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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

SCOTT EHREDT, Plaintiff and Appellant, v. MEDIEVAL KNIGHTS, LLC, et al., Defendants and Respondents.	B275833 (Los Angeles County Super. Ct. No. BC530275)

APPEAL from a judgment of the Superior Court of Los Angeles County. Maureen Duffy-Lewis, Judge. Affirmed.

The Hamideh Firm, Bassil A. Hamideh; Elite Law Partners and Peter Shahriari for Plaintiff and Appellant.

Rutan & Tucker, Ronald P. Oines and Heather N. Herd for Defendants and Respondents.

* * * * * * * * * *

Plaintiff and appellant Scott Ehredt appeals from the entry of judgment following confirmation of an arbitration award in favor of defendants and respondents Medieval Knights, LLC, Medieval Times USA, Inc., Medieval Times Georgia, Inc., Medieval Times Maryland, Inc., Medieval Times Dinner and Tournament Toronto, Inc., and Medieval Times Entertainment, Inc. Plaintiff contends the arbitrator exceeded his powers by issuing an award in violation of California public policy, and that the parties' arbitration agreement expressly provides for judicial review of the award under California law.

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Defendants operate dinner theater locations throughout the United States and Canada featuring live medieval-style games. In January 2008, plaintiff was hired by defendants to perform at its dinner theater in Buena Park, California.

At the time of hire, plaintiff signed a document titled "Release for Pictures and Recordings – Use of Likeness" (hereafter Release). The Release, among other things, included the following language: "I hereby irrevocably consent to and authorize the recording and use of my likeness (including portrait or picture), voice and name by any Medieval Times company or affiliate ('Medieval Times') for any purpose whatsoever, without monetary compensation to me. I hereby agree and acknowledge that Medieval Times is and will be the sole owner of all rights in and to all photo(s), video(s), film footage, utterances, and the recordings, copies and proofs, for all purposes. Medieval Times shall have the exclusive right, among other things, to publish or broadcast my likeness, voice and name, including but not limited to, publishing or broadcasting my likeness, voice and name or the

recordings thereof one or more times, on a sustaining, promotional or commercial basis, in any form, over any print media, radio or television station or stations or other medial now or hereafter known."

In September 2011, plaintiff and defendants executed a three-page document titled "Mutual Arbitration Agreement (Current Buena Park Team Members)" (hereafter Arbitration Agreement). The Arbitration Agreement contained two provisions of relevance here. First is paragraph 2, titled "Rules of Procedure." In relevant part, the provision reads, "[t]he arbitration shall be administered by JAMS pursuant to this Arbitration Agreement and JAMS Employment Arbitration Rules & Procedures ('Rules'), and subject to the JAMS Policy on Employment Arbitration Minimum Standards of Procedural Fairness ('Policy') . . . . The arbitrator shall apply the same substantive law, with the same statutes of limitations and same substantive remedies, that would apply if the claims were brought in a court of law."

The second relevant provision is paragraph 6, titled "Governing Law, Enforcement and Judicial Review." The paragraph reads, in its entirety: "This Arbitration Agreement is governed by and enforceable under the Federal Arbitration Act, 9 U.S.C. § 1 et seq. ('FAA'). Either Employee or Employer may bring an action in any court having jurisdiction to compel arbitration under this Arbitration Agreement and to enforce an arbitration award. In addition to the other grounds for vacating or modifying an arbitrator's award under the FAA, if a party claims that in making any award the arbitrator acted in manifest disregard of the law or otherwise exceeded the arbitrator's powers, the arbitrator's award also shall be judicially reviewable

under the laws of the state in which the arbitration was conducted. If for any reason the FAA is held not to apply to this Arbitration Agreement or any portion of it, the Arbitration Agreement shall, to that extent, be governed by and enforceable under the laws of the state in which Employee is or was last employed by Employer."

In December 2011, an outside production company hired by defendants conducted a two-day shoot to create advertising materials for defendants' use, including a commercial (hereafter the Shoot). Defendants' employees, including plaintiff, were asked to audition if they wanted to participate, but were told it was voluntary and not part of their job duties. Non-employee actors were also considered for roles. Plaintiff was cast in the role of the king for the Shoot, including a speaking part for the commercial. Plaintiff's likeness had never been previously used by defendants in advertising materials. Plaintiff was told to "punch in" for the hours worked on the Shoot. He received no other compensation other than his normal hourly wage.

In July 2013, defendants terminated plaintiff from his position.

On December 12, 2013, plaintiff filed a complaint in Los Angeles Superior Court against defendants alleging numerous claims, including declaratory relief, and misappropriation of likeness based on defendants' use of plaintiff's image in advertising materials created from photographs and video footage obtained during the Shoot. Plaintiff and defendants filed a joint stipulation acknowledging that the claims contained in plaintiff's complaint were covered by the parties' written Arbitration Agreement and would be submitted to arbitration accordingly.

The parties participated in an arbitration with JAMS over the course of three days in March 2015. The parties submitted post-arbitration briefing to the arbitrator, including on the issues of whether the Release and other employee documents signed by plaintiff were enforceable, whether they provided valid consent for the use of plaintiff's likeness in defendants' advertising materials, and whether plaintiff's participation in the Shoot and his failure to object at that time constituted implied consent.

The arbitrator issued a 19-page final award in September 2015. The arbitrator found in favor of defendants, concluding that the Release was valid and enforceable, that plaintiff failed to show lack of consent, that his participation in the Shoot and failure to timely object amounted to implied consent, and that Labor Code section 2802 was not applicable and did not void the Release. The arbitrator awarded defendants attorney fees in the amount of $280,000 and costs in the amount of $8,650.26.

Defendants filed a petition in the superior court seeking confirmation of the arbitration award. Plaintiff filed a petition to vacate the award. After extensive briefing and argument, the superior court granted defendants' petition to confirm the arbitration award, and denied plaintiff's petition to vacate. On May 3, 2016, the final award was entered as a judgment.

This appeal followed.

DISCUSSION

Plaintiff contends the trial court erred in confirming the arbitration award and entering judgment in favor of defendants. We independently review a trial court order confirming an arbitration award. (*Mave Enterprises, Inc. v. Travelers Indemnity Co.* (2013) 219 Cal.App.4th 1408, 1422 (*Mave Enterprises*).)

Plaintiff frames his argument as follows. Defendants acted illegally and in violation of public policy by requiring plaintiff, as a condition of employment, to "assign his valuable proprietary right of voice and likeness," in perpetuity and for no compensation, in order to lessen their "advertising business expenses." Plaintiff contends the arbitrator exceeded his powers by validating such illegal actions, enforcing the validity of the Release, and issuing an award in favor of defendants. Plaintiff maintains that, under the terms of the parties' Arbitration Agreement, this court can review the merits of the arbitration award and that such de novo review dictates the award be set aside and vacated.

Boiled down, plaintiff argues we have authority to review the merits of the arbitrator's decision and to vacate that decision on the grounds of legal and factual error, and because it contravenes public policy. No California law supports plaintiff.

It is well established that "California law favors alternative dispute resolution as a viable means of resolving legal conflicts. 'Because the decision to arbitrate grievances evinces the parties' intent to bypass the judicial system and thus avoid potential delays at the trial and appellate levels, arbitral finality is a core component of the parties' agreement to submit to arbitration.' " (*Richey v. AutoNation, Inc.* (2015) 60 Cal.4th 909, 916 (*Richey*), quoting *Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 10 (*Moncharsh*).)

Both "[t]he California Arbitration Act [(CAA)] (Code Civ. Proc., § 1280 et seq.) and the Federal Arbitration Act [(FAA)] (9 U.S.C. § 10 et seq.) provide *limited grounds* for judicial review of an arbitration award." (*Richey*, *supra*, 60 Cal.4th at p. 916, italics added; accord, *Cable Connection, Inc. v. DIRECTV, Inc.*

(2008) 44 Cal.4th 1334, 1344 (*Cable Connection*).) Under both the CAA and the FAA, a court is authorized to vacate an arbitration award where it is demonstrated the arbitrator exceeded his or her powers. (Code Civ. Proc., § 1286.2, subd. (a)(4); 9 U.S.C. § 10(a)(4).)

In proceedings in which the procedural rules of the FAA apply, the statutory grounds for vacatur and modification of an arbitration award are exclusive. (*Hall Street Associates, LLC v. Matel, Inc.* (2008) 552 U.S. 576, 581 (*Hall Street*).) However, "the *Hall Street* majority left the door ajar for alternate routes to an expanded scope of review. 'In holding that [9 U.S.C.] §§ 10 and 11 provide exclusive regimes for the review provided by the statute, we do not purport to say that they exclude more searching review based on authority outside the statute as well. The FAA is not the only way into court for parties wanting review of arbitration awards[.]" (*Cable Connection*, *supra*, 44 Cal.4th at p. 1349, quoting *Hall Street*, at p. 590.)

As our Supreme Court has explained, " 'the United States Supreme Court does not read the FAA's procedural provisions to apply to state court proceedings.' [Citation.]" (*Cable Connection*, *supra*, 44 Cal.4th at p. 1351.) "[T]he provisions for judicial review of arbitration awards in sections 10 and 11 of the FAA are directed to 'the United States court in and for the district wherein the award was made.' " (*Ibid*.) "[T]he procedural provisions of the CAA apply in California courts by default." (*Valencia v. Smyth* (2010) 185 Cal.App.4th 153, 174 (*Valencia*).) "There is no federal policy favoring arbitration under a certain set of procedural rules; the federal policy is simply to ensure the enforceability, according to their terms, of private agreements to

arbitrate." (*Volt Info. Scis. v. Bd. of Trs.* (1989) 489 U.S. 468, 476.)

These proceedings were instituted in state court. California applies its own rules of procedure "absent a choice-of-law provision expressly mandating the application of the procedural law of another jurisdiction." (*Mave Enterprises, supra*, 219 Cal.App.4th at p. 1429; see also *Cable Connection*, *supra*, 44 Cal.4th at pp. 1350-1351, fn. 12; *Valencia*, *supra*, 185 Cal.App.4th at pp. 174-175.)

Here, the parties' choice of law provision at paragraph 6 of the Arbitration Agreement plainly incorporates the substantive provisions of the FAA. However, the provision also unequivocally provides that any arbitration award "shall be judicially reviewable under the laws of the state in which the arbitration was conducted." The parties therefore expressly contracted for California law regarding judicial review to apply. We conclude the procedural rules of the CAA apply.

In *Cable Connection*, the Supreme Court concluded the statutory grounds for review enumerated in the CAA are not exclusive, and that allowing parties to an arbitration contract to specifically agree to an expanded scope of review was consistent with the CAA and "fully consistent with the FAA 'policy guaranteeing the enforcement of private contractual arrangements.' [Citation.]" (*Cable Connection*, *supra*, 44 Cal.4th at pp. 1354, 1354-1358.)

However, because of the strong policy favoring arbitral finality and the general rule against judicial review of the merits of an award, any provision for an expanded scope of review must be unequivocal and explicit. "[*T*]*he parties must clearly state that legal errors are an excess of arbitral authority that is reviewable*

by the courts." (*Cable Connection*, *supra*, 44 Cal.4th at p. 1361, italics added.) The provision at issue in *Cable Connection* was clear and explicit: " 'The arbitrators shall not have the power to commit errors of law or legal reasoning, and the award may be vacated or corrected on appeal to a court of competent jurisdiction for any such error.' " (*Ibid*., fn. 20.)

No such clear and unequivocal language is contained in Paragraph 6 of the Arbitration Agreement. Rather, it provides, in relevant part, as follows: "In addition to the other grounds for vacating or modifying an arbitrator's award under the FAA, if a party claims that in making any award the arbitrator acted in manifest disregard of the law or otherwise exceeded the arbitrator's powers, the arbitrator's award also shall be judicially reviewable under the laws of the state in which the arbitration was conducted."

The inclusion of the phrase "manifest disregard of the law" cannot be viewed as providing a basis for general review of the award for legal error. The manifest disregard standard is a federal standard that is narrowly construed. (See, e.g., *Comerica v. Howsam* (2012) 208 Cal.App.4th 790, 829-830.) *Hall Street*, which was decided several years prior to the parties' execution of the Arbitration Agreement, explained that the federal "manifest disregard" standard "presumes a rule against general review for legal error, and should not be seen as a 'camel's nose' under the arbitration tent." (*Cable Connection*, *supra*, 44 Cal.4th at p. 1348, quoting *Hall Street*, *supra*, 552 U.S. at pp. 584-585.) There is no language in paragraph 6 that can be reasonably construed to provide for review of the arbitration award on the merits.

Moreover, the arbitrator's resolution of the issue of plaintiff's consent cannot reasonably be argued as being outside the scope of his arbitral powers. The issue of the validity of plaintiff's consent to the use of his likeness in defendants' advertising materials, both in the written Release, and implied from conduct, were legal issues embraced by plaintiff's claim and expressly submitted by the parties to the arbitrator for resolution. "When parties contract to resolve their disputes by private arbitration, their agreement ordinarily contemplates that the arbitrator will have the power to decide any question of contract interpretation, historical fact or general law necessary, in the arbitrator's understanding of the case, to reach a decision. [Citations.] Inherent in that power is the possibility the arbitrator may err in deciding some aspect of the case. Arbitrators do not ordinarily exceed their contractually created powers simply by reaching an erroneous conclusion on a contested issue of law or fact, and arbitral awards may not ordinarily be vacated because of such error, for ' "[t]he arbitrator's resolution of these issues is what the parties bargained for in the arbitration agreement." ' [Citation.]" (*Gueyffier v. Ann Summers, Ltd*. (2008) 43 Cal.4th 1179, 1184.)

Plaintiff finally contends judicial review is warranted because the entire "transaction" is illegal; specifically, the Release improperly required plaintiff, as a condition of employment, to assign the right to use his likeness in perpetuity to defendants without compensation. "*Moncharsh* noted that judicial review may be warranted when a party claims that an arbitrator has enforced an entire contract or transaction that is illegal." (*Richey*, *supra*, 60 Cal.4th at p. 917.) An arbitrator may also exceed his or her powers "by issuing an award that violates a

party's unwaivable statutory rights or that contravenes an explicit legislative expression of public policy." (*Id.* at p. 916.)

Circumstances warranting judicial review on such grounds are exceptional. (See, e.g., *Department of Personnel Administration v. California Correctional Peace Officers Assn.* (2007) 152 Cal.App.4th 1193, 1200, 1203 [arbitration award properly vacated where it reformed a memorandum of understanding between union and state already approved by the Legislature, in violation of the Dills Act and contravening public policy mandating legislative oversight of employee contracts].) *Moncharsh* made clear that courts should be reluctant to invalidate arbitration awards on such grounds. "Absent a clear expression of illegality or public policy undermining [the] strong presumption in favor of private arbitration, an arbitral award should ordinarily stand immune from judicial scrutiny." (*Moncharsh*, *supra*, 3 Cal.4th at p. 32.)

Plaintiff has failed to show such exceptional circumstances exist here. Plaintiff has not articulated an express public policy that is relevant to the facts. Plaintiff relies generally on various statutes from the Labor Code and Business and Professions Code which he contends establish the requisite illegality, only one of which was presented and argued to the arbitrator (Lab. Code, § 2802). Plaintiff's argument on these grounds does not warrant further discussion. (*Moncharsh*, *supra*, 3 Cal.4th at p. 30 ["we cannot permit a party to sit on his rights, content in the knowledge that should he suffer an adverse decision, he could then raise the illegality issue in a motion to vacate the arbitrator's award. A contrary rule would condone a level of 'procedural gamesmanship' that we have condemned as 'undermining the advantages of arbitration.' "].)

DISPOSITION

The judgment entered on the order confirming the arbitration award is affirmed.

Defendants and respondents shall recover costs of appeal.

GRIMES, J.

WE CONCUR:

RUBIN, Acting P. J.

FLIER, J.