Laschkewitsch v. Transamerica Life Insurance Company Doc. 52

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:14-CV-632-D

JOHN LASCHKEWITSCH, Plaintiff, v. TRANSAMERICA LIFE INSURANCE COMPANY, Defendant.	)	**ORDER**

John Laschkewitsch ("Laschkewitsch" or "plaintiff") is a familiar litigant. See, e.g., Laschkewitsch v. Legal & Gen. Am., Inc., No. 5:15-CV-251-D, 2017 WL 1102619, at *1 (E.D.N.C. Mar. 23, 2017) (unpublished). In this case, on September 21, 2016, this court denied as baseless Laschkewitsch's motion to modify or correct Transamerica Life Insurance Company's ("Transamerica" or "defendant") arbitration award of $540,723.76 [D.E. 42] and his motion to vacate the arbitration award and to dismiss Transamerica's petition for confirmation [D.E. 43]. See Order [D.E. 44]. On October 19, 2016, Laschkewitsch moved for reconsideration of that order under Rules 52(b) and 59(e) of the Federal Rules of Civil Procedure [D.E. 47]. On November 3, 2016, Transamerica responded in opposition [D.E. 49]. On November 23, 2016, Laschkewitsch replied [D.E. 51]. As explained below, the court denies Laschkewitsch's motion for reconsideration.

Laschkewitsch bases his motion on both Rules 52(b) and 59(e). Rule 52, however, applies only in "action[s] tried on the facts without a jury or with an advisory jury." Fed. R. Civ. P. 52(a)(1); see O'Hara v. Comptroller of Md., No. TDC-14-4044, 2016 WL 2760337, at *1 (D. Md. May 12, 2016) (unpublished), aff'd, 670 F. App'x 777 (4th Cir. 2016) (per curiam) (unpublished). That did not happen here. Thus, the court denies relief under Rule 52(b).

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As for Rule 59(e), "[i]n general, reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly." Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998) (quotation omitted). A Rule 59(e) motion may thus be granted in only three situations: "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." Mayfield v. Nat'l Ass'n for Stock Car Auto Racing, Inc., 674 F.3d 369, 378 (4th Cir. 2012) (quotation omitted); see Zinkand v. Brown, 478 F.3d 634, 637 (4th Cir. 2007). Rule 59(e) motions may not be used "to raise arguments which could have been raised prior to the issuance of the judgment, nor may they be used to argue a case under a novel legal theory that the party had the ability to address in the first instance." Pac. Ins. Co., 148 F.3d at 403.

Laschkewitsch argues that this court must grant his motion to reconsider in order "to correct clear errors and prevent manifest injustice and manifest errors in the law and in fact regarding the arbitrator's award and this court's confirmation." [D.E. 51] 2. This argument fails if the court's decision under reconsideration "was factually supported and legally justified." Hutchinson v. Staton, 994 F.2d 1076, 1081–82 (4th Cir. 1993). Mere disagreement with the court's decision is not a proper basis for a Rule 59(e) motion. Id. at 1082. Nor can a party invoke Rule 59(e) to "relitigate old matters." Exxon Shipping Co. v. Baker, 554 U.S. 471, 485 n.5 (2008) (quotation omitted); see Pac. Ins. Co., 148 F.3d at 403. "Consequently, a Rule 59(e) motion is not intended to allow for reargument of the very issues that the court has previously decided and is not intended to give an unhappy litigant one additional chance to sway the judge." Melvin v. Social Security Admin., No. 5:14-CV-170-F, 2016 WL 7383542, at *1 (E.D.N.C. Sept. 26, 2016) (unpublished) (alterations, citations, and quotations omitted), aff'd, No. 16-2248, 2017 WL 1506644 (4th Cir. Apr. 27, 2017) (per curiam) (unpublished); see Palmer v. Champion Mortg., 465 F.3d 24, 30 (1st Cir. 2006); Zimmerman v. City of Oakland, 255 F.3d 734, 740 (9th Cir. 2001); Fox v. Am. Airlines, Inc., 295 F. Supp. 2d 56, 60 (D.D.C. 2003), aff'd, 389 F.3d 1291 (D.C. Cir. 2004).

In his Rule 59(e) motion Laschkewitsch simply disagrees with this court's order dismissing his motion to modify or correct the arbitration award and his motion to vacate that award. In doing so Laschkewitsch reasserts the same meritless legal arguments that this court previously rejected. Compare [D.E. 42, 43], with [D.E. 48]. The arguments have not improved with age and do not warrant reconsideration. Accordingly, the court denies his motion.

Alternatively, Laschkewitsch's motion fails because this court's decision "was factually supported and legally justified." Hutchinson, 994 F.2d at 1081–82. Laschkewitsch's motions challenged the arbitrator's decision in favor of Transamerica. "[T]he scope of judicial review for an arbitrator's decision is among the narrowest known at law because to allow full scrutiny of such awards would frustrate the purpose of having arbitration at all—the quick resolution of disputes and the avoidance of the expense and delay associated with litigation." MCI Constructors, LLC v. City of Greensboro, 610 F.3d 849, 857 (4th Cir. 2010) (quotation omitted). "[I]n reviewing such an award, a district or appellate court is limited to determine whether the arbitrators did the job they were told to do—not whether they did it well, or correctly, or reasonably, but simply whether they did it." Three S Del., Inc. v. DataQuick Info. Sys., Inc., 492 F.3d 520, 527 (4th Cir. 2007) (quotation omitted). "An arbitration award is enforceable even if the award resulted from a misinterpretation of law, faulty legal reasoning or erroneous legal conclusion, and may only be reversed when arbitrators understand and correctly state the law, but proceed to disregard the same." Upshur Coals Corp. v. United Mine Workers of Am., Dist. 31, 933 F.2d 225, 229 (4th Cir. 1991) (citations and quotations omitted).

In seeking vacatur Laschkewitsch bore "the heavy burden of showing one of the grounds specified in the Federal Arbitration Act (the 'FAA') or one of certain limited common law grounds." MCI Constructors, LLC, 610 F.3d at 857; see Patten v. Signator Ins. Agency, Inc., 441 F.3d 230, 234 (4th Cir. 2006). Under the FAA, a court may vacate an arbitration award only on one of the following grounds:

> (1) where the award was procured by corruption, fraud, or undue means;
>
> (2) where there was evident partiality or corruption in the arbitrators, or either of them;
>
> (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
>
> (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

9 U.S.C. § 10(a); see MCI Constructors, LLC, 610 F.3d at 857. As for the common law, "[t]he permissible common law grounds for vacating such an award include those circumstances where an award fails to draw its essence from the contract, or the award evidences a manifest disregard of the law." MCI Constructors, LLC, 610 F.3d at 857 (quotations omitted); see Patten, 441 F.3d at 234.

Laschkewitsch argues that no enforceable arbitration agreement existed. This court has twice concluded otherwise and did not clearly err in doing so. See [D.E. 20, 31]. As for Laschkewitsch's arguments concerning the recognized grounds for vacating an arbitrator's award, the court has applied the relevant legal standards and concludes that Laschkewitsch failed to carry his burden of proving that the award was procured by corruption, fraud, or undue means,[1] that the arbitrator demonstrated evident impartiality or corruption,[2] that the arbitrator engaged in misconduct or improperly refused to hear evidence,[3] that the arbitrator exceeded the scope of his powers or imperfectly executed them such that a mutual, final, and definite award upon the subject matter

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[1] See MCI Constructors, LLC, 610 F.3d at 858–59; Three S Del., Inc., 492 F.3d at 529–30.

[2] See Three S Del., Inc., 492 F.3d at 530; ANR Coal Co. v. Cogentrix of N.C., Inc., 173 F.3d 493, 500–01 (4th Cir. 1999); Consol. Coal Co. v. Local 1643, United Mine Workers of Am., 48 F.3d 125, 129 (4th Cir. 1995); Peoples Sec. Life Ins. Co. v. Monumental Life Ins. Co., 991 F.2d 141, 146 (4th Cir. 1993).

[3] See United Paperworkers Int'l Union, AFL-CIO v. Misco, Inc., 484 U.S. 29, 40–41 (1987); Three S Del., Inc., 492 F.3d at 530–31; Int'l Union, United Mine Workers of Am. v. Marrowbone Dev. Co., 232 F.3d 383, 389–90 (4th Cir. 2000).

submitted was not made,[4] that the award fails to draw its essence from the contract,[5] or that the award evidences a manifest disregard for the law.[6] Thus, Laschkewitsch fails to show that reconsideration of this court's order denying his motions challenging the arbitration award is necessary "to correct a clear error of law or prevent manifest injustice." Rather, the court's order denying the motions "was factually supported and legally justified." Hutchinson, 994 F.2d at 1081–82.

In sum, the court DENIES Laschkewitsch's motion [D.E. 47].

SO ORDERED. This 17 day of July 2017.

JAMES C. DEVER III
Chief United States District Judge

[4] See Oxford Health Plans LLC v. Sutter, 133 S. Ct. 2064, 2068–71 (2013); Jones v. Dancel, 792 F.3d 395, 405 (4th Cir.), cert. denied, 136 S. Ct. 591 (2015); Apex Plumbing Supply, Inc. v. U.S. Supply Co., 142 F.3d 188, 193 (4th Cir. 1998).

[5] See MCI Constructors, LLC, 610 F.3d at 861–62; Patten, 441 F.3d at 235; Apex Plumbing, Inc., 142 F.3d at 193 n.5; United Food & Commercial Workers, Local 400 v. Marval Poultry Co., 876 F.2d 346, 351 (4th Cir. 1989).

[6] See Wachovia Sec., LLC v. Brand, 671 F.3d 472, 480–81 (4th Cir. 2012); Long John Silver's Rests., Inc. v. Cole, 514 F.3d 345, 349–50 (4th Cir. 2008); Patten, 441 F.3d at 235.