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THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

NORTH BEACH PARTNERS, LLC, et al.

Plaintiffs and Appellants,

v.

JOHN SOLLNER et al.,

Defendants and Respondents.

A140489

(San Francisco County  
Super. Ct. No. CGC11-501631)

This is the third appeal arising out of the purchase and sale of a six unit building located at 3300 Clay Street (the property). It follows the trial court's judgment confirming an arbitration award in two actions by the parties: *Dissolution Properties LLC v. Sollner* (Super. Ct. S.F. City and County, 2010, No. CGC10-501629) (*Dissolution Properties*), an action seeking an equitable lien on the property, and *North Beach Partners, LLC v. Sollner* (Super. Ct. S.F. City and County, 2010, No. CGC10-501631), an action seeking partition against the other owners of the property. North Beach Partners, LLC (NBP), W.B. Coyle, and Telegraph Hill Properties, Inc. (Telegraph Hill; collectively, appellants) contend that: (1) the arbitrator lacked jurisdiction over Coyle and Telegraph Hill because they were not parties to the tenancy in common agreement (the TIC agreement); (2) the arbitrator exceeded his powers when he issued two additional final awards after having issued a "first final award"; (3) the arbitration award imposed an illegal remedy in violation of the Subdivided Lands Act (Bus. & Prof. Code, § 11000 et seq.); (4) appellants did not receive adequate notice of the hearing on the petition to confirm the arbitration award; (5) there were improper ex parte

communications with the arbitrator; and (6) the trial court erred in denying their request for a statement of decision. We affirm.

## I. FACTUAL BACKGROUND

In 2004, respondents John Sollner, Scott Jacques, and Ted and Pauline Elms (the Elmses) purchased the property together with an investment group that included NBP, Terrapin Ventures, LLC (Terrapin), and Astabella, LLC. Respondent Reginald Hindley purchased Astabella, LLC's interest in the property in 2005. The purchasers were parties to the TIC agreement under which each cotenant was assigned a unit in the property. Accordingly, the units were assigned as follows—Unit 1: Sollner; Unit 2: The Elmses; Unit 3: Jacques; Unit 4: initially to Sollner and NBP, but Sollner subsequently sold the unit to NBP under a settlement agreement executed in 2008; Unit 5: Hindley; and Unit 6: Terrapin. (See *North Beach Partners, LLC v. John Sollner* (Dec. 19, 2014, A136514) [nonpub. opn.] (*NBPI*)). The TIC agreement contained an arbitration provision under which the parties agreed to submit any disputes relating to the property to binding arbitration.

The parties became embroiled in a series of disputes. In *NBPI*, we affirmed the trial court's judgment denying NBP's claim to rescind Sollner's sale of unit 4 of the property. (*NBPI, supra*, slip opn. at p. 6.) We upheld the trial court's findings that the Subdivided Lands Act did not apply to the transaction between Sollner and NBP. (*Id.* at pp. 3–4.)

In July 2010, NBP filed the present action—a complaint for partition against the other owners of the property. In January 2011, Hindley filed a cross-complaint for damages against NBP and Coyle alleging breach of contract, negligence, breach of fiduciary duty, and seeking declaratory relief and piercing of NBP's corporate veil to impose personal liability on Coyle. The remaining respondents filed a cross-complaint in June 2011 against appellants and Terrapin alleging the same claims as Hindley, as well as breach of the covenant of good faith and fair dealing, conversion, unfair business practices, intentional and negligent misrepresentation, equitable indemnity, tort of another, and foreclosure. Dissolution Properties, an entity owned solely by Coyle, in

turn, filed a complaint against respondents to establish an equitable mortgage on the property to recover \$600,000 it borrowed from the seller of the property to purchase it in 2004 (*Dissolution Properties, supra*, No. CGC10-501629). The complaint alleged that Ivy Properties, the seller of the property, financed \$600,000 of the purchase price and that respondents were obligated to repay the loan.

Jacques and the Elmses filed a petition to compel arbitration in the present action. A petition to compel arbitration was also filed in the *Dissolution Properties* case. The court granted the petitions to compel arbitration in both cases on August 25, 2011, finding that the parties were bound by the arbitration clause contained in the TIC agreement.

Prior to the arbitration, the arbitrator determined that Coyle and Telegraph Hill were proper parties to the arbitration. The arbitrator commenced hearings on the cases beginning on May 23, 2012, and held several hearings resulting in a series of awards.

***A. The September 4, 2012 Award and Interlocutory Order***

On September 4, 2012, the arbitrator issued an interlocutory order regarding the partition claim. The arbitrator found that respondents were not liable on the \$600,000 loan to Dissolution Properties because there were no written agreements or promissory notes executed by respondents pertaining to the loan nor was the loan disclosed to respondents at the close of escrow on the property. The arbitrator also found that Coyle, Dissolution Properties, Telegraph Hill, NBP, and Terrapin were all alter egos of each other as to the promotion, sale, and management of the property. (See *North Beach Partners, LLC. v. Sollner* (Jul. 27, 2015, A139893) [nonpub. opn.] (*NBPII*)). In addition, the arbitrator determined that Coyle failed to pay his monthly assessments pursuant to the TIC agreement commencing in May 2010. As a result, respondents were entitled to recover \$156,234.15 for the sums owed. The arbitrator further found that respondents were entitled to recover the amount of funds wrongfully disbursed from the tenancy in common account to repay sums owed on the \$600,000 loan. The arbitrator's order provided that the parties "shall reach agreement on the amount of funds disbursed and not reimbursed."

On Coyle's partition claim, the arbitrator found that the parties were required to give Coyle an opportunity to sell his interest for a period of one year under the TIC agreement. Accordingly, the arbitrator ordered that respondents submit an application for a public report from the California Department of Real Estate by October 26, 2012. The arbitrator further ordered Coyle to market and attempt to sell his interest in the property within six months of issuance of the public report. The arbitrator ordered the parties to submit briefs on the issue of attorney fees and costs.

***B. The January 16, 2013 Order***

On January 16, 2013, the arbitrator issued another order respecting the calculation of damages upon which it had ordered the parties to reach an agreement in its September 2012 order. The arbitrator determined that subject to any additional evidence produced at a hearing to be scheduled, the total damages owed to respondents were \$653,556.21. He noted that the calculation was tentative and subject to revision following a hearing on damages issues and attorney fees. The arbitrator modified his earlier partition order to permit respondents to utilize the forced sale provision under the TIC agreement. He found that appellants were causing unnecessary delay and expense to respondents in obtaining a public report, and hence appellants would not be permitted the opportunity to market their units to the general public.

***C. The February 5, 2013 Final Award of Damages***

On February 5, 2013, the arbitrator issued a final award of compensatory damages. He ordered that appellants were jointly and severally liable to pay respondents a total of \$1,108,836.76. The sum included damages for the unpaid monthly assessments on units 4 and 6, sums Coyle diverted from the tenancy in common account to pay the \$600,000 loan, property taxes, and attorney fees and costs.

***D. The March 26, 2013 Final Arbitration Award***

On March 26, 2013, the arbitrator issued his "Final Arbitration Award and Finding of Sanctionable Conduct" following a hearing held on March 25. He noted that on March 15, 2013, pursuant to the TIC agreement's forced sale provision, respondents offered to purchase units 4 and 6 of the property for a credit of \$667,555.62 against the damages

award. Coyle did not appear at the hearing, although appellants were represented by counsel. Counsel for Coyle did not offer any evidence or opinion that Coyle had not received notice of the hearing.

The arbitrator found that Coyle had committed sanctionable conduct based on his actions in interfering with the forced sale process. He retained limited jurisdiction of the matter in order to determine the amount of an appropriate sanctions award against Coyle.

The arbitrator entered a final award in favor of respondents of \$476,066.46 plus daily interest of \$80.23 from March 26, 2013, title to units 4 and 6 of the property, and ordered that respondents were thereafter responsible for payments due under the First Republic Bank loan and all other costs of ownership.

#### ***E. Petition to Confirm Arbitration Award***

On April 9, 2013, Sollner and Jacques filed a petition to confirm the arbitration award. NBP filed a petition to vacate and correct the award and submitted an opposition to the petition to confirm the award. Coyle and Telegraph Hill subsequently filed a joinder in the petition to vacate and correct the award and in opposition to the petition to confirm the award. Coyle and Telegraph Hill did not appear at the hearing. NBP thereafter filed a request for a statement of decision and Coyle and Telegraph Hill filed an objection to the hearing, contending that they had not received adequate notice of the hearing date. On September 27, 2013, the court granted the petitions to confirm the arbitration award. The court denied the request for a statement of decision.

## **II. DISCUSSION**

### ***A. Arbitrator's Jurisdiction***

Appellants first contend that the arbitrator lacked jurisdiction over Coyle and Telegraph Hill because they never agreed to arbitrate. They argue that they were not signatories to the TIC agreement that contained the arbitration provision. This contention lacks merit.

It is well settled that the grounds for judicial review of an arbitration award are extremely limited. (*Alexander v. Blue Cross of California* (2001) 88 Cal.App.4th 1082, 1087.) “On issues concerning whether the arbitrator exceeded his powers, we review the

trial court's decision de novo, but we must give substantial deference to the arbitrator's own assessment of his contractual authority." (*Ibid.*)

Here, as respondents point out, both Terrapin and Dissolution Properties were parties to the TIC agreement. NBP, as an initial owner of unit 4 with Sollner, was also a party to the agreement. Further, Coyle, as the managing agent or owner of these three entities, and Telegraph Hill, as the agent and broker for the property, were inextricably linked with each other and the other entities. As we have previously determined, Coyle and these entities were each alter egos of each other. (*NBP II, supra*, slip opn. at p. 6.) Consequently, they were bound by the TIC agreement's arbitration provision. (*Rowe v. Exline* (2007) 153 Cal.App.4th 1276, 1285 and fn. 2 [alter ego of signatory to an arbitration agreement subject to arbitration].)

Our holding in *NBP II* on the alter ego issue is the law of the case. "The law of the case doctrine states that when, in deciding an appeal, an appellate court "states in its opinion a principle or rule of law necessary to the decision, that principle or rule becomes the law of the case and must be adhered to throughout its subsequent progress, both in the lower court and upon subsequent appeal." [Citation.]" (*Quackenbush v. Superior Court* (2000) 79 Cal.App.4th 867, 874.) Given our holding on the alter ego issue that "appellants acted as one," Coyle and Telegraph Hill are precluded from arguing that they are not bound by the agreement to arbitrate. (*NBP II*, slip opn. at p. 6.)

### ***B. Arbitrator's Interlocutory And Final Awards***

Appellants next argue that the arbitrator exceeded his authority when he issued subsequent awards modifying his September 4, 2012 order. They assert that the arbitrator lacked authority to change the relief ordered in that award from an order of partition to a forced sale under the TIC agreement.

The arbitrator's September 4, 2012 award specifically stated that it was "interlocutory" and that the arbitrator retained jurisdiction "over [the] matter in its entirety." In light of the arbitrator's ruling, it was not a final award and was subject to modification. (*Alexander v. Blue Cross of California, supra*, 88 Cal.App.4th at p. 1087 [we give substantial deference to the arbitrator's judgment regarding his authority].)

Appellants find fault with the arbitrator's subsequent January 16, 2013 order in which the arbitrator modified the partition order to allow respondents to exercise the forced sale provision under the TIC agreement. The September 4, 2012 order, however, stated that the partition order was interlocutory. Moreover, it was appellants themselves who were "primarily responsible for the unnecessary delays in moving forward to obtain a public report," which was required in order to proceed with the partition sale. The arbitrator therefore proceeded with the remedies for default set forth in the TIC agreement to permit a forced sale of units 4 and 6. There is nothing inconsistent in the arbitrator's orders.

Appellants next argue that the arbitrator's January 16, 2013 order imposes an illegal remedy because it requires the sale of units 4 and 6 without a public report in violation of the Subdivided Lands Act. In *NBPI*, we concluded that the sale of unit 4 of the property by Sollner to NBP did not violate the Subdivided Lands Act because NBP, as the subdivider, was not within the members of the public sought to be protected by the Act. (*NBPI, supra*, slip opn. at p. 4.) Here, as well, the Subdivided Lands Act is not implicated; the units are not being sold or marketed to the public, but rather are being purchased by respondents, who are parties to the TIC agreement.

### ***C. Request For Continuance of Arbitration Hearing***

Appellants further argue that the arbitrator's March 26, 2013 final damages award must be vacated because the arbitrator failed to give them adequate notice of the hearing and denied their request for a continuance. The record refutes appellants' argument.

On March 21, 2013, counsel for respondents wrote to the arbitrator to notify him of Coyle's violations of the arbitrator's November 8, 2012 order precluding rental of units 4 and 6 of the property, which were interfering with the forced sale of the units. Counsel requested that the arbitrator issue the final arbitration award because he was concerned that Coyle would continue his delaying tactics and interference with the forced sale process. Counsel also asked the arbitrator to consider an award of sanctions due to Coyle's tactics. That same day, the arbitrator notified the parties that he would be

conducting an evidentiary hearing on the issues raised by respondents' counsel on March 25, 2013 and ordered all parties and their counsel to attend.

On Sunday, March 24, 2013, counsel for NBP and Dissolution Properties requested a continuance of the hearing, arguing that the arbitrator's notice was insufficient and that they needed time to obtain testimony from third-party witnesses, including the tenants of the property. The arbitrator, in turn, requested an offer of proof, noting that there were not supposed to be any tenants living at the property. Counsel for NBP and Dissolution Properties responded, stating that as an offer of proof, two of his tenants would testify that they recently took on roommates and that respondents had changed the locks on their units.

The arbitrator denied the request for a continuance, noting that Coyle could testify about his tenants and was not precluded from bringing any witnesses or documentation to the hearing.<sup>1</sup> The arbitrator again ordered all parties to be present at the hearing.

The decision whether to grant a continuance of an arbitration hearing is within the sound discretion of the arbitrator. (*SWAB Financial, LLC v. E\*Trade Securities, LLC* (2007) 150 Cal.App.4th 1181, 1196.) Here, the arbitrator was well aware that appellants had continually delayed the resolution of the issues before him and had obstructed the forced sale process. In fact, the arbitrator scheduled the hearing on short notice because Coyle had placed squatters in units 4 and 6 and made unauthorized modifications to the property in an attempt to disrupt the forced sale process. Respondents requested the hearing in order to obtain a final arbitration award that would be enforceable in superior court so they would then have the means to prevent Coyle's continued interference with the forced sale process. On this record, the arbitrator did not abuse his discretion in denying the request for a continuance. Given Coyle's actions in delaying and obstructing

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<sup>1</sup> In a declaration submitted on April 22, 2013 in support of a petition to vacate the arbitration award, Coyle stated that he did not attend the March 25, 2013 arbitration hearing because he was on a pre-planned trip to Philadelphia. We have found no indication in the record that Coyle's travel plans were made known to the arbitrator prior to the hearing.

the forced sale and arbitration process, the arbitrator reasonably denied a further attempt by Coyle to derail the process.

***D. Modifications of Award***

Appellants also argue that the final award should be vacated because the arbitrator modified the monetary award to exclude NBP and Terrapin from obtaining any monetary relief. This argument ignores the fact that after the forced sale of units 4 and 6, NBP and Terrapin were no longer a part of the tenancy in common ownership group for the property. There was no error in the arbitrator's monetary award to respondents.

Nor did the arbitrator err in permitting a forced sale of units 4 and 6 to respondents. Appellants contend that the TIC agreement did not permit a sale to respondents, but only to the public on the open market. To the contrary, the forced sale provision of the TIC agreement specifically authorizes the purchase of a cotenant's share of the property: "Any non-Defaulting Cotenant shall be permitted to purchase a Defaulting Cotenant's Cotenancy Share at the Offering Price at any time." Again, there was no error in the award.

***E. Ex Parte Communication***

Appellants further assert that the arbitrator engaged in an improper ex parte communication with Sollner. They complain that the arbitrator asked for Sollner's assistance with his son's application to an ROTC program and that they agreed to have drinks together "when this was all over."

There is no indication in the record that the arbitrator was biased against appellants. And, Coyle at no point objected to the conversation he overheard between the arbitrator and Sollner or raised any concerns with the arbitrator. He therefore waived the issue. (See *Fidelity Federal Bank, FSB v. Durga Ma Corp.* (9th Cir. 2004) 386 F.3d 1306, 1313 [waiver doctrine applies where party has constructive knowledge of potential conflict of arbitrator but fails to timely object].)

***F. Notice of Hearing on Petition to Confirm Arbitration Award***

Appellants also contend that the judgment must be set aside as to Coyle and Telegraph Hill because they received inadequate notice of the hearing on the petition to

confirm the arbitration award. We need not determine whether inadequate notice was provided. It is undisputed that counsel for NBP appeared at the hearing. As we have already decided, NBP, Coyle, and Telegraph Hill were each alter egos of each other. Since NBP appeared at the hearing, there was no prejudice to Coyle and Telegraph Hill, as counsel for NBP argued their opposition to the petition. Indeed, counsel for NBP “handed copies of as-yet unfiled oppositions [to the court] on behalf of Telegraph Hill Properties, Inc., and WB Coyle” at the hearing. Inasmuch as NBP had not prepared an opposition, NBP joined in the unfiled oppositions. The oppositions were discussed at the hearing. Moreover, the court gave NBP leave to file a late reply to the motion to confirm the arbitration award. On this record, assuming *arguendo* that insufficient notice of the hearing was provided, there was no prejudice to Coyle or Telegraph Hill.

***G. Statement of Decision***

Finally, appellants assert that the judgment should be reversed because the trial court denied their request for a statement of decision. There is a conflict in authority over whether a statement of decision is required on a court’s decision to confirm an arbitration award. (See *Metis Development LLC v. Bohacek* (2011) 200 Cal.App.4th 679, 689 (*Metis*) [Code of Civil Procedure section 632 requires a statement of decision where there is an adjudication of a question of fact in deciding a petition to compel arbitration]; but see *Rebmann v. Rohde* (2011) 196 Cal.App.4th 1283, 1295 [statement of decision not required under Code of Civil Procedure section 632 because a petition to confirm or vacate an arbitration award is not a trial].) We need not decide the issue because even if a statement of decision was required, the court’s written decision granting respondents’ motion to confirm the arbitration award and denying appellants’ motions to vacate the arbitration awards sufficed to satisfy the requirements and purposes of a statement of decision. (*Metis, supra*, 200 Cal.App.4th at p. 689 [court’s written order may suffice to satisfy the requirements of a statement of decision if it discloses its determinations as to the ultimate facts and issues in the case].) Even if the court’s order was insufficient, any error in not issuing a statement of decision was harmless. (*Hellman v. La Cumbre Golf & Country Club* (1992) 6 Cal.App.4th 1224, 1230 [if judgment is otherwise supported,

omission to make findings in a statement of decision is harmless error unless evidence is sufficient to sustain findings in favor of the complaining party].) Appellants point to only one allegedly unanswered factual question posed in appellants' request for statement of decision, and that is whether Coyle and Telegraph Hill had agreed to arbitrate. Because the alter ego findings discussed above are the law of the case, that question is essentially moot. In short, the evidence wholly supports the arbitrator's findings, and any error in failing to issue a statement of decision was harmless.

### **III. DISPOSITION**

The judgment is affirmed.

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Rivera, J.

We concur:

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Ruvolo, P.J.

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Reardon, J.