DIVISION ONE
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

BLUE LINE EQUIPMENT, LLC, an Arizona limited liability company; SAPPHIRE SCIENTIFIC, INC., an Arizona corporation; and SKAGIT NORTHWEST HOLDINGS, INC., a Washington corporation, Plaintiffs/Appellees, v. SHAWN LORENZO YORK, Defendant/Appellant.	No. 1 CA-CV 11-0559 DEPARTMENT D **MEMORANDUM DECISION** (Not for Publication - Rule 28, Arizona Rules of Civil Appellate Procedure)

Appeal from the Superior Court in Maricopa County

Cause No. CV2010-026991

The Honorable George H. Foster, Judge

AFFIRMED

Perkins Coie LLP — Phoenix
By Philip R. Higdon
P. Derek Petersen
Attorneys for Plaintiffs/Appellees

Shawn Lorenzo York — Sandy, UT
In Propria Persona

S W A N N, Judge

¶1 The appellant in this case argues that an arbitration award denying his claim for loss of future royalties is invalid under A.R.S. § 12-1512 because the award issued from an "excess of arbitral power." Finding no such excess in the record before us, we affirm the trial court's confirmation of that award.

FACTS AND PROCEDURAL HISTORY

¶2 Shawn York developed a mobile carpet-cleaning machine called the Vortex PTO. The Vortex PTO uses the exhaust from a diesel truck's engine to power the carpet cleaner's air blower and water pump as well as to heat the water used in cleaning. York created a prototype of the Vortex PTO in 1994 and obtained a patent for the heat-transfer technology in 2004. He also developed a design for a Vortex Slide-In: a carpet-cleaning machine that is self-contained (i.e., it has its own motor) and that can be mounted in a van. From 1998 to 2006, York's company Vortex Cleaning Systems, LLC ("Vortex Cleaning") manufactured and marketed the Vortex PTO.

¶3 In 2006, the assets of Vortex Cleaning were sold to Blue Line Equipment, LLC ("Blue Line"). The sale was effected on May 11, 2006, by an Asset Purchase Agreement ("APA") executed by Blue Line and by York, on behalf of himself, Vortex Cleaning, and Vortex Technologies, LLC (another company York owned). Under the APA, Blue Line paid York $174,000 for the patent and the Vortex name and logo. The APA also provided that York would

receive a $2,000 royalty for each Vortex PTO that Blue Line sold and a $1,500 royalty for the sale of each Vortex Slide-In (which had not yet been developed).[1] Under Paragraph 2.4.5 of the APA, Blue Line was required "to use all reasonable efforts to market, promote, distribute and sell the Vortex Machines[,] provided that it is commercially reasonable for [Blue Line] to continue to manufacture and market such Vortex Machines[.]"

¶4 At the same time that York and Blue Line executed the APA, they also executed an employment agreement. Under that agreement, York worked as a sales and marketing representative for $60,000 a year; he was also entitled to receive a $1,000 commission for each Vortex machine sold. The employment agreement was amended on January 1, 2008; under the new terms, York worked as Blue Line's website developer for $1,000 a month plus an hourly wage. The amended employment agreement expired in 2009.

¶5 On September 3, 2009, York filed a Demand for Arbitration with the American Arbitration Association.[2] York's demand was predicated on the slow sales of the Vortex PTO: from November 2007 through February 2009, Blue Line sold three to

[1] At the time of the asset transfer, Blue Line already sold its own line of Slide-In carpet-cleaning machines, but did not have its own line of PTO machines.

[2] Paragraph 7.11 of the APA designated the American Arbitration Association as the body to settle disputes arising under the APA.

four units a month, while from March 2009 to June 2010, only five units total were sold. York attributed the sales decline to a change of ownership that took place in March 2009, when Sapphire Scientific, Inc. acquired Blue Line. He claimed that Blue Line, Sapphire Scientific, and Skagit Northwest Holdings, Inc. (Sapphire Scientific's parent company) were in breach of the APA for failing to use reasonable efforts to market, promote, distribute, and sell the Vortex machines.

¶6 Three days of hearings were held before an arbitrator in June 2010. On August 11, the arbitrator issued an award in which York received back the assets transferred in the APA, including the patent and the "Vortex" name. The award, however, denied York relief for the breach of contract claims. The arbitrator found that even if there had been a breach of the APA causing him to lose royalties for the Vortex PTO, York had established "no reasonable basis for the conclusion that [he] is thereby entitled to $70,400 per year for fifty (50) years." The arbitrator found similarly speculative York's claim that he was entitled to damages "in the amount of $97,575 per year for fifty (50) years" arising from Blue Line's failure to produce the Vortex Slide-In machine within the period specified by the APA.

¶7 On August 30, 2010, York filed a motion with the arbitrator to modify the award. York argued that the award lacked an interpretation of Paragraph 2.4.1, a section of the

APA which defined the terms "Vortex PTO Machine" and "Vortex Slide-In Machine."[3] The arbitrator initially denied the motion as outside the scope of the rule under which York filed it[4], but when York persisted in seeking an amendment to the award, the arbitrator construed York's demands as a request to clarify the award. The arbitrator granted that request and issued a clarification containing the following:

> [York] did not prevail in this matter because he failed to prove damages. The

[3] The whole of Paragraph 2.4.1 reads:

> Definitions. As used in this paragraph 2.4, the following terms shall have the following meanings:
>
> (a) "Vortex PTO Machine" means any configuration of any machine which utilizes the vehicle's engine to power the cleaning machine and which either incorporates the Intangible Assets or uses the Vortex brand.
>
> (b) "Vortex Slide-In Machine" means any configuration of machine which does not utilize the vehicle's engine to power the cleaning machine but rather is self contained and which either incorporates the Intangible Assets or uses the Vortex brand name.

[4] York filed his motion under Rule R-46 of the American Arbitration Association's Commercial Arbitration Rules and Mediation Procedures, which states: "Within 20 days after the transmittal of an award, any party, upon notice to the other parties, may request the arbitrator, through the AAA, to correct any clerical, typographical, or computational errors in the award. The arbitrator is not empowered to redetermine the merits of any claim already decided. The other parties shall be given 10 days to respond to the request. The arbitrator shall dispose of the request within 20 days after transmittal by the AAA to the arbitrator of the request and any response thereto."

> Award made clear that no determination of whether Respondents breached the APA was made or needed to be made. . . . Because the Award did not reach the question of liability -- whether the Respondents breached the APA -- no interpretation of APA ¶ 2.4.1 is necessary.

¶8 On September 9, 2010, Blue Line, Sapphire Scientific, and Skagit Northwest Holdings filed an application in the superior court to confirm the arbitration award. On November 1, 2010, York filed under A.R.S. § 12-1509 a motion to remand the arbitration award for clarification. Then on November 10, 2010, he filed under § 12-1513 an application to correct the arbitration award or, in the alternative, to vacate it.

¶9 The superior court issued a signed minute entry on February 1, 2011. The court found that York's motion for correction of the award under § 12-1513 amounted to a request that the court "substitute [York]'s Judgment for that of the Arbitrator in violation of the laws as to the Application to Correct." Regarding York's motion for clarification under § 12-1509, the court noted that the arbitrator had already clarified the award and that York's motion "once again, seeks to substitute [his] Judgment for that of the Arbitrator." The court denied both motions.

¶10 On July 28, 2011, the court entered judgment, confirming the August 11, 2010 arbitration award. York timely appeals from that judgment.

STANDARD OF REVIEW

¶11 We review a trial court's confirmation of an arbitration award for an abuse of discretion. *FIA Card Services, N.A. v. Levy*, 219 Ariz. 523, 524, ¶ 5, 200 P.3d 1020, 1021 (App. 2008).

DISCUSSION

¶12 The arbitrator's award is final unless an opposing party can adequately show the existence of at least one of the five conditions enumerated in A.R.S. § 12-1512(A). *Hirt v. Hervey*, 118 Ariz. 543, 545, 578 P.2d 624, 626 (App. 1978); *Pawlicki v. Farmers Ins. Co.*, 127 Ariz. 170, 173, 618 P.2d 1096, 1099 (App. 1980). Under that statute, a court must decline to confirm an award if the party opposing it can show that:

> 1. The award was procured by corruption, fraud or other undue means;
>
> 2. There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;
>
> 3. The arbitrators exceeded their powers;
>
> 4. The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of § 12-1505, as to prejudice substantially the rights of a party; or
>
> 5. There was no arbitration agreement and the issue was not adversely determined in

> proceedings under § 12-1502 and the adverse party did not participate in the arbitration hearing without raising the objection; but the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

A.R.S. § 12-1512(A). That statutory list is exhaustive in the sense that the trial court, if it does decline to confirm an award, may not do so by considering grounds other than those set forth in § 12–1512(A). *FIA Card Services*, 219 Ariz. at 524, ¶ 6, 200 P.3d at 1021.

¶13 On appeal, York singles out the ground identified in § 12-1512(A)(3) -- that an arbitrator exceeded his or her powers -- as the basis for arguing that the award was improper and that the trial court abused its discretion in confirming it. He argues that "[a]n arbitrator is not empowered to refuse to rule on a governing principle requiring a materially different outcome and a Superior Court Judge is not empowered to 'rubber stamp' the confirmation of an award produced from such misconduct[.]" York argues that the "governing, controlling principle" on which the arbitrator should have ruled is Paragraph 2.4.1 in the APA: the paragraph which defines the terms "Vortex PTO Machine" and "Vortex Slide-In Machine."

¶14 Arbitrators are empowered to decide questions of fact and questions of law. *Verdex Steel & Constr. Co. v. Bd. of Supervisors of Maricopa Cnty.*, 19 Ariz. App. 547, 551, 509 P.2d

240, 244 (1973). Here, the arbitrator decided that the legal principle governing the dispute between York and the other parties was the one articulated in *Rancho Pescado, Inc. v. Northwestern Mutual Life Insurance Co.*, 140 Ariz. 174, 186, 680 P.2d 1235, 1247 (App. 1984), which states: "It is well settled that conjecture or speculation cannot provide the basis for an award of damages." Applying that principle, the arbitrator correctly stated that York needed to establish "a reasonable basis" from which one could conclude that the lost royalties York sought as damages were something more than a "mere speculation." After considering the evidence presented, the arbitrator found that York established no such reasonable basis; she described York's "sampling of historical sales of the Vortex PTO" as "very thin" and ultimately inadequate "to project lost royalties in the future." And when York demanded that the award be altered to include the arbitrator's interpretation of Paragraph 2.4.1, the arbitrator explained that her legal analysis, hinging as it did upon York's lack of any reasonable basis for damages, did not require an authoritative interpretation of that paragraph and the definitions contained in it.

¶15 Nothing in the reasoning or in the determinations of the arbitrator suggests that "[t]he arbitrator[] exceeded [her] powers." A.R.S. § 12-1512(A)(3). Nor does the record support

York's assertion that the trial court abused its discretion by "rubber stamping" the award. The trial court, after reviewing the award and York's opposition to it, concluded that York wanted to replace the arbitrator's determination with his own. Under § 12-1512(A), the superior court does not sit in a traditional appellate capacity -- its power is limited to review of the enumerated grounds for relief. Here, the trial court properly recognized that there was no statutory ground on which to reject the award, and properly confirmed it.

CONCLUSION

¶16 We affirm the trial court's July 28, 2011 judgment confirming the August 11, 2010 arbitration award.

/s/
_____
PETER B. SWANN, Judge

CONCURRING:

/s/
_____
JOHN C. GEMMILL, Presiding Judge

/s/
_____
ANDREW W. GOULD, Judge