IN THE SUPREME COURT OF GUAM

TERRITORY OF GUAM

SUMITOMO CONSTRUCTION CO., LTD.
Petitioner-Appellee,

vs.

ZHONG YE, INC.,
Respondent-Appellant.

Supreme Court Case No. CVA96-014
Superior Court Case No. SP0284-95

OPINION

Filed: July 11, 1997

Cite as: 1997 Guam 8

Appeal from the Superior Court of Guam
Argued and Submitted on January 29, 1997
Agana, Guam

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BEFORE: PETER C. SIGUENZA, Chief Justice, JANET HEALY WEEKS, and MONESSA G. LUJAN[1], Associate Justices.

SIGUENZA, C.J.:

The appellant, Zhong Ye, appeals the Superior Court's decision confirming an arbitration award. Appellant supports its position by focusing upon various grounds for vacating arbitration awards. Appellee, Sumitomo Construction Co. Ltd., in opposition, asserts that the Guam statute addressing this issue precludes the grounds upon which appellant rests his appeal.

We believe that the wrong standards were used to confirm the award. We find, however, that under the appropriate standards, the arbitration award would still be confirmed. Accordingly, we affirm the Superior Court's decision.

I. FACTUAL AND PROCEDURAL HISTORY

[1] Between 1991 and 1992, appellee Sumitomo Construction Company ("Sumitomo") was the general contractor on two construction projects, the Leo Palace Hotel ("Leo Palace") and the Pia Marine Condominiums ("Pia Marine"). As to the Leo Palace, it is undisputed that Sumitomo entered into a subcontract with Nga Brothers Corporation ("NBC"). In turn, NBC entered into a subcontract with the appellant Zhong Ye. Zhong Ye then entered into a subcontract with Liao Tong Construction ("Liao Tong"). The parties, however, dispute whether the same relationship existed between these entities as to the Pia Marine. Appellant maintains that it was not involved in this project whatsoever while appellee conversely asserts that contractual relationships similar to the Leo Palace project existed between the entities, although undocumented.

[2] Based on the failure of Liao Tong to pay its employees, the Government of Guam filed liens against both construction projects in 1992. The lien on Leo Palace was initially assessed at $242,231.07 while the Pia Marine lien totaled $72,828.93. The defense of these liens fell upon Sumitomo. Sumitomo had earlier attempted to tender the defense of the Leo Palace lien to Zhong Ye. The appellant, however, denied responsibility and rejected the tender. As a result, appellee withheld payments totaling $125,041.50 from the Leo Palace project. Sumitomo maintains that this amount was owed to NBC while Zhong Ye asserts that it should have received the payment.

[3] The liens against both the Leo Palace and the Pia Marine were eventually settled for $43,530.40 and $10,799.06 respectively and paid out of the previously retained payments. Sumitomo also reimbursed itself for attorney fees and costs incurred as a result of the litigation. The retention balance of $24,780.00 was eventually paid to Zhong Ye.

[4] Zhong Ye eventually instituted arbitration proceedings against Sumitomo for recovery of the retained payments, attorneys fees, and punitive damages. Sumitomo, although initially asserting a lack of a contractual relationship, eventually agreed to arbitrate the dispute. The arbitration proceedings were held on Guam on April 24 and 25, 1995. The arbitrator decided that Sumitomo was obligated to pay Zhong Ye the total amount of $834.00. Sumitomo later filed a petition in the Superior Court of Guam to confirm the award; the petition was opposed by Zhong Ye on the same grounds now before this Court. In a written decision, the lower court granted the petition and entered judgment accordingly. The lower court, in reaching its decision, relied exclusively upon cases from California and from the Appellate Division of the District Court of Guam.

[1] Justice Lujan heard argument and participated in the resolution of this matter but passed away before this opinion had been completed.

II. ANALYSIS

[5] Guam's original arbitration statutes became effective on March 14, 1970 and were codified under Title VII of the Guam Code of Civil Procedure, §§ 2110-2120. These statutes have never been amended or modified and are currently codified at 7 GCA §§ 42101-42111. A review of the legislative drafts concerning Guam's arbitration statutes indicates that they were patterned after the United States Arbitration Act found in Title 9 of the United States Code Annotated, §§ 1-14 (1970)(originally codified on July 30, 1947). In particular, the Guam provisions addressing vacation of arbitration awards mirror exactly the corresponding federal statutes. Thus, when needed, this Court will appropriately consider federal authorities as persuasive sources of interpretation.

[6] Our use of federal authority is in direct contrast with Guam precedent established by the Appellate Division of the District Court of Guam. The Appellate Division previously held that California authority should be used to interpret Guam's arbitration statutes. *L & T Builders v. Cruz,* Civil Appeal No. 82-288A (D. App. Div. November 17, 1982); and *Episcopal Church in Micronesia v. Chung Kuo Insurance Co.,* Civil Appeal No. 84-0001 (D. App. Div. June 28, 1984). Though pre-existing precedent continues to operate until addressed by this Court, decisions of the federal courts are not controlling upon our construction of the law. *People of the Territory of Guam v. Dwayne S. Quenga*, CRA96-005, 7, n.4 (Sup. Ct. Guam, May 13, 1997). And while we will not disturb precedent that is "well supported in law and well reasoned", we clearly are within our authority to modify those interpretations previously addressed by federal courts. *Id.* When choosing to make such changes, we will use our own independent and reasoned analysis of the issues before us. Moreover, based on our familiarity with these matters, we will give consideration to local law and customs, if applicable, and provide for their proper effect.

[7] The legislature modeled Guam's arbitration statutes after the United States Arbitration Act. Generally, when a legislature adopts a statute which is identical or similar to one in effect in another jurisdiction, it is presumed that the adopting jurisdiction applies the construction placed on the statute by the originating jurisdiction. Sutherland's Stat. Const. §52.01 (5th Ed). This rule of construction is useful in helping the judiciary interpret statutes adopted from federal acts. *Id.* The interpretation of the statutes by federal courts, however, is only persuasive and does not bind or control this Court's analysis. *Id.*

[8] We can properly assume that the legislature meant to adopt the federal construction of Guam's arbitration statutes when it patterned these provisions after the United States Arbitration Act. Thus, use of California authority would be improper under the circumstances before us. While we may agree with the outcome under California case authority, we believe that use of federal interpretations would give proper effect to the legislature's objectives.

[9] When reviewing the decision of a lower court confirming an arbitration award, questions of law are reviewed de novo while questions of fact are reviewed under the clearly erroneous standard. *First Option of Chicago, Inc., v. Kaplan*, 514 U.S. 938 (1995). These same standards apply to the trial court's review of the arbitrator's award. *Carpenters Pension Trust v. Underground Construction Co.,* 31 F.3d 776 (9th Cir. 1994).

[10] In arbitration cases decided under the federal act, the scope of review is quite narrow. This is complementary to a policy favoring consensual agreements and guaranteeing enforcement of contractual terms between the parties. *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth*, 473 U.S. 614 (1985). Although a serious question may arise as to the arbitrator's view of the law, an award "will not be set aside by a court for error either in law or fact ... if the award contains the honest decision of the arbitrators, after a full and fair hearing of the parties." *Coast Trading Co., Inc. v. Pacific Molasses Co.*, 681 F.2d 1195, 1198 (9th Cir. 1982)(citations omitted). In other words, "as long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, a court's conviction that the arbitrator made a serious mistake or committed grievous error will not furnish a

satisfactory basis for undoing the decision." *Advest, Inc. v. McCarthy*, 914 F.2d 6, 9 (1st Cir. 1990)(citations omitted). With these standards in mind, we now address Guam's arbitration laws.

[11] Arbitration awards are binding unless certain limited exceptions exist upon which a court may vacate the grant. Specifically, upon application of a party, a court may vacate the award under the following circumstances:

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.[2]

4. Where the arbitrators exceeded their powers, or so imperfectly executed them so that a mutual, final, and definite award upon the subject matter submitted was not made.

7 GCA § 42108(a)-(d).

[12] The appellant first argues that the facts of the case do not support the arbitrator's award and the subsequent confirmation by the lower court. Essentially, appellant asks this Court to review testimony and substitute its judgment for that of the lower court judge. We decline such undertaking for the following reasons. First, this exception is not recognized under Guam's statutory scheme of exceptions. Nowhere within our statutes are courts permitted to entertain such extensive review as that asked for by appellant. Second, appellant fails to provide an explanation or argument that would demonstrate how the facts in themselves support the conclusion that the award was unjustified. Instead, appellant makes naked assertions of error based on its own rendition of facts. Finally, issues of substantive law were addressed at the arbitration hearings supporting the appellee's right to retain and settle the claims in the manner that occurred under the given facts. The record before us thus supports the arbitrator's decision.

[13] The appellant next claims that the arbitrator exceeded the power delegated to him by the parties. Appellant claims that the arbitrator created a contract between the parties as to the Pia Marine project where none existed before. This argument is also without merit.

[14] Guam's statute permits vacation of arbitration awards when the arbitrator exceeds his power. 7 GCA § 42108(d). When the demand for arbitration uses broad language, however, arbitrators are given the necessary power to resolve the dispute. *Valentine Sugars, Inc., v. Donau Corp.*, 981 F.2d 210, 213 (5th Cir. 1993); *See also Peoples Security Life Insurance Company v. Monumental Life Insurance Company*, 991 F.2d 141 (4th Cir. 1993). Consequently, any doubt as to the arbitrator's jurisdiction is resolved in favor of arbitration. *Moses H. Cone Memorial Hospital v. Mercury Construction*, 460 U.S. 1, 24 (1983).

[15] Although we recognize this exception for vacating an arbitration award, we reject appellant's claim of error under it and find that the arbitrator did not exceed his power. When appellant initiated arbitration proceedings, a Demand for Arbitration was filed and signed by appellant's counsel. The Demand described the nature of the dispute as "[w]ithholding/retention of monies due claimant under both contracts." As relief, appellant claimed damages of $125,000, attorneys' fees, interest, and costs. These

[2] Based upon the briefs, this exception is not at issue before this Court.

are the terms agreed upon by the parties and then placed before the arbitrator. Clearly, the terms submitted by appellant were specific to both the Leo Palace and Pia Marine projects. In addition, the amount of damages claimed matched the payment retained by appellee from both liens. Not only did the arbitrator not exceed his powers, but he decided the issues put before him by the parties.

[16] Appellant next argues that the amount of the award suggests fraud or partiality on the part of the arbitrator. Although a great disparity may indicate the arbitrator's corruption or partisan bias, *Tinaway v. Merrill Lynch & Co.*, 658 F.Supp 576, 579 (S.D.N.Y. 1987); an award, generally, will not be overturned for mere inadequacy in amount and every reasonable presumption will be indulged to sustain the award. *Firemen's Fund Insurance Co. v. Flint Hosiery Mills*, 74 F.2d 533, 536 (4th Cir. 1935). If the grounds for the decision can be inferred from the facts of the case, the award should be confirmed. *Tinaway*, 658 F.Supp at 579. The award, however, should not be confirmed if it has no support whatsoever from the record. *NF&M Corp. v. United Steelworkers of America*, 524 F.2d 756, 760 (3rd Cir. 1975). If the award is ambiguous, indefinite, or irrational, a court should vacate it. *Sargent v. Paine Webber, Jackson & Curtiss, Inc.*, 687 F.Supp. 7, 10 (D.D.C. 1988).

[17] The record before us does not support vacating the arbitration award on this ground. The basis of the award can be easily ascertained. Specifically, the award is based on the retention of attorneys' fees. Appellee's counsel openly admitted and explained that closing out attorneys' fees estimated at an earlier time were in excess of the actual amount of fees charged. This accounted for the difference of $833.77 due to appellant. The award is neither ambiguous, indefinite, or irrational. It is apparent that the arbitrator rejected outright appellant's claims and awarded an amount objectively based on the difference between estimated and actual attorneys' fees.

[18] Finally, appellant asserts that the arbitrator manifestly disregarded the law by ignoring the following Guam provisions:

1. Maxims of Jurisprudence: No one should suffer by the act of another. 20 GCA § 15112;

2. Maxims of Jurisprudence: He who takes the benefit must bear the burden. 20 GCA § 15113;

3. Restoration of things wrongfully acquired: One who obtains a thing without the consent of its owner, or by a consent afterwards rescinded, or by an unlawful exaction which the owner could not at the time prudently refuse, must restore it to the person from whom it was thus obtained, unless he has acquired a title thereto superior to that of such other person, or unless the transaction was corrupt and unlawful on both sides. 18 GCA § 90105; and

4. Involuntary trust from fraud, mistake, etc.: One who gains a thing by fraud, accident, mistake, undue influence, the violation of a trust, or other wrongful act is, unless he has some other and better right thereto, an involuntary trustee of the thing gained, for the benefit of the person who would otherwise have had it. 18 GCA § 65110.

[19] Arbitration awards have been vacated based on a "manifest disregard of the law." *Todd Shipyards Corp. v. Cunard Line Ltd.*, 943 F.2d 1056 (9th Cir. 1991). This exception is not statutory but rather a judicially recognized federal exception introduced by the United States Supreme Court in *Wilko v. Swan*, 346 U.S. 427, 436-37 (1953), *overruled on other grounds by Rodriguez De Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477 (1989). The Second Circuit has described the exception in the following manner:

> Although the bounds of this ground have never been defined, it clearly means more than error or misunderstanding with respect to the law. (citations omitted).The error must have been obvious and capable of being readily and instantly perceived by the average person qualified to serve as an arbitrator. Moreover, the term "disregard" implies that the arbitrator appreciates the existence of a clearly governing legal principle but decides to ignore or pay no attention to it. . . . Judicial inquiry under the "manifest disregard" standard is therefore extremely limited. The governing law alleged to have been ignored by the arbitrators must be well defined, explicit, and clearly applicable.

Carte Blanche v Carte Blanche, 888 F.2d 260, 265 (2nd Cir. 1989)(citations omitted).

[20] Appellant's contention of error under this exception is rejected for two reasons. First, appellant does not provide a basis of any kind as to why this Court should embrace this judicial exception. While authority exists, both recent and that in existence at the time when our statutes became effective, that would enable us to adopt such an exception, at this time we are not presented with the proper justification necessitating our adoption and use of the manifest disregard exception. Second, appellant has utterly failed to explain how the Guam statutes it cites should apply to the facts of this case and how they were disregarded by the arbitrator. Moreover, appellant does not address the appellee's substantive legal arguments giving it authority to take action as it did and upon which the arbitrator apparently decided the case. Instead, appellant, in its brief, again makes the unsupported assertion that "[t]he factual situation of this case established that the arbitrator understood the law but completely disregarded it." Nothing in the record before us would trigger use of this exception if we were to adopt it. We readily reject this argument.

III. CONCLUSION

Based on the foregoing, the Judgment of the Superior Court confirming the arbitration award is **AFFIRMED**.