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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

HOSPITALITY MARKETING
CONSULTANTS, LLC, et al.,

Plaintiffs and Appellants,

v.

SANDRA CASE,

Defendant and Respondent.

G046283

(Super. Ct. No. 30-2011-00493355)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Steven L. Perk, Judge. Affirmed.

Spach, Capaldi & Waggaman, Madison S. Spach, Jr., Douglas S. Waggaman and Thomas E. Walling for Plaintiffs and Appellants.

Freeman, Freeman & Smiley, John P. Godsil and Todd M. Lander for Defendant and Respondent.

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Plaintiffs and appellants Hospitality Marketing Consultants, LLC (HMC), Mokhtar Ramadan, Marwan Ramadan, and Fadi Ramadan¹ appeal from a trial court order denying their petition to correct an arbitration award by striking the attorney fees the arbitrator awarded to defendant and respondent Sandra Case. Appellants contend the arbitrator exceeded his authority by awarding Case her fees because neither the law nor the parties' contracts authorized an award based on the arbitrator's rulings regarding the underlying claims. Appellants' argument, however, amounts to an impermissible request for this court to review the merits of the arbitrator's fee award. Neither the trial court nor this court may correct an erroneous factual or legal ruling on an issue the parties submitted to the arbitrator and therefore we affirm the trial court's decision confirming the arbitrator's award and entering judgment in Case's favor, including the attorney fee award.

I

FACTS AND PROCEDURAL HISTORY²

HMC provides membership programs for prestigious hotels and other businesses in the United States and around the world. The Ramadans started the business in the 1980's and originally conducted business as Hospitality Marketing Consultants, a California general partnership (Partnership). Case began working for the Partnership in 1988. In 1993, the Ramadans made Case a partner, assigning her a five percent

¹ Mokhtar Ramadan, Marwan Ramadan, and Fadi Ramadan are brothers and we collectively referred to them as the Ramadans. We collectively refer to HMC and the Ramadans as Appellants.

² We summarize the facts as found by the arbitrator. Because courts may not review an arbitrator's award for the sufficiency of the evidence supporting it, we "take the arbitrator's findings as correct without examining a record of the arbitration hearings themselves." (*Advanced Micro Devices, Inc. v. Intel Corp.* (1994) 9 Cal.4th 362, 367, fn. 1 (*Advanced Micro*).

interest in the Partnership. The Ramadans each held one-third of the remaining 95 percent of the Partnership.

In 1996, the Ramadans formed HMC and converted the Partnership into a limited liability company. In 1997 or 1998, the Ramadans explored whether HMC should make an initial public offering to raise capital. During that process, the Ramadans learned they needed a written operating agreement to govern HMC's ownership and operations. They hired counsel to prepare one, and both the Ramadans and Case signed the "Operating Agreement for Hospitality Marketing Consultants, LLC" (Operating Agreement). Although the Ramadans and Case each signed the Operating Agreement, the arbitrator later found the Ramadans and Case never agreed to the Operating Agreement and therefore it was not enforceable. According to the arbitrator, the parties never discussed the Operating Agreement's terms and did not intend for it to govern HMC's operations. Instead, the parties merely signed it as part of the efforts to take HMC public and believed HMC would be dissolved and the business conducted through a separate corporation after the initial public offering. The initial public offering, however, was never completed and HMC continued to conduct business as a limited liability company.

In 1998, Case entered into the "Agreement of Purchase and Sale of General Partnership Interest" (Purchase Agreement) with the Partnership. The Purchase Agreement acknowledged the Partnership's previous business was now conducted through HMC (the limited liability company). The Purchase Agreement's purpose was to redeem "all of Case's right, title and interest in and to the Partnership." The Partnership paid Case \$84,521 for her interest and the Ramadans each signed the Purchase Agreement in their individual capacities. In 1998, Case also entered into the "Employment Agreement" with HMC setting forth the terms of her employment.

Case voluntarily resigned her employment with HMC in 1999. She and HMC entered into the "Severance Agreement" to rescind the Employment Agreement

and transfer a small amount of Case's interest in HMC to the company in exchange for \$225,000 paid over several months. After the transfer, Case continued to hold a 4.56 percent interest in HMC. In the ensuing years, HMC made several attempts to "buy out" Case's remaining interest at prices ranging from \$400,000 to \$1 million. None of those efforts were consummated because numerous disagreements arose between the Ramadans and Case regarding the Operating Agreement's meaning and effect.

HMC commenced the underlying arbitration in July 2008 based on the Operating Agreement's arbitration provision. In June 2009, HMC submitted an Amended Statement of Claim (Amended Claim), alleging claims against Case for declaratory relief, breach of the Severance Agreement, and intentional interference with contract. HMC alleged Case never received an equity interest in either the Partnership or HMC, but rather merely received a right to a percentage of the profits. The declaratory relief claim sought a declaration that (1) Case did not hold an equity interest; (2) Case was never a true equity member of HMC; (3) Case must repay to HMC the sum she received from the Partnership to redeem her partnership interest and the \$225,000 she received under the Severance Agreement; (4) the Operating Agreement was unenforceable because the parties never intended it to be binding; and (5) in the event the Operating Agreement is binding, Case forfeited her interest by failing to make the capital contributions the Operating Agreement required.

Case answered the Amended Claim and filed a Counter-Claim against HMC and the Ramadans. The Counter-Claim alleged claims for declaratory relief, breach of the Operating Agreement, breach of fiduciary duty, accounting, and unjust enrichment against HMC and the Ramadans. It also alleged a derivative claim on HMC's behalf against the Ramadans for breach of fiduciary duty. The declaratory relief claim sought a declaration that (1) the Operating Agreement was enforceable; (2) Case received a full equity interest in HMC, less the percentage she transferred under the Severance Agreement; (3) Case is entitled to the same rights as the Ramadans under the Operating

Agreement, including the right to profit distributions and the right to inspect the books; and (4) Case is entitled to participate in HMC's management.

The parties conducted the arbitration hearing before the Honorable Jonathan H. Cannon (Ret.) over 10 days between September 2010 and January 2011. The arbitrator issued his Interim Award in March 2011, finding (1) Case owns 4.56 percent of HMC and is a member entitled to inspect the records and receive a pro rata share of all profits; (2) the Operating Agreement was not agreed to by the parties and it did not describe the parties' agreement regarding HMC's management; (3) the Ramadans breached their fiduciary duties to Case by taking disguised distributions and concealing information from Case regarding HMC's operations; (4) the Ramadans acted intentionally, maliciously, and oppressively; and (5) HMC presented no evidence Case breached the Severance Agreement. Accordingly, the arbitrator declared the Operating Agreement was unenforceable, but Case nonetheless owned a 4.56 percent interest in HMC. He also awarded Case \$105,792 in compensatory and \$211,584 in punitive damages against the Ramadans. Finally, the arbitrator stated any party could submit a motion for attorney fees and costs.

Case submitted an attorney fee motion seeking \$84,610.25 in costs and \$492,306.94 in attorney fees against HMC and the Ramadans. Case sought her attorney fees under the Purchase Agreement's fee provision. HMC and the Ramadans submitted a motion seeking \$269,739.28 in attorney fees and costs based on the Operating Agreement's fee provision. The arbitrator issued his Final Award in April 2011, restating the findings and award from the Interim Award and also awarding Case \$478,000 in attorney fees and costs against HMC and the Ramadans, jointly and severally. The arbitrator did not make any findings or provide any explanation for his attorney fee and cost award.

Appellants filed a petition in the superior court seeking to correct the arbitrator's final award by striking Case's attorney fees.³ Appellants argued the arbitrator lacked the authority to award attorney fees against them based on the Purchase Agreement Case relied on as the sole contractual basis for her attorney fee request. Specifically, HMC argued Case entered into the Purchase Agreement with the Partnership, not HMC, and therefore the arbitrator could not award fees against HMC under the Purchase Agreement. Similarly, the Ramadans argued they asserted no claims against Case based on the Purchase Agreement or any other contract and Case did not assert any claim against them based on the Purchase Agreement. Accordingly, the Ramadans concluded, the arbitrator exceeded his authority because the Purchase Agreement provided no basis for a fee award against them.

The trial court denied the petition to correct the award and instead confirmed the arbitrator's award as written. The court found the issue regarding which party, if any, should be awarded attorney fees was an issue the parties submitted to the arbitrator for decision and therefore any error the arbitrator may have made in awarding attorney fees was a legal or factual error the court could not review. The trial court thereafter entered judgment in Case's favor against Appellants, which included the attorney fee award. Appellants timely appealed.

II

DISCUSSION

A. *Courts are Greatly Limited in Their Power to Review Arbitration Awards*

California law reflects a “‘strong public policy in favor of arbitration as a speedy and relatively inexpensive means of dispute resolution’ [and therefore] courts will

³ Appellants apparently do not challenge the arbitrator's award of costs to Case because the total award of fees and costs was \$478,000 and Appellant's petition sought only to delete “[t]he attorneys' fees award of \$393,389.75.”

“indulge every intendment to give effect to such proceedings.” [Citations.]” (*Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 9 (*Moncharsh*)). To further that policy, arbitration awards are generally final. (*Id.* at p. 10.) Courts may review an arbitration award only on the extremely narrow statutory grounds identified in Code of Civil Procedure sections 1286.2 and 1286.6 for vacating or correcting an award.⁴ (*Moncharsh*, at pp. 27-28 [statutory grounds are “exclusive” grounds for vacating and correcting an arbitration award]; *Pierotti v. Torian* (2000) 81 Cal.App.4th 17, 23 (*Pierotti*) [“the grounds for judicial review of a contractual arbitration award are extremely limited”].)

Courts may *not* review an arbitrator’s decision for errors of law or fact, nor may they review an arbitrator’s reasoning or the sufficiency of the evidence to support his or her award. (*Moncharsh, supra*, 3 Cal.4th at p. 11.) Indeed, even “an error of law apparent on the face of the award that causes substantial injustice does not provide grounds for judicial review.” (*Id.* at p. 33.) “The arbitrator’s resolution of the[] issues is what the parties bargained for in the arbitration agreement” (*Moshonov v. Walsh* (2000) 22 Cal.4th 771, 775-776 (*Moshonov*)), and therefore the courts may not substitute their

⁴ All further statutory references are to the Code of Civil Procedure.

Section 1286.2 authorizes a court to vacate an arbitration award if (1) “[t]he award was procured by corruption, fraud or other undue means”; (2) “[t]here was corruption in any of the arbitrators”; (3) “[t]he rights of the party were substantially prejudiced by misconduct of a neutral arbitrator”; (4) “[t]he arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted”; (5) the arbitrator substantially prejudiced a party’s rights by refusing to postpone the hearing despite a showing of good cause or by refusing to hear material evidence; or (6) the arbitrator failed to make the required disclosures or disqualify himself or herself based upon a proper request.

Section 1286.6 authorizes a court to correct an arbitration award when (1) “[t]here was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;” (2) “[t]he arbitrators exceeded their powers but the award may be corrected without affecting the merits of the decision upon the controversy submitted;” or (3) “[t]he award is imperfect in a matter of form, not affecting the merits of the controversy.”

judgment for the arbitrator's in deciding the issues (*Advanced Micro, supra*, 9 Cal.4th at p. 372). The risk the arbitrator may make a mistake is a risk the parties assume in exchange for the speedy and relatively inexpensive method of dispute resolution arbitration provides. (*Moncharsh*, at p. 11.)

This extreme deference paid to an arbitrator's award is compelled not only by the policy favoring arbitral finality, but also the rule that arbitrators are not bound by strict rules of law: “[A]rbitrators, unless specifically required to act in conformity with rules of law, may base their decision upon broad principles of justice and equity, and in doing so may expressly or impliedly reject a claim that a party might successfully have asserted in a judicial action.” [Citations.] . . . “[Indeed, A]rbitrators are not bound to award on principles of dry law, but may decide on principles of equity and good conscience, and make their award *ex aequo et bono* [according to what is just and good].” [Citation.]” (*Moncharsh, supra*, 3 Cal.4th at pp. 10-11; *Advanced Micro, supra*, 9 Cal.4th at pp. 374-375.)

This does not mean an arbitrator's authority to decide a dispute is unrestricted or unreviewable. (*Advanced Micro, supra*, 9 Cal.4th at p. 375.) One of the limited grounds for vacating or correcting an arbitrator's award arises when the arbitrator exceeds his or her powers. (§§ 1286.2, subd. (a)(1), 1286.6, subd. (b).) This ground for reviewing an arbitrator's award is necessary because “[t]he powers of an arbitrator derive from, and are limited by, the agreement to arbitrate.” (*Advanced Micro*, at p. 375.) Despite the substantial deference due an arbitrator's award, “the courts retain the ultimate authority to overturn awards as beyond the arbitrator's powers, whether for an unauthorized remedy or decision on an unsubmitted issue.” (*Ibid.*)

“The pivotal question a court must answer when deciding whether an arbitrator exceeded his powers is whether the arbitrator had the authority to rule on a particular issue under the terms of the controlling arbitration agreement.” (*Kahn v. Chetcuti* (2002) 101 Cal.App.4th 61, 65 (*Kahn*).) It is well settled that “arbitrators do not

‘exceed[] their powers’ . . . merely by rendering an erroneous decision on a legal or factual issue, so long as the issue was within the scope of the controversy submitted to the arbitrators.” (*Moshonov, supra*, 22 Cal.4th at p. 775; *Moncharsh, supra*, 3 Cal.4th at p. 28.) Indeed, when an issue is within the scope of the issues submitted for binding arbitration, an arbitrator does not exceed his or her powers by rendering an erroneous decision “even where such [decision] would be reversible legal error if made by a court in civil litigation.” (*Moore v. First Bank of San Luis Obispo* (2000) 22 Cal.4th 782, 784 (*Moore*)). “A contrary holding would permit the exception to swallow the rule of limited judicial review; a litigant could always contend the arbitrator erred and thus exceeded his powers.” (*Moncharsh*, at p. 28)

““In determining whether an 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. [Citation.]’ [Citation.]” (*Kelly Sutherlin McLeod Architecture, Inc. v. Schneickert* (2011) 194 Cal.App.4th 519, 528 (*Kelly Sutherlin*)). In other words, we review the trial court’s decision de novo, but we do not review the arbitrator’s decision de novo. (*Advanced Micro, supra*, 9 Cal.4th at pp. 375-376 & fn. 9.)

B. *The Arbitrator Did Not Exceed His Powers by Awarding Case Her Attorney Fees*

Appellants contend the arbitrator’s award should be corrected to remove Case’s attorney fee award because the arbitrator exceeded his powers by making the award. According to Appellants, no contractual basis existed for awarding Case her attorney fees and therefore the arbitrator lacked the power to make a fee award. Appellants’ argument fails because it ignores the arbitrator’s broad power to decide submitted issues and the deference we must pay to the arbitrator’s decision on submitted issues.

As stated above, the question presented when deciding whether an arbitrator exceeded his or her powers by deciding a particular issue is whether the parties submitted that issue to the arbitrator for resolution. (*Moore, supra*, 22 Cal.4th at p. 784; *Kahn, supra*, 101 Cal.App.4th at p. 65.) Once the parties submit an issue to arbitration, the courts may not review the arbitrator's resolution of that issue even if the arbitrator's decision would have been reversible error if made by a court. (*Moore*, at p. 784.)

In *Moore*, the plaintiffs sued a bank for fraud, breach of contract, and various other claims based on several secured loan agreements they entered into with the bank. The plaintiffs sought compensatory damages and equitable relief to void the loan agreements and deeds of trust they signed, cancel liens the bank recorded, and enjoin the bank from foreclosing on the plaintiffs' property. The bank filed a cross-complaint, seeking to judicially foreclose on the plaintiffs' property and a deficiency judgment. Both the plaintiffs and the bank sought attorney fees under a fee provision in the secured loan agreements. At the arbitration hearing, the plaintiffs dropped the claims for compensatory damages, but continued to seek equitable relief and attorney fees. The arbitration panel awarded the plaintiffs the requested equitable relief and ordered all parties to pay their own attorney fees without any explanation. The plaintiffs petitioned to correct the arbitration award to include their attorney fees. They argued the arbitrators exceeded their power by denying the plaintiffs their attorney fees because they were the prevailing parties as a matter of law and therefore the arbitrators were required to award them attorney fees under the secured loan agreements' fee provision. Both the trial court and the Court of Appeal rejected the plaintiffs' request. (*Moore, supra*, 22 Cal.4th at pp. 784-786.)

The Supreme Court affirmed: “[U]nder the principle of arbitral finality . . . , the arbitrators' award in the present case could not be judicially corrected to award plaintiffs their attorney fees. By agreement of the contracting parties, the fee question was within the arbitrators' powers to decide. Both plaintiffs and defendant prayed for

fees in their complaints. The controversy was ordered to binding arbitration pursuant to an agreement to arbitrate ‘all disputes, claims and controversies between us’ [¶] Under these circumstances the arbitrators had the power to decide the entire matter of recovery of attorney fees. The recovery or nonrecovery of fees being one of the ‘contested issues of law and fact submitted to the arbitrator for decision’ [citation], the arbitrators’ decision was final and could not be judicially reviewed for error. . . . [¶] . . . Having submitted the fees issue to arbitration, plaintiffs cannot maintain the arbitrators exceeded their powers . . . by deciding it, even if they decided it incorrectly.” (*Moore, supra*, 22 Cal.4th at pp. 786-787.)

Here, HMC submitted its dispute with Case to arbitration pursuant to the Operating Agreement’s arbitration provision, which provided, “Any action to enforce or interpret this Agreement or to resolve disputes between the Members or by or against any Member shall be settled by arbitration” HMC’s Amended Claim sought a declaration that Case was not an equity member of HMC, the Operating Agreement was unenforceable, and Case must pay to HMC the approximately \$85,000 she received from the Partnership under the Purchase Agreement and the \$225,000 she received from HMC under the Severance Agreement. The Amended Claim prayed for attorney fees “[t]o the extent allowed by the agreements referenced above.” Under the Operating Agreement, Case also submitted all claims she had against HMC and the Ramadans to arbitration. Her Counter-Claim prayed for attorney fees “as permitted by law.”

After conducting the arbitration over 10 days, the arbitrator issued his Interim Award. He found the Operating Agreement was unenforceable, but Case was nonetheless an equity member of HMC entitled to receive a pro rata share of the profits and all other rights associated with membership in HMC. The arbitrator denied all of HMC’s claims for relief against Case other than a declaration the Operating Agreement was unenforceable, and found the Ramadans breached the fiduciary duties they owed Case. Finally, the arbitrator awarded Case compensatory and punitive damages against

the Ramadans and stated, “Any party may make an appropriate motion for an award of attorney’s fees and costs.”

Case submitted a fee motion seeking attorney fees and costs pursuant to a fee provision in the Purchase Agreement. HMC and the Ramadans filed a joint fee motion seeking attorney fees and costs under the fee provision in the Operating Agreement. Both sides argued they were the prevailing party and the other side should be denied all fees. The arbitrator then issued his Final Award, awarding Case her attorney fees and costs against HMC and the Ramadans without any explanation.

Accordingly, as in *Moore*, Appellants and Case submitted the attorney fee issue to the arbitrator for resolution and Appellants cannot now maintain the arbitrator exceeded his authority by deciding the issue, even if he decided it incorrectly. (*Moore, supra*, 22 Cal.4th at pp. 786-787; see also *Moshonov, supra*, 22 Cal.4th at p. 773 [having submitted attorney fee issue to the arbitrator, the losing party may not obtain judicial review by arguing the arbitrator erroneously interpreted a contractual attorney fee provision or erred in applying that provision to the facts presented]; *Kahn, supra*, 101 Cal.App.4th at pp. 65-67 [same]; *Delaney v. Dahl* (2002) 99 Cal.App.4th 647, 654-657 (*Delaney*) [same]; *Pierotti, supra*, 81 Cal.App.4th at pp. 23-26; *Creative Plastering, Inc. v. Hedley Builders, Inc.* (1993) 19 Cal.App.4th 1662, 1665-1666 [same].)

Appellants do not dispute they submitted the attorney fee issue to the arbitrator, but they nonetheless argue the arbitrator exceeded his powers in making the award because he relied on the Purchase Agreement as the contractual basis for awarding Case her fees. In Appellants’ view, the Purchase Agreement provided no legal basis for an attorney fee award to Case based on the underlying claims. Specifically, Appellants contend the Purchase Agreement did not provide a basis for a fee award against HMC because the Partnership, not HMC, entered into that agreement with Case and HMC did not present any claim based on the Purchase Agreement at the arbitration hearing. Similarly, Appellants contend the Purchase Agreement may not support a fee award

against the Ramadans because neither Case nor the Ramadans asserted a claim based on the Purchase Agreement. These arguments fail because they ignore the deference we must give to the arbitrator's award and improperly ask us to review the factual and legal basis for the arbitrator's attorney fee award.

Appellants submitted the attorney fee issue to the arbitrator and made all of these same arguments to the arbitrator. The arbitrator considered Appellants' arguments, interpreted the Purchase Agreement and all other contracts submitted during the arbitration, and concluded Case was entitled to recover her attorney fees. The arbitrator was therefore free to decide the fee issue "on any legal or factual basis, whether or not any party has relied upon that particular basis." (*Moshonov, supra*, 22 Cal.4th at p. 777 ["Although the parties, by agreement, can certainly exclude specific questions from arbitration, in the absence of such restriction an arbitrator has the power to decide the submitted matter on any legal or factual basis, whether or not any party has relied upon that particular basis"].) The decision is final and we may not review its legal or factual basis.

Appellants argue *DiMarco v. Chaney* (1995) 31 Cal.App.4th 1809 (*DiMarco*) authorizes us to review the merits of the arbitrator's fee award, but that decision is readily distinguishable. In *DiMarco*, the parties submitted their dispute to arbitration pursuant to a contract that included an attorney fee provision stating the prevailing party "shall" recover his or her attorney fees. The arbitrator ruled in the plaintiff's favor on the underlying claim and found the plaintiff was the prevailing party, but refused to award the plaintiff his attorney fees because the arbitrator found he had the discretion to deny fees to the prevailing party. The trial court denied the plaintiff's petition to correct the arbitration award to include an attorney fee award, but the Court of Appeal reversed. (*Id.* at pp. 1812-1813 & fn. 1.) The *DiMarco* court found the arbitrator exceeded his powers by denying the plaintiff attorney fees because the parties' contract required a fee award for the prevailing party. (*Id.* at p. 1815.)

DiMarco is readily distinguishable because the arbitrator in our case did not make any finding that prohibited him from awarding Case her attorney fees. Indeed, the Supreme Court has distinguished *DiMarco* on this same ground in a case that is much more analogous to our case than *DiMarco*. (*Moshonov, supra*, 22 Cal.4th at pp. 778-779; see also *Kahn, supra*, 101 Cal.App.4th at pp. 67-68 [distinguishing *DiMarco* on similar grounds].) In *Moshonov*, the arbitrator refused to award contractual attorney fees to the party he found was the prevailing party because the arbitrator also found the contractual attorney fee provision did not apply to the tort claims at issue. The trial court and the Court of Appeal refused to correct the award to include an attorney fee award and the Supreme Court affirmed. (*Moshonov*, at pp. 774-775, 779.) The *Moshonov* court declined to rule on whether *DiMarco*'s reasoning was correct because it found *DiMarco* readily distinguishable: The arbitrator in *Moshonov* refused to award attorney fees based on his interpretation regarding the scope of the contractual attorney fee provision, but the arbitrator in *DiMarco* simply refused to award fees despite finding the contractual conditions for a fee award were satisfied. The *Moshonov* court concluded the interpretation of the attorney fee provision's scope was an issue submitted to the arbitrator and therefore it could not review that interpretation. (*Id.* at pp. 778-779.) Here, the interpretation of the Purchase Agreement as a basis for awarding Case her attorney fees was an issue the parties submitted to the arbitrator and we cannot substitute our judgment for the arbitrator's on that issue. The arbitrator made no findings that prevented him from awarding Case her fees under the Purchase Agreement.

Finally, Appellants contend *Thompson v. Jespersen* (1990) 222 Cal.App.3d 964 (*Thompson*), compels the conclusion the arbitrator exceeded his powers by awarding Case her attorney fees without any contractual basis for doing so. *Thompson*, however, is readily distinguishable and we previously questioned its precedential value. *Thompson* involved an arbitration between the plaintiffs and a contractor they hired. The arbitrators awarded the plaintiffs damages and attorney fees. The contractor petitioned the trial

court to correct the award by deleting attorney fees on the ground the arbitrators exceeded their powers by awarding fees. The trial court denied the petition, but the Court of Appeal reversed. The *Thompson* court found the contract pursuant to which the parties submitted their dispute to arbitration did not include an attorney fee provision and therefore the arbitrators lacked the power to award fees to either party. (*Id.* at pp. 967-968.)

Thompson is readily distinguishable because the only contract at issue in that case did not include an attorney fee provision and the parties did not submit the attorney fee issue to the arbitrators for resolution. Accordingly, the arbitrators exceeded their powers because they decided an unsubmitted issue. As explained above, Appellants and Case submitted the attorney fee issue to the arbitrator and the contracts at issue included attorney fee provisions. Other cases have distinguished *Thompson* on this same ground. (See, e.g., *Delaney, supra*, 99 Cal.App.4th at p. 656; *Pierotti, supra*, 81 Cal.App.4th at p. 26.) Moreover, in *Delaney*, we questioned *Thompson*'s precedential value because it was decided before *Moncharsh* and therefore did not have the benefit of the Supreme Court's insight regarding the amount of deference courts must pay to an arbitrator on an issue submitted to him or her for resolution. (*Delaney*, at p. 656.) Regardless, *Thompson* simply does not apply in our case because the Appellants and Case submitted the attorney fee issue to the arbitrator.

III

DISPOSITION

The judgment is affirmed. Case shall recover her costs on appeal.

ARONSON, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

IKOLA, J.