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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

JOHN STEVE ARCHER,

Plaintiff and Respondent,

v.

JEFF ARCHER,

Defendant and Appellant.

B241435 and B241436

(Los Angeles County
Super. Ct. Nos. LC089343
and LC089564)

APPEALS from judgments of the Superior Court of Los Angeles County,
Maria E. Stratton and Richard Adler, Judges. Affirmed.

Law Offices of Andrew M. Wyatt and Andrew M. Wyatt for Defendant and
Appellant.

Lavaee Law Group and Michael Y. Lavaee for Plaintiff and Respondent.

INTRODUCTION

These consolidated appeals challenge the judgments entered after the trial court confirmed an arbitration award. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The Lawsuits*

Appellant Jeff Archer (plaintiff) and respondent John Steve Archer (defendant) are brothers. Disputes arose between them about the management of four parcels of real property that they jointly owned. As result, plaintiff filed two lawsuits in April 2010.

The first lawsuit involved the McCormick property which the parties had purchased for renovation and resale.¹ By the time plaintiff filed his lawsuit, the McCormick property had been sold to a third party. Plaintiff's lawsuit alleged that defendant owed him for unaccounted profits (including a secret referral fee paid to defendant by the listing broker), sought an accounting and requested an award of compensatory and punitive damages.

The second lawsuit raised claims about defendant's mismanagement of three parcels of property that the parties still owned: the Mason property, the Winnetka property, and the Vanowen property.² Plaintiff sought an accounting, an order of partition and sale of the properties with the proceeds to be divided between the parties, an award of compensatory and punitive damages, and "[f]or such other and further relief as the court may deem proper."

¹ Los Angeles Superior Court Case No. LC089343 filed on April 13, 2010 .

² Los Angeles Superior Court Case No. LC089564 filed on April 28, 2010.

2. *The Arbitration*

On February 16, 2011, the parties filed a stipulation consolidating both actions and providing for binding arbitration under the auspices of Judicate West ADR. Paragraph eight of the stipulation provided, in pertinent part: “The Arbitrator shall have the authority to award any remedy or relief that a court of this State could order or grant Upon application, the Superior Court shall enforce the order as though it made the order.” Paragraph 12 provided, in pertinent part: “The decision of the Arbitrator shall be final and binding upon the Parties without appeal or review except as permitted by the California Arbitration Act. Any Party may apply to this Court of general jurisdiction for entry and enforcement of judgment based on said decision.”

On June 22, 2011, defendant filed for bankruptcy.

On July 5, 2011, counsel for defendant sent an email to plaintiff’s attorney stating: “I have spoken with [defendant’s] bankruptcy attorney and confirmed that our matter is not required to be stayed if we don’t desire it to be. Therefore we will be moving forward as scheduled.”

From August 22 through 25, 2011, the arbitrator conducted the hearing in the consolidated cases. Both parties participated through the presentation of evidence, argument and briefs.

On October 28, 2011, the arbitrator filed a partial award resolving the credibility issues in plaintiff’s favor and declaring plaintiff to be the prevailing party.³ The arbitrator awarded plaintiff \$18,500 in compensatory damages and

³ The award states, among other things: “The vast majority of [plaintiff’s] testimony was credible and verified by others. The vast majority of [defendant’s] testimony lacked any credibility whatsoever. . . . In specific, [defendant] attempted to mislead by falsifying documents, and lying on numerous occasions under oath. Particularly repulsive to this Arbitrator was the fact that these lies continued long after

gave plaintiff the option to use that sum as a credit against his purchase of defendant's interest in the Mason or Winnetka properties. The partial award reserved for decision several issues, including the question of punitive damages.

On December 23, 2011, plaintiff filed a motion in the Bankruptcy Court for relief from the automatic stay provision. On January 25, 2012, the court granted plaintiff's motion. It terminated the bankruptcy stay and "[a]nnulled [it] retroactively to the date of the bankruptcy petition filing" but stated that plaintiff could "enforce its final judgment only by" "Proceeding against the Debtor(s) as to NON-estate property or earnings." In addition, the Bankruptcy Court's order provided: "[Plaintiff] may also enforce the Arbitration Award entered in the pending Superior Court (companion Case Numbers LC089654 and LC089343) among the Parties as a result of the Arbitration held from August 22 – August 25, 2011."

On February 5, 2012, the arbitrator, after reviewing additional briefs from the parties, filed the final award. Among other things, plaintiff was awarded \$7,248.31 in compensatory damages and \$52,500 in punitive damages⁴ as well as title to the Mason and Winnetka properties.

Thereafter, defendant filed in the Bankruptcy Court a Motion for Violation of the Automatic Stay.⁵ On March 27, 2012, the Bankruptcy Court denied the motion.

there was manifest, clear and convincing evidence that [defendant] was lying under oath."

⁴ The arbitrator's award includes a four-page discussion explaining why, given the facts of the case, punitive damages were warranted. It concluded: "Re punitive damages, [plaintiff's] best estimate of [defendant's] net worth is hereby deemed to be conclusively accurate at \$525,000.00; I hereby award punitive damages in the sum of \$52,500.00 to the benefit of [plaintiff]."

⁵ The record does not disclose the date the motion was filed.

3. *Confirmation of the Arbitration Award*

On March 12, 2012, plaintiff filed a Motion to Confirm the Arbitration Award in the superior court. He attached a copy of the arbitrator's 67-page decision and award.

On April 10, 2012, defendant filed opposition to plaintiff's motion. Defendant argued that the arbitrator's award exceeded his powers and that the award demonstrated a "manifest disregard of the law." In particular, defendant urged: (1) the arbitrator's award violated the Bankruptcy Court's orders; (2) the punitive damages award was not supported by the record; and (3) plaintiff's claims regarding the McCormick property were time-barred. Based upon those arguments, defendant asked the trial court to "vacate and/or not confirm this arbitration award."

The trial court rejected all of defendant's arguments and granted plaintiff's motion to confirm. Because plaintiff had filed two separate lawsuits, two judgments were entered. In the case involving the previously owned McCormick property, the judgment awarded plaintiff \$52,500 in punitive damages with post-judgment interest. In the case involving the three jointly owned properties, the judgment awarded: (1) plaintiff \$7,248.31 in compensatory damages with post-judgment interest and title to the Mason and Winnetka properties and (2) defendant title to the Vanowen property, subject to defendant's assumption of all encumbrances on that property.

Defendant appeals from both judgments.⁶

⁶ Prior to oral argument, we consolidated the two appeals.

DISCUSSION

In *Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1 (*Moncharsh*), “our Supreme Court made it clear that the grounds for judicial review of a contractual arbitration award are extremely limited. Under *Moncharsh*, we cannot review the merits of the controversy, the arbitrator’s reasoning, or the sufficiency of the evidence supporting the award. [Citation.] Even ‘an error of law apparent on the face of the award that causes substantial injustice does not provide grounds for judicial review.’ [Citation.] Code of Civil Procedure sections 1286.2 and 1286.6 provide the only grounds for challenging an arbitration award. [Citation.]” (*Pierotti v. Torian* (2000) 81 Cal.App.4th 17, 23.)

With those principles in mind, we review defendant’s arguments as to why the trial court erred in confirming the arbitration award.

First, defendant urges that all of plaintiff’s claims arising out of their prior ownership of the McCormick property are “time-barred” but “[y]et, this arbitrator has chosen to hear this case.” The argument fails for two reasons. First, defendant failed to raise this claim before the arbitrator. “In order to challenge an award in [the superior] court, a litigant must have raised the point before the arbitrator. [Citations.]” (*Comerica Bank v. Howsam* (2012) 208 Cal.App.4th 790, 829-830, and cases cited therein.) Second, even if defendant had raised the issue and the arbitrator had resolved it against him, the trial court would have been precluded from reviewing that decision because “an arbitrator’s decision is not generally reviewable for errors of fact or law.”⁷ (*Moncharsh, supra*, 3 Cal.4th at p. 6.)

⁷ In his reply brief, defendant raises for the first time the argument that plaintiff’s claims about defendant’s mismanagement of the Mason property are barred by the statute of limitations. This claim is forfeited for the reasons stated above, as well as the principle that “[p]oints raised in the reply brief for the first time will not be considered.” (*Campos v. Anderson* (1997) 57 Cal.App.4th 784, 794, fn. 3.)

Second, defendant claims that “the award of punitive damages was unsubstantiated by evidence” and “the award of compensatory damages of \$7,248.31 is capricious [because] [n]o evidence of damages was presented to justify an award.” (Capitalization omitted.) These arguments are barred by the well-settled principle that we “may not review the sufficiency of the evidence supporting an arbitrator’s award. [Citations.]” (*Moncharsh, supra*, 3 Cal.4th at p. 11.)

Defendant attempts to avoid this conclusion by characterizing the damages awards as orders made in excess of the arbitrator’s powers.⁸ That approach must fail. There is no question that the arbitrator had the power to award plaintiff compensatory and punitive damages. Plaintiff’s complaints—the pleadings upon which the parties submitted the matter to arbitration—sought compensatory and punitive damages. The parties’ stipulation to arbitrate specifically provided that the arbitrator had “the authority to award any remedy or relief that a court of this State could order or grant.” And as indicated by the arbitrator’s detailed and lengthy award, the issues of compensatory and punitive damages were extensively briefed and argued before him. Thus, the arbitrator did not act in excess of his powers in making either award. (See *Shahinian v. Cedars-Sinai Medical Center* (2011) 194 Cal.App.4th 987, 1006 [stipulation that the arbitrator ““may grant any remedy or relief that would have been available to the parties had the matter been heard in court”” clearly permits the arbitrator to award punitive damages].)

⁸ Subdivision (a)(4) of Code of Civil Procedure section 1286.2 provides that a court can vacate an arbitration award where “[t]he arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision.” Subdivision (b) of section 1286.6 provides that a court can correct an arbitration award where “[t]he arbitrators exceeded their powers but the award may be corrected without affecting the merits of the decision.”

In a similar vein, defendant, for the first time on appeal, urges that in regard to the three properties jointly owned by the parties, the arbitrator exceeded his authority because he “ignored what was sought in the complaint [partition and sale of the three properties] and gave a windfall to Plaintiff” by granting him title to two of the properties. We are not persuaded. That the complaint did not seek the specific relief ordered by the arbitrator is not dispositive. As set forth earlier, the parties’ arbitration agreement specifically provided that the arbitrator had “the authority to award any remedy or relief that a court of this State could order or grant.”⁹ In addition, Rule 43 of the American Arbitration Association Rules for Commercial Arbitration—the rules that governed the parties’ arbitration—provides: “The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties.” In any event, defendant is estopped from raising this argument because, as indicated by the arbitration award, he agreed to the fashioning of this remedy.¹⁰ (See *Nevada County Office of Education v. Riles* (1983) 149 Cal.App.3d 767, 779 [by expressly agreeing to a specific administrative action, the defendant waived his right to object to that action on appeal].)

⁹ The relief awarded by the arbitrator falls within the relief a trial court could have ordered since, after receiving the evidence, it could have permitted plaintiff to amend his complaint to include a prayer for that specific remedy. (See 5 Witkin, Cal. Procedure (5th ed. 2008) Pleading, § 1214, pp. 647-648.)

¹⁰ The arbitration award recites, in pertinent part: “Both parties desire a partition by appraisal under which any of the parties may either be cashed out or partitioned in kind *where one or both parties would acquire certain of the Properties*. In order to accomplish as equal division after all appropriate credits/offsets/allowances awarded to one or more of the parties hereto[,] . . . this Arbitrator ordered an appraisal of the [three] Properties in August 2011. In addition to the above at issue is the following: [¶] A. What credits/offsets/allowances, if any, are to be provided to one or both of the parties?” (Italics added.)

Next, defendant claims that the arbitrator's award of compensatory and punitive damages violated "the bankruptcy court order because he [based] his award on Defendant's bankruptcy estate property and earnings." A state court is not the proper venue to raise this argument. The Bankruptcy Court has exclusive jurisdiction over any claim that a state court order has violated one of its orders. In other words, defendant is required to raise this claim in the Bankruptcy Court. (*Hicks v. E.T. Legg & Associates* (2001) 89 Cal.App.4th 496, 513; *Abdallah v. United Savings Bank* (1996) 43 Cal.App.4th 1101, 1109.)

Lastly, relying exclusively upon federal authority, defendant urges that the arbitration award should have been vacated because it was made in "manifest disregard of the law." The argument lacks merit. As exhaustively explained in *Comerica Bank v. Howsam, supra*, 208 Cal.App.4th 790: "[O]ne thing is clear, an arbitrator's manifest disregard of the law is not a ground for vacatur under California law. [Citations.]"¹¹ (*Id.* at p. 830.)

¹¹ Defendant's motion for monetary sanctions based upon the claim that plaintiff has prosecuted frivolous appeals is denied.

DISPOSITION

The judgments are affirmed.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.