

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

TEMPLO CALVARIO SPANISH
ASSEMBLY OF GOD,

Plaintiff and Appellant,

v.

GARDNER CONSTRUCTION
CORPORATION,

Defendants and Respondents.

F060838

(Super. Ct. No. S-1500-CV-268037)

**ORDER MODIFYING OPINION
AND DENYING REHEARING
[Change in Judgment]**

BY THE COURT:

The opinion in the in the above-captioned case, filed on August 16, 2011, is modified as follows:

- (1) On page 5, the second sentence of the first full paragraph (beginning with “The court then entertained ...”) is modified by a deletion of everything following the words “at a second hearing.”

The sentence, as modified, now reads in its entirety:

“The court then entertained argument at a second hearing.”

- (2) On page 11, the final two sentences before the “DISPOSITION” presently read:

“In the case presently before us, therefore, the contract likewise was not illegal and void at its inception. The arbitration clause was not part of an illegal or void contract, and the arbitrator was not without power to arbitrate the dispute initiated by Templo.”

Those two sentences are modified to instead read:

“In the case presently before us, therefore, the contract likewise was not illegal and void at its inception, and the arbitration clause was not part of an illegal or void contract.”

(3) On page 11, footnote 1 presently reads

“Respondent has filed a ‘Renewed Motion to Augment Record on Appeal’ asking us to augment the appellate record with various documents which were not filed or lodged with the superior court, and which appear to have nothing to do with the issue of whether the arbitrator had authority to arbitrate the parties’ dispute. We deny the request. (*People v. Gaston* (1978) 20 Cal.3d 476.)”

Footnote 1 is modified to instead read:

“Respondent has filed a ‘Renewed Motion to Augment Record on Appeal’ asking us to augment the appellate record with various documents which were not filed or lodged with the superior court and which appear to have nothing to do with the issue of whether the arbitration clause was part of an illegal or void contract. We deny the request. (*People v. Gaston* (1978) 20 Cal.3d 476.)”

(4) On page 11, the “DISPOSITION” presently reads:

“The judgment is reversed and remanded back to the superior court for that court to enter an order granting Templo’s petition to confirm the arbitration award and denying Gardner’s petition to vacate the arbitration award. Costs on appeal are awarded to appellant.”

The “DISPOSITION” is modified to instead read:

“The judgment is reversed. Because the superior court vacated the arbitration award on the basis of that court’s erroneous conclusion that *Loving & Evans v. Blick, supra*, called for such a result, and does not appear to have considered the grounds raised by respondent in respondent’s petition to vacate the arbitration award, we therefore remand the matter to the superior court for that court to address the grounds raised by respondent in respondent’s petition to vacate the arbitration award, and to rule accordingly on said petition.

Costs on appeal are awarded to appellant.”

This modification changes the appellate judgment. (See Cal. Rules of Court, rule 8.264, subd. (c)(2).)

Respondent's petition for rehearing, filed in this court on August 30, 2011, is denied.

Franson, J.

WE CONCUR:

Gomes, Acting P.J.

Kane, J.