

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

THE SPAULDING LLC,
Plaintiff/Appellee,

v.

RANDON L. MILLER, et al.,
Defendants/Appellants.

No. 1 CA-CV 20-0046
FILED 12-22-2020

Appeal from the Superior Court in Maricopa County
No. CV2016-054308
The Honorable Theodore Campagnolo, Judge

AFFIRMED

COUNSEL

Hymson, Goldstein & Pantiliat, PLLC, Scottsdale
By Eddie A. Pantiliat, David B. Goldstein
Counsel for Plaintiff/Appellee

Timothy A. LaSota, PLC, Phoenix
By Timothy A. LaSota
Counsel for Defendants/Appellants

OPINION

Judge David D. Weinzwieg delivered the opinion of the Court, in which
Presiding Judge Samuel A. Thumma and Judge D. Steven Williams joined.

SPAULDING v. MILLER, et al.
Opinion of the Court

WEINZWEIG, Judge:

INTRODUCTION

¶1 Defendants contend the superior court erroneously confirmed the arbitration award of an arbitrator who lacked subject matter jurisdiction. Plaintiff counters that arbitrators derive their authority from valid arbitration agreements and talk of subject matter jurisdiction is misplaced. The superior court agreed with Plaintiff. So do we.¹

¶2 An arbitrator is empowered to hear and decide disputes by the mutual assent of parties who voluntarily agree to arbitrate a defined universe of disputes. By contrast, courts are authorized to hear and decide disputes under their subject matter jurisdiction, which represents the scope of their constitutional or legislative authority to hear cases. Arbitrators do not have or need subject matter jurisdiction.

BACKGROUND

¶3 This appeal stems from a dispute between members of Dynamite, an Arizona limited liability company. Dynamite was formed in May 2002 to purchase and develop a vacant lot in North Scottsdale. It had five members, including Plaintiff and Miller, the managing member. Each member signed an Operating Agreement, which contained an arbitration clause:

All disputes of every kind and nature between the parties to this [Agreement] shall be resolved by mutual agreement of the parties [or] [f]ailing such agreement, disputes shall be resolved by mediation and/or arbitration . . .

¶4 Dynamite obtained a loan and purchased the lot in 2003. Miller personally guaranteed the loan, which was also secured by a deed of trust on the property. Dynamite then tried to rezone the lot from residential to commercial but could not. Dynamite defaulted on the loan in 2010. The lender noticed a trustee's sale for April 2012. Before the sale, Miller purchased the debt at his own expense from lender and Dynamite kept the lot. Four months later, Miller quitclaimed the lot from Dynamite to Miller & Sons, his personal company. After another year, Miller caused Miller &

¹ "Defendants" collectively include Scottsdale & Dynamite Properties, LLC ("Dynamite"), Miller and Sons Dirt, LLC ("Miller & Sons"), Atlas Development Group, LLC ("Atlas"), and Randon L. Miller ("Miller"). "Plaintiff" is The Spaulding LLC.

SPAULDING v. MILLER, et al.
Opinion of the Court

Sons to quitclaim the lot to Atlas, another company owned by Miller and his sons. After these transfers, Dynamite no longer owned the lot, its sole asset, rendering shares in Dynamite worthless. Even so, Miller never told Plaintiff about either transfer.

¶5 The vacant lot remained undeveloped and zoned residential for several years. In May 2015, Plaintiff noticed that a longtime restaurant, Pinnacle Peak Patio, was closing. Plaintiff suggested to Miller that Dynamite reopen the restaurant on the vacant lot, unaware that Dynamite no longer owned the lot. Miller liked the idea and agreed to increase Plaintiff's ownership interest in Dynamite to 8.6% if it was successful. Based on Plaintiff's new concept, the City of Scottsdale rezoned the lot from residential to commercial in December 2015, which increased the property's value from \$300,000 to \$5 million.

¶6 Around this time, Plaintiff discovered that Dynamite no longer owned the lot, which had twice been quitclaimed to businesses controlled by Miller. In September 2016, Plaintiff sued the Defendants in superior court, alleging fraud, breach of fiduciary duty and related claims. Plaintiff claimed that "Miller usurped the [Company's] assets . . . for his own personal benefit and gain." The parties then stipulated to stay the case to participate in arbitration as required by the Operating Agreement.

¶7 Defendants raised various defenses in the arbitration, including that Plaintiff's claims were untimely and improper under the arbitration clause, and that Plaintiff was "seeking to improperly maintain what amounts to a derivative action here." After receiving evidence and argument, the arbitrator ruled for Plaintiff, awarding Plaintiff an 8.6% interest in the lot. Defendants unsuccessfully moved for reconsideration. Adopting Plaintiff's version of the facts, the arbitrator found that Miller intended to conceal from Plaintiff the property transfers.

¶8 Plaintiff applied to have the arbitration award confirmed by the superior court under A.R.S. § 12-3022. Defendants moved the court to vacate and dismiss the arbitration award because the arbitrator (1) exceeded his authority by awarding Plaintiff a property interest in the lot, and (2) lacked subject matter jurisdiction. More specifically, Defendants argued that Plaintiff's "claims are clearly derivative" and Plaintiff "has failed to follow the necessary statutory steps to maintain a derivative action," which meant the arbitrator lacked subject matter jurisdiction under Rule 12(b)(1), Ariz. R. Civ. P. The superior court denied both motions and confirmed the arbitration award. Defendants timely appealed. We have jurisdiction. A.R.S. §§ 12-2101(A)(1), -2101.01(A)(6).

DISCUSSION

¶9 Defendants claim the superior court erroneously (1) confirmed the arbitration award and (2) denied their motions to dismiss and vacate the arbitration award for lack of subject matter jurisdiction. Defendants also contend the arbitrator exceeded his authority and disregarded the agreed-upon arbitration rules. We review the superior court’s confirmation of an arbitration award for an abuse of discretion. *See FIA Card Servs., N.A. v. Levy*, 219 Ariz. 523, 524, ¶ 5 (App. 2008). A motion to dismiss is reviewed de novo. *See State ex rel. Montgomery v. Mathis*, 231 Ariz. 103, 109, ¶ 18 (App. 2012).

A. Subject Matter Jurisdiction

¶10 Defendants argue that the arbitrator or private arbitration tribunal lacked subject matter jurisdiction over Plaintiff’s claims and the superior court thus erred by confirming the arbitration award. Defendants insist the arbitrator lacked subject matter jurisdiction because Plaintiff brought a “classic derivative action” without performing the statutory prerequisite of “a demand on the manager” under A.R.S. § 29-831.²

¶11 We need not decide whether Plaintiff’s claim was a derivative action under A.R.S. § 29-831 or whether Plaintiff complied with the statutory “demand on the manager” because Defendants confuse the distinct concepts of subject matter jurisdiction and a private arbitrator’s authority under an arbitration agreement. *See MBNA Am. Bank, N.A. v. Boata*, 926 A.2d 1035, 1041 (Conn. 2007) (explaining that state constitutions vest “the legislature with the duty to define the subject matter jurisdiction of the state’s constitutional courts . . . whereas an agreement to arbitrate confers on an arbitrator the power to decide disputes in accordance with the terms of that agreement”).

¶12 A private arbitrator is contractually empowered to hear and decide a defined universe of disputes specified by the arbitration agreement. *See Atreus Cmtys. Grp. of Ariz. v. Stardust Dev., Inc.*, 229 Ariz. 503, 506, ¶ 13 (App. 2012); *Snowberger v. Young*, 24 Ariz. App. 177, 180 (App.

² Section 29-831 is part of the Limited Liability Act adopted in 1992. In 2018, the Arizona legislature enacted a new Arizona Limited Liability Company Act, which replaced the Limited Liability Act of 1992 and now applies to all LLCs. *See* 2018 Ariz. Sess. Laws 833 (2d Reg. Sess.). The new Act is codified at A.R.S. § 29-3101 et seq. *See In re Sky Harbor Hotel Properties, LLC*, 246 Ariz. 531, 532, ¶ 3 (2019).

SPAULDING v. MILLER, et al.
Opinion of the Court

1975) (explaining that an arbitrator’s authority comes “from the parties and not from the law of the land”) (quoting *Park Constr. Co. v. Indep. Sch. Dist. No. 32*, 11 N.W.2d 649, 652 (Minn. 1943)); *Boata*, 926 A.2d at 1041 (“[A]n arbitrator’s power to arbitrate claims consists of the power to hear and determine issues that fall within the class of matters that the parties have agreed to resolve using this alternative forum.”). By contrast, subject matter jurisdiction is a “court’s statutory or constitutional power to hear and determine a particular type of case.” *State v. Maldonado*, 223 Ariz. 309, 311, ¶ 14 (2010); accord *Boata*, 926 A.2d at 1041 (“Subject matter jurisdiction ‘is the power [of the court] to hear and determine cases of the general class to which the proceedings in question belong.’”) (quoting *Rayhall v. Akim Co.*, 819 A.2d 803, 811 (Conn. 2003)).

¶13 Aside from that organic difference, the law treats these different concepts differently – just as subject matter jurisdiction cannot be waived, mutual assent cannot be revoked absent grounds not asserted here. See *Health For Life Brands, Inc. v. Powley*, 203 Ariz. 536, 538, ¶ 12 (App. 2002); *Boata*, 926 A.2d at 1041-42. Defendants signed the Operating Agreement, which contained an arbitration clause in which they agreed to arbitrate a broad spectrum of disputes. This dispute falls under the broad sweep of the arbitration agreement, granting the arbitrator the power to adjudicate the matter. Indeed, Defendants do not contest whether arbitration was appropriate.

¶14 In the end, whether this dispute is characterized as a derivative suit or something else, Defendants agreed to arbitrate it before a private arbitrator. The superior court correctly confirmed the arbitration award and denied Defendants’ motion to dismiss for lack of subject matter jurisdiction.

B. Merits and Procedure

¶15 Defendants fare no better on the merits. They argue the arbitrator “exceeded his powers under the operating agreement” because the facts and law did not support the arbitrator’s award. Factually, Defendants made and lost the same arguments in the arbitration proceeding. We will not revisit the arbitrator’s factual findings. See *Verdex Steel & Const. Co. v. Bd. Of Sup’rs, Maricopa Cty.*, 19 Ariz. App. 547, 551 (App. 1973) (holding that judicial review of an arbitration award does not include the ability to decide questions of fact).

¶16 We review the superior court’s confirmation of an arbitration award for an abuse of discretion. *FIA Card Servs.*, 219 Ariz. at 524, ¶ 5.

SPAULDING v. MILLER, et al.
Opinion of the Court

Defendants have shown no such error. The record contains ample evidence supporting the arbitration award, including Miller’s “repeated transfer of the property” in 2012 and 2013 to his other companies and Miller’s agreement in 2015 to increase Plaintiff’s ownership interest in Dynamite, which had no value at that point.

¶17 And last, Defendants claim the arbitrator erred by awarding Plaintiff an 8.6% interest in the lot rather than an 8.6% interest in Dynamite, a worthless company, because Plaintiff only asked for “an ownership interest in the Property” at the end of arbitration. Pointing to the American Arbitration Association rules, Defendants contend that Plaintiff missed the deadline to seek a property interest. We are not persuaded. Plaintiff’s pre-arbitration statement asserts that “[d]amages in this case is the value of [Plaintiff]’s share of the Property.” Moreover, the rules authorized the arbitrator to grant *any* relief deemed just and equitable under the broad arbitration agreement here. AAA Rule R-48(a).³

CONCLUSION

¶18 We affirm the superior court’s confirmation of the arbitration award. Plaintiff also requests its reasonable attorney fees and costs incurred on appeal under Arizona Rule of Civil Appellate Procedure 21(a), citing A.R.S. § 12-3025(C). As the prevailing party, we award Plaintiff its reasonable attorney fees and costs upon compliance with ARCAP 21.



AMY M. WOOD • Clerk of the Court
FILED: AA

³ See www.adr.org/sites/default/files/ConstructionRules_Web.pdf (Rules R-48, F-4, pp. 33, 43).