SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1446-21

SAMUEL BELLO and
RHONDA BELLO,

Plaintiffs-Respondents,

v.

CHRISTOPHER HALGAS,

Defendant-Appellant.

Submitted February 8, 2023 – Decided March 6, 2023

Before Judges Firko and Natali.

On appeal from the Superior Court of New Jersey, Law Division, Camden County, Docket No. L-2943-21.

Zucker Steinberg & Wixted, PA, attorneys for appellant (David W. Sufrin, on the briefs).

McDowell Law, PC, attorneys for respondents (Ellen M. McDowell, on the brief).

PER CURIAM

Defendant Christopher Halgas appeals from the court's December 16, 2021 order denying his cross-motion to vacate an arbitration award in the amount of $169,076.26 and granting plaintiffs Samuel and Rhonda Bello's motion to confirm the award. We affirm.

I.

In August 2019, defendant agreed to purchase plaintiffs' business, Bello Irrigation, LLC, for $150,000 to be paid in thirty-three monthly installments. The parties stipulated the agreement would be governed by New Jersey law and in accordance with paragraph twenty-two agreed to "waive[] . . . the right to trial by jury in any legal proceeding arising out of or relating to the agreement . . . ."

The agreement also addressed jurisdictional, dispute resolution and enforcement issues. Indeed, according to paragraph twenty-one, the parties consented to:

> irrevocably submit[] to the exclusive jurisdiction of the United States District Court for the District of New Jersey or any New Jersey court sitting in Camden County, New Jersey for the purpose of any suit, action or other proceeding arising out of or based on this [a]greement or the subject matter of this [a]greement.

The parties also waived and agreed not to assert in court:

> any [c]laim that: (a) it is not subject personally to the jurisdiction of those courts, (b) the suit, action or proceeding is brought in an inconvenient forum, (c) the

> venue of the suit, action or proceeding is improper, or (d) the [a]greement or its subject matter may not be enforced in or by these courts.

In paragraph twenty-three, entitled "Enforcement," the parties consented to the "jurisdiction of any New Jersey [S]tate court sitting in Camden County, New Jersey and the United States District Court for the District of New Jersey." They also agreed not to object to venue in those courts or assert those forums were inconvenient.

Finally, in paragraph twenty-five, entitled "Legal Matters," the parties agreed to resolve all disputes by way of arbitration. That provision provided:

> Any and all disputes, claims and controversies between the parties hereto concerning the validity, interpretation, performance, termination or breach of this [a]greement, which cannot be resolved by the parties within thirty . . . days after such dispute, claim, or controversy arises shall, at the option of either party, be referred to and finally settled by arbitration. Such arbitration shall be initiated before the American Arbitration Association [(AAA)] in accordance with the rules of the [AAA] as in effect on the date the notice of submission to arbitration is given and shall be conducted in the State of New Jersey.
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> All costs and expenses of arbitration shall be appointed between the parties by the arbitrators. The award of the arbitrators shall be final and binding, and judgment thereon may be rendered by any court having jurisdiction thereof, or application may be made to such court for the judicial acceptance of the award and an order of enforcement as the case may be.

After defendant purchased the company, he alleged plaintiffs misrepresented its value and breached the agreement by improperly contacting and collecting money from plaintiffs' former customers. As a result, in January 2020, defendant withheld making the monthly installment payments required by the agreement.

Plaintiffs disputed defendant's claims and filed a demand for arbitration with the AAA consistent with paragraph twenty-five. Plaintiffs claimed defendant failed to make payments as required under the agreement resulting in an outstanding balance of $135,000 and improperly "changed the locks on the business."

Michele Azar, defendant's accountant, sent an email on defendant's behalf to Sandy Duarte, manager of alternative dispute resolution services at the AAA, stating defendant "does not agree to arbitration at this time" because "there is an active criminal investigation involving [plaintiffs] that relates directly to the purchase of Bello Irrigation." The next day, Mariaina Moran, Duarte's administrative assistant, emailed defendant, Azar, and Rachel B. Brekke, plaintiffs' counsel, acknowledging receipt of defendant's email and requesting plaintiffs provide a response. Brekke emailed Duarte, defendant, and Azar, and stated plaintiffs "have no knowledge of the alleged investigation," "will not

agree to a continuance," and requested AAA appoint an arbitrator. Duarte responded that Brekke's request would be forwarded to the "arbitrator upon appointment."

AAA appointed an arbitrator who denied defendant's application to delay the arbitration. Brekke later emailed Duarte and defendant stating she would like to schedule the arbitration hearing for July 2021. Defendant responded he has "been available" and he is "still available." He also noted he had "the right to a speedy trial" and Brekke's "lag [in commencing the proceedings] is far overreaching to accommodate [plaintiffs who have] failed to deliver anything [defendant] . . . requested." Defendant continued he is not "willing to wait until [it is] convenient for [plaintiffs]," instead, he is "ready for trial today or this week."

The arbitration proceeding ultimately took place from July 13, 2021 to July 15, 2021. Plaintiffs were represented by counsel, and defendant was self-represented. At the hearing, defendant reprised his claims of being misled about the true value of the company. Defendant also represented he expected to call fifteen witnesses but only he and Azar testified.

After considering the testimony, documentary evidence and oral and written submissions of the parties, the arbitrator ruled in plaintiffs' favor. In his

written decision and award, the arbitrator found defendant's and Azar's testimony to be "purely speculative and unsupported by any evidence." The arbitrator also concluded defendant's failure to make all necessary payments under the agreement constituted a "repudiat[ion]" of the agreement and ordered defendant pay plaintiffs $128,000 for his breach, $28,792.50 for plaintiffs' attorneys' fees, and $12,283.76 for associated costs for the arbitration, for a total award of $169,076.26.

After defendant failed to pay the award, plaintiffs filed a verified complaint and sought confirmation of the award and entry of $169,076.26 judgment against defendant. Defendant filed an answer, counterclaim and supporting certification in which he sought declaratory relief vacating any paragraphs of the agreement mandating arbitration as well as the August 24, 2021 arbitration award. He requested all disputes under the agreement be resolved in the Camden Vicinage.

Defendant reiterated his claim plaintiffs improperly accessed client accounts and misappropriated account receivables. He also maintained paragraph twenty-five was "unenforceable" pursuant to the United States and this State's Constitutions, as well as Atalese v. United States Legal Services Group, L.P., 219 N.J. 430, 445-46 (2014), in light of provisions twenty-one and

twenty-three, which he contended conflicted with the arbitration clause rendering the agreement ambiguous. Defendant also noted the agreement was "written exclusively" by plaintiffs' attorney, he never participated in an arbitration before, was an unsophisticated and unrepresented landscaper and plow truck driver, and "believed to his detriment that the '[a]rbitration' was both non-binding, and akin to mediation."

Defendant also claimed to have repeatedly contacted the AAA and arbitrator, "only to receive[] automated recorded lines with no person available to answer his questions." He also maintained no one explained the arbitration process to him and the arbitrator was "extremely biased" in plaintiffs' favor and refused to consider defendant's evidence.

Brekke filed a reply certification in which she contested defendant's claims he was unsophisticated and was unaware the agreement required all disputes to be arbitrated. For example, she explained after plaintiffs filed their demand for arbitration, she participated in a conference call with defendant and Duarte on November 2, 2020, in which "[d]efendant agreed to participate in the AAA process in Camden County, agreed to select an arbitrator with specific expertise in business purchases and commercial contract disputes, and also agreed to participate in a separate meditation process concurrently with the

arbitration proceeding." On November 5, 2020, defendant emailed Brekke to schedule a discussion regarding the selection of an arbitrator.

Further, despite defendant failing to engage in further discussions, plaintiffs submitted their preferred list of arbitrators on November 18, 2020. On December 1, 2020, AAA inquired if the parties were willing to mediate. Due to defendant's lack of response regarding mediation, plaintiffs informed the AAA they were no longer considering mediation. Accordingly, on December 2, 2020, the AAA "advised that the mediation process was closed and the arbitration would proceed."

Brekke also certified she participated in a preliminary hearing on December 23, 2020 with defendant and the appointed arbitrator. She explained after defendant expressed his concerns about moving forward with the arbitration, the arbitrator ruled defendant could file a motion to delay the arbitration, and on December 29, 2020 defendant did so. However, on January 29, 2021, the parties participated in another preliminary hearing, where they discussed "discovery deadlines and schedule[d] arbitration hearing dates." In June 2021, defendant sought to depose Samuel Bello, but failed to propose any dates for the deposition.

Additionally, Brekke certified plaintiffs deposed defendant on June 8, 2021, where he testified he owned ten or fifteen businesses during his career, "had sold quite a few of those businesses," and worked at a cable company for twenty years dealing with acquisitions. Defendant testified he had been deposed before because "unfortunately when you own businesses[,] litigation is something you have to deal with occasionally." He claimed he did not hire an attorney to represent him in the current matter because he used them "everywhere else." Finally, Brekke certified defendant "was afforded every opportunity to obtain counsel throughout the entire arbitration process," and "fully understood that he was engaging in binding arbitration."

On December 16, 2021, the court held a hearing regarding plaintiffs' verified complaint and defendant's counterclaim during which both Brekke and defendant testified. Defendant testified he had no legal background, and did not know what the word "arbitration" meant before this proceeding nor did he understand he was agreeing to arbitrate all disputes related to the agreement.

Brekke also testified about two phone conversations that she had with defendant. During the first call, Brekke explained she informed defendant arbitration was "a very expensive process," and she was "willing to take an offer back" to plaintiffs but defendant never proposed a settlement offer. During the

second call, Brekke again asked defendant if he wanted to make an offer since an AAA deadline was approaching, but he declined. Brekke claimed plaintiffs and defendant agreed to participate in "mediation concurrently as the arbitration proceeding went forward." But because defendant was unresponsive about mediation, Brekke informed the AAA that plaintiffs did not want to participate in mediation.

After considering the testimony, exhibits and arguments of counsel, the court granted plaintiffs' motion to confirm the arbitration award in the amount of $169,076.26 and denied defendant's cross-motion, noting it had "some issues" with defendant's credibility. Specifically, the court found defendant to be "more sophisticated than the average person that has a landscaping company." Based on defendant's level of sophistication and his prior participation in mediations, the court found defendant understood the difference between arbitration and mediation.

The court also found Duarte offered mediation to defendant "as a different course of action." Further, the court noted defendant never requested "the arbitration be cancelled [or] terminated without moving forward," rather, defendant simply asked for a delay. The court characterized defendant's objections as "temporal as opposed to absolute."

Additionally, while defendant was not forced to participate in the arbitration proceedings, the court found he "voluntarily participated." The court explained:

> [I]n our law, once someone does avail themselves of arbitration, [the court] think[s] it would be a reversible precedent for this [c]ourt to say [defendant] gets another chance at it now based on this set of facts.
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> He availed himself of it. He participated with discovery and three days of testimony and he had . . . his pre-arb[itration] deposition taken and presented his own facts and his own evidence and at no point in time did he stop the presses and . . . what [the court] [did not] hear was, knowing that he can hire counsel, knowing that he could avail himself of counsel at any point in time, not once until after the award went against him did he say [he] [is] going to get an attorney because this is going off the rails, [defendant is] getting counsel now.
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> [T]hat . . . [is] . . . what [the court] was referencing when [it] said naivete or genius . . . to be able to avail [him]self of one opportunity at arbitration in total, where [he] [went] through an entire discovery period, present it to an arbitrator, and then it comes out wrong, and then, if [defendant] were able to, then get a second bite of the apple, well that would be genius but [it is] not going to happen because [he] did get [his] bite of the apple and [the court] think[s] it was a fair bite . . . and . . . [defendant] participated in it fully and fairly.

II.

On appeal, defendant raises the same contentions he unsuccessfully presented to the court. Because a trial court's decision confirming an arbitrator's award is a decision of law, we review that decision de novo, but with a recognition of the wide authority bestowed upon the arbitrator by statute. Minkowitz v. Israeli, 433 N.J. Super. 111, 136 (App. Div. 2013). Essentially, appellate review entails a determination whether the arbitrator and the trial court have each adhered to the requirements of the controlling statute. Ibid.

We are also guided by the principle that "[t]he public policy of this State favors arbitration as a means of settling disputes that otherwise would be litigated in a court." Badiali v. N.J. Mfrs. Ins. Grp., 220 N.J. 544, 556 (2015). Further, as our Supreme Court has held, "[a]rbitration can attain its goal of providing final, speedy and inexpensive settlement of disputes only if judicial interference with the process is minimized; it is, after all, 'meant to be a substitute for and not a springboard for litigation.'" Barcon Assocs., Inc. v. Tri-Cnty. Asphalt Corp., 86 N.J. 179, 187 (1981) (quoting Korshalla v. Liberty Mut. Ins. Co., 154 N.J. Super. 235, 240 (Law Div. 1977)).

The arbitration statute, N.J.S.A. 2A:23B-23(a), only permits a court to vacate an arbitration award on very narrow grounds. In Tretina Printing, Inc. v.

Fitzpatrick & Associates, Inc., 135 N.J. 349, 357-58 (1994), the Court harkened back to the language in Chief Justice Wilentz's concurring opinion in Perini Corp. v. Greate Bay Hotel & Casino, Inc., 129 N.J. 479, 548-49 (1992):

> Basically, arbitration awards may be vacated only for fraud, corruption, or similar wrongdoing on the part of the arbitrators. [They] can be corrected or modified only for very specifically defined mistakes as set forth in [the arbitration statute]. If the arbitrators decide a matter not even submitted to them, that matter can be excluded from the award. For those who think the parties are entitled to a greater share of justice, and that such justice exists only in the care of the court, I would hold that the parties are free to expand the scope of judicial review by providing for such expansion in their contract; that they may, for example, specifically provide that the arbitrators shall render their decision only in conformance with New Jersey law, and that such awards may be reversed either for mere errors of New Jersey law, substantial errors, or gross errors of New Jersey law and define therein what they mean by that. I doubt if many will. And if they do, they should abandon arbitration and go directly to the law courts.
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> [Tretina, 135 N.J. at 358 (quoting Perini, 129 N.J. at 548-49 (Wilentz, C.J., concurring)) (first alteration in the original).]

Under the arbitration statute, a court may vacate an arbitration on the following limited grounds:

> (1) the award was procured by corruption, fraud, or other undue means;

> (2) the court finds evident partiality by an arbitrator; corruption by an arbitrator; or misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;
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> (3) an arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to section 15 of this act, so as to substantially prejudice the rights of a party to the arbitration proceeding;
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> (4) an arbitrator exceeded the arbitrator's powers;
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> (5) there was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection . . . not later than the beginning of the arbitration hearing; or
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> (6) the arbitration was conducted without proper notice of the initiation of an arbitration as required . . . so as to substantially prejudice the rights of a party to the arbitration proceeding.
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> [N.J.S.A. 2A:23B-23(a).]

Based on our review of the record, we conclude that none of those grounds applies here. First, defendant failed to prove "the award was procured by corruption, fraud, or other undue means." See N.J.S.A. 2A:23B-23(a)(1). While defendant argued he was misled as to the true value of the company, the arbitrator was not satisfied with defendant's "speculative" proofs.

Defendant also failed to establish the arbitrator participated in any improper conduct. See N.J.S.A. 2A:23B-23(a)(2) to (4). Defendant claims the outcome of the arbitration was "biased" in plaintiffs' favor because the arbitrator failed to allow him to present his claims or obtain discoverable evidence. Again, the record does not support defendant's contentions. At the first preliminary hearing, defendant claimed he would produce fifteen witnesses, yet only he and Azar ultimately testified. It is clear the arbitrator evaluated witness credibility and made appropriate findings of fact and legal conclusions based on the evidence actually presented.

We also agree with the court's finding that defendant availed himself of the arbitration process. We "consider the totality of circumstances to evaluate whether a party has waived the right to object to arbitration after the matter has been ordered to arbitration and arbitration is held." Wein v. Morris, 194 N.J. 364, 383 (2008); see also Highgate Dev. Corp. v. Kirsh, 224 N.J. Super. 328, 333 (App. Div. 1988) (finding waiver despite a challenge to the arbitrator's jurisdiction when the challenging party submitted responses to the arbitrator, participated in discovery, and presented evidence and testimony before the arbitrator). The factors to determine whether a party has waived its right to object to arbitration include: "whether the party sought to enjoin arbitration or

sought interlocutory review, whether the party challenged the jurisdiction of the arbitrator in the arbitration proceeding, and whether the party included a claim or cross-claim in the arbitration proceeding that was fully adjudicated." Id. at 383-84. In concluding the defendants in Wein had waived their right to contest the order compelling arbitration, the Court noted that

> it would be a great waste of judicial resources to permit defendants, after fully participating in the arbitration proceeding, to essentially have a second run of the case before a trial court. That would be contrary to a primary objective of arbitration to achieve final disposition, in a speedy, inexpensive, expeditious and perhaps less formal manner.
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> [Id. at 384-85.]

Consistent with Wein, under the arbitration statute, an arbitration award can be vacated if "there was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection . . . not later than the beginning of the arbitration hearing." N.J.S.A. 2A:23B-23(a)(5).

As the record reflects, defendant actively participated in pre-arbitration discovery, testified, called Azar as a witness, and asserted a claim plaintiff mispresented the value of the business. He raised no objection to the arbitration by way of formal motion or otherwise prior to its commencement and only objected to the arbitration after the arbitrator had ruled adversely to his interests.

At most, he sought but a slight delay in the commencement of the arbitration. Under the totality of the circumstances, defendant's conduct constitutes a waiver of any objection he may have had to resolving his dispute with plaintiffs by way of arbitration.

Defendant also argues paragraph twenty-five is invalid and the arbitration award is void because it "failed to contain clear and unambiguous language that would have allowed [him] to understand . . . the rights he was waiving to present his defenses in court." In support, defendant relies on Atalese, 219 N.J. at 435, and Kernahan v. Home Warranty Administrator, Inc., 236 N.J. 301, 307-09 (2019), and specifically argues "nothing in Atalese . . . limited its holding to purely consumer contracts." Even if were we to accept defendant's argument that the agreement is subject to the principles of Atalese, see County of Passaic v. Horizon Healthcare, ___ N.J. Super. ____, ____ (App. Div. 2023) (slip op. at 6) (holding the principles of Atalese were not intended to apply to sophisticated commercial litigants possessing comparatively equal bargaining power), we need not address those arguments because, as noted, defendant's conduct, as credibly found by the court, acted as a waiver of any objection to resolving all disputes through arbitration.

To the extent we have not specifically addressed any of defendant's arguments it is because we have concluded they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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

CLERK OF THE APPELLATE DIVISION