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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4758-15T2

ALGEN DESIGN SERVICES, INC.,

Plaintiff-Respondent,

v.

CIENA CORPORATION,

Defendant-Appellant.

Argued telephonically April 13, 2018 – Decided April 30, 2018

Before Judges Currier and Geiger.

On appeal from Superior Court of New Jersey, Law Division, Ocean County, Docket No. L-1279-16.

Marshall D. Bilder argued the cause for appellant (Eckert Seamans Cherin & Mellott, LLC, attorneys; Marshall D. Bilder and Christopher E. Torkelson, of counsel and on the briefs).

David A. Dorey argued the cause for respondent (Blank Rome LLP, attorneys; David A. Dorey, on the brief).

PER CURIAM

In this commercial matter pertaining to an agreement entered into by the parties, plaintiff, Algen Design Services, Inc.,

alleged claims of breach of contract and fraud against defendant Ciena Corporation. Following a multi-day arbitration hearing, an award was rendered in favor of plaintiff. Defendant appeals the subsequent Law Division orders of May 27, 2016, confirming the award and denying its motion to vacate. After a review of the contentions in light of the record and applicable principles of law, we affirm.

The parties entered into a manufacturing services agreement (the MSA), under which plaintiff would manufacture, assemble, and package electronic assemblies for defendant. The MSA did not provide for exclusivity, but defendant was required to provide a forecast of the quantity of products it anticipated purchasing and desired delivery dates. Plaintiff responded with a feasibility analysis and build schedule, indicating its ability to satisfy defendant's needs. The parties operated under this agreement for two years.

Defendant terminated the MSA in October 2006. Plaintiff instituted suit in September 2007, alleging that defendant had engaged in a "pattern of deception" whereby it was representing to plaintiff that it would continue to honor the MSA while simultaneously securing a new manufacturer. Plaintiff contended that it relied on defendant's forecast and representations regarding future demand and invested $2 million in equipment in

order to assure it could meet defendant's demands. Shortly after the installation of the manufacturing equipment, defendant cancelled the anticipated orders.

Defendant removed the action to federal court and later moved to compel arbitration. The parties executed an arbitration agreement engaging an arbitrator in 2010, and the arbitration hearings took place over several days in September 2015. The arbitrator issued a May 10, 2016 award and supporting opinion.

The award denied plaintiff's application for "single source" damages, as the arbitrator concluded there was no "'single-source' provision in the [MSA]." In considering plaintiff's claim for breach of contract, the arbitrator found "that [defendant] breached both the notice of termination provisions in the [MSA] and the obligation to provide Demand Forecasts." He also concluded that "[defendant] violated the duty of good faith and fair dealing," when it engaged in a "pattern of deception" prior to terminating the MSA. This pattern began in December 2005 with defendant's representation that a "huge ramp" in production would be forthcoming, leading plaintiff to purchase $2 million worth of new equipment to meet defendant's increased production needs.

Noting defendant's internal January 2006 emails indicating it had already made a decision to move production from plaintiff to a new manufacturing source, and stating that "[a] decision to

move manufacturers was not a decision made lightly [because] [i]t involved significant expense and typically took months to complete the change[,]" the arbitrator reasoned that it was "impossible that [defendant] did not know it was switching providers during December of 2005" when plaintiff bought and installed the new equipment. The arbitrator further concluded that defendant continued to deceive plaintiff in January 2006, in its reassurances that "there is lots of opportunity for all" and even threatening "liquidated damages if [plaintiff] took on customers that threatened [defendant's] continuing supply of product." The arbitrator found that "[t]he evidence shows that [defendant] did this in order to keep a steady supply while it was getting [the new source] ready to take over" production.

Therefore, the arbitrator concluded:

> [Defendant] willfully misled [plaintiff] to believe that the business relationship would continue when, in fact, it had plans to terminate the relationship. [Plaintiff] relied on those misrepresentations to its detriment when it bought the manufacturing equipment in anticipation of significantly more demand. Consequently, [plaintiff] is entitled to $2 million in reliance damages compensation.

In awarding these damages, the arbitrator noted that while Paragraph 20 of the MSA imposed a limitation excluding consequential damages, Paragraph 22.11, entitled "Entire

Agreement," was applicable to plaintiff's claims and did not exclude damages for fraud or willful misrepresentation. Paragraph 22.11 provides that "[t]his section is not intended, nor shall be construed, to preclude claims by either Party based on fraud or willful misrepresentation." The arbitrator reasoned that relief was available under this provision because defendant knowingly engaged in a pattern of deception prior to the termination of the MSA. Plaintiff was awarded $2 million on its breach of contract claim plus prejudgment interest from the date of the filing of the complaint.

Plaintiff filed a subsequent motion to confirm the arbitration award, and defendant filed a cross-motion to vacate the award. The Law Division judge granted plaintiff's motion to confirm the arbitration award in the amount of $2,625,591.00[1] and denied defendant's motion to vacate, reasoning that "N.J.S.A. [2A:23b-25(a)] requires a Court to enter Judgment in conformity with the Arbitrator's award."

On appeal, defendant argues that the court erred in confirming the arbitration award because the arbitrator exceeded the scope of power accorded to him in the arbitration agreement in his award of consequential damages, and the award is not supported by either

[1] This award was comprised of $2,000,000 in damages and $625,591 in prejudgment interest.

the presented evidence or applicable law. Defendant also contests the award of prejudgment interest, arguing it should be calculated from the date the matter was submitted to arbitration, not the date of the filing of the complaint. We are not persuaded by these arguments.

The decision to confirm or vacate an arbitration award is reviewed de novo. Bound Brook Bd. of Educ. v. Ciripompa, 442 N.J. Super, 515, 520 (App. Div. 2015). We are mindful that "[t]he public policy of this State favors arbitration as a means of settling disputes that otherwise would be litigated in court." Badiali v. N.J. Mfrs. Ins. Grp., 220 N.J. 544, 556 (2015) (citing Cty. Coll. of Morris Staff v. Cty. Coll. of Morris Staff Ass'n, 100 N.J. 383, 390 (1985)). "[T]o ensure finality, as well as to secure arbitration's speedy and inexpensive nature, there exists a strong preference for judicial confirmation of arbitration awards." Borough of E. Rutherford v. E. Rutherford PBA Local 275, 213 N.J. 190, 201 (2013) (quoting Middletown Twp. PBA Local 124 v. Twp. of Middletown, 193 N.J. 1, 10 (2007)).

Under the New Jersey Uniform Arbitration Act, N.J.S.A. 2A:23B-1 to -32, a court may only vacate an arbitration award under specific narrow grounds. N.J.S.A. 2A:23B-23. Defendant contends that Section 20 of the MSA limited the type and scope of damages that a party could claim in the event of its breach, and

that the arbitrator failed to comply with that provision. As a result, defendant argues that the arbitrator exceeded his powers, a ground under which an award may be vacated.

Whether or not the arbitrator exceeded his authority "entails a two-part inquiry: (1) whether the agreement authorized the award, and (2) whether the arbitrator's action is consistent with applicable law." E. Rutherford PBA Local 275, 213 N.J. at 212. "[A]n arbitrator may not disregard the terms of the parties' agreement, nor may he rewrite the contract for the parties." Cty. Coll. of Morris, 100 N.J. at 391 (citations omitted). Moreover, "the arbitrator may not contradict the express language of the contract." Linden Bd. of Educ. v. Linden Educ. Ass'n ex rel: Mizichko, 202 N.J. 268, 276 (2010). As such, "courts have vacated arbitration awards as not reasonably debatable when arbitrators have, for example, added new terms to an agreement or ignored its clear language." Policemen's Benevolent Ass'n v. City of Trenton, 205 N.J. 422, 429 (2011) (citations omitted).

Defendant contends that Section 20 of the arbitration agreement does not permit the arbitrator's award of consequential damages. However, the award was not premised on Section 20. The arbitrator specifically noted the limitation on damages clause under Section 20, but advised that his award was grounded on a different clause, Section 22.11, which states that: "This section

is not intended, nor shall be construed, to preclude claims by either Party based on fraud or willful misrepresentation."

The arbitrator found that defendant had willfully misled plaintiff in their continuing business relationship in providing a significantly higher demand for its product. Plaintiff had relied on those willful misrepresentations to its detriment and incurred substantial expense in its purchase of manufacturing equipment to meet the anticipated demand. The arbitrator found that "[defendant] violated the duty of good faith and fair dealing" owed to plaintiff. Consequently, plaintiff was awarded the $2 million it expended to purchase the new equipment under Section 22.11. This decision was within the scope of the MSA, which limited damages in some instances, but did not explicitly impose a limit on damages resulting from "fraud or willful misrepresentation" by a party.

Here, the arbitrator did not ignore the unambiguous meaning of any provision of the MSA, he did not attempt to rewrite the agreement or insert additional contract provisions, nor did he disregard any essential conditions of the MSA. See, e.g., Cty. Coll. of Morris, 100 N.J. at 389-90 (reversing an arbitration award where the arbitrator ignored the unambiguous meaning of a clause and added an extra term); City Ass'n of Supervisors & Adm'rs v. State Operated Sch. Dist., 311 N.J. Super. 300, 308 (App. Div.

1998) (reversing an arbitration award where the arbitrator "ignor[ed] the clear language of the agreement"); PBA Local 160 v. Twp. of New Brunswick, 272 N.J. Super. 467, 475 (App. Div. 1994) (reversing the confirmation of an award that disregarded a term of the agreement and essentially "rewrote the agreement"). Instead, he concluded that Section 22.11 afforded relief to plaintiff for damages incurred by defendant's breach of the implied covenant of good faith and fair dealing intrinsic to every contract. We are satisfied that the arbitrator did not exceed the scope of his authority in his interpretation of the parties' agreement.

We also disagree that the award was not premised on sufficient evidence. Defendant argues that plaintiff never claimed the manufacturing equipment was an element of damages.[2] We find this

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[2] In support of this assertion, defendant points to the following testimony from plaintiff's president at the hearing:

Question: "[H]ow much money did you lay out for test equipment special to the products you manufactured for . . . Ciena?" (emphasis added).

Defense counsel objected to the question, stating that no documentation had been produced on that issue and those costs were not part of the damages calculation. Plaintiff's counsel concurred, stating: "We are not making this a damage calculation." When plaintiff's president was again asked how much he spent for the test equipment to manufacture products, he replied "millions of dollars." The president was asked several minutes later about the specialized equipment he had purchased following the receipt

argument disingenuous. Prior to arbitration, in a deposition, plaintiff's president testified to the investment of $2 million in equipment to enable "significant manufacturing capacity to be able to build [the] product in a really timely way." The damage claim was raised throughout the parties' respective briefs for and in opposition to summary judgment.

At the hearing, plaintiff presented witnesses and testimony regarding the cost of the new manufacturing equipment it purchased in reliance on defendant's demand. Plaintiff also presented testimony that defendant was aware of the purchase as its employees were continuously present at plaintiff's facility during the equipment's installation. Defendant cross-examined plaintiff's witnesses and questioned its own witness on the equipment claim.

At the close of plaintiff's case, defendant renewed its motion for a directed verdict and discussed the $2 million damage claim. Plaintiff responded that it was seeking damages for defendant's fraudulent actions, which had caused it to purchase equipment it otherwise did not need. We are satisfied that defendant was aware of this specific claim for damages at all times during this litigation.

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of substantial purchase orders and demand forecasts. There was no objection to this question nor to his answer that the company expended $2 million for that equipment. These questions clearly referred to two different categories of equipment.

We also conclude that defendant's reliance on McHugh, Inc. v. Soldo Constr. Co., Inc., 238 N.J. Super. 141 (App. Div. 1990) is misplaced. In McHugh, we found there was no evidence presented to support a portion of the arbitration award. Id. at 144. As a result, we stated that the arbitrators had exceeded their powers and the objectionable portion of the arbitration award should be vacated. Id. at 148. In contrast, the award here was based on sufficient evidence in the record and was not the result of fraud, corruption or similar wrongdoing on the part of the arbitrator. See Tretina v. Fitzpatrick & Assocs., 135 N.J. 349, 358 (1994) (holding that an arbitration award "may be vacated only for fraud, corruption, or similar wrongdoing on the part of the arbitrators") (quoting Perini Corp. v. Greate Bay Hotel & Casino, Inc., 129 N.J. 479, 548-49 (1992)).

We turn to defendant's argument that prejudgment interest should only have been awarded from the date the case was submitted to arbitration, and not from the date of the filing of the complaint. Defendant provides no authoritative support for its argument. Plaintiff argues that defendant delayed in readying its case for arbitration.

"[T]he award of prejudgment interest on contract and equitable claims is based on equitable principles." Cty. of Essex v. First Union Nat. Bank, 186 N.J. 46, 61 (2006). Generally, an

award for prejudgment interest is addressed to the sound discretion of the trial judge. <u>Litton Indus., Inc. v. IMO Indus., Inc.</u>, 200 N.J. 372, 390 (2009). "Unless the allowance of prejudgment interest 'represents a manifest denial of justice, an appellate court should not interfere.'" <u>Ibid.</u> (quoting <u>Cty. of Essex</u>, 186 N.J. at 61).

> The primary consideration in awarding prejudgment interest is that "the defendant has had the use, and the plaintiff has not, of the amount in question; and the interest factor simply covers the value of the sum awarded for the prejudgment period during which the defendant had the benefit of monies to which the plaintiff is found to have been earlier entitled."
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> [<u>Musto v. Vidas</u>, 333 N.J. Super. 52, 74 (App. Div. 2000) (quoting <u>Rova Farms Resort, Inc. v. Inv'rs Ins. Co. of Am.</u>, 65 N.J. 474, 506 (1974)).]

We discern no manifest injustice in the award of prejudgment interest commencing on the complaint filing date.

Affirmed.

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

CLERK OF THE APPELLATE DIVISION