IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DAVID CAPOBIANCO, an individual; and NAVIN THUKKARAM, an individual, Respondents/Cross-Appellants, v. VULCAN, INC., a Washington corporation; VULCAN CAPITAL PRIVATE EQUITY, INC., a Delaware corporation; and VCPE ORANGE II, LLC, a Delaware limited liability company, Appellants/Cross-Respondents.	)	DIVISION ONE No. 67607-5-I (consol. with No. 67700-4-I) UNPUBLISHED OPINION FILED: October 22, 2012

Dwyer, J. — A superior court has the inherent authority to enforce its own judgments. This is no less true when the judgment entered confirms an arbitration award. Here, the superior court entered judgment confirming an arbitration award that resolved a dispute between Vulcan, Inc. (Vulcan) and David Capobianco and Navin Thukkaram, private equity investment managers previously employed by Vulcan. Capobianco and Thukkaram thereafter moved to enforce the superior court's judgment; the court granted the motion, awarding both monetary and declaratory relief, but denied their request for an award of

exemplary damages.

Vulcan appeals, asserting that the superior court's judgment does not address the dispute underlying the motion to enforce, and, therefore, that the court exceeded its authority in granting that motion. However, contrary to Vulcan's contention, the judgment does resolve the parties' dispute; thus, the superior court properly exercised its authority in enforcing that judgment. Capobianco and Thukkaram cross-appeal, challenging the superior court's denial of their request for exemplary damages. Because a fairly debatable dispute existed with regard to the amount of wages owed, the superior court did not err by declining to grant such an award. Accordingly, we affirm the superior court's judgment on both accounts.

I

Capobianco and Thukkaram were hired by Vulcan as private equity investment managers in 2003. On February 25, 2005, Capobianco and Thukkaram, among other employees of Vulcan, entered into a profit-sharing agreement with Vulcan. That agreement, titled the "Vulcan Energy Corporation Incentive Compensation Program" (the VEC agreement), created incentive compensation plans, giving the investment managers the right to share in profits on investments that they had made and managed on Vulcan's behalf.[1] The VEC agreement entitled Vulcan to receive a full return on all sums that it had invested

[1] The parties also entered into two additional profit-sharing agreements, neither of which is at issue in this appeal.

plus an additional annual return. After this threshold was met, a percentage of the additional earnings would be shared with the investment managers associated with a particular investment. The agreement allocated to each of the investment managers a differing percentage interest in these "post-threshold" earnings.

Relevant to the parties' dispute here, the VEC agreement also provided that a particular percentage of each employee's interest would vest according to a schedule set forth in the agreement. Following an initial vest of the interest, the vesting percentage for each employee would periodically increase, eventually becoming 80% vested. At that time, the employee would be entitled to receive 80% of his or her allocated share in earnings on the investments that he or she managed. The remaining 20% of an employee's interest, along with any other unvested portion of that interest, would become vested upon the final disposition of the investment—this was referred to as an "Exit." Thus, the extent to which an employee's interest was vested depended upon whether the earnings resulted from a return on an investment still owned by Vulcan or from the final sale of that investment. If the investment was still owned by Vulcan, an employee's interest could be up to 80% vested; if the investment had been sold, the employee's interest would be 100% vested.[2] The VEC agreement further provided that an employee's interest could become 100% vested only if he or

[2] The VEC agreement was amended on two occasions, the last occurring on May 21, 2007. Accordingly, the arbitration award, as discussed below, is not fully consistent with this description of the agreement that was entered into in February 2005.

she were still employed by Vulcan upon the final disposition of the investment. Thus, if the employee had been terminated prior to the final sale of an investment that he or she had managed, his or her interest in the resulting earnings would be, at best, 80% vested.

On October 24, 2008, in what the arbitration panel described as an effort to "prevent the operation of certain elements of the compensation plan," Vulcan fired its entire private equity team and then rehired four of its members under a different compensation arrangement. Pursuant to the VEC agreement's mandatory arbitration clause, Capobianco and Thukkaram thereafter sought arbitration to settle various disputes with Vulcan regarding their rights pursuant to the VEC agreement, including the extent to which their interests were vested when their employment was terminated; whether Vulcan breached the VEC agreement and, if so, the extent to which they were entitled to additional vesting for this reason; and their entitlement to severance pay.

On July 29, 2009, the arbitration panel issued a reasoned arbitration award in favor of Capobianco and Thukkaram. The panel concluded that Vulcan's conduct in terminating the entire private equity team, only to thereafter rehire four of its members under a different compensation scheme, constituted a breach of the VEC agreement and, alternatively, a breach of the covenant of good faith and fair dealing. Before determining the extent to which the investment managers' interests should be vested for purposes of future

distributions, the panel explained the profit-sharing arrangement set forth in the VEC agreement:

> These profit-sharing formulae applied to all earnings achieved on any given investment program. Once the base return to Vulcan had occurred, they required interim distribution of dividends, interest and any other return on investments still owned by Vulcan, as well as distribution from any earnings on the final sale or other disposition of that investment.

The panel concluded that, pursuant to the VEC agreement, as amended on May 21, 2007, Capobianco and Thukkaram were entitled to "interim distributions" calculated at the 100% vesting rate at the time of their termination.[3] Thus, the panel determined that Capobianco's and Thukkaram's interests would be 100% vested for purposes of any future (i.e., post-termination) interim distributions.

The panel then addressed the extent to which Capobianco's and Thukkaram's interests would be considered vested for purposes of the second category of earnings identified in the VEC agreement—earnings from "the final sale or other disposition" of an investment program. The VEC agreement provided that such interests could be 100% vested only if the investment managers were employed by Vulcan when the investment was sold. However, because Vulcan had breached the agreement, the panel determined that Capobianco and Thukkaram were "entitled to be treated as if they were still employed" by Vulcan for purposes of final sale or disposition payments. Thus,

[3] Although, pursuant to the original VEC agreement, Capobianco's and Thukkaram's interests in interim distributions were only 80% vested, the arbitration panel determined that both the amended VEC agreement and the parties' course of dealing indicated that the investment managers were entitled to interim distributions calculated at the 100% vesting rate.

the panel concluded that, with regard to any future final sale or disposition of an investment, Capobianco's and Thukkaram's interests would be vested at 96%.[4]

On February 9, 2010, the arbitration panel issued a final arbitration award, explicitly incorporating the July 29 award. The panel awarded to Capobianco and Thukkaram both monetary and declaratory relief. Of relevance here, the panel awarded declaratory relief regarding both (1) "future interim distributions" and (2) "exit vest distributions." Consistent with the July 29 award, the panel determined that all "future interim distributions" to the investment managers must be calculated at the 100% vesting rate. With regard to "exit vest distributions," the panel concluded that Capobianco's and Thukkaram's interests were to be calculated at the 96% vesting rate.

Capobianco and Thukkaram thereafter filed a motion to confirm the final arbitration award in the superior court. Conversely, Vulcan moved to vacate the award. On April 6, 2010, the superior court granted the motion to confirm and denied the motion to vacate, setting forth its reasoning in a thorough memorandum decision. On April 30, 2010, the superior court entered judgment confirming the arbitration award. The judgment explicitly incorporated the arbitration award, thus adopting the arbitration panel's reasoning and the relief granted therein. Accordingly, the judgment awarded to Capobianco and Thukkaram the declaratory relief described in that award. In addition, as per the

[4] Because the investment managers' interests were 80% vested with regard to final sales of investments when their employment was terminated, the panel concluded that they were entitled to 80% of their unvested interest (20%) at that time—80% of the 20% unvested interest equals 16%. Thus, to the 80% vesting rate, the panel added 16%, arriving at a 96% vesting rate.

award, the judgment required Vulcan to pay to Capobianco and Thukkaram monetary damages in the amount of $854,406.65 and attorney fees and costs in the amount of $1,218,198.65.[5]

Then, in December 2010, Vulcan Energy Corporation (VEC) sold its 50.1% interest in Plains All American GP LLC, thus triggering Vulcan's obligation to make distributions to Capobianco and Thukkaram (the VEC/PAA sale). Plains All American GP LLC is the general partner of Plains All American Pipeline LP, of which VEC continued to own units with substantial value. Thus, the transaction constituted a partial sale of Vulcan's investment.[6] Vulcan characterized the sale as an "Exit" or "Deemed Disposition" and, accordingly, calculated the distributions to which Capobianco and Thukkaram were entitled at the 96% vesting rate. Vulcan made payments to the investment managers based upon this vesting percentage.

On January 21, 2011, Capobianco wrote to Vulcan's general counsel, requesting a "tax true-up" payment, a contractual obligation that, according to Capobianco, had been triggered "given that [the VEC/PAA sale] transactions were 'Exit or Deemed Dispositions' as indicated in the letters from Vulcan." On February 10, Vulcan responded that "true-up amounts are due only upon a final Disposition or a Deemed Disposition as defined in the agreement, and [the VEC/PAA sale] is neither of the two." Thus, Vulcan's position appeared to

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[5] Vulcan appealed from the superior court's judgment confirming the arbitration award. We affirmed the judgment. Capobianco v. Vulcan, Inc., noted at 161 Wn. App. 1004 (2011).

[6] The parties agree that the VEC/PAA sale constituted a partial sale of an investment.

contradict its earlier indication that the VEC/PAA sale constituted an "Exit" or "Deemed Disposition."[7]

Capobianco again wrote to Vulcan, asserting that, pursuant to the arbitration award, he and Thukkaram were "entitled to 100% of [their] vested interest on interim distributions." He further stated, "[b]ecause the [VEC/PAA] sale transaction was not a final disposition, we should have been paid 100% of our vested interest, rather than the 96% that you have paid us." Capobianco demanded that Vulcan immediately pay the remaining 4% of the vested interest. On March 23, 2011, Vulcan's associate general counsel replied, informing Capobianco that Vulcan disagreed with his assertion "that the [VEC/PAA sale] proceeds constitute an interim distribution that should have resulted in a payout at 100% (rather than 96%)." He further explained that "[t]he sale proceeds were not an interim distribution of dividends, interest or other recurring return on an investment."

On April 28, 2011, Capobianco and Thukkaram filed a motion to enforce the superior court's judgment confirming the arbitration award. They requested that the superior court order Vulcan to calculate the distributions from the VEC/PAA sale as "future interim distributions" pursuant to the judgment—in other words, they sought an order that they were entitled to distributions calculated based upon the 100% vesting rate. Capobianco and Thukkaram

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[7] Pursuant to the VEC agreement, a "final Disposition" or "Deemed Disposition" is synonymous with an "Exit."

additionally sought exemplary damages pursuant to RCW 49.52.070, contending that the alleged underpayment for the VEC/PAA sale constituted a willful withholding of wages. Vulcan opposed the motion, contending that the arbitration award—and, thus, the judgment, which incorporated that award—did not address "the type of post-arbitration payments" at issue. Vulcan asserted that, due to the mandatory arbitration clause in the VEC agreement, the dispute regarding the VEC/PAA sale could be resolved only by arbitration.

On June 1, 2011, the superior court granted Capobianco's and Thukkaram's motion to enforce the judgment. The court determined that the distributions resulting from the VEC/PAA sale constituted "Interim Distributions" pursuant to the declaratory relief granted in its April 30 judgment, and, accordingly, that Vulcan was required to treat Capobianco and Thukkaram "as 100% vested with respect to those distributions." Thus, the court found that Vulcan had violated the judgment by treating Capobianco and Thukkaram "as only 96% vested with respect to distributions resulting from [that sale]." Although the superior court ordered Vulcan to pay "the Withheld Wages" to Capobianco and Thukkaram, it did not award exemplary damages because, the court found, there was a bona fide dispute as to whether the VEC/PAA sale distributions constituted "Interim Distributions."

The superior court thereafter entered judgment in the action, ordering Vulcan to pay damages in the amount of $1,846,291.92 to Capobianco and

$433,853.83 to Thukkaram. The court additionally awarded to Capobianco and Thukkaram attorney fees and costs in the amount of $43,000.

Vulcan appeals from this judgment, contending that the superior court erroneously granted the motion to enforce. Capobianco and Thukkaram cross-appeal, asserting that the superior court erred by declining to grant an award of exemplary damages.

II

Vulcan contends that the superior court's judgment confirming the arbitration award does not address the vesting percentage applicable to distributions triggered by the partial sale of an investment, such as the VEC/PAA sale. Thus, Vulcan asserts, by granting the motion to enforce its judgment, the superior court necessarily interpreted not only the judgment, which by its terms incorporates the arbitration award, but also the VEC agreement itself. Because the VEC agreement includes a mandatory arbitration clause, Vulcan contends that the superior court's grant of the motion to enforce violated the Federal Arbitration Act (FAA or Act).

We disagree. The superior court's judgment clearly addresses Vulcan's financial obligations to Capobianco and Thukkaram triggered by the VEC/PAA sale. The superior court did not "modify" the award or "interpret" the VEC agreement in enforcing its own judgment. Moreover, the dispute here did not "arise out of" or "relate to" the VEC agreement, thus mandating its submission to

arbitration. Accordingly, enforcement of the judgment was a proper exercise of the superior court's authority.

The FAA provides that a contractual agreement to settle by arbitration any dispute arising under that contract "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C.A. § 2. It further provides that, where the parties have agreed that "a judgment of the court shall be entered upon the award made pursuant to the arbitration," any party can apply to the court for an order confirming the award. 9 U.S.C.A. § 9. The court "must grant such an order unless the award is vacated, modified, or corrected as prescribed" in other sections of the Act. 9 U.S.C.A. § 9.[8] Where the court enters judgment confirming the arbitration award, the judgment is treated as though it had been rendered in an action:

> The judgment so entered shall have the same force and effect, in all respects, as, and be subject to all the provisions of law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered.

9 U.S.C.A. § 13.

When a court enters judgment, "'it has ancillary jurisdiction over subsequent proceedings necessary to vindicate its authority, and effectuate its decrees. This includes proceedings to enforce the judgment.'" Zeiler v. Deitsch,

[8] Grounds for vacation, modification, and correction of an arbitration award are tightly circumscribed. See 9 U.S.C.A. § 10-11. Here, although Vulcan moved to vacate the arbitration award, the superior court denied the motion. We affirmed the superior court's decision. Capobianco v. Vulcan, Inc., noted at 161 Wn. App. 1004 (2011). Neither party requested that the superior court modify the arbitration award or remand to the arbitration panel to clarify the award prior to its confirmation.

500 F.3d 157, 170 (2d Cir. 2007) (quoting Dulce v. Dulce, 233 F.3d 143, 146 (2d Cir. 2000)). Because a judgment confirming an arbitration award is to be enforced in the same manner as any other judgment, enforcement of the judgment is "the exclusive concern of the court." Pelletier & Flanagan, Inc. v. Maine Court Facilities Auth., 673 A.2d 213, 215 (Sup. Jud. Ct. Me. 1996) (holding that, because judgment had been entered confirming the arbitration award, arbitration panel lacked authority to arbitrate claim for damages caused by failure to promptly pay damages granted in that award). Once confirmed, an arbitration award becomes an enforceable court order, and, "when asked to enforce such orders, a court is entitled to require actions to achieve compliance with them." Zeiler, 500 F.3d at 170. However, the scope of the court's authority to enforce such a judgment extends only to the subject matter addressed by that judgment. Hellman v. Program Printing, Inc., 400 F.Supp. 915, 918 (S.D.N.Y. 1975). Thus, where a petition for enforcement involves a new dispute, enforcement must be denied. Hellman, 400 F.Supp. at 918.

Here, the VEC agreement included a mandatory arbitration provision, which provided that any dispute "arising out of, relating to or in connection with" the VEC agreement shall be resolved exclusively by arbitration. Accordingly, the parties submitted the dispute regarding the breach of that agreement to arbitration. Following the arbitration panel's decision, Capobianco and Thukkaram, consistent with the FAA, filed a motion in the superior court seeking

confirmation of the arbitration award. The superior court thereafter confirmed the award and entered judgment, incorporating that award. By virtue of the entry of judgment, the arbitration award became an enforceable court order, to be "enforced as if it had been rendered in an action" in the superior court. 9 U.S.C.A. § 13; see also Zeiler, 500 F.3d at 170. "[I]t is the function of the courts to enforce that judgment, not of the arbitrators to enforce their award." 6 C.J.S. *Arbitration* § 196 (2012).

Vulcan asserts, however, that the arbitration award does not address the extent to which Capobianco's and Thukkaram's interests are vested with regard to distributions resulting from a partial sale of an investment. Thus, Vulcan impliedly asserts that the superior court's judgment confirming that award does not resolve the parties' dispute.[9] Rather, Vulcan contends, the dispute regarding the VEC/PAA sale is a "new dispute" that must be arbitrated pursuant to the VEC agreement and the FAA. However, by its terms, the superior court's judgment indicates the vesting percentage applicable in this circumstance.

The arbitration award explains that the disputes resolved therein include "the extent to which [Capobianco and Thukkaram] were vested at the time of

[9] The superior court's judgment confirming the arbitration award incorporates the final arbitration award entered on February 9, 2010, which incorporates the arbitration panel's July 29, 2009 arbitration award. Thus, both the arbitration panel's reasoning and the relief granted in the arbitration award were adopted by the superior court in confirming that award. Accordingly, it is the superior court's judgment—not the arbitration panel's award—that is the basis for our analysis. For clarity, however, we refer to the arbitration award separately from the superior court's judgment, as the parties did in their briefing. Nevertheless, it is the judgment confirming the arbitration award that was the subject of Capobianco's and Thukkaram's motion to enforce; and we consider here whether that judgment, not the arbitration award, resolved the VEC/PAA sale dispute.

termination entitling them to certain past and future compensation" and "the extent to which they may be entitled to additional vesting" due to the alleged breach of the VEC agreement. The award thereafter notes that the "profit-sharing formulae [in the VEC agreement] applied to *all earnings* achieved on any given investment program." (Emphasis added.) The arbitration award divides these earnings, based upon the language of the VEC agreement, into two categories: (1) "interim distribution[s] of dividends, interest and any other return on investments still owned by Vulcan" and (2) "distribution[s] from any earnings on the final sale or other disposition of that investment." Prior to setting forth its analysis, the arbitration panel, in its award, stated:

> The foregoing analysis will govern the remedies available to [Capobianco and Thukkaram] based on Vulcan's failure to make post-termination distributions to [them] at the appropriate level, as well as future interim distributions which will become due and owing under the Agreements and any future "Exit Vest."

Thus, the arbitration award (1) sets forth the compensation arrangement provided by the VEC agreement, (2) divides the earnings to which Capobianco and Thukkaram are entitled pursuant to that agreement into two categories, and then (3) purports to fully address the distribution rights of the investment managers pursuant to that agreement. Hence, the superior court's judgment confirming the arbitration award, which incorporates that award, provides two declaratory judgments—one setting forth the vesting percentage applicable to "Future Interim Distributions" (100%) and one setting forth the vesting

percentage applicable to “Exit Vest Distributions” (96%).[1]

Moreover, the VEC agreement is consistent with the arbitration panel’s explanation of the categories of earnings described in that agreement. The VEC agreement provides that incentive compensation payments must be made to the investment managers “[u]pon the receipt by the Founder of any (i) distributions from, or proceeds in respect of any partial sale of the Founder’s interest in, Vulcan Energy or Vulcan Resources, of cash or Securities . . . or (ii) any amounts as a result of a Disposition or Deemed Disposition.” Like the arbitration award, the VEC agreement divides the payments to which Capobianco and Thukkaram were entitled into two categories: (1) those resulting from distributions from an investment or proceeds from a partial sale of an investment and (2) those resulting from the final disposition (or sale) of that investment. This is consistent with the vesting mechanism employed by the VEC agreement—the investment managers’ interests were 80% vested for purposes

[1] Moreover, contrary to Vulcan’s contention, the VEC agreement is consistent with the arbitration panel’s explanation of the categories described in that agreement. The VEC agreement provides that incentive compensation payments must be made to the investment managers “[u]pon the receipt by the Founder of any (i) distributions from, or proceeds in respect of any partial sale of the Founder’s interest in, Vulcan Energy or Vulcan Resources, of cash or Securities . . . or (ii) any amounts as a result of a Disposition or Deemed Disposition.” In addition, this categorization of earnings is consistent with the vesting mechanism employed by the VEC agreement—the investment managers’ interests were 80% vested for purposes of earnings prior to the final disposition of an asset; they could become 100% vested only upon the final disposition of that asset.

Nevertheless, Vulcan asserts that the VEC agreement includes three categories of earnings—(1) distributions, (2) proceeds from a partial sale, and (3) earnings resulting from a final sale or disposition. Thus, Vulcan asserts, the arbitration award, which contemplates two categories of proceeds, must necessarily not include one such category addressed in the VEC agreement. However, this untenable construction of the agreement does not indicate, as Vulcan contends, that the arbitration panel did not address all categories of earnings and, thus, that the superior court was required to itself interpret the VEC agreement.

of earnings prior to the final disposition of an asset; they could become 100% vested only upon the final disposition of that asset. Thus, in essence, both the VEC agreement and the arbitration award separate the incentive compensation payments into (1) those occurring while Vulcan still owned an interest in an asset and (2) those occurring upon Vulcan's final disposition of that asset.

Therefore, contrary to Vulcan's contention, the arbitration award—and, thus, the superior court's judgment—*does* address the extent to which Capobianco's and Thukkaram's interests are to be considered vested with regard to distributions resulting from the partial sale of an asset. Moreover, the superior court's determination that the proceeds resulting from the VEC/PAA sale constituted "interim distributions" is consistent with its judgment confirming the award. Pursuant to the award, proceeds triggering compensation incentive payments include distributions from a final sale of an investment and "interim distribution[s] of dividends, interest and any other return on investments still owned by Vulcan." [11] The parties agree that the VEC/PAA sale constituted a partial sale of that investment and, thus, that Vulcan still owns an interest in that entity. Pursuant to the plain language of the award, "any other return on

[11] Vulcan asserts that the term "Interim Distributions" "is not defined anywhere in the Award." Although it is true that the final arbitration award, entered on February 9, 2010, itself does not define the terms used therein, it explicitly incorporates by reference the arbitration award entered on July 29, 2009. The July 29 award notes that the "profit-sharing formulae" of the VEC agreement "applied to all earnings achieved on any given investment program" and placed these "earnings" into two categories: "interim distribution of dividends, interest and any other return on investments still owned by Vulcan, as well as distribution from any earnings on the final sale or other disposition of that investment." Vulcan dismissively acknowledges that the arbitration panel "presumably intended" that definition to apply. To the contrary, it is quite clear that the definition applies.

investments still owned by Vulcan" encompasses the proceeds from the VEC/PAA sale. See Black's Law Dictionary 1432 (9th ed. 2009) (defining "return" as "yield" or "profit").[12] Moreover, the superior court's conclusion that Capobianco and Thukkaram are entitled to payments calculated using the vesting percentage applicable to "interim distributions" is consistent with the division of profits, both in the judgment confirming the arbitration award and the VEC agreement, into two categories—those occurring while Vulcan still owns an interest in the asset and those occurring upon final disposition of that asset.

Furthermore, the case to which Vulcan cites in contending that this dispute is "new" and, thus, not addressed in the arbitration award, is inapposite. There, the Federal District Court denied a motion to enforce an arbitration award because the dispute was not within the scope of that award. Hellman, 400 F.Supp. at 918. The dispute at issue concerned whether a printing company had contravened a collective bargaining agreement by having work performed outside of the print shop. Hellman, 400 F.Supp. at 916. The arbitrator concluded both that the company had breached the agreement and that one of its employees had been laid off as a result. Hellman, 400 F.Supp. at 916-17. The arbitrator thus ordered that the employee be reinstated, and the company

[12] Vulcan attempts to obfuscate this issue by asserting that the proceeds from the VEC/PAA sale were not "interim distributions" because "they were not interest, dividends, or any other type of *recurring* return on an asset still owned by Vulcan." (Emphasis added.) However, the arbitration award refers to interim distributions as "dividends, interest and any other return on investments still owned by Vulcan." Nowhere does the arbitration award state that these distributions must be "recurring." The VEC/PAA partial sale constituted a "return on [an] investment[] still owned by Vulcan." It need not have been a "recurring" return.

complied. Hellman, 400 F.Supp. at 917. However, when the print shop opened the following season, the employee was not rehired, purportedly because the company had lost a printing contract and no longer had sufficient work. Hellman, 400 F.Supp. at 917. In an attempt to have the employee rehired, the union sought enforcement of the arbitration award. Hellman, 400 F.Supp. at 917.

The District Court concluded that because of the “change in circumstances,” the issue of whether the company was required to rehire the employee was a proper subject for arbitration. Hellman, 400 F.Supp. at 918. Due to the alleged loss of the printing contract and the seasonal nature of the work, the court determined that the petition for enforcement involved a “new dispute,” and, thus, that “enforcement” was not proper. Hellman, 400 F.Supp. at 918; see also Int’l Chem. Workers Union (AFL-CIO), Local No. 227 v. BASF Wyandotte Corp., 774 F.2d 43, 45-46 (2d. Cir.1985) (holding that dispute was subject to arbitration where it was clear that the arbitrator had not considered the employee’s rights pursuant to new collective bargaining agreement signed subsequent to arbitration decision). Here, no “changed circumstance” or “new dispute” is at issue. Rather, this dispute concerns the vesting percentage applicable to particular proceeds obtained by Vulcan—an issue already addressed by the arbitration panel. The only “changed circumstance” is that Vulcan has not complied with the arbitration award. The reasoning in Hellman is

not persuasive in this circumstance.

Vulcan additionally contends that the superior court exceeded its authority in granting the motion to enforce because, according to Vulcan, the superior court was required to "interpret" the VEC agreement, thus violating the requirement that disputes arising from that agreement must be arbitrated. In so contending, Vulcan asserts that the parties' dispute, "at its core," "concerned whether all categories of proceeds or distributions contemplated by the VEC Agreement correspond with an apparently dichotomous Award structure—or whether the Award does not address at least one category." In fact, this is not the parties' dispute. Rather, the parties' dispute is whether, pursuant to the arbitration award, Vulcan incorrectly categorized the proceeds from the VEC/PAA sale and, thus, underpaid Capobianco and Thukkaram in violation of the judgment entered confirming that award. As explained above, the arbitration award addresses all of the earnings contemplated by the VEC agreement; thus, any proceeds that would have triggered payment obligations pursuant to that agreement—had Vulcan not terminated the investment managers in violation of that agreement—trigger parallel payment obligations pursuant to the confirmed arbitration award.

Moreover, Vulcan is incorrect that, had the superior court compared the VEC agreement and the arbitration award to ensure that the award addressed all potential earnings, such conduct would violate the FAA. The VEC agreement

requires that any dispute "arising out of, relating to or in connection with" that agreement must be submitted to arbitration. This dispute concerns Vulcan's compliance with the judgment entered confirming the arbitration award—it does not arise out of or relate to the VEC agreement. This is so regardless of whether the superior court looked to the VEC agreement in order to determine the arbitration panel's intent in wording the award.

Contrary to Vulcan's contention, the superior court did not exceed its authority in granting the motion to enforce its own judgment. Rather, pursuant to the FAA, the superior court has the explicit authority to enforce a judgment entered confirming an arbitration award in the same manner as it would any other judgment. 9 U.S.C.A. § 13. Indeed, "when asked to enforce such orders, a court is entitled to require actions to achieve compliance with them." Zeiler, 500 F.3d at 170; see also Akin Gump Strauss Hauer & Feld, LLP, 252 S.W.3d 480, 490 (Ct. App. Tex. 2008) (noting that "post-confirmation remands [to the arbitration panel] appear to violate the legislative mandate that judgments on arbitration awards should have the same effect and be subject to the same law as any other judgment of that court"). Thus, requiring the parties to re-arbitrate a dispute previously resolved by the arbitration panel would usurp the superior court's authority to enforce its judgments. By interpreting and enforcing the arbitration award, the superior court "do[es] not supplant the parties' arbitration agreement; rather, [it] vindicate[s] this agreement and give[s] effect to the end

result[s] of the arbitration in the manner provided by [the FAA]." Akin Gump, 252 S.W.3d at 494.

The superior court did not contravene the FAA by enforcing its judgment confirming the arbitration award. Rather, consistent with the FAA, the superior court properly exercised its authority to enforce that judgment.

III

Capobianco and Thukkaram cross-appeal, contending that the superior court erred by determining that a bona fide dispute existed regarding whether the VEC/PAA sale triggered the payment of "interim distributions." Thus, they assert, the superior court erroneously denied their request for an award of exemplary damages pursuant to RCW 49.52.070. Because the resolution of the dispute regarding the vesting percentage applicable to the VEC/PAA sale proceeds was fairly debatable, the superior court did not err by declining to grant such an award.

When an employer willfully and with intent to deprive an employee of any part of his or her wages, pays to that employee a lower wage than that which the employer is obligated to pay, the employee is entitled to exemplary damages of twice the amount of the wages unlawfully withheld. RCW 49.52.050(2), .070. Wages are not willfully withheld, and, thus, exemplary damages are not warranted, where the withholding is "'the result of a bona fide dispute as to the obligation of payment.'" Snoqualmie Police Ass'n v. City of Snoqualmie, 165

Wn. App. 895, 908, 273 P.3d 983 (2012) (internal quotation marks omitted) (quoting Yakima County v. Yakima County Law Enforcement Officers Guild, 157 Wn. App. 304, 341, 237 P.3d 316 (2010)). A "bona fide" dispute is a "'fairly debatable' dispute over whether an employment relationship exists, or whether all or a portion of the wages must be paid." Schilling v. Radio Holdings, Inc., 136 Wn.2d 152, 161, 961 P.2d 371 (1998).

Capobianco and Thukkaram contend that the superior court erred by declining to grant an award of exemplary damages, asserting that Vulcan's "contrived legal argument" does not create a fairly debatable dispute. In so contending, they cite to our decision in Flower v. T.R.A. Indus., Inc., 127 Wn. App. 13, 111 P.3d 1192 (2005). There, the employer contended that there was a bona fide dispute regarding whether a "bonus" to which the employee was entitled was actually an "expense" pursuant to the employment contract. Flower, 127 Wn. App. at 36. In that case, however, the employment contract clearly differentiated between a "bonus" and an "expense" and indicated that the bonus was intended to compensate Flower for signing on with the company. Flower, 127 Wn. App. at 36. We determined that "[t]he fact that [the employer] contrived a legal argument that the bonus was actually an 'expense' does not make it a bona fide dispute." Flower, 127 Wn. App. at 36.

Capobianco and Thukkaram contend that Vulcan's argument in the superior court and on appeal—that the arbitration award, and, therefore, the trial

court's judgment, does not address the vesting percentage applicable to the partial sale of an investment—constitutes such a "contrived legal argument." We agree that Vulcan's contention is unmeritorious. However, there is no indication in the record that the superior court determined that *this argument* created a bona fide dispute. Rather, the superior court ruled that "[a] bona fide dispute existed as to whether [the] distributions [from the VEC/PAA sale] were Interim Distributions"—*not* that a bona fide dispute existed regarding whether the parties' dispute was within the scope of the arbitration award. In other words, although it is *not* fairly debatable that the arbitration award—and, therefore, the superior court's judgment—addresses the vesting percentage applicable to the partial sale of an asset, there *was* a fairly debatable dispute regarding whether the VEC/PAA sale distributions constituted "interim distributions" or "exit vest distributions" and, thus, which of the two vesting percentages applied.

Again, the two categories set forth in the arbitration award are (1) "interim distribution[s] of dividends, interest and any other return on investments still owned by Vulcan" and (2) "distribution[s] from any earnings on the final sale or other disposition of that investment." The VEC/PAA sale—which the parties agree was a "partial sale" of Vulcan's investment—could reasonably fall within either category, depending upon the meaning of "investment." If the "investment" is considered to be the entirety of Vulcan's interest in a corporate entity, then the investment is "still owned by Vulcan" following a partial

sale—and, thus, the "interim distribution" vesting percentage applies. However, if the "investment" constitutes an individual share of that entity, then the VEC/PAA sale could reasonably be considered a "final disposition" of that "investment."[13] See Snoqualmie Police Ass'n, 165 Wn. App. at 907-08 (concluding that a bona fide dispute precluded an award of exemplary damages where the arbitration award was ambiguous regarding the rate at which police officer's back pay was to be calculated).

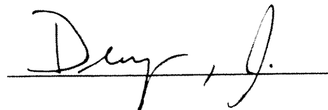
Moreover, the record supports the determination that a bona fide dispute existed regarding whether the required payments constituted "interim distributions" or "exit vest distributions." Indeed, both parties, prior to this litigation, changed their positions with regard to the proper classification of the VEC/PAA sale distributions. Vulcan originally classified the sale as an "Exit" or "Deemed Disposition" and, accordingly, made distribution payments to Capobianco and Thukkaram at the 96% vesting rate. Capobianco then requested a "tax true up" payment, a contractual obligation triggered by the final sale of an investment, stating that the payment was due "given that these transactions were 'Exit or Deemed Dispositions' as indicated in the letters from Vulcan." Vulcan then appeared to change its position, asserting that the transactions were neither a "final Disposition" nor a "Deemed Disposition." Only

[13] Vulcan contends that any such "ambiguity" dictates a determination that the trial court interpreted the VEC agreement, not simply the arbitration award, and, therefore, exceeded its authority pursuant to the FAA. This argument is unavailing. "[G]iven that courts usually have to interpret judgments before they can enforce them and that parties often dispute the proper interpretation of judgments in enforcement proceedings," Akin Gump, 252 S.W.3d at 482, such a rule would preclude a trial court from enforcing its judgment in most circumstances.

then did Capobianco take the position that he and Thukkaram should have been paid 100% of their vested interests pursuant to the "interim distributions" clause of the arbitration award.

Contrary to Vulcan's assertion on appeal, the arbitration award clearly addresses the vesting percentage applicable to payments resulting from the VEC/PAA sale. However, whether those payments constitute "interim distributions" or "exit vest distributions" was fairly debatable. The record supports the superior court's determination that a bona fide dispute existed, thus precluding an award of exemplary damages. The superior court did not err by declining to award exemplary damages to Capobianco and Thukkaram.[14]

Affirmed.



We concur:

[14] Capobianco and Thukkaram additionally point to the arbitration panel's determination that "there can be no bona fide dispute regarding [Vulcan's] obligation to continue to make interim distribution payments at the 100% level." But the question here is not whether Vulcan must make interim distribution payments at the 100% level. Rather, the question is whether the VEC/PAA sale triggers Vulcan's requirement to make payments of such "interim distributions" or whether, instead, it requires Vulcan to make payments pursuant to the "exit vest distribution" portion of the declaratory judgment.

Appelwick, J.   Becker, J.