NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2014 CA 1374

LAKEVIEW HOME CARE, L.L.C., A LOUISIANA LIMITED LIABILITY COMPANY, AND ITS MEMBERS/MANAGERS, WILLIAM CLOUGHLEY, MICHAEL CASSIDY AND CHRISTOPHER VINCE

VERSUS

MEDISTAR HOME HEALTH OF BATON ROUGE, L.L.C.

Judgment Rendered: MAR 06 2015

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Docket Number C610927

Honorable Todd W. Hernandez, Judge Presiding

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BEFORE: WHIPPLE, C.J., McCLENDON AND HIGGINBOTHAM, JJ.

WHIPPLE, C.J.

Plaintiffs appeal the judgment of the trial court that granted defendant's motion to confirm an arbitration award and denied plaintiffs' motion to vacate or modify the award. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

On March 10, 2011, plaintiffs, Lakeview Home Care, LLC, William Cloughley, Michael Cassidy and Christopher Vince (at times herein collectively referred to as "the Lakeview plaintiffs"), and defendant, Medistar Home Health of Baton Rouge, LLC ("Medistar"), entered into an Asset Purchase Agreement, through which Medistar agreed to purchase the "properties, rights and assets" used in the operation of a home health agency owned by Lakeview.[1] Pursuant to the agreement, a portion of the $4,250,000.00 purchase price was financed by a $1,250,000.00 promissory note executed by Medistar in favor of Lakeview, providing for five annual payments of $250,000.00 with interest thereon at a rate of 7% per annum.

Thereafter, a dispute arose between the parties, with the Lakeview plaintiffs contending that Medistar failed to timely make the first annual installment due on the $1,250,000.00 promissory note executed in connection with the sale. Medistar, on the other hand, contended: (1) that the Lakeview plaintiffs made certain misrepresentations and breached certain warranties set forth in the Asset Purchase Agreement which caused Medistar to suffer losses; (2) that the Lakeview plaintiffs were obligated pursuant to the Asset Purchase Agreement to indemnify Medistar for those damages; and (3) that it was entitled to offset the outstanding amounts owed

[1]Cloughley, Cassidy and Vince had "direct control and ownership" of Lakeview and were listed as guarantors in the Asset Purchase Agreement.

under the promissory note with the sums owed to it by the Lakeview plaintiffs in indemnification.

The dispute was ultimately heard by an arbitration panel, as provided in Section 11.2 of the Asset Purchase Agreement.[2] Following a six-day evidentiary hearing before the arbitration panel, the panel issued an amended award on November 15, 2013, awarding $1,446,004.56 to Lakeview from Medistar and $1,671,019.89 to Medistar from the Lakeview plaintiffs, resulting in a net amount of $225,015.33 due from the Lakeview plaintiffs to Medistar.[3]

Medistar then filed in the district court below a motion to confirm the arbitration award pursuant to LSA-R.S. 9:4209, and the Lakeview plaintiffs responded by filing a motion to vacate or modify the award pursuant to LSA-R.S. 9:4210 and 9:4211. In support of its motion to vacate or modify the award, Lakeview contended that the award of $350,000.00 in costs and attorney's fees by the arbitration panel conflicted with section 11.2 of the Asset Purchase Agreement, which provided that "[e]ach party shall bear its own expenses of preparation for arbitration," and, thus, that the arbitration panel, in rendering an award of costs and attorney's fees, "ignored the restrictive language of Section 11.2" of the agreement in violation of LSA-R.S. 9:4210(D) or 9:4211(A).

Following a hearing on the competing motions, the district court rendered judgment: (1) granting Medistar's motion to confirm the

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[2]Initially, the Lakeview plaintiffs filed suit in district court to collect on the promissory note. However, the district court maintained Medistar's exception of prematurity and stayed the matter in district court pending conclusion of arbitration proceedings.

[3]The amended award was rendered in response to a request for reconsideration of the panel's original November 7, 2013 award. The amended award only affected those sections of the original award setting forth the amounts due and the net award to Lakeview. In all other respects, the arbitration panel "confirmed and ratified" its original award.

arbitration award and confirming the award; (2) denying the Lakeview plaintiffs' motion to vacate or modify the award; (3) cancelling the April 1, 2011 promissory note between the parties; and (4) decreeing that the Lakeview plaintiffs were solidarily obligated to pay Medistar the amount of $225,015.33.

From this judgment, the Lakeview plaintiffs appeal, contending that the district court erred in: (1) denying their motion to vacate or modify the arbitration award; (2) granting Medistar's motion to confirm the arbitration award; (3) ordering that the Lakeview plaintiffs are solidarily obligated to pay Medistar the amount of $225,015.33; and (4) failing to find that Medistar is obligated to pay the Lakeview plaintiffs the sum of $124,984.67.

DISCUSSION

On appeal, the Lakeview plaintiffs challenge only that portion of the arbitration award that awarded Medistar $350,000.00 in "costs and expenses, including attorney['s] fees." They contend that Section 11.2 of the Asset Purchase Agreement, which provides in part that "[e]ach party shall bear its own expenses of preparation for arbitration," is the only contractual authority addressing the procedures and restrictions of any arbitration between the parties and that, in the absence of any evidence that the claimed costs and expenses were not in preparation of the arbitration, the arbitration panel exceeded its contractual powers when it awarded Medistar $350,000.00 in costs and expenses, including attorney's fees.[4]

Medistar, on the other hand, notes that the arbitration panel

[4]The Lakeview plaintiffs' arguments in support of all of their assignments of error are premised on their position that the arbitration panel exceeded its contractual authority in awarding attorney's fees in violation of Section 11.2 of the Asset Purchase Agreement. Thus, the assignments of error will not be addressed individually.

specifically found that the Lakeview plaintiffs had breached certain warranties in the Asset Purchase Agreement and that, as such, they were obligated to indemnify and hold harmless Medistar from all losses, pursuant to Section 7.1(a) of the Asset Purchase Agreement. Section 7.1(a) of the agreement provides, in pertinent part, as follows:

> 7.1 Indemnification by Seller and Guarantors.
>
> (a) Subject to Sections 7.3 through 7.5, Seller and Guarantors, solidarily, shall indemnify and hold harmless Purchaser, and its members, managers, employees, officers, directors, agents and affiliates (collectively, the "Purchaser Indemnified Parties"), from and against any and all demands, claims, actions or causes of action, assessments, **losses, damages, liabilities, costs and expenses (including but not limited to reasonable attorney['s] fees)** (collectively, "Losses"), suffered or incurred by any such party, if and to the extent such losses are suffered or incurred by reason of or arising out of any of the following:
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> * * *
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> (ii) The failure of any representation or warranty of Seller contained herein or in any Acquisition Document to be true and correct when made or deemed made under the terms hereof, or the breach by Seller of any warranty contained herein or in any Acquisition Document;
>
> (iii) The breach of any covenant or agreement of Seller contained in this Agreement or any other Acquisition Documents;
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> * * *

(Emphasis added). The arbitration panel further found that Medistar had incurred reasonable costs and expenses, including attorney's fees, as a result of the breaches and violations of the Asset Purchase Agreement by the Lakeview plaintiffs and, accordingly, awarded $350,000.00 for those costs and expenses, in accordance with Section 7.1(a) of the agreement.

Medistar asserts on appeal that the only issue presented in this appeal by the Lakeview plaintiffs is whether the arbitration panel was in error in ruling that Section 7.1 of the Asset Purchase Agreement should apply to Medistar's claim for attorney's fees, rather than Section 11.2 of the

agreement, and that such a determination is beyond the scope of judicial relief that may be sought with regard to an arbitration award. It asserts that the Lakeview plaintiffs seek to have this court replace its judgment for that of the arbitration panel on the issue of interpretation of these two provisions of the Asset Purchase Agreement, a request that is outside of the limited grounds for vacating or modifying an arbitration award that are set forth in LSA-R.S. 9:4210 and 9:4211.

Louisiana Revised Statute 9:4209 provides that at any time within one year after an arbitration award is made, any party to the arbitration may apply to the court for an order confirming the award and "thereupon the court **shall** grant such an order unless the award is vacated, modified, or corrected as prescribed in R.S. 9:4210 and 9:4211." Pursuant to LSA-R.S. 9:4210, the district court is directed to vacate an arbitration award upon application of any party to the arbitration under four listed situations:

> A. Where the award was procured by corruption, fraud, or undue means.
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> B. Where there was evident partiality or corruption on the part of the arbitrators or any of them.
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> C. 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.
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> D. 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.

With regard to modifying or correcting an award, LSA-R.S. 9:4211 directs a district court to modify or correct an award in three listed situations:

> A. Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.

> B. Where the arbitrators have awarded upon a matter not submitted to them unless it is a matter not affecting the merits of the decision upon the matters submitted.
>
> C. Where the award is imperfect in matter of form not affecting the merits of the controversy.

As this court has noted, the Louisiana jurisprudence applying these provisions reflects a strict adherence to the exclusive and very limited authority for judicial modification of arbitration awards. JK Developments, LLC v. Amtek of Louisiana, Inc., 2007-1825 (La. App. 1st Cir. 3/26/08), 985 So. 2d 199, 201, writ denied, 2008-0889 (La. 6/20/08), 983 So. 2d 1276. As explained by the Louisiana Supreme Court in National Tea Co. v. Richmond, 548 So. 2d 930, 933 (La. 1989):

> Arbitration is a substitute for litigation. The purpose of arbitration is settlement of differences in a fast, inexpensive manner before a tribunal chosen by the parties. That purpose is thwarted when parties seek judicial review of an arbitration award. [Citations omitted.]

Because of the strong public policy favoring arbitration, arbitration awards are presumed to be valid, and errors of fact or law do not invalidate a fair and honest arbitration award. Therefore, as noted by the Supreme Court, "**misinterpretation of a contract by an arbitration panel is not subject to judicial correction.**" National Tea Co., 548 So. 2d at 932-933 (emphasis added).

Medistar asserts that the crux of the Lakeview plaintiffs' argument on appeal is that the arbitration panel misinterpreted Section 7.1(a) of the Asset Purchase Agreement, which allows costs and expenses, including attorney's fees, to be recoverable as damages arising from breach of warranties under the agreement, and Section 11.2, which provides that each party shall bear its own expenses for preparation for arbitration, in reaching its determination that Medistar was entitled to an award of attorney's fees as a result of the

breaches by the Lakeview plaintiffs. This type of substantive review of the arbitration panel's findings and interpretations of the contract between the parties is simply not contemplated within the scope of LSA-R.S. 9:4210 and 9:4211.

As to the Lakeview plaintiffs' argument that the arbitration panel exceeded its contractual authority in rendering its award herein, we note that Section 11.2 of the Asset Purchase Agreement, which they contend is the only section of the agreement that addresses the procedures and limitation of any arbitration between the parties, provides that "if the parties hereto are unable to resolve **any dispute arising under the terms of this Agreement**..., then each party shall appoint an arbitrator...and such appointed arbitrators will appoint a third arbitrator...to hear the parties and resolve the dispute...." (Emphasis added). Thus, this provision clearly grants the arbitration panel authority to resolve **any** dispute between the parties arising under the terms of the Asset Purchase Agreement. In the instant case, one of the disputes between the parties involved Medistar's entitlement to attorney's fees as an element of its damages caused by the Lakeview plaintiffs' breach of warranties under the agreement, the resolution of which involved interpretation of two separate provisions of the agreement. Interpretation of these provisions is clearly within the realm of the authority granted to the arbitration panel pursuant to Section 11.2 of the Asset Purchase Agreement.

Moreover, we find no merit to the Lakeview plaintiffs' reliance on Southgate Penthouses, LLC v. MAPP Construction, 2012-1242 (La. App. 1st Cir. 4/26/13), 2013 WL 1790994 (unpublished), writs denied, 2013-1217 and 2013-1906 (La. 9/13/13), 120 So. 3d 700,705, as support for their assertion that the arbitration panel exceeded its contractual authority and,

thus, that the award be vacated pursuant to LSA-R.S. 9:4210(D). In Southgate Penthouses, this court held that the arbitration panel had exceeded its authority and prejudiced one of the parties by violating its own scheduling order and allowing one party to make a contractual claim after the deadline for doing so in the scheduling order had expired, in violation of LSA-R.S. 9:4210(D). Southgate Penthouses, 2012-1242 at p. 15, 2013 WL 1790994 at 7. The facts herein do not involve any type of procedural violation by the arbitration panel, but, rather, involve the interpretation of two competing provisions of the contract at issue.

In the instant case, the arbitration panel concluded that Section 7.1(a) of the Asset Purchase Agreement authorized an award of attorney's fees as an element of damages suffered by Medistar as a result of the Lakeview plaintiffs' breach of warranties, an interpretation of the agreement with which the Lakeview plaintiffs disagree. However, judges are not entitled to substitute their judgment for that of the arbitrators chosen by the parties. National Tea Co., 548 So. 2d at 933. Accordingly, we find no merit to the Lakeview plaintiffs' argument that the arbitration panel exceeded its authority in violation of LSA-R.S. 9:4210(D).[5]

CONCLUSION

For the above and foregoing reasons, the April 14, 2014 judgment of the district court, confirming the award of the arbitration panel, is affirmed. Costs of this appeal are assessed equally among Lakeview Home Care, LLC, William Cloughley, Michael Cassidy, and Christopher Vince.

AFFIRMED.

[5]We likewise find no merit to any contention that the award of the arbitration panel contained a material miscalculation that would warrant correction pursuant to LSA-R.S. 9:4211(A).