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Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0221-16T3

539 GATES, LLC, EFRAIM
ALTER and RAFI MAMAN,

Plaintiffs-Respondents,

v.

HMC HOLDING CORP., a/k/a
HMC HOLDING, INC., and
MESHULAM HAAS,

Defendants-Appellants,

and

EYAL KALFA, individually,

Defendant.

Submitted January 29, 2018 – Decided February 26, 2018

Before Judges Sabatino and Ostrer.

On appeal from Superior Court of New Jersey,
Chancery Division, General Equity, Bergen
County, Docket No. C-000117-14.

Allan R. Freedman, attorney for appellants.

William Goldberg, attorney for respondents.

PER CURIAM

This matter involves two successive arbitrations concerning disputes among the members of a New York limited liability company, 539 Gates, LLC ("539 Gates" or "the LLC"). Defendants HMC Holding Corp. ("HMC") and Meshulam Haas appeal from Judge Robert P. Contillo's amended order dated August 11, 2016 confirming and enforcing the second arbitration award.

The factual and procedural background is substantially set forth in Judge Contillo's written opinion, and we need not repeat it in detail here. HMC is a fifty percent owner and shareholder of 539 Gates. Haas is the sole owner of HMC. Haas formed 539 Gates with plaintiffs Efraim Alter and Rafi Maman. 539 Gates bought three buildings in Brooklyn, renovated them, and then sold them as eighteen condominium units. The LLC's Operating Agreement specified that the consent of the general manager, defined to be jointly Haas and Alter, was required for certain business decisions.

The record reflects that Alter took charge of the company without much or any involvement from Haas. HMC and Haas allege Alter diverted funds, including entering into a contract on behalf of 539 Gates with an electrical contractor, LEA, which Alter owned or controlled.

Disputes among the business owners were initially presented before the first arbitrator, Peter M. Collins. That arbitration

concerned Haas' demand for access to the books and records of 539 Gates, and a claim for the restitution of funds allegedly siphoned from the LLC to Alter and Maman.

On January 9, 2014, Arbitrator Collins issued a three-page decision ruling in favor of HMC and Haas. Among other things, the arbitrator found that Alter and Maman violated the Operating Agreement by writing checks from the LLC's account without a co-signature by Haas. The arbitrator directed that monies paid and disbursed from 539 Gates to Alter and Maman, each in the amount of \$2,192,787, be paid into an account in the name of 539 Gates, plus twelve percent interest, or about \$3.5 million each. The arbitrator also determined that because Alter had caused invoices of LEA to be paid from the LLC without Haas's approval, those sums likewise must be repaid to the LLC.

HMC sought enforcement of the first arbitration award by the Supreme Court of the State of New York in New York County. On September 5, 2014, Judge Eileen Rakower of that Court issued an order confirming Arbitrator Collins' award without opposition, specifically requiring both Alter and Maman to return about \$3.5 million each to the LLC and granting Haas/HMC access to the LLC's books and records.

A second arbitration was then conducted concerning the disposition of profits from the sale of the eighteen condo units.

That arbitration was heard by a different arbitrator, Norman H. Rosen. As part of the calculation of net profits, the arbitrator needed to consider the legitimacy and reasonableness of the LEA invoices.

On March 15, 2016, Arbitrator Rosen issued an award and written decision, determining that the LLC's net profits from the condo sales were \$207,279. The second arbitrator found it was proper to include the amounts invoiced by LEA in the course of construction, because that work was performed at arm's length on commercially reasonable terms. He found credible Alter's testimony that LEA was able to do the electrical work cheaper than other contractors who had submitted bids. He further noted that Haas' approval was not required for the LEA contract, because at the time "Haas was not actively participating in the business, and that decisions had to be made without his approval for the benefit of all of the members. By not performing as a General Manager, Haas waived his right to give consent."

539 Gates, Alter, and Maman moved in the Superior Court before Judge Contillo to confirm the second arbitration award. Haas and HMC interposed an exception to the award, asserting that the findings made by Arbitrator Rosen with respect to the LEA contract and Haas's "waiver" were inconsistent with the first arbitration award.

According to Haas and HMC, the first arbitrator heard and at least impliedly rejected the claim of Alter and Maman that Haas had acted like a "phantom" and that he had voluntarily absented himself from the business. Haas and HMC argue it is unjust to make them as co-members of the LLC share in the costs of payment to LEA, and that the LEA costs should not have been subtracted by the second arbitrator in calculating the LLC's net profits.

Judge Contillo affirmed the second arbitrator's award, and did not grant any modification to Haas and HMC. The judge reasoned that under the revised New Jersey Arbitration Act, N.J.S.A. 2A:23B-1 to -32, the grounds for our courts to set aside an arbitration award are very limited. The judge rejected the argument of Haas and HMC that principles of preclusion (i.e., res judicata and collateral estoppel) required the second arbitrator to find no waiver by Haas of his right to object to payment of the LEA invoices. The judge determined that the issues presented in the two arbitrations, although similar, were not identical. The judge also noted that the first arbitrator had never ruled specifically on the waiver issue, and thus the two awards are not necessarily in conflict.

On appeal, Haas and HMC argue that the first arbitration award and the second arbitration award are inherently and fundamentally inconsistent with respect to the phantom/waiver

question, as well as with respect to the charges made by LEA. They invite us to remand the matter to have the trial court examine a transcript of the first arbitration, which they contend will show that the "phantom" argument was specifically made to the first arbitrator and was not successful. Hence, appellants contend that principles of res judicata and collateral estoppel prevent the second arbitrator from having the ability to find that Haas and HMC waived their right to object to the LEA invoices.

Having fully considered appellants' contentions, we affirm the trial court's decision, substantially for the sound reasons expressed by Judge Contillo. As the judge correctly recognized, the judiciary's role in reviewing arbitration awards under the statute is a very limited one. See N.J.S.A. 2A:23B-23 (delineating various limited grounds); see also Malik v. Ruttenberg, 398 N.J. Super. 489, 495 (App. Div. 2008) (noting the statute "precludes judicial interference with an arbitrator's award except in extremely limited circumstances"). The grounds for modification of an arbitration award are likewise very restricted. See N.J.S.A. 2A:23B-24 (authorizing modification by the court for such things as mathematical miscalculations, mistaken descriptions, and imperfections as to form that do not affect the merits of the award). We agree with Judge Contillo that none of the points

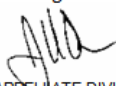
asserted by appellants suffice to meet those stringent standards to set aside or modify an arbitration award.

The judge did not misapply principles of res judicata, see Wadeer v. N.J. Mfrs. Ins. Co., 220 N.J. 591, 606-07 (2015) (articulating purposes behind res judicata and factors to be considered by a court when determining its applicability), or collateral estoppel, see First Union Nat'l Bank v. Penn Salem Marina, Inc., 190 N.J. 342, 352 (2007) (listing the requirements for collateral estoppel's application), in his analysis. We agree with the judge that the precise issues presented and decided in the two arbitrations were not identical. The question of Haas's alleged "phantom" role in the company was never decided in the award issued in the first arbitration and thus there is no inconsistency with the express findings made on that subject in the second arbitration.

Appellants failed to demonstrate that the second arbitrator's decision "exceeded his powers," see N.J.S.A. 2A:23B-23(a)(4), or otherwise must be set aside or modified under any of the other statutory criteria. We decline their request that the matter be remanded in order to present a transcript of the first arbitration award to the trial court as a basis for reconsideration of its ruling. If such a transcript would have been informative it should have been presented to the trial court in the first instance.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.

A handwritten signature in black ink, appearing to be 'JMA', is written over the text 'file in my office'.

CLERK OF THE APPELLATE DIVISION