

**STRATEGIC PLANNING
ASSOCIATES, L.L.C.**

*

NO. 2018-CA-0176

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VERSUS

COURT OF APPEAL

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**CORE CONSTRUCTION
SERVICES, L.L.C., JASON
BRUZIK, AND TRAVELERS
CASUALTY AND SURETY
COMPANY OF AMERICA**

FOURTH CIRCUIT

*

STATE OF LOUISIANA

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2016-09621, DIVISION "A"
HONORABLE Henry P Julien, AD HOC

Judge Roland L. Belsome

(Court composed of Judge Edwin A. Lombard, Judge Roland L. Belsome, Judge Sandra Cabrina Jenkins)

JENKINS, J., CONCURS IN THE RESULT

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AFFIRMED
SEPTEMBER 19, 2018

In this construction contract case, the plaintiff, Strategic Planning Associates, LLC (SPA), appeals the Civil District Court's judgment, which confirmed an arbitration award in favor of the defendants, Core Construction Services, LLC (Core) and Travelers Casualty and Surety Company of America. For the following reasons, the trial court's judgment is affirmed.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

In November 2014, SPA and Core entered into a subcontract for the fabrication and erection of steel for the Sophie B. Wright High School renovation project. SPA was required to provide performance and labor and material payment bonds, which were issued by United States Specialty Insurance Company (USSIC) and incorporated as a necessary part of the subcontract. SPA had also executed a General Indemnification Agreement (GIA) with USSIC.

As the project fell behind schedule, disputes arose between Core and SPA. Core subsequently placed SPA in default and terminated the subcontract on December 22, 2015. As a result, USSIC filed an indemnity lawsuit against SPA in the United States District Court for the Eastern District of Louisiana. In the same court, Core filed suit against USSIC over the bond.

In August 2016, Core submitted a Demand for Arbitration with the American Arbitration Association (AAA), to which SPA lodged an objection. Later that month, SPA filed a Petition to Enforce Sworn Statement of Claim and for Damages against Core in the Civil District Court for the Parish of Orleans, the case from which this appeal arises. In response, Core filed an Exception of Prematurity and Alternative Motion to Stay State Litigation. In response to the exception, the parties agreed to: (1) stay the state litigation pending the arbitration and (2) stay the arbitration pending mediation. Mediation was unsuccessful.

During the pendency of the arbitration proceedings, Core reached a settlement with USSIC, acting on behalf of itself and SPA through its power of attorney set forth in the GIA. Core then moved to dismiss the arbitration with the AAA. SPA objected, disputing the validity and authority of the arbitrator to review the settlement and GIA. After a hearing on the briefs, the arbitrator dismissed the arbitration, finding that the Settlement Agreement disposed of all claims between the parties.

With the dismissal of the arbitration, the parties returned to Civil District Court. Core moved to lift the stay of arbitration, to confirm the arbitration award, and to dismiss the case, while SPA moved to vacate or modify the arbitration award. After a hearing, the trial court confirmed the arbitration award and dismissed the lawsuit. This appeal followed.

STANDARD OF REVIEW

An appellate court reviews a district court judgment confirming an arbitration award *de novo*. *Favalora Constructors, Inc. v. Grillot Elec. Co., Inc.*, 16-550, p. 3 (La. App. 4 Cir. 11/30/16), 204 So.3d 1064, 1066. Arbitration is favored, and an arbitration award is *res judicata*. *Montelepre v. Waring Architects,*

00-671, 00-672, p. 4, (La. App. 4 Cir. 5/16/01), 787 So.2d 1127, 1130 (citations omitted). The burden of proof is on the party attacking the award. *Id.*

La. R.S. 9:4209 requires that a district court confirm the arbitration award upon application by any party unless grounds pursuant to La. R.S. 9:4210 or 9:4211 exist.¹ *Bottle Poetry, LLC v. Doyle Rest. Grp. Franchise Co., LLC*, 13-406, p. 3 (La. App. 4 Cir. 1/15/14), 133 So.3d 60, 64, *writ denied*, 14-335 (La. 4/11/14), 138 So.3d 606 (citation omitted). In addition to the grounds enumerated in La. R.S. 9:4210 and 4211, a litigant may attack an arbitration award on the basis of a “manifest disregard of the law,” a judicially created ground for vacating an arbitration award. *Id.* “A manifest disregard of the law refers to error which is obvious and capable of being readily and instantly perceived by an average person qualified to serve as an arbitrator.” *Id.*

In the absence of statutory or agreed to procedures, the arbitrator has broad discretion in conducting arbitration proceedings. *Southern Tire Services v. Virtual Point Dev.*, 00-2301, p. 6 (La. App. 4 Cir. 9/26/01), 798 So.2d 303, 307. The

¹ La. R.S. 9:4210 provides that the courts can vacate the award:

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

La.R.S. 9:4211 states the award can be modified:

- 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.

appellate court's function is to determine if the arbitration proceedings have been fundamentally fair. *Id.*

DISCUSSION

On appeal, SPA asserts that the trial court erred in confirming the arbitration award. In granting Core's motion to dismiss, the arbitrator made two rulings: 1) he had authority to consider and rely on the GIA and Settlement Agreement in ruling on the motion to dismiss the arbitration; and 2) a settlement existed between the parties.

First, concerning the arbitrator's authority to consider the GIA and Settlement Agreement submitted by Core, the issue is whether the settlement dispute and related documents fall within the scope of the arbitration agreement. *See Lakeland Anesthesia, Inc. v. United Healthcare of La., Inc.*, 03-1662, p. 9 (La. App. 4 Cir. 3/17/04); 871 So.2d 380, 388 (finding arbitration should be ordered unless the arbitration clause is not susceptible of an interpretation that covers the asserted dispute).

SPA argues that the arbitrator exceeded his authority and violated its due process rights when he ruled on matters not covered in the narrow language of the arbitration demand."² The arbitration provision states:

all claims, disputes, and **other matters in question** between the Contractor and the Subcontractor, **arising out of**, or relating to this Subcontract or the breach thereof shall be decided by arbitration ... (emphasis added).

² This Court has made it clear that due process violations require a reviewing court to vacate the award. *Johnson v. 1425 Dauphine, L.L.C.*, 10-793, p. 10 (La. App. 4 Cir. 12/1/10), 52 So.3d 962, 968-69. However, the four grounds which require a reviewing court to vacate an arbitrator's award are broad in scope and provide sufficient leeway to correct fundamental due process violations. *Pittman Constr. Co., Inc. v. Pittman*, 96-1079, 96-1498, p. 13 (La. App. 4 Cir. 3/12/97), 691 So.2d 268, 274.

Despite SPA's argument to the contrary, the jurisprudence has referred to similar arbitration provisions as "broad" in nature:

Both the Supreme Court and this court have characterized similar arbitration clauses as broad arbitration clauses capable of expansive reach. *See Prima Paint Corp., v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 397-98, 87 S.Ct. 1801, 1802-03, 18 L.Ed.2d 1270 (1967) (labelling as 'broad' a clause requiring arbitration of '[a]ny controversy or claim arising out of or relating to this Agreement'); *Nauru Phosphate Royalties, Inc. v. Drago Daic Interests, Inc.*, 138 F.3d 160, 164-65 (5th Cir.1998) (holding that when parties agree to an arbitration clause governing '[a]ny dispute ... arising out of or in connection with or relating to this Agreement,' they 'intend the clause to reach all aspects of the relationship.'). *Pennzoil Exploration & Prod. Co., v. Ramco Energy, Ltd.*, 139 F.3d 1061, 1067 (5th Cir.1998).

Rain CII Carbon LLC v. ConocoPhillips Co., 12-203, pp. 10-11 (La. App. 4 Cir. 10/24/12), 105 So.3d 757, 764, writ denied, 12-2496 (La. 1/18/13), 107 So.3d 631. Moreover, both the federal and state jurisprudence hold that any doubt as to whether a controversy is arbitrable should be resolved in favor of arbitration. *J. Caldarera & Co. v. Louisiana Stadium & Exposition Dist.*, 98-294, p. 4 (La. App. 5 Cir. 12/16/98), 725 So.2d 549, 551.

A review of the record reveals that Core filed a motion to dismiss based on the purported settlement of the claims in arbitration. As evidence, Core submitted the GIA and settlement documents. The GIA was incidental to the bonded subcontract. In addition, the Settlement Agreement arose out of the alleged breach of the subcontract claims. In his decision, the arbitrator determined that the documents at issue were "ancillary to the issues related to the subcontract;" therefore, he found that he could review and rely on the documents when ruling on the motion to dismiss.

We agree. The arbitration agreement was broad enough to encompass the consideration of the settlement dispute, as well as the related documents.

Therefore, we do not find that the arbitrator exceeded his authority when considering and ruling on these documents in connection with the motion to dismiss.³ Accordingly, SPA has not met its burden of demonstrating that these issues were beyond the scope of arbitration as contemplated by the arbitration agreement.⁴

Second, concerning the arbitrator's finding that a settlement existed between the parties, the issue turns on whether the arbitrator correctly interpreted the GIA. There is no dispute that USSIC entered into a settlement with Core on SPA's behalf. The relevant portions of the GIA are as follows:

IV. ASSIGNMENT

A. As security for all of the provisions of this Agreement and any other indebtedness or liabilities of the Principal and Indemnitor to the Surety, whenever and however incurred, the Principal and Indemnitor do hereby assign, transfer, pledge, convey and set-over to the Surety the property, rights, and entitlements, and any proceeds thereof, whether such property, rights, entitlements or proceeds shall be now owned or hereafter acquired, described herein below:

...

6. All right, title and interest of any Principal or Indemnitor in and to any causes of action, claims, demands, or actions of whatsoever kind or nature which any Principal may have or acquire against any party to any Contract, or causes of action, claims, demands, or actions of whatsoever kind or nature arising out of or connected with any Contract, including but not limited to, actions against any owner, obligee, design professional, subcontractor, supplier, laborer, material man or any other person or entity performing or providing labor, materials or services in connection with any work called for in connection with any Contract.

³ While these documents did not specifically contain an arbitration provision, Section XX of the GIA provided:

The Principal [SPA] and Indemnitor hereby consent to enforcement of this Agreement and submit themselves to personal jurisdiction in any and all jurisdictions in which (a) the Surety may sustain or pay any loss for which the Principal and Indemnitor may be liable; (b) the Surety may be sued or be subject to suit or arbitration as a consequence of having issued any Bond on behalf of the Principal; (c) any construction project may be located which is the subject of any Bonded Contract; and/or (d) any assets of any Principal or Indemnitor may be located.

⁴ Furthermore, SPA has not demonstrated that the arbitrator awarded on a matter not submitted. Rather, the dismissal of the arbitration directly related to the matters submitted.

...

VI. ATTORNEY IN FACT

The Principal and Indemnitor hereby irrevocably nominate, constitute, appoint and designate the Surety as their attorney-in-fact with the right, but not the obligation, to exercise all of the rights of such Principal and Indemnitor assigned, transferred and set over to the Surety in this agreement, and in the name of such Principal and Indemnitor to make execute, and deliver any and all additional or other assignments, documents or papers deemed necessary and proper by the Surety in order to give full effect to the Surety under all other provisions of this agreement.

...

IX. SETTLEMENTS

The Surety shall have the right, in its sole and absolute discretion, to adjust, settle, prosecute, defend, compromise or appeal any claim, demand, suit, award or judgment on or in connection with any Bond or Bonded Contract.

In his decision, the arbitrator noted that SPA signed the GIA. The GIA clearly gave USSIC the right to enter into settlement agreements related to the bonded contract. The arbitrator further noted that SPA gave USSIC an irrevocable power of attorney and assignment of rights. Accordingly, he found that a settlement between the parties existed and dismissed the arbitration.

Considering that the plain terms of the GIA support the arbitrator's conclusion, there was no manifest disregard of the law that would provide grounds for reversal. Accordingly, the arbitrator did not err in acknowledging the existence of a settlement and dismissing the arbitration. Moreover, errors of fact or law do not invalidate a fair and honest arbitration award. *St. Tammany Manor, Inc. v. Spartan Bldg. Corp.*, 509 So.2d 424, 427 (La. 1987).

CONCLUSION

After a careful review of the record, we find SPA failed to sustain its burden of establishing jurisprudential or statutory grounds to vacate or modify the arbitration award, pursuant to La. R.S. 9:4210 or 4211. There is no evidence to

indicate that the proceedings were fundamentally unfair or the arbitrator exceeded his authority. For these reasons, the judgment of the trial court confirming the arbitration award and dismissing the lawsuit is affirmed.

AFFIRMED