. 549, 553, 96 P.3d 1159, 1162 (2004). Thus, "[t]he 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." Health Plan of Nevada v. Rainbow Med., 120 Nev. 689, 695, 100 P.3d 172, 176 (2004).

Despite this high hurdle, Nevada courts may utilize either of two common-law grounds to vacate an arbitration award: "(1) [ ] the award

is arbitrary, capricious, or unsupported by the agreement; and (2) [ ] the arbitrator manifestly disregarded the law." Clark Cty. Educ. Ass'n v. Clark Cty. Sch. Dist., 122 Nev. 337, 341, 131 P.3d 5, 8 (2006). The Castanedas challenge the award on both grounds. They assert that the arbitrator manifestly disregarded the law in deciding issues of fact on summary judgment and that substantial evidence did not support the arbitrator's finding that Palm Beach had met its duties under the contract. Finally, they argue that the arbitrator erred in awarding attorney fees. We disagree with the Castanedas' contentions and affirm.

III.

First, the Castanedas assert that the arbitrator issued summary judgment despite the existence of issues of material fact and, therefore, manifestly disregarded the law of summary judgment.[1] We conclude that the arbitrator did not manifestly disregard the law.

"Judicial inquiry under the manifest-disregard-of-the-law standard is extremely limited. A party seeking to vacate an arbitration award based on manifest disregard of the law may not merely object to the

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[1]The Castanedas do not argue that rendering a decision on summary judgment is outside the scope of the arbitrator's authority. NRS 38.231(2) gives arbitrators the authority, provided notice is given to the nonmoving party, to decide a request for summary disposition of a claim. The American Arbitration Association's Commercial Arbitration Rules neither expressly permit nor prohibit disposition on summary judgment motions. However, it leaves arbitration procedures to the discretion of the arbitrator and courts have recognized a right to decide on summary judgment. Am. Arbitration Assoc. Commercial Arbitration Rules, R-30, R-34 (2009); see Campbell v. American Family Life Assur. Co., 613 F. Supp. 2d 1114, 1119 (D. Minn. 2009).

results of the arbitration." Clark Cty. Educ. Ass'n, 122 Nev. at 342, 131 P.3d at 8 (internal quotations and citations omitted). In a manifest disregard analysis, "'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.'" Id. (quoting Bohlmann v. Printz, 120 Nev. 543, 547, 96 P.3d 1155, 1158 (2004), disapproved on other grounds by Bass-Davis v. Davis, 122 Nev. 442, 452 n.32, 134 P.3d 103, 109 n.32 (2006)); see also Health Plan of Nevada, 120 Nev. at 699, 100 P.3d at 179 (stating that manifest disregard of the law requires a conscious disregard of applicable law).

In framing his summary judgment analysis, the arbitrator correctly cited Wood v. Safeway, Inc., 121 Nev. 724, 121 P.3d 1026 (2005), as the applicable summary judgment standard. See id. at 729, 121 P.3d at 1029 ("[W]hen reviewing a motion for summary judgment, the evidence, and any reasonable inferences drawn from it, must be viewed in a light most favorable to the nonmoving party."); see also NRCP 56(c) ("The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.").

The genuine issue of material fact that the Castanedas contended should have defeated summary judgment is whether they received a public offering statement at the time they received the purchase agreement. They signed and initialed each page of the purchase agreement, in which they acknowledged that they received the public offering statement. This court has held that "'when a party to a written

contract accepts it [a]s a contract he is bound by the stipulations and conditions expressed in it whether he reads them or not. Ignorance through negligence or inexcusable trustfulness will not relieve a party from his contract obligations.'" Campanelli v. Altamira, 86 Nev. 838, 841, 477 P.2d 870, 872 (1970) (quoting Level Export Corp. v. Wolz, Aiken & Co., 111 N.E.2d 218, 221 (N.Y. 1953) (quoting Metzger v. Aetna Ins. Co., 125 N.E. 814, 816 (N.Y. 1920))). Thus, the Castanedas' claim that this presented an issue of fact fails as a matter of law.[2]

Because the arbitrator understood the applicable standard and we find nothing in the record to indicate that he disregarded the law, that ends the analysis. See Clark Cty. Educ. Ass'n, 122 Nev. at 342, 131 P.3d at 8 ("'[T]he 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.'" (quoting Bohlmann, 120 Nev. at 547, 96 P.3d at 1158)).

IV.

The Castanedas' challenge to the award as arbitrary and capricious is threefold. First, they allege that the arbitrator arbitrarily

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[2]The Castanedas also appear to argue that the arbitrator manifestly disregarded the strictures of NRS 116.4108 and NRS Chapter 113. NRS 116.4108 grants a right of cancellation to buyers who did not receive a public offering statement and NRS Chapter 113 governs seller disclosure requirements. These arguments hold no water. NRS 116.4108's cancellation provision is implicated only when the buyer did not receive a public offering statement. Here, the arbitrator concluded that the Castanedas had received a public offering statement, and this conclusion is supported by substantial evidence. Likewise, the arbitrator made the factual determination that Palm Beach complied with NRS Chapter 113's disclosure requirements.

concluded that the purchase agreement's financing contingency was met. Second, they argue that the unit was not delivered within twenty-four months, as required by the agreement. Finally, they assert that there was not substantial evidence to support the arbitrator's finding that Palm Beach supplied a public offering statement.[3] For these reasons, the Castanedas complain that the arbitrator incorrectly concluded that they were not entitled to rescission and recovery of the earnest money. These arguments lack merit because the arbitrator's findings are supported by substantial evidence.

"The arbitrary-and-capricious standard does not permit a reviewing court to vacate an arbitrator's award based on a misinterpretation of the law. Rather, our review is limited to whether the arbitrator's findings are supported by substantial evidence in the record." Clark Cty. Educ. Ass'n, 122 Nev. at 343-44, 131 P.3d at 9-10. "Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion." Whitemaine v. Aniskovich, 124 Nev. 302, 308, 183 P.3d 137, 141 (2008). "[W]hether a party has substantially complied with the terms of the contract presents a pure question of fact that the trier of fact alone may decide." Turrill v. Life Ins. Co. of N. Am., 753 F.2d 1322, 1326 (5th Cir. 1985). And an arbitrator's award must be upheld even in

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[3]The Castanedas also argue that the arbitrator did not follow decisions in similar proceedings against Palm Beach, in which other arbitrators concluded that the public offering statement had not been delivered to the buyers. The arbitrator was free to determine the "admissibility, relevance, materiality and weight" of this evidence. NRS 38.231.

the presence of erroneous findings of fact. Bohlmann, 120 Nev. at 547 n.7, 96 P.3d at 1158 n.7 (citing French v. Merrill Lynch, Pierce, Fenner & Smith, 784 F.2d 902, 906 (9th Cir. 1986)).

The record demonstrates that the Castanedas had obtained preliminary approval for financing and this is confirmed by their responses to interrogatories.[4] Regarding the delivery issue, Palm Beach delivered the unit one day after the twenty-four-month period. Although under the agreement delivery technically came one day late, the record supports the arbitrator's finding that the Castanedas certified acceptance of the unit. Thus, the arbitrator's conclusion that the one-day tardiness was irrelevant is factually supported and legally correct. See 23 Richard A. Lord, Williston on Contracts § 63:9 (4th ed. 2002) ("[T]he general rule is that where a contracting party, with knowledge of a breach by the other party, receives and accepts payment or other performance of the contract, he or she will be held to have waived the breach."). Finally, the

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[4]While we need not address the issue, it is arguable whether failure to obtain financing by the buyers would be grounds for rescission even if the evidence supported their position. The purchase agreement provided the seller the right to terminate if the financing condition was not met. Furthermore, to the extent the Castanedas argue that the arbitrator misinterpreted the contract provision on financing, this argument evades judicial review. Hill v. Norfolk and Western Ry. Co., 814 F.2d 1192, 1195 (7th Cir. 1987) (The question in reviewing an arbitration award "is not whether the arbitrator or arbitrators erred in interpreting the contract; it is not whether they clearly erred in interpreting the contract; it is not whether they grossly erred in interpreting the contract; it is whether they interpreted the contract. If they did, their interpretation is conclusive.") (citations omitted). Here, the arbitrator understood the contract to mean that the Castanedas' preliminary approval of financing satisfied that provision.

arbitrator's determination that the public offering statement was provided was supported by substantial evidence. The Castanedas indicated receipt of the statement by initialing the purchase agreement and a separate attachment to the purchase agreement entitled "Receipt of Public Offering Statement."

Appellants have not shown by clear and convincing evidence that any aspect of the arbitrator's decision was arbitrary and capricious. Thus, we conclude that the arbitrator's decision was supported by substantial evidence and is not arbitrary and capricious.

V.

Finally, the Castanedas argue that the district court erred in confirming the attorney fee portion of the award. They argue that the arbitrator should not have granted attorney fees because the award had already been entered and Palm Beach made no motion to amend the award within the twenty-day time frame as required by NRS 38.237. The brief is unclear as to which common law standard of vacatur the Castanedas seek to apply. However, because the adequacy of a motion is a question of law, In re Int'l Yacht and Tennis, Inc., 922 F.2d 659, 663 (11th Cir. 1991), it appears their argument invokes the manifest disregard standard. Granting attorney fees did not amount to a manifest disregard of the law.

Within twenty days of the award's issuance, Palm Beach sent the arbitrator a letter asking whether he would consider a motion for attorney fees. The letter asserted that Palm Beach was due fees under the offer of judgment statute, NRS 17.115, because Palm Beach had previously made an offer greater than the Castanedas' eventual judgment. The arbitrator took evidence and heard both sides before acting on Palm Beach's request. He found that the letter satisfied the motion requirement

under NRS 38.237 and exercised his authority to grant attorney fees. NRS 38.238 (An arbitrator may grant attorney fees so long as doing so would be "authorized by law in a civil action involving the same claim.").

We conclude that the Castanedas have not shown by clear and convincing evidence that the arbitrator's award of attorney fees was a manifest disregard of the law. See Clark Cty. Educ. Ass'n, 122 Nev. at 342, 131 P.3d at 8; Health Plan of Nevada v. Rainbow Med., 120 Nev. 689, 695, 100 P.3d 172, 176 (2004).

Having considered all of the Castanedas' arguments, we conclude that they have not shown by clear and convincing evidence that the arbitrator's award was either in manifest disregard of the law or arbitrary and capricious. Accordingly we,

ORDER the judgment of the district court AFFIRMED.

_____, C. J.
Douglas

_____, J.
Gibbons

_____, J.
Pickering

cc: Hon. James M. Bixler, District Judge
Nathaniel J. Reed, Settlement Judge
Huggins & Maxwell, Ltd.
Jolley Urga Wirth Woodbury & Standish
Eighth District Court Clerk