Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-16-00481-CV

JACAMAN POLARIS SPORTS CENTER LTD. and Eduardo Andres Jacaman,
Appellants

v.

FALCON INTERNATIONAL BANK,
Appellee

From the 49th Judicial District Court, Webb County, Texas
Trial Court No. 2014CV7001041 D1
Honorable Jose A. Lopez, Judge Presiding

Opinion by: Irene Rios, Justice

Sitting: Sandee Bryan Marion, Chief Justice
Karen Angelini, Justice
Irene Rios, Justice

Delivered and Filed: July 5, 2017

AFFIRMED

INTRODUCTION

Jacaman Polaris Sports Center Ltd. and Eduardo Jacaman (collectively, "the Jacaman parties") appeal the trial court's order confirming an arbitration award and final judgment. On appeal, the Jacaman parties contend the trial court erred by: (1) assigning the case to arbitration under the Federal Arbitration Act; and (2) failing to file amended findings of fact and conclusions of law. The Jacaman parties also contend the trial court erred by confirming the arbitration award because: (1) there is no record of the summary judgment hearing in the arbitration proceedings;

(2) they were not provided sufficient notice of a summary judgment hearing in the arbitration proceedings; and (3) the arbitration panel did not allow the Jacaman parties to contest the unliquidated damages awarded. Finally, the Jacaman parties contend they should be awarded attorney fees should they prevail on appeal. We overrule the Jacaman parties' issues and affirm the trial court's judgment.

BACKGROUND

Jacaman Polaris Sports Center Ltd. entered into a loan contract under which it borrowed $2,000,000 from Falcon International Bank (Falcon Bank). In this transaction, Eduardo Jacaman signed a real estate lien note and a deed of trust on behalf of Jacaman Sports Center, giving Falcon Bank a security interest in a commercial lot. Eduardo Jacaman also signed a guaranty for the loan. All parties signed an arbitration agreement confirming they would arbitrate any disputes that might arise from the loan transaction.

Later, in a separate loan transaction, Jacaman Sports Center borrowed $240,000 from Falcon Bank. Eduardo Jacaman signed a real estate lien note and a deed of trust on behalf of Jacaman Sports Center, giving Falcon Bank a security interest in five acres in Webb County. Eduardo Jacaman also signed a guaranty for this loan. Again, all parties signed an arbitration agreement confirming they would arbitrate any disputes that might arise from the loan transaction.

After Falcon Bank foreclosed on the two properties given as security, the Jacaman parties filed suit alleging Falcon Bank violated the Deceptive Trade Practices Act and committed statutory fraud. Falcon Bank moved to compel arbitration, and the trial court granted its motion over the Jacaman parties' objection.

Falcon Bank filed a demand for arbitration with the American Arbitration Association (AAA). After appointment of an arbitration panel, Falcon Bank filed a motion for summary judgment. On November 13, 2015, the AAA notified the parties of a hearing on the motion

scheduled for December 2, 2015, and advised the parties that the panel "may postpone any hearing . . . upon request of a party for good cause shown." On January 14, 2016, the panel issued an award granting Falcon Bank's motion for summary judgment. In so doing, the panel ruled that Eduardo Jacaman and Jacaman Sports Center take nothing against Falcon Bank on all of their claims, and Falcon Bank recover $19,125.00 in attorneys' fees and recover all administrative costs and expenses of the arbitration.

Falcon Bank moved the trial court to confirm the arbitrators' award. The Jacaman parties filed a response to the motion and a separate motion asking the trial court to vacate the arbitrators' award. The trial court confirmed the arbitrators' award and rendered judgment in accordance with the arbitrators' award. The trial court subsequently entered findings of fact and conclusions of law in which it concluded: (a) the arbitrators' award was not procured by corruption, fraud, or undue means; (b) there was no evident partiality or corruption by the arbitrators; (c) the arbitrators were not guilty of any misconduct or misbehavior; and (d) the arbitrators did not exceed their powers. The Jacaman parties perfected this appeal.

ANALYSIS

Issue One: Whether the trial court erred by assigning the case to arbitration under the Federal Arbitration Act because the transaction involved intrastate commerce, only

The Jacaman parties contend the trial court erred by assigning this case to arbitration under the Federal Arbitration Act (FAA). The Jacaman parties argue all of the parties are Texas residents and the loan contracts involved property in Texas. Therefore, the contracts affected only intrastate commerce. Because the FAA applies only to interstate commerce, the Jacaman parties contend the lawsuit should not have been assigned to arbitration under the FAA.

Standard of Review

A trial court's determination of choice of law is a question of law and is reviewed *de novo*. *In re Chestnut Energy Partners, Inc.*, 300 S.W.3d 386, 398 (Tex. App.—Dallas 2009, pet. denied).

Application

All parties signed arbitration agreements as part of the loan documents. These arbitration agreements all state:

> [t]he Parties acknowledge that this Notice evidences a transaction involving interstate commerce and that loan funds provided under this Note are derived from interstate financial markets. The Federal Arbitration Act shall govern the interpretation, enforcement, and proceedings pursuant to the arbitration clause in this Note.

As the Jacaman parties assert, the FAA applies to an arbitration agreement in any contract that involves interstate commerce to the full extent of the Commerce Clause of the United States Constitution. *See* 9 U.S.C.A. § 2 (West 2009); *see also Allied–Bruce Terminix Co. v. Dobson*, 513 U.S. 265, 277–81 (1995); *In re L & L Kempwood Assocs.*, 9 S.W.3d 125, 127 (Tex. 1999). However, the FAA shall govern any dispute that arises under contract if the parties have expressly contracted for the FAA's application. *In re AdvancePCS Health, L.P.*, 172 S.W.3d 603, 605–06 & n.3 (Tex. 2005) (orig. proceeding) (per curiam); *In re Brock Specialty Servs., Ltd.*, 286 S.W.3d 649, 653 (Tex. App.—Corpus Christi 2009, no pet.) (orig. proceeding). "When parties have designated the FAA to govern their arbitration agreement, their designation should be upheld." *In re Brock Specialty Servs.*, 286 S.W.3d at 653.

Here, the subject arbitration agreement expressly stated the FAA would "govern the interpretation, enforcement, and proceedings pursuant to the arbitration clause…." For this reason, the trial court did not err by upholding the parties' designation that the FAA govern this underlying dispute. *See id.*

Therefore, we overrule the Jacaman parties' first issue on appeal.

Issue Two: Whether the Jacaman parties are entitled to a new trial because there is no reporter's record of the arbitration panel's hearing on Falcon Bank's motion for summary judgment

The Jacaman parties argue on appeal that they are entitled to a new trial in the arbitration proceedings on Falcon Bank's motion for summary judgment because there is no reporter's record of the arbitration panel's hearing for this Court to conduct a *de novo* review of the motions and evidence presented.

Standard of Review

Under the FAA, we review a trial court's confirmation of an arbitration award *de novo* based on the entire record, which includes the arbitration proceedings. *Myer*, 232 S.W.3d at 407; *In re Chestnut Energy Partners*, 300 S.W.3d at 397–98. An arbitration award under the FAA is presumed valid, and judicial review shall be "exceedingly deferential" and "extraordinarily narrow". *Myer*, 232 S.W.3d at 407–08; *Tanox, Inc. v. Akin, Gump, Strauss, Hauer & Feld, L.L.P.*, 105 S.W.3d 244, 250 (Tex. App.—Houston [14th Dist.] 2003, pet. denied). Importantly, judicial review is so limited that we may not vacate an award even if it is based upon a mistake in law or fact. *Myer*, 232 S.W.3d at 407. Based upon this extremely narrow and deferential appellate review, "'[d]isputes that are committed by contract to the arbitral process almost always are won or lost before the arbitrator. Successful court challenges are few and far between.'" *Tanox, Inc.*, 105 S.W.3d at 250–51 (quoting *Gupta v. Cisco Sys., Inc.*, 274 F.3d 1, 3 (1st Cir. 2001); *Keebler Co. v. Truck Drivers, Local 170*, 247 F.3d 8, 10 (1st Cir. 2001)).

The FAA mandates that an arbitration award must be confirmed unless one of the limited grounds set forth in the Act support vacatur, modification, or correction. *See* 9 U.S.C. §§ 9–11. Section 10(a) sets forth limited situations in which a court may vacate an arbitration award:

> (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)(1)-(4); *In re Chestnut Energy Partners*, 300 S.W.3d at 397–98. The grounds listed in Section 10(a) are the exclusive grounds for vacating an arbitration award under the FAA. *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 582–85 (2008); *Ancor Holdings, LLC v. Peterson, Goldman & Villani, Inc.*, 294 S.W.3d 818, 826–29 (Tex. App.—Dallas 2009, no pet.).

Application

The Jacaman parties' argument for vacatur of the arbitration award focuses on an alleged procedural defect committed in the arbitration proceedings. The Jacaman parties do not argue this alleged procedural defect falls within any of the limited statutory grounds which allow for vacating the arbitration panel's award. *See* 9 U.S.C. § 10(a)(1)-(4). For this reason, this argument must be overruled. *See Hall St.*, 552 U.S. at 582-85; *Ancor Holdings*, 294 S.W.3d at 826–29.

However, we construe the Jacaman parties' argument liberally to assert the lack of a reporter's record of the arbitration panel hearing falls within the statutory ground 9 U.S.C. § 10(a)(4), which allows vacatur if the arbitrators "were guilty of . . . any other misbehavior by which the rights of any party have been prejudiced." *See In re Chestnut Energy Partners*, 300 S.W.3d at 400–02.

In the arbitration agreement, the parties agreed that any arbitration proceeding would be conducted "in accordance with the Commercial Arbitration Rules, then existing, of the American Arbitration Association." These Commercial Arbitration Rules, state, "[a]ny party desiring a stenographic record shall make arrangements directly with a stenographer. . . ." COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION, R-28(a) (effective Oct. 1,

2013) (available online at www.adr.org/commercial). "When a non-prevailing party seeks to vacate an arbitration award, it bears the burden in the trial court of bringing forth a complete record that establishes its basis for vacating the award." *See In re Chestnut Energy Partners*, 300 S.W.3d at 400–02; *see also Statewide Remodeling, Inc. v. Williams*, 244 S.W.3d 564, 568 (Tex. App.—Dallas 2008, no pet.). "'When there is no transcript of the arbitration hearing, the appellate court will presume the evidence was adequate to support the award.'" *In re Chestnut Energy Partners*, 300 S.W.3d at 400 (quoting *Statewide Remodeling*, 244 S.W.3d at 568).

Therefore, pursuant to the Commercial Arbitration Rules, the Jacaman parties, not the arbitrators, held the duty to arrange for a reporter's record. Consequently, the arbitrators were not guilty of any misconduct on this basis. *See In re Chestnut Energy Partners*, 300 S.W.3d at 400–02.

For these reasons, we overrule the Jacaman parties' second issue on appeal.

Issue Three: Whether the arbitration award should be overturned because the Jacaman parties were not given sufficient notice of the summary judgment hearing

The Jacaman parties allege on appeal the trial court erred by confirming the arbitration award because they were not given sufficient notice of the summary judgment hearing in the arbitration proceeding.

Again, the Jacaman parties' argument focuses on a procedural defect committed in the arbitration proceedings that, they allege, necessitates vacatur. The Jacaman parties do not argue this defect falls within any of the statutory grounds which allow for vacating the arbitration panel's award. For this reason, this argument must be overruled. *See Hall St.*, 552 U.S. at 582–85; *Ancor Holdings*, 294 S.W.3d at 826–29.

However, to the extent the Jacaman parties' argument could be construed liberally to fall within the statutory ground allowing vacatur "where the arbitrators were guilty of misconduct in

refusing to postpone the hearing, . . . or of any other misbehavior by which the rights of any party have been prejudiced", this argument still must fail.

The Commercial Arbitration Rules require the AAA to "send notice of hearing to the parties at least 10 calendar days in advance of the hearing date." COMMERCIAL ARBITRATION RULE R-24. Further, the arbitration hearing may postpone any hearing upon agreement of the parties or upon any party's request with good cause shown. COMMERCIAL ARBITRATION RULE R-30.

It is undisputed that the AAA sent notice on November 13, 2015, of the summary judgment hearing to be held on December 2, 2015. Therefore, the Jacaman parties received nineteen days' notice of the summary judgment hearing. It is also undisputed that the Jacaman parties did not request a continuance of the hearing as allowed by Rule 30. Consequently, the Jacaman parties received the notice they were entitled to under the Commercial Arbitration Rules, and the arbitrators committed no misconduct on this basis. *See* COMMERCIAL ARBITRATION RULES R-24, R-30; *see also In re Chestnut Energy Partners, Inc.*, 300 S.W.3d at 402–03.

For these reasons, we overrule the Jacaman parties' third issue on appeal.

Issue Four: Whether the arbitration award should be overturned because the arbitration panel did not allow the Jacaman parties to contest the unliquidated damages awarded

The Jacaman parties allege the arbitration award should be overturned because the arbitration panel did not allow them to contest the unliquidated damages awarded.

The Jacaman parties do not argue the arbitration panel's alleged error falls within any of the statutory grounds which allow for vacating the arbitration panel's award. For this reason, this argument must be overruled. *See Hall St.*, 552 U.S. at 582–85; *Ancor Holdings*, 294 S.W.3d at 826–29.

However, to the extent the Jacaman parties' argument could be construed liberally to fall within the statutory ground allowing vacatur "where the arbitrators were guilty of . . . any other misbehavior by which the rights of any party have been prejudiced", this argument still must fail.

To present adequate argument for review on appeal, a brief must contain "a clear and concise argument for the contentions made, with appropriate citations to the record." TEX. R. APP. P. 38.1(i). To comply with Rule 38.1, existing legal authority applicable to the facts and the questions the appellate court is requested to analyze must be accurately cited. *Lance v. Robinson*, 04-14-00758-CV, 2016 WL 147236, at *12 (Tex. App.—San Antonio Jan. 13, 2016, pet. filed) (mem. op.); *Bolling v. Farmers Branch Indep. Sch. Dist.*, 315 S.W.3d 893, 896 (Tex. App.—Dallas 2010, no pet.). The brief must apply the facts to the referenced law to guide the court in the proposed result or to show how the trial court committed error. *See Bolling*, 315 S.W.3d at 896; *Tesoro Petroleum Corp. v. Nabors Drilling USA, Inc.*, 106 S.W.3d 118, 128 (Tex. App.—Houston [1st Dist.] 2002, pet. denied).

In presenting this argument, the Jacaman parties state the issue and generally cite to authorities without application or argument. The authority cited does not apply under these facts. The Jacaman parties fail to apply the cited authority to the facts, and do not present any actual argument. This Court cannot draw any proposed conclusion or analyze the issue presented based upon the incomplete application of law proposed. Therefore, the Jacaman parties inadequately briefed the fourth issue.

For these reasons, the Jacaman parties' fourth issue on appeal is overruled.

Issue Five: Whether the trial court erred by failing to file amended findings of fact and conclusions of law

The Jacaman parties allege the trial court erred by failing to respond to its request for amended findings of fact and conclusions of law.

"Procedural matters relating to the confirmation of arbitration awards in Texas courts are governed by Texas law even if the FAA supplies the substantive rules of decision." *Roehrs v. FSI Holdings, Inc.*, 246 S.W.3d 796, 804 (Tex. App.—Dallas 2008, pet. denied) (citing *Hamm v. Millennium Income Fund, L.L.C.*, 178 S.W.3d 256, 260 n.3 (Tex. App.—Houston [1st Dist.] 2005, pet. denied)); *see also In re Chestnut Energy Partners*, 300 S.W.3d 398. Upon a party's timely request for additional findings, the trial court "shall file any additional or amended findings and conclusions that are appropriate." TEX. R. CIV. P. 298. Additional findings are not required if the original findings and conclusions "'properly and succinctly relate the ultimate findings of fact and law necessary to apprise [the party] of adequate information for the preparation of [the party's] appeal.'" *Jamestown Partners, L.P. v. City of Fort Worth*, 83 S.W.3d 376, 386 (Tex. App.—Fort Worth 2002, pet. denied) (citations omitted). If the refusal to file additional findings does not prevent a party from adequately presenting an argument on appeal, there is no reversible error. *Id*. If the requested findings will not result in a different judgment, the findings need not be made. *Main Place Custom Homes, Inc. v. Honaker*, 192 S.W.3d 604, 612–13 (Tex. App.—Fort Worth 2006, pet. denied); *Johnston v. McKinney Am., Inc.*, 9 S.W.3d 271, 277 (Tex. App.—Houston [14th Dist.] 1999, pet. denied).

The trial court's original findings of fact and conclusions of law addressed each of the statutory grounds under which it could have vacated the arbitration award. Consequently, the Jacaman parties' requested additional findings of fact and conclusions of law were unnecessary, and the trial court's failure to enter the additional requests did not prevent the Jacaman parties from adequately presenting an argument on appeal. Therefore, the trial court did not err by failing to enter additional or amended findings of fact and conclusions of law.

For these reasons, the Jacaman parties' fifth issue on appeal is overruled.

Issue Six: Whether the Jacaman parties should be awarded reasonable attorneys' fees should they prevail on appeal

In an issue presented on appeal, the Jacaman parties move that in the event they prevail on appeal, this Court order the trial court to hear their claim for attorney fees.

The Jacaman parties do not prevail on appeal. Therefore, this issue is not necessary for final disposition of this appeal, and we do not address it. *See* TEX. R. APP. P. 47.1. We overrule the sixth issue on appeal.

CONCLUSION

For the reasons stated, we affirm the trial court's order confirming the arbitration award and final judgment.

Irene Rios, Justice