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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

ROLLER BEARING COMPANY OF AMERICA, INC., Plaintiff and Appellant, v. HONEYWELL INTERNATIONAL, INC., Defendant and Respondent.	B231228 (Los Angeles County Super. Ct. No. BS127074)

APPEAL from a judgment of the Superior Court of Los Angeles County. Michael Johnson and Joseph R. Kalin, Judges. Affirmed.

Bohm, Matsen, Kegel & Aguilera, James G. Bohm and Matthew J. Salcedo for Plaintiff and Appellant.

Jenner & Block, Rick Richmond, Kenneth K. Lee, and Damon Thayer; Osborn Maledon, David B. Rosenbaum, Thomas L. Hudson, and Mark P. Hummels for Defendant and Respondent.

Plaintiff and appellant Roller Bearing Company of America, Inc. (RBC) appeals from the judgment confirming an arbitration award in favor of defendant and respondent Honeywell International, Inc. (Honeywell) in this breach of contract dispute. RBC contends the judgment must be reversed because the arbitrator disregarded the parties' contractual choice of law provision, considered inadmissible parol and extrinsic evidence to contradict the terms of the contract, and ignored the contractual notice provisions.

The arbitrator did not disregard the choice of law provision, and none of the remaining arguments RBC advances is a valid ground for vacating the arbitration award under Code of Civil Procedure section 1286.2. We therefore affirm the judgment.

BACKGROUND

1. The parties and their pre-contract negotiations

RBC is a manufacturer of precision bearing assemblies used in the aerospace industry. Honeywell uses precision bearing assemblies in engines it manufactures for use in business and general aviation aircraft. Honeywell contracts with manufacturers such as RBC to obtain the bearing assemblies.

In late 2007, Honeywell received notice that one of its bearing suppliers, Timken, was restricting Honeywell's allocation of bearing assemblies because Timken had oversold its production capacity. The restricted allocation would have resulted in Honeywell's inability to satisfy its own customer demands and substantial lost revenue.

Given the anticipated bearing assembly shortfall, Honeywell began searching for an alternative supply source. One manufacturer, New Hampshire Ball Bearings (NHBB), was willing to commit to supply Honeywell with parts, but would not commit to delivery until September 2008 at the earliest. Honeywell placed orders with NHBB for deliveries in September 2008 and beyond, but continued to search for another alternative supplier to meet Honeywell's more immediate needs.

In late 2007 and early 2008, Honeywell's representatives met with representatives from RBC to discuss a potential agreement for bearing assemblies. Honeywell explained that it had contracted with NHBB for September 2008 deliveries but that Honeywell would do business with RBC instead if RBC could provide the parts sooner. RBC

indicated that it could commit to July 2008 deliveries of six critical roller bearing parts for which Honeywell had the most acute and immediate need (the Big Six) if Honeywell would agree to use RBC as the exclusive supplier of the Big Six parts.

2. The memorandum of understanding and long term contract

On January 18, 2008, RBC and Honeywell executed a memorandum of understanding (MOU) covering 2,400 parts to be delivered in July 2008. These parts were described in exhibit A to the MOU as the "'Urgent MOU' Req. Quote Qty." On February 1, 2008, Honeywell issued purchase orders to RBC for the 2,400 parts, with "on dock delivery required" on July 21, 2008. Shortly thereafter, Honeywell issued purchase orders for an additional 2,250 parts scheduled for delivery in October 2008.

On February 26, 2008, RBC and Honeywell entered into a long term contract (the LTC) covering the Big Six parts, including the 2,400 parts identified in exhibit A to the MOU. Twenty-one additional bearing assembly parts were added to the LTC via a subsequent contract amendment.

As a condition of the LTC, RBC required that it receive 100 percent of Honeywell's requirements for Big Six parts. RBC understood, however, that Honeywell would continue to rely on Timken to meet its needs for Big Six parts until such time as RBC had ramped up its production and had been validated as an approved supplier of these parts. In addition, Honeywell reserved the right under the LTC to purchase parts from other suppliers in certain circumstances, including RBC's nonperformance. Paragraph 2(d) of the LTC states in relevant part:

> "Honeywell reserves the right to use other sources under specific circumstances, such as, to meet specific customer call-outs, in response to supplier non-performance, or to meet requirements for un-forecasted demand which [RBC] could not fulfill. The quantity of purchased off contract will be minimized to the quantity necessary to meet the specific requirements."

Paragraph 7(a) of the LTC required RBC to maintain an average quarterly "on time" delivery performance of 95 percent in 2008 and 96 percent in 2009. RBC agreed that "on time" meant that the product was received on the date specified in

Honeywell's purchase order or "no more than 5 days prior" to the date on the purchase order. Paragraph 7(b) of the LTC provides that if RBC failed to meet its on time delivery commitments two months in a row, Honeywell could require RBC to submit a performance improvement plan, due within 30 days of a request.

Paragraph 8(a) required RBC to achieve certain monthly quality performance commitments. Similar to the on time delivery commitments, Honeywell reserved the right to insist on a performance improvement plan should RBC fail to meet quality performance commitments.

The LTC includes General Purchase Order Provisions (GPOP) that apply to all purchase orders issued pursuant to the LTC. Paragraph 10(B) of the GPOP accorded Honeywell the right to terminate in whole or part any purchase orders issued to RBC "if [RBC] fails or refuses to perform in accordance with any of the requirements of this order or to make progress so as to endanger performance hereunder (a 'Default') and does not submit a Cure Plan acceptable to [Honeywell] within ten (10) days after receipt of written notice from [Honeywell]."

Paragraph 20 of the LTC contains an integration clause, which states: "This Contract including those additional terms or conditions incorporated herein by reference and made a part hereof, constitutes the entire Contract between the Parties with respect to the matters contained herein."

Paragraph 28 of the GPOP contains an agreement by the parties to arbitrate any disputes concerning purchase orders in accordance with the Federal Arbitration Act (FAA) and the CPR Institute for Dispute Resolution Rules for Non-Administered Arbitration (CPR rules):

> "DISPUTES. Any dispute arising out of or relating to this order, including the breach, termination, or validity hereof, will be finally resolved by a sole arbitrator in accordance with the CPR Institute for Dispute Resolution Rules for Non-Administered Arbitration then currently in effect. The arbitration will be governed by the Federal Arbitration Act, 9 [United States Code] [sections] 1-16, and judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. The

> place of arbitration will be the city and state of Buyer's place of business that issued this order."

In paragraph 29 of the GPOP, the parties further agreed that New York law would govern their agreement and its interpretation:

> "CHOICE OF LAW. This order shall, in all respects, be interpreted, construed, and governed by and in accordance with the laws of the State of New York, disregarding any conflict of law provisions which may require the application of the laws of another jurisdiction."

3. RBC's performance under the LTC

RBC failed to meet the July 21, 2008 delivery date for the 2,400 "Urgent MOU" parts covered by the purchase orders issued in February 2008. Following the missed July 2008 deliveries, Honeywell requested, in October 2008, assurances from RBC that it could remedy its delivery backlog and meet its commitments on a going forward basis. In response to that request, RBC stated that it was unsure whether it wanted to continue with Honeywell's program and that it needed to push back all scheduled delivery dates by at least two months. Faced with a shortfall of necessary parts, Honeywell placed Big Six orders with other suppliers.

During the fourth quarter of 2008, an economic downturn caused Honeywell customers to cancel or postpone engine orders, which in turn caused Honeywell's projected need for Big Six parts to fall substantially. As a result, Honeywell cancelled certain of its Big Six orders with RBC and pushed out delivery on other orders.

In 2009, the parties' relationship deteriorated significantly. RBC refused to take back, rework, or replace parts that Honeywell had rejected as nonconforming.

4. The arbitration

The parties filed respective claims for arbitration and agreed to submit their dispute to Christopher M. Skelly, a retired Arizona superior court judge and a private arbitrator. A key disputed issue in the arbitration was whether RBC had promised to make certain deliveries to Honeywell in 2008 or had merely pledged to use its best efforts to do so.

RBC maintained that the LTC established the only delivery deadlines relevant to the parties' dispute. RBC claimed that Honeywell breached the LTC by issuing purchase orders to other suppliers, in contravention of the contract provisions requiring Honeywell to purchase 100 percent of its Big Six parts from RBC and by cancelling orders Honeywell had previously placed with RBC. Honeywell argued that RBC's failure to perform under the LTC, including RBC's failure to timely deliver the 2,400 "Urgent MOU" parts, authorized Honeywell to cancel orders with RBC and to place orders with other suppliers. Honeywell further claimed RBC's breaches entitled Honeywell to terminate the LTC.

The parties agreed to submit written witness statements in advance of the arbitration. RBC thereafter submitted a motion in limine seeking to preclude Honeywell from introducing all evidence regarding RBC's failure to deliver parts in 2008 and RBC's failure to deliver conforming parts and refusals to accept the return of nonconforming parts in 2009. RBC maintained that all such evidence was inadmissible under New York law because the LTC was an integrated contract that contained no enforceable commitment by RBC to deliver anything prior to January 2009. Honeywell responded by arguing that RBC's position contradicted the evidence, including the contract documents themselves, as well as RBC's admissions regarding its failure to meet the 2008 delivery commitments. Honeywell further argued the LTC was ambiguous regarding delivery requirements and the evidence was admissible to resolve any ambiguity. The arbitrator denied RBC's motion in limine but granted RBC leave to renew its objections during the witnesses's testimony at the hearing.

5. The arbitration award

After a three-day evidentiary hearing, the parties submitted closing memoranda and draft proposed awards. The arbitrator issued an award on April 5, 2010, denying RBC's claims and recognizing Honeywell's right to terminate the LTC for RBC's material breaches of contract.

The arbitrator concluded that Honeywell did not breach the LTC by placing orders with other suppliers after signing the MOU and the LTC. The arbitrator found that

Honeywell placed orders with other bearing suppliers in response to RBC's nonperformance, including RBC's failure to supply parts scheduled for delivery in July 2008. The arbitrator rejected RBC's argument that the 2008 deliveries were "best efforts" pledges by RBC rather than contractual commitments, and found that the parties' course of performance, contemporaneous statements, and multiple documents confirmed that both RBC and Honeywell considered the 2008 deliveries to be contractual commitments.

The arbitrator further concluded that Honeywell did not breach the LTC by cancelling orders it had placed with RBC. The arbitrator found that certain cancellations were in response to reduced demand by Honeywell's customers, and that the GPOP expressly allowed Honeywell to cancel orders with RBC under those circumstances. The arbitrator also found that the remaining cancellations were in response to RBC's material breaches, and that the terms of the GPOP authorized Honeywell to cancel the orders and to terminate the LTC.

Honeywell terminated the LTC on April 6, 2010. On April 15, 2010, RBC submitted objections to the arbitration award and requested de novo reconsideration of its claims. RBC argued that the arbitrator had erred under New York law by considering evidence apart from the integrated LTC. The arbitrator agreed to consider RBC's objections, and the parties submitted additional briefing on the matter.

After considering the additional briefing, the arbitrator overruled RBC's objections. The arbitrator reasoned: "New York UCC provisions permit extrinsic evidence to interpret contractual ambiguities. While written terms of an integrated contract may not be contradicted by evidence of a prior or contemporaneous oral agreement, under the law of New York and virtually everywhere else, written terms may be explained or supplemented by evidence of course of dealing or performance. [Honeywell's] position was not that the parties had a prior contemporaneous oral agreement that was different from the integrated contract."

6. Petition to vacate the arbitration award

RBC filed a petition to vacate the arbitration award. Following a hearing, the trial court denied the petition, confirmed the award, and entered judgment in favor of Honeywell. This appeal followed.

DISCUSSION

I. Scope and standard of review

"[I]n reviewing a judgment confirming an arbitration award, we must accept the trial court's findings of fact if substantial evidence supports them, and we must draw every inference to support the award. [Citation.] On issues concerning whether the arbitrator exceeded his powers, we review the trial court's decision de novo . . . ." (*Alexander v. Blue Cross of California* (2001) 88 Cal.App.4th 1082, 1087.) De novo review does not apply, however, to the arbitration award itself.

California maintains a strong public policy in favor of private arbitration as an expedient and relatively inexpensive means of ending a dispute. (*Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 10 (*Moncharsh*); *Ericksen, Arbuthnot, McCarthy, Kearney & Walsh, Inc. v. 100 Oak Street* (1983) 35 Cal.3d 312, 322.) Because of this important public policy, contractual arbitration awards are subject to extremely narrow judicial review. (*Berglund v. Arthroscopic & Laser Surgery Center of San Diego, L.P.* (2008) 44 Cal.4th 528, 534.) A court may not review the underlying merits of the controversy or the validity of the arbitrator's reasoning. (*Moncharsh, supra*, at p. 11.) "[I]t is the general rule that, with narrow exceptions, an arbitrator's decision cannot be reviewed for errors of fact or law." (*Ibid.*) A contractual arbitration award may be vacated only on the statutory grounds set forth in Code of Civil Procedure section 1286.2, subdivision (a).[1] (*Moncharsh*, at p. 33.)

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[1] Section 1286.2, subdivision (a) provides: "Subject to Section 1286.4 [conditions to vacation of award], the court shall vacate the award if the court determines any of the following: [¶] (1) The award was procured by corruption, fraud or other undue means. [¶] (2) There was corruption in any of the arbitrators. [¶] (3) The rights of the party were substantially prejudiced by misconduct of a neutral arbitrator. [¶] (4) The arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of

RBC contends the arbitrator acted in "manifest disregard of the law" by disregarding the choice of law provision requiring application of New York law and the CPR rules for dispute resolution, by relying on inadmissible parol and extrinsic evidence to contradict the terms of an integrated contract, and by refusing to enforce the notice provisions of the contract. The federal common law doctrine allowing review of an arbitration award for "manifest disregard of the law" does not apply to a postarbitration action filed in a California state court, even if the arbitration was governed by the FAA. (*Siegel v. Prudential Ins. Co.* (1998) 67 Cal.App.4th 1270, 1290.) The FAA does not preempt California law limiting judicial review of arbitration awards.[2] (*Id.* at pp. 1280, 1290.) Because the exclusive grounds for vacating an arbitration award are those set forth in Code of Civil Procedure section 1286.2, we address RBC's claim that the arbitrator acted in "manifest disregard of the law" as an argument that the arbitrator exceeded the scope of his authority.

II. Alleged failure to apply New York law and CPR rules

The record does not support RBC's contention that the arbitrator exceeded the scope of his authority by refusing to apply New York law or the CPR rules. The arbitrator's written ruling on RBC's request for de novo consideration of the arbitration

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the decision upon the controversy submitted. [¶] (5) The rights of the party were substantially prejudiced by the refusal of the arbitrators to postpone the hearing upon sufficient cause being shown therefor or by the refusal of the arbitrators to hear evidence material to the controversy or by other conduct of the arbitrators contrary to the provisions of this title. [¶] (6) An arbitrator making the award either: (A) failed to disclose within the time required for disclosure a ground for disqualification of which the arbitrator was then aware; or (B) was subject to disqualification upon grounds specified in Section 1281.91 but failed upon receipt of timely demand to disqualify himself or herself as required by that provision. However, this subdivision does not apply to arbitration proceedings conducted under a collective bargaining agreement between employers and employees or between their respective representatives."

[2] Federal law governing vacatur may apply in an action filed in California state court only if the parties unambiguously agree to enforcement of the arbitration award under the FAA. (*Countrywide Financial Corp. v. Bundy* (2010) 187 Cal.App.4th 234, 247.) The parties here did not agree to do so.

award specifically addressed RBC's claim that the arbitrator had disregarded the CPR rules and New York law governing parol evidence and integrated contracts:

> "Certainly, New York UCC provisions permit extrinsic evidence to interpret contractual ambiguities. While written terms of an integrated contract may not be contradicted by evidence of a prior or contemporaneous oral agreement, under the law of New York and virtually everywhere else, written terms may be explained or supplemented by evidence of course of dealing or performance. [Honeywell's] position was not that the parties had a prior or contemporaneous oral agreement that was different from the integrated contract. [¶] In my opinion the draft award complies with the CPR rules even though New York UCC provisions are not specifically referenced. [RBC] does not cite any New York UCC provision that is applicable and materially different from the UCC as adopted elsewhere in regard to the parol evidence rule. Here, extrinsic evidence had to be considered. It would have been error to reject it, even under New York law cited by [RBC]. [RBC] was not entitled to judgment as a matter of law because its proffered interpretation of the contract documents was the only possible reasonable interpretation of those documents. [¶] While New York law applied per the contract documents, the case really turned on the contract documents themselves and the parties' conduct in the performance of the contract documents. Citations to the many UCC provisions cited by [RBC] are not necessary to a reasoned and supported award."

RBC's argument that the arbitrator disregarded New York law is "flatly contradict[ed]" by the record, as the trial court noted in its ruling below.

III. Alleged errors in admitting and relying upon parol and extrinsic evidence

RBC's argument that the arbitrator admitted and applied inadmissible parol and extrinsic evidence in contravention of New York law is simply another way of saying that the arbitrator committed legal error. Alleged legal error is not a valid ground for vacating an arbitration award. (*Moncharsh, supra*, 3 Cal.4th at p. 11 ["an arbitrator's decision cannot be reviewed for errors of fact or law]".) An arbitrator does not exceed his powers within the meaning of Code of Civil Procedure section 1286.2 by erroneously resolving a legal or factual issue "so long as the issue was within the scope of the controversy submitted." (*Moshonov v. Walsh* (2000) 22 Cal.4th 771, 775.) Interpretation and enforcement of the LTC were squarely within the scope of the controversy the parties submitted to the arbitrator in this case.

RBC argues at length against the arbitrator's determinations that the LTC was ambiguous, that the terms of the LTC were not contradicted by the terms of the MOU or the purchase orders issued by Honeywell, and that RBC failed to timely deliver conforming parts in accordance with the parties' agreement. Those findings all go to the merits of the parties' dispute and cannot be revisited in this appeal. (*Moncharsh, supra*, 3 Cal.4th at p. 11 ["'The merits of the controversy between the parties are not subject to judicial review'"].)

IV. Alleged error regarding LTC notice provisions

RBC's claim that the arbitrator disregarded the notice provisions of the LTC, which required Honeywell to provide written notice of nonperformance before cancelling or decreasing any order, is also a claim of alleged legal error by the arbitrator and is not a valid ground for vacating the arbitration award. (*Moncharsh, supra*, 3 Cal.4th at p. 11.) That claim is also unsupported by the record. The arbitrator specifically found that section 2(d) of the LTC did not require Honeywell to provide notice before exercising its right to place orders with other suppliers pursuant to that section. The arbitrator further found that Honeywell's request for a cure plan and adequate assurances of future performance from RBC in October 2008, and RBC's refusal to provide such assurances, was a sufficient ground for terminating the purchase orders under section 10(B) of the GPOP.

RBC has failed to establish any valid basis for vacating the arbitration award. The trial court did not err by denying the petition to vacate the award.

DISPOSITION

The judgment is affirmed. Honeywell is awarded its costs on appeal.

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_____, J.
CHAVEZ

We concur:

_____, P. J.
BOREN

_____, J.
DOI TODD