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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

CLEAN BATTERY RECYCLING, INC.

et al.,

Plaintiffs and Appellants,

v.

AKKUSER OY et al.,

Defendants and Respondents.

A142458

**(Alameda County
Super. Ct. No. RG12645044)**

Appellant Lawrence B. Landman, doing business as Interagan Technology Group (Interagan), entered into an agreement with respondent Akkuser Oy (Akkuser) to create appellant Clean Battery Recycling, Inc. (Clean Battery). Clean Battery and Akkuser then entered into a license agreement granting Clean Battery an exclusive right to use Akkuser's proprietary technology. Both agreements contained arbitration clauses, and when appellants sued Akkuser in Alameda County Superior Court, the latter petitioned to compel arbitration. The superior court granted that petition, the matter proceeded to arbitration and award, and thereafter Akkuser filed a petition to confirm the award. Appellants, on the other hand, sought to have the award partially confirmed and corrected, and asked the court to vacate its earlier order compelling arbitration.

The trial court granted Akkuser's petition to confirm the award, and it denied the relief requested by appellants. Although it granted the petition to confirm, the lower

court did not reduce the award to a final judgment. Appellants filed an appeal from the trial court's orders.

We agree with Akkuser that the orders specified in the notice of appeal are not appealable in the absence of a final judgment. Without a final judgment or other appealable order, we have no jurisdiction over this appeal. Accordingly, we will dismiss it.

FACTUAL AND PROCEDURAL BACKGROUND

Akkuser, a company organized in Finland, is the owner of certain proprietary battery recycling technology. To assist Akkuser in marketing its technology in North America, on December 11, 2008, Akkuser entered into a Shareholders Agreement with Landman through which the parties formed Clean Battery.¹ On that same date, Akkuser and Clean Battery signed a License Agreement. Under the terms of this agreement, Akkuser granted Clean Battery an exclusive license to use its battery technology in the United States, Canada, and Mexico.²

The Shareholders Agreement and the License Agreement contain identical arbitration clauses. Those clauses state: "Any disputes relating to this Agreement shall be settled by Arbitration. Such arbitration shall be held in Finland, in English, and conducted by the Arbitration Institute of the Central Chamber of Commerce of Finland."

Disagreements later arose between Landman and Akkuser over the latter's alleged entry into a licensing agreement with a German company and its efforts to obtain batteries in European countries within the territory defined in the amended License Agreement. As a result, on August 22, 2012, Landman filed a complaint in propria persona in Alameda County Superior Court. The complaint listed Clean Battery and Landman as plaintiffs and Akkuser and its chief executive officer, Jarmo Pudas, as defendants. It alleged causes of action for breach of fiduciary duties, constructive fraud,

¹ Landman was doing business as Interagan, a company based in Denmark. Clean Battery was organized under California law but shared Interagan's Danish address.

² The License Agreement was amended on November 17, 2009, to expand the territory covered by the license to include Denmark, Germany, France, Belgium, Holland, Luxemburg, the United Kingdom, and Ireland.

fraud, deceit, usurpation of corporate opportunity, and violation of Corporations Code section 800.

On September 26, 2012, Akkuser filed a petition to compel arbitration and stay the action.³ The petition was based on the arbitration clauses in the Shareholders Agreement and License Agreement. Appellants opposed the petition. Thereafter, on November 26, 2012, Akkuser filed an application to initiate arbitration with the Arbitration Institute of the Central Chamber of Commerce of Finland. On December 20, 2012, after a hearing, the trial court granted Akkuser's petition to compel arbitration.⁴

Thereafter, the parties proceeded to arbitration in Finland, and the appointed arbitrator considered their opposing claims. On June 7, 2013, the arbitrator entered an interim award dismissing Landman's counterclaims against Pudas for lack of jurisdiction. The arbitrator issued his final award on February 5, 2014, finding the Shareholder Agreement and License Agreement were no longer valid and rejecting any claim Akkuser had breached those agreements.

On May 7, 2014, Akkuser filed a petition to confirm the award. On June 17, 2014, appellants filed a petition to partially confirm and partially correct the arbitration award, as well as a petition to confirm the award and partially vacate the trial court's order compelling arbitration.

On June 25, 2014, the trial court published tentative rulings on the pending matters. The rulings announced granted Akkuser's petition to confirm the award and denied appellants' petitions. None of the tentative rulings was contested. The following day, the court filed orders confirming its tentative rulings. It thus granted Akkuser's

³ Under Code of Civil Procedure section 1281.2, a party may file a "petition" to compel arbitration of a controversy. Here, Akkuser styled its petition a "motion." For the sake of clarity, however, we will follow the statutory nomenclature and refer to it as a petition in this opinion. (See *Frog Creek Partners, LLC v. Vance Brown, Inc.* (2012) 206 Cal.App.4th 515, 521-522, fn. 4.) We follow the same practice for the "motions" filed by appellants.

⁴ Although the parties appeared before the trial court to argue the merits of the petition, the record contains no reporter's transcript of that hearing because appellants have elected to proceed by appendix. (See Cal. Rules of Court, rule 8.124(a)(1)(A).)

petition to confirm the award, while denying appellants' petition to partially confirm and partially correct the award, as well as their petition to confirm the award and partially vacate the order compelling arbitration.

Appellants filed a notice of appeal on July 14, 2014.

DISCUSSION

According to their notice of appeal, appellants seek review of four orders: (1) the trial court's December 20, 2012 order compelling arbitration, (2) the June 26, 2014 order confirming the arbitration award, (3) the June 26, 2014 order denying the motion to partially confirm and partially correct the award, and (4) the June 26, 2014 order denying the motion to confirm the interim arbitration award and partially vacate the order compelling arbitration. Significantly, however, the record on appeal contains no copy of any judgment in this action. As we explain, the lack of a final judgment means we have no jurisdiction over this appeal.

I. *Appealable Judgments and Orders in Arbitration Matters*

The right to appeal is wholly statutory. (*Rubin v. Western Mutual Ins. Co.* (1999) 71 Cal.App.4th 1539, 1544 (*Rubin*)). The appealability of orders in arbitration matters is governed by Code of Civil Procedure section 1294, which enumerates the orders or judgments from which an appeal in an arbitration matter may be taken.⁵ As case law makes clear, “[a]n appeal lies only from the *judgment* entered on an order confirming an arbitration award, not from the order.” (*Cummings v. Future Nissan* (2005) 128 Cal.App.4th 321, 326 (*Cummings*)). And while an aggrieved party may appeal from an order dismissing a petition to confirm, correct, or vacate an award (Code Civ. Proc., § 1294, subd. (b)), no appeal may be taken from an order denying vacation or correction of an arbitration award. (*Mid-Wilshire Associates v. O’Leary* (1992) 7 Cal.App.4th 1450, 1454 (*Mid-Wilshire*)). “Such an order may be reviewed upon an appeal from the

⁵ Code of Civil Procedure section 1294 provides: “An aggrieved party may appeal from: [¶] (a) An order dismissing or denying a petition to compel arbitration. [¶] (b) An order dismissing a petition to confirm, correct or vacate an award. [¶] (c) An order vacating an award unless a rehearing in arbitration is ordered. [¶] (d) A judgment entered pursuant to this title. [¶] (e) A special order after final judgment.”

judgment of confirmation. [Citations.] Similarly, an order to compel arbitration is an interlocutory order which is appealable only from the judgment confirming the arbitration award and, in certain exceptional circumstances, by writ of mandate.” (*Ibid.*)

II. *Because No Judgment Has Been Entered, the Orders Before Us Are Not Appealable.*

Although the trial court granted Akkuser’s petition to confirm the arbitration award, it does not appear to have entered judgment on that award. (See Code Civ. Proc., § 1287.4 [“If an award is confirmed, judgment shall be entered in conformity therewith.”].) Appellants’ appendix contains no copy of any judgment, and the parties have not represented to us that one was entered after the notice of appeal was filed. In addition, although not necessary to our decision, we take judicial notice of the Alameda County Superior Court’s online docket for this case. (Evid. Code, §§ 452, subd. (d)(1), 459, subd. (a); *Truong v. Nguyen* (2007) 156 Cal.App.4th 865, 872, fn. 3 [taking judicial notice of superior court’s docket entries to determine disposition of action].) The superior court’s docket for this case indicates proceedings in this matter are ongoing.⁶

This case is unlike those in which courts in other arbitration appeals have treated the notice of appeal as premature, because in those cases, a judgment had been entered, albeit after the notice of appeal was filed. (See, e.g., *Cooper v. Lavelly & Singer Professional Corp.* (2014) 230 Cal.App.4th 1, 10, fn. 3 [treating notice of appeal as premature under Cal. Rules of Court, rule 8.104(e) where judgment was entered after notice of appeal filed]; *National Marble Co. v. Bricklayers & Allied Craftsmen* (1986) 184 Cal.App.3d 1057, 1060, fn. 1 [where judgment of confirmation was entered after notice of appeal was filed, court of appeal would construe order specified in notice of appeal to refer to judgment]; *Hohn v. Hohn* (1964) 229 Cal.App.2d 336, 339 [notice of appeal “filed between the date of order confirming award and ‘judgment confirming

⁶ It is unclear why proceedings in the trial court continue despite the filing of a notice of appeal. “[A]n appeal from a judgment ordinarily deprives the trial court of jurisdiction.” (*Hopkins & Carley v. Gens* (2011) 200 Cal.App.4th 1401, 1409.) An exception to this rule may apply when a party attempts to appeal a nonappealable order, such as an order denying a petition to vacate an arbitration award. (*Id.* at p. 1409, fn. 4.)

award’ ” valid as premature appeal].) Nor is it a case in which the parties have resolved questions about appealability by augmenting the record with a copy of a judgment entered after the filing of the notice of appeal. (*Saffer v. JP Morgan Chase Bank* (2014) 225 Cal.App.4th 1239, 1245, fn. 4 [considering appeal after parties augmented record with copy of judgment entered after filing of notice of appeal]; *Cummings, supra*, 128 Cal.App.4th at p. 327 [considering purported appeal from order confirming arbitration award after defendant augmented record with copy of judgment].)

In the absence of a final, appealable judgment or order, we have no jurisdiction to consider the appeal and must dismiss it. (*Rubin, supra*, 71 Cal.App.4th at pp. 1544, 1548.) Moreover, none of the orders from which appellants seek to appeal are orders that are appealable in the absence of a judgment. (*Mid-Wilshire, supra*, 7 Cal.App.4th at p. 1454; cf. Cal. Rules of Court, rule 8.108(e).)

III. *We Decline to Treat the Appeal as a Petition for Writ of Mandate.*

In their reply brief, appellants make a cursory request that we avoid the jurisdictional issue by treating this appeal as a petition for writ of mandate. We decline to do so for several reasons. First, we ordinarily will not consider arguments made for the first time in a reply brief. (E.g., *In re Groundwater Cases* (2007) 154 Cal.App.4th 659, 693 [“Basic notions of fairness dictate that we decline to entertain arguments that a party has chosen to withhold until the filing of its reply brief, because this deprives the respondent of the opportunity to address them on appeal.”].) Second, appellants fail to explain why they lack an adequate remedy at law, since they may obtain review of the trial court’s orders on direct appeal from the judgment of confirmation. (*Mid-Wilshire, supra*, 7 Cal.App.4th at p. 1455.) Third, our Supreme Court has instructed us “to reserve the exercise of [our] discretionary power [of writ review] for cases involving compelling evidence of ‘unusual circumstances.’ ” (*Ibid.*, quoting *Olson v. Cory* (1983) 35 Cal.3d 390, 401.)

IV. *Final Comments About the Record and Briefs*

Before concluding, we wish to comment on the issue of the record and briefs. Appellants elected to proceed by appendix under California Rules of Court, rule 8.124.⁷ Under the appellate rules, the form of the appendix must comply with the requirements for a clerk's transcript set forth in rule 8.144(a)-(c). (Rule 8.124(d)(1).) This includes the requirements that the contents of the appendix be arranged in chronological order (rule 8.144(a)(1)(C)) and that the appendix include chronological and alphabetical indices (rule 8.144(b)). These formatting requirements assist the court in reviewing the record expeditiously and allow the justices and their staff to find material in the record. In this case, appellants' appendix is not arranged in chronological order. It has only one index that is not arranged in either chronological or alphabetical order. Because "these defects hindered our review of the record . . . ," we would be justified in awarding sanctions against appellants. (*Committee to Save the Beverly Highlands Homes Assn. v. Beverly Highlands Home Assn.* (2001) 92 Cal.App.4th 1247, 1273, fn. 10.)

And regrettably, that is not all. In addition to flouting the foregoing requirements, the pages of the appendix are not consecutively numbered as required by the rules. (Rule 8.144(a)(1)(D).) Since the pages are not properly numbered, the parties' briefs necessarily cannot comply with the mandate of rule 8.204(a)(1)(C) that any reference to a matter in the record be supported by "a citation to the volume and page number of the record where the matter appears." This requirement also applies to electronic records such as the one in this case. (*Ibid.*) Instead of proper volume and page citations, the parties frequently refer us to "exhibit" tabs within the appendices. As we have made clear, citation to such tabs is insufficient to comply with rule 8.204(a)(1)(C). (See *SCI California Funeral Services, Inc. v. Five Bridges Foundation* (2012) 203 Cal.App.4th 549, 552, fn. 1.) Moreover, "[c]iting to a tab in the appendix that includes an entire

⁷ All subsequent rule references are to the California Rules of Court.

document, which may include 40 pages or more, is insufficient.”⁸ (*In re Marriage of Barth* (2012) 210 Cal.App.4th 363, 366, fn. 4.)

In light of these rule violations, we could have, and perhaps should have, stricken appellants’ appendix and required that it be corrected. (See rule 8.124(g); *Nguyen v. Proton Technology Corp.* (1999) 69 Cal.App.4th 140, 145, fn. 7.) The same is true for appellants’ noncompliant briefs. (Rule 8.204(e)(2)(B).) Since we conclude we have no jurisdiction to hear this appeal, we have declined to do so. Should further appellate proceedings arise from the action below, however, we will insist on strict compliance with the appellate rules.

DISPOSITION

The appeal is dismissed. Respondents shall recover their costs on appeal. (Rule 8.278(a)(1), (2).)

⁸ Appellants occasionally expect us to make do with citations to cryptic abbreviations such as “DCS 2” or “AD 117.” Only a painstaking and unnecessarily time consuming study of appellants’ opening brief revealed to us that these stood for “Domain Case Summary” (meaning the superior court’s register of actions) and “Arbitrator’s Decision, paragraph 117.” Armed only with these citations, we were then expected to locate these documents in the four volumes of appellants’ unpaginated appendix.

Jones, P.J.

We concur:

Simons, J.

Needham, J.