IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JASON HARTMAN,
Appellant,
vs.
PALMS PLACE, LLC, A NEVADA LIMITED LIABILITY COMPANY; PALMS PLACE UNIT OWNERS' ASSOCIATION, A NEVADA DOMESTIC NON-PROFIT CORPORATION; GEORGE MALOOF, JR, AN INDIVIDUAL.; JULIE CHAPMAN, AN INDIVIDUAL; AND THOMAS K. LAND,
Respondents.

No. 63718

FILED

JUN 09 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order confirming an arbitrator's award of attorney fees and costs. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

RELEVANT FACTS AND PROCEDURAL HISTORY

In 2005, appellant Jason Hartman executed a Purchase and Sale Agreement ("PSA") to purchase a condominium unit from respondent Palms Place, LLC ("Palms") for $530,750.00, which Hartman intended to use as an investment property. Section 24.10 of the PSA provides, in relevant part: "The parties agree to submit to arbitration any dispute related to this Agreement (including, but not limited to, any dispute related to the interpretation or enforceability of this Agreement) and agree that the arbitration process shall be the exclusive means for resolving disputes which the parties cannot resolve. . . . The prevailing party shall be reimbursed for all expenses of arbitration, including arbitration fees and attorneys' fees and costs." In connection with the transaction,

Hartman deposited $108,150.00 into an escrow account. However, Hartman later failed or refused to close the sale.

In 2011, Hartman filed his demand for arbitration and asserted nine causes of action[1] seeking, among other things, rescission of the PSA and the return of his deposit money based primarily on his allegation that Palms representatives made misrepresentations or failed to disclose information to him, and that he was fraudulently induced into entering the PSA. After two years of proceedings, respondents Palms, Palms Place Unit Owners' Association, George Maloof, Jr., Julie Chapman, and Thomas L. Land (collectively, "Respondents") prevailed on summary judgment.

Following the Arbitrator's decision, Respondents timely filed their application for attorney fees and costs seeking an award of $89,265.00 in attorney fees and $20,460.78 in costs, including arbitration fees. Relying on Section 24.10 of the PSA, Respondents argued that they are entitled to an award of "all" attorney fees and costs by the terms of the agreement. Notwithstanding, Respondents further argued that the fees requested are reasonable under the factors set forth in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969), and provided the Arbitrator with detailed invoices. In his opposition, Hartman argued that

---

[1]Specifically, in his Amended Arbitration Claim for Rescission and Damages, Hartman named nine defendants and asserted claims labeled as follows: (1) declaratory relief; (2) violation of the Interstate Land Sales Full Disclosure Act; (3) violation of NRS 41.600 and NRS 598.0915 *et seq.* (Nevada Deceptive Trade Practices Act and related consumer fraud); (4) breach of implied covenant of good faith and fair dealing; (5) illusory promise – declaratory relief; (6) violation of the Condominium and Hotel Act, NRS Ch. 116B; (7) fraudulent misrepresentation; (8) negligent misrepresentation; and (9) restitution/unjust enrichment.

Respondents were not entitled to recover all of their fees and costs because some of his claims did not "relate to" the PSA. In addition, Hartman argued that the fees claimed are unreasonable.

In his final ruling on attorney fees and costs, the Arbitrator found that Respondents, as the prevailing parties, are entitled to an award of "all expenses of arbitration, including arbitration fees and attorneys' fees and costs" pursuant to Section 24.10 of the PSA and "the entire dispute was, in fact, related to the [PSA]."[2] Then, without reference to the *Brunzell* factors (or any other standard of reasonableness), the Arbitrator ordered that "Respondents are entitled to an award of their attorneys' fees in the amount of $89,265.00 and costs in the amount of $4,764.53" and that Hartman "shall reimburse Respondents the sum of $14,804.77, representing that portion of [arbitration] fees and expenses in excess of the apportioned costs previously incurred by Respondents."

Respondents then filed a Motion for Order Confirming Arbitration Award, and Reduce Award to Judgment, Including Attorneys' Fees and Costs (the "Motion") with the district court. Hartman opposed the Motion and filed a countermotion seeking to either vacate or modify the Arbitrator's award (the "Countermotion"). In the Countermotion, Hartman again argued that some of his claims did not "relate to" the PSA, and that Respondents' attorney fees are not reasonable. Further, based on the absence of any discussion in the Arbitrator's ruling concerning the reasonableness of the fees awarded to Respondents, Hartman concluded

[2] It does not appear from the record that the Arbitrator conducted a hearing on Respondents' application for attorney fees and costs.

that the Arbitrator failed to consider the reasonableness of the fees and argued that, in so doing, the Arbitrator manifestly disregarded the law.

After a hearing on the Motion and the Countermotion, the district court entered its order granting the Motion, denying the Countermotion, and reducing the Arbitrator's award to judgment. This appeal followed.

DISCUSSION

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). However, "review of an arbitrator's actions is far more limited than an appellate court's review of a trial court's actions." *Bohlmann v. Byron John Printz & Ash, Inc.*, 120 Nev. 543, 546, 96 P.3d 1155, 1157 (2004), *overruled on other grounds by Bass-Davis v. Davis*, 122 Nev. 442, 134 P.3d 103 (2006). In reviewing an arbitrator's 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).

NRS 38.241 and NRS 38.242 provide limited statutory grounds for a court to review an arbitrator's award. In particular, a court must modify or correct an award where there is an evident mathematical miscalculation or a mistake in the description of a person, thing or property referenced in the award; where the arbitrator made an award on a claim not submitted to him and the award may be corrected without

affecting the merits of the decision upon claims submitted; or where the award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted. NRS 38.242(1). Similarly, a court must vacate an award where, for example, the award was procured by corruption, fraud, or other undue means. NRS 38.241(1). In addition, "[t]here are two common-law grounds recognized in Nevada under which a court may review private binding arbitration awards: (1) whether the award is arbitrary, capricious, or unsupported by the agreement; and (2) whether the arbitrator manifestly disregarded the law." *Clark County Educ. Ass'n v. Clark County School Dist.*, 122 Nev. 337, 341-42, 131 P.3d 5, 8-9 (2006).

On appeal, Hartman asserts: (1) the district court erred by confirming the arbitration award without either evaluating the fees for reasonableness or remanding the case to the Arbitrator for findings regarding reasonableness; and (2) both the district court and the Arbitrator erred by interpreting the word "all" in the PSA's fee-shifting provision to mean any amount set forth in Respondents' attorney invoices, regardless of whether the fees were incurred defending against claims "related to" the PSA or whether the fees are reasonable. Accordingly, Hartman asks this Court to recognize that the Arbitrator could only award reasonable fees and costs relating to the PSA and to remand the matter for a determination as to the reasonableness of Respondents' attorney fees under the *Brunzell* factors and whether those fees related to the PSA. Thus, although Hartman does not specifically identify any statutory or common law basis for challenging the arbitrator's award in his appeal statement, it appears Hartman challenges the arbitrator's award on the grounds that the award was arbitrary, capricious, or unsupported by the

agreement because it included fees incurred to defend against claims not "related to" the PSA and the Arbitrator manifestly disregarded the law by allegedly failing to consider the reasonableness of Respondents' attorney fees.

Whether the Arbitrator's award was arbitrary, capricious, or unsupported by the agreement

An arbitrator enjoys broad discretion in determining a question under an arbitration agreement; however, "[h]e is confined to interpreting and applying the agreement, and his award need not be enforced if it is arbitrary, capricious, or unsupported by the agreement." *Exber, Inc. v. Sletten Constr. Co.*, 92 Nev. 721, 731, 558 P.2d 517, 523 (1976). In analyzing whether an arbitrator's award is arbitrary, capricious, or unsupported by the agreement, "the reviewing court may only concern itself with the arbitrator's findings and whether they are supported by substantial evidence or whether the subject matter of the arbitration is within the arbitration agreement." *Clark Cnty. Educ. Ass'n v. Clark Cnty. School Dist.*, 122 Nev. 337, 339, 131 P.3d 5, 7 (2006).

Here, Hartman contends that the Arbitrator's award was unsupported by the agreement because it includes attorney fees and costs incurred defending against claims not "related to" the PSA. However, the Arbitrator's conclusion that "the entire dispute was, in fact, related to the [PSA]" is supported by substantial evidence. Indeed, it appears from the record that every claim asserted arose from the transaction that is the subject of the PSA, and Hartman's primary objective was to rescind the PSA and recover his deposit money. Even assuming, *arguendo*, that some of Hartman's claims did not relate to the PSA, Hartman submitted all of his claims to arbitration, and Section 24.10 of the PSA expressly provides that "[t]he prevailing party shall be reimbursed for all expenses of

arbitration." Further, to the extent that Hartman contends the Arbitrator's award was arbitrary or capricious, the amount awarded is supported by the detailed invoices submitted by Respondents in connection with their application for fees and costs. Thus, Hartman failed to prove by clear and convincing evidence that the Arbitrator's award was arbitrary, capricious, or unsupported by the agreement.

Whether the Arbitrator manifestly disregarded the law

"Judicial inquiry under the manifest-disregard-of-the-law standard is extremely limited." *Bohlmann v. Byron John Printz & Ash, Inc.*, 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). "Manifest disregard of the law is 'something beyond and different from a mere error in the law or failure on the part of the arbitrators to understand or apply the law.'" *Id.* (quoting *Thompson v. Tega-Rand Intern.*, 740 F.2d 762, 763 (9th Cir. 1984)). Thus, "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.*

Here, Hartman infers from the lack of findings in the Arbitrator's decision that the Arbitrator did not consider the reasonableness of Respondents' attorney fees and, on that basis, contends that the district court erred by failing to either evaluate the reasonableness of Respondents' attorney fees or remand the matter to the Arbitrator for findings concerning reasonableness. However, the mere absence of explicit findings concerning the reasonableness of the fees awarded does not, on its own, lead to Hartman's conclusion that the Arbitrator failed to consider the reasonableness of Respondents' attorney fees, particularly in light of the fact that the parties addressed the

Brunzell factors in their briefs before the Arbitrator. Furthermore, even assuming, *arguendo*, that the Arbitrator did not consider the reasonableness of Respondents' attorney fees and instead relied solely upon the PSA's broad fee-shifting provision, Hartman presented no evidence demonstrating the Arbitrator recognized that Respondents were only entitled to recover reasonable fees and that Respondents' attorney fees are not reasonable, yet consciously disregarded the law. Accordingly, we conclude that Hartman failed to prove by clear and convincing evidence that the Arbitrator manifestly disregarded the law.[3]

CONCLUSION

In the absence of any statutory or common law ground for vacating or modifying the Arbitrator's award of attorney fees and costs, the district court did not err by confirming the award. We therefore

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Silver

[3]Because Hartman failed to demonstrate that the Arbitrator understood a certain legal standard to apply, but nevertheless chose to ignore it, we do not reach the question of whether the Arbitrator's award of fees and costs pursuant to the PSA's fee-shifting provision is, in fact, subject to a reasonableness analysis.

cc: Hon. Mark R. Denton, District Judge
Stephen E. Haberfeld, Settlement Judge
Jason Hartman
Bailus Cook & Kelesis
Eighth District Court Clerk