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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

WELLS FARGO BANK, N.A., Plaintiff and Respondent, v. CAMDEN PROPERTIES, LTD., Defendant and Appellant.	B231273 (Los Angeles County Super. Ct. Nos. BS114845 & BC391476)

APPEAL from a judgment and orders of the Superior Court of Los Angeles County, Soussan G. Bruguera and Yvette M. Palazuelos, Judges. Affirmed.

Browne Woods George, Eric M. George, and Ira Bibbero for Defendant and Appellant.

White & Case, John A. Sturgeon, Dan Woods, Rachel J. Feldman, and Melissa J. Nadal for Plaintiff and Respondent.

INTRODUCTION

This is appellant Camden Properties, Ltd.'s (Camden) and respondent Wells Fargo Bank, N.A.'s (Wells Fargo) second appearance before us. Camden and Wells Fargo are the lessor and lessee, respectively, of commercial office space in Beverly Hills, California. In 1996, they entered a five-year lease (Lease) that, among other things, gave Wells Fargo the option to extend the lease term for two additional five-year periods. The Lease provided that if Wells Fargo exercised the option to extend, the parties should attempt to agree on the rent to be paid during the extension period, but if they were unable to agree, the rent would be determined by appraisals conducted by two appraisers selected by the parties. If the appraisals differed by less than 10 percent, the rent would be the average of the two appraisals; if the appraisals differed by more than 10 percent, the rent would be determined by a third appraiser whose sole responsibility would be to determine "which of the determinations made by the first two (2) appraisers is most accurate."

In 2007, Wells Fargo exercised its right to extend the Lease for an additional five years. Each party selected an appraiser, whose resulting appraisals were more than 10 percent apart. When the parties could not agree on a third appraiser, Wells Fargo petitioned the superior court to appoint one. Camden opposed the petition, contending that a third appraiser should not be appointed because Wells Fargo's appraisal was not consistent with the terms of the Lease. The superior court agreed and denied the petition.

We reversed, concluding that under the plain language of the Lease, a third appraiser, not a court, was to determine which appraisal most accurately reflected the property's fair rental value. We therefore ordered the trial court to grant the petition and order the appointment of a third appraiser.

Following remand, the parties submitted their dispute to a third appraiser whom they jointly selected. In a final award, the appraiser determined that Wells Fargo appraiser's proposed rent was "the most appropriate." The superior court confirmed that award.

Camden has appealed the order confirming the award, again contending that the award does not comply with the Lease's provisions. Camden has also appealed judgment on the pleadings granted in a related declaratory relief action in which Camden sought judicial construction of the Lease. In this consolidated appeal, Camden contends that both our prior opinion and arbitration case law compelled the trial court to make an independent determination of the award's compliance with the Lease, and the trial court erred in failing to do so.

We disagree. A well-established body of arbitration cases makes clear that substantive review of arbitration awards is permitted in extremely limited circumstances, none of which are present here. Accordingly, we affirm both the judgment and orders granting the petition to confirm the award and denying the petition to vacate.

FACTUAL AND PROCEDURAL BACKGROUND[1]

I. The Lease

Camden leased portions of an office building (the office building) to Wells Fargo on June 28, 1996. The Lease was for five years, but it gave Wells Fargo the option to extend the lease for two additional five-year terms. If Wells Fargo exercised the option to extend the lease term, the Lease provided that rent during the extension term would be determined as follows.

(1) Paragraph 4.2 provided that the monthly base rent during the extension period "shall be the Market Rent (as defined in Section 5.3 below)." Paragraph 5.3 defined "Market Rent" as "the going market rental as of the date of the commencement of the Extension Term for similar space in the area where the Premises are located, taking into consideration location (within the City of Beverly Hills), size, condition, permitted uses (including general retail uses), and improvements (but excluding any alterations or

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[1] Significant portions of this statement of facts are taken from our prior nonpublished opinion, *Wells Fargo Bank, N.A. v. Camden Properties, Ltd.* (Sep. 30, 2009, B211396) (*Wells Fargo I*).

personal property of Tenant installed in the Premises by Tenant at Tenant's expense) for a tenant proposing to sign a lease equal to the Extension Term, and passing on to Tenant (in the form of reduced Market Rent) any cost savings which would be realized by Landlord in extending this Lease including, without limitation, any customary brokerage commissions which would have been paid relative to a nonrenewal tenant and any free rent, tenant improvement allowances, or other tenant concessions that may then be customarily granted to nonrenewal tenants."

(2) Paragraph 5.3.1 provided for a period of negotiation of the "Market Rent" as follows: "Commencing from the date that notice of Tenant's exercise of the option to extend the term is delivered to Landlord and continuing thereafter for thirty (30) days (the 'Negotiation Period'), the parties shall negotiate in good faith the Market Rent. If the parties are unable to agree on the Market Rent prior to the expiration of the Negotiation Period, the matter shall be submitted to arbitration pursuant to the terms and conditions set forth in Section 5.3.2 below."

(3) Paragraph 5.3.2.1 provided for an initial appraisal period based on appraisals prepared by two appraisers. It said: "Within fifteen (15) days after the expiration of the Negotiation Period, each party, at its own cost and by giving notice to the other party, shall appoint an MAI real estate appraiser, with at least five (5) years' full-time commercial appraisal experience in the area where the Premises are located, to appraise and determine the Market Rent. . . . If two (2) appraisers are appointed by the parties, the two (2) appraisers shall independently, and without consultation, prepare an appraisal of the Market Rent within thirty (30) days after their appointment. Each appraiser shall seal its respective appraisal after completion. After both appraisals are completed, the resulting appraisals of the Market Rent shall be opened and compared. If the value of the appraisals differ by no more than ten percent (10%) of the value of the higher appraisal, then the Market Rent shall be the average of the two (2) appraisals."

(4) Paragraph 5.3.2.2 provided for appointment of a third arbitrator if the two appraisals differed by more than 10 percent: "If the values of the appraisals differ by more than ten percent (10%) of the value of the higher appraisal, then within ten (10)

days after the date the appraisals are compared, the two (2) appraisers selected by the parties shall appoint a third similarly qualified appraiser. If the two (2) appraisers fail to so select a third appraiser, a third similarly qualified appraiser shall be appointed at the request of either Landlord or Tenant by the then Presiding Judge of the Superior Court of the State of California for the County of Beverly Hills. The two (2) appraisers shall each then submit his or her independent appraisal in simple letter form to the third appraiser stating his or her determination of the Market Rent (which determination may not be changed from that which was set forth in such appraiser's sealed appraisal). The sole responsibility of the third appraiser shall be to determine which of the determinations made by the first two (2) appraisers is most accurate. The third appraiser shall have no right to propose a middle ground or any modification of either of the determinations made by the first two (2) appraisers. The third appraiser's choice shall be submitted to Landlord and Tenant within fifteen (15) days after the third appraiser has received the written determination from each of the first two (2) appraisers. The Market Rent shall be determined by the selection made by the third appraiser from the determinations submitted by the first two (2) appraisers."

(5) Paragraph 5.3.2.4 provided that "The appraisers shall use their best efforts to fairly and reasonably appraise and determine the Market Rent in accordance with the terms of this Lease." Paragraph 5.3.2.5 provided that the appraisers "shall have no power to modify the provisions of this Lease, and their sole function shall be to determine the Market Rent in accordance with this Section 5.3.2."

II. The Lease Amendments

The parties entered a first lease amendment on April 14, 1998. Through this amendment, the parties agreed that Wells Fargo would continue to lease the eighth floor of the office building (the "Original Premises"), and would also lease the twelfth floor of the office building (the "New Premises"), for 10 years. It further provided an option for Wells Fargo to extend the lease term for an additional five years as follows: "Tenant shall have an option to extend the Term with respect to the New Premises for five (5)

years (the 'Extension Term'). During the Extension Term, the terms and conditions previously applicable to the initial Term with respect to the New Premises shall continue to apply, except that the Monthly Base Rent shall be equal to the fair market base rent therefor. Such fair market base rent shall be the base rental amount that a willing, comparable, non-equity tenant would pay, and a willing, comparable landlord would accept, at arm's length, at Beverly Hills Triangle buildings comparable to the Building, for premises comparable to the New Premises in quality and size (plus or minus 20%), with comparable tenant improvements (excluding those installed by Tenant), under a lease for a five (5) year term entered into not more than six (6) months prior to Tenant's exercise of such option, taking into consideration (a) that the Base Year shall be adjusted by ten (10) years and (b) all economic inducements and concessions then being granted to non-renewal tenants."

In the event that the parties were unable to agree on a fair market base rent, the first lease amendment provided: "Within ten (10) days after . . . notice of exercise is given to Landlord, Landlord shall give Tenant notice of the rental applicable to the Extension Term (the 'Proposal'). The Proposal shall apply to the Extension Term unless Tenant . . . rejects the proposal, in which event the rental applicable to the Extension Term shall be determined by appraisal in a manner corresponding to that set forth in Section 5.3.2 of the Lease."

The parties entered a second amendment to lease on May 10, 2004. The amendment provided for the lease of additional space in the office building (the "Additional Premises") through September 30, 2008. It further provided that "Tenant shall have the identical right (and subject to the same terms and conditions) to extend the term of the Lease with respect to the Additional Premises as Tenant has with respect to the New Premises (e.g., one time right to extend the term for 5 years at the then fair market base rent)."

III. Wells Fargo's Exercise of the Option to Extend the Lease and the Resulting Dispute

In December 2007, Wells Fargo exercised its option to extend the term of its lease. In January 2008, Camden proposed a rental rate of $4.95 per square foot per month. Wells Fargo rejected the proposed lease rate and notified Camden that it would hire an appraiser pursuant to section 5.3.2 of the Lease.

Wells Fargo and Camden each obtained appraisals. Camden's appraiser determined that the fair market base rent was $4.85 per square foot, and Wells Fargo's appraiser determined that the fair market base rent was $4.20 per square foot. Since the appraisals were more than 10 percent apart, the parties' appraisers attempted to agree on a third appraiser pursuant to section 5.3.2.2 of the lease. When they were unable to do so, Wells Fargo filed a petition for appointment of an appraiser (petition) with the superior court.

Camden opposed the petition. It claimed that the superior court lacked jurisdiction to appoint a third appraiser because Wells Fargo had not obtained a proper appraisal under the terms of the Lease. Specifically, Camden asserted that Wells Fargo's appraiser had determined market rent by deducting both a tenant improvement allowance of $0.33 per square foot and "customary" leasing commissions of $0.26 per square foot. According to Camden, these deductions were not authorized by the Lease. Thus, Camden asserted, Wells Fargo's appraisal was not performed under the terms of the Lease, and the court lacked jurisdiction to appoint a third appraiser: "An appraisal that incorporates impermissible deductions into the fair market base rent is, by definition, not obtained 'in accordance with the terms of' the lease. The parties agreed to the appointment of a third appraiser only upon the obtaining of appraisals made in accordance with the terms of the lease . . . . While [Wells Fargo] may correct this situation by obtaining a new appraisal done in accordance with the terms of the lease, until that happens—and only in the event the other conditions precedent to the appointment of a third appraiser are satisfied—this Court may not appoint a third appraiser."

Concurrently, Camden filed a complaint for declaratory relief seeking a declaration that Wells Fargo's appraisal was invalid because it was not determined in accordance with the terms of the Lease. Specifically, Camden asked the court to declare "that [¶] (a) the fair market base rent, as that term is used in the First Lease Amendment and the Second Amendment to Lease, does not permit the deduction from the rent for the Extension Term of tenant improvement allowances; [¶] (b) the fair market base rent, as that term is used in the First Lease Amendment and the Second Amendment to Lease, does not permit the deduction from the rent for the Extension Term of customary brokerage commissions that would have been paid relative to a nonrenewal tenant; [¶] (c) defendant's appraisal impermissibly deducted from its rent for the Extension Term both $0.33 in tenant improvement allowances and $0.26 in brokerage commissions; [¶] (d) defendant's appraisal, adjusted to conform to the applicable leases, is $4.79 per square foot; [¶] (e) under the terms of the applicable leases, the fair market base rent for the Extension Term is $4.82 (the average of plaintiff's appraiser's determination of $4.85 per square foot and defendant's appraiser's corrected determination of $4.79 per square foot); and [¶] (f) the applicable leases do not, therefore, permit the appointment of third appraiser." In the alternative, Camden sought a declaration that "(a) the fair market base rent, as that term is used in the First Lease Amendment and the Second Amendment to Lease, does not permit the deduction from the rent for the Extension Term of either tenant improvement allowances or customary brokerage commissions that would have been paid relative to a nonrenewal tenant; (b) defendant's appraisal impermissibly deducted from its rent for the Extension Term both tenant improvement allowances and brokerage commissions; and (c) defendant's appraisal is therefore invalid and has no force or effect under the terms of the First Lease Amendment or the Second Amendment to Lease."

The two cases were consolidated. The court held a hearing on the petition to appoint an appraiser on September 11, 2008, and denied the petition on September 23, 2008.

IV. The First Appeal

Wells Fargo appealed from the denial of the petition, and on December 18, 2008, it obtained a writ of supersedeas from this court staying the declaratory relief action throughout the pendency of the appeal.

Wells Fargo contended on appeal that the parties never agreed to have a court interpret the Lease. Instead, it urged that under the plain language of the Lease, if the first two appraisals differed by more than 10 percent, a third appraiser "shall" decide which is "most accurate." Camden disagreed, contending that the Lease contained several steps before a third appraiser could be appointed: (1) Camden must propose rent for the Extension Term; and (2) if Wells Fargo rejects the proposed rent, each party must select its own appraiser, who must determine the "fair market base rent" "in accordance with the terms of this Lease." If the appraisal step was not properly completed—that is, if an appraiser did not determine fair market base rent "in accordance with the terms of the Lease"—then appointment of a third appraiser would be a violation of the Lease. As a result, Camden urged, a court could not rule on a petition to compel, which it likened to a suit in equity to compel specific performance of a contract, without first deciding whether the appraisal step had been properly completed.

We concluded that the appraisal provisions of the Lease constituted an agreement to arbitrate, and thus the appeal must be resolved with reference to statutory arbitration provisions. We further concluded that, under the plain language of the Lease, the parties intended a third appraiser, not a court, to review the appraisals' accuracy and conformance with the appraisal provisions of the Lease in the first instance, and thus that the trial court erred in failing to order the appointment of a third appraiser. We explained: "[T]he Lease explicitly tasks the *appraisers* with making substantive determinations about the content of the appraisals, but provides no such role for the court. Specifically, it provides in paragraph 5.3.2.4 that the initial two appraisers shall use their best efforts to fairly and reasonably appraise and determine rent '*in accordance with the terms of this Lease*,' and it provides in paragraph 5.3.2.5 that the appraisers' sole function shall be to determine rent '*in accordance with this Section 5.3.2*.' Further, in paragraph

5.3.2.2, it states that the third appraiser shall 'determine which of the determinations made by the first two (2) appraisers *is most accurate*.' Thus, it expressly charges the appraisers with making determinations 'in accordance with' the Lease's terms. In contrast, on its face it seeks no such determination by the court. Instead, it provides only that the presiding judge of the superior court shall appoint a third appraiser if requested to do so by either landlord or tenant. Accordingly, on its face it seeks no substantive determinations by the court regarding the appraisals' content.

"Moreover, as in *Helzel* [*v. Superior Court* (1981) 123 Cal.App.3d 652 (*Helzel*)], the Lease reflects the parties' intent that the determination of rent during the extension term shall be made expeditiously. It provides, for example, that the parties shall negotiate the rent for no more than 30 days from notice of Wells Fargo's exercise of the option to extend the lease term, and that if the parties are unable to agree on the rent within 30 days, the issue shall be submitted to arbitration. It further provides that each party shall appoint an appraiser within 15 days of the expiration of the negotiation period, and that the appraisers shall prepare their appraisals within 30 days. And, it provides that if the two appraisals differ by more than 10 percent, then the two appraisers shall select a third appraiser within 10 days, and the third appraiser shall make a determination within 15 days. In view of the expeditious appraisal procedure explicitly contemplated by the Lease, we, like the *Helzel* court, consider it extremely unlikely that the parties intended to interpose a judicial proceeding between the first and second phase appraisals.

"Accordingly, as in *Helzel*, we conclude that given a choice between 'a procedure which could result in unnecessary litigation and a procedure which could result in unnecessary arbitration proceedings' (*Helzel*, *supra*, 123 Cal.App.4th at p. 664), the latter choice is more compatible with the Lease, as well as with California's policy of encouraging arbitration. We thus conclude that Camden's contentions regarding the propriety of the appraisal conducted by Wells Fargo's appraiser should be addressed by the third appraiser in the first instance. [Fn. omitted.]" (*Wells Fargo I*, *supra*, B211396 [at pp. 19-20].)

We noted, finally, that our conclusion did not foreclose the possibility of future judicial review of the appraisal process: "We simply conclude that the proper time for a court to reach [Camden's contentions regarding the proper construction of the Lease] is *after* an appraisal award has been rendered, not before. (See [Code Civ. Proc.,] § 1286.2.)" (*Wells Fargo I*, *supra*, B211396 [at p. 20, fn. 3].)

V. The Third Appraisal

Following remand, the trial court appointed Ronald Buss as the third appraiser. Camden's and Wells Fargo's appraisers submitted their appraisals to Buss, and on November 15, 2010, Buss issued his determination, the substance of which is in its entirety as follows:

"Pursuant to your joint authorization, an inspection has been made of Wells Fargo's leased space on the fifth and twelfth floors as well as all of the more comparable market data items which conform with the criteria set forth in the Original Lease and the two Amendments. While not the preferred approach of the undersigned, the specific language cited in Section 5.3.2.2 requires the Third Appraiser to ascertain which of the two opinions of rental value opined to by each parties' respective appraiser is the most realistic as of October 1, 2008. Assuming a 60-month term and a new expense base, [Wells Fargo's] valuation is judged the most appropriate.

"Floor	Rentable Square Feet	Gross Monthly Rent Per Sq. Ft.	Total
"Fifth	5,324	$4.20	$22,360.80
"Twelfth	16,823	$4.20	70,656.60
"Total Rent ……			$93,017.40"

VI. Postappraisal Proceedings

On November 16, 2010, Wells Fargo moved for judgment on the pleadings on Camden's declaratory relief action, and on November 29, 2010, it petitioned the trial court to confirm the third appraiser's award. Camden opposed the motion for judgment

on the pleadings and the petition to confirm and, on January 4, 2011, filed a petition to vacate the third appraiser's award.

The trial court granted the petition to confirm and denied the petition to vacate the appraisal. It explained:

"In the previous decision of the Court of Appeal[] in this case, filed on September 30, [2009], the Court of Appeal[] addressed whether a third appraiser should be appointed. [Record citation omitted.] In doing so, the Court concluded: 'We thus conclude that Camden's contentions regarding the propriety of the appraisal conducted by Wells Fargo's appraiser should be addressed by the third appraiser in the first instance.' [Record citation omitted.] In a footnote, the Court noted: 'We emphasize, however, that our conclusion does not foreclose the possibility of future judicial review or, indeed, that a court may ultimately adopt Camden's interpretation of the Lease. We simply conclude that the proper time for a court to reach these issues is after an appraisal award has been rendered, not before. (See [Code Civ. Proc.,] § 1286.2.)' [Record citation omitted.]

"Finally, the Court of Appeal[] addressed Camden's argument that appointing the third appraiser would preclude it from challenging the appraisal award because no one would know the basis for the appraiser's decision. The Court stated: 'Camden claims the Wells Fargo appraisal is inherently flawed because the appraiser utilized deductions not authorized by the lease. *If its contention is correct and the third appraiser selects Wells Fargo's figure, he or she will have chosen an appraisal that was not obtained in accordance with the terms of the Lease.* In any event, as we have discussed, the parties intended that such arguments be made after the arbitration process is completed.' [Record citation omitted.] However, this Court does not believe that the above language mandates that this Court review the interpretation of the lease agreements' requirements for the appraisals de novo. The Court of Appeal[] expressly stated that the question concerning the adequacy of the Wells Fargo appraisal was to be determined by the third appraiser in the first instance. As such, this Court must give that decision the deference given to decisions by an arbiter concerning his own powers.

"Arbitrators exceed their powers when they act beyond the unambiguous limits expressly set by the arbitration agreement. [Citations.] Furthermore, arbitrators do not exceed their powers by rendering erroneous decisions of law or fact, when made within the scope of the controversies submitted to arbitrators. [Citation.] Finally, as to whether arbitrators exceeded their powers, generally judges must give substantial deference to the arbitrators' determinations of their contractual authority. [Citation.]

"The controversy concerning the Wells Fargo appraisal was expressly given to the third appraiser to decide. . . . As such, this controversy was submitted to an arbitrator. Therefore, . . . an erroneous decision of law or fact regarding the propriety of including deductions for customary brokerage commissions would not exceed the third appraiser's power.

"In addition, it was reasonable to include in the appraisal figure a deduction for brokerage commissions. Therefore, even if the Court were to look into the lease agreements' terms, the Court cannot determine that the third appraiser exceeded his authority. . . .

". . . . . .

"Finally, even if the third appraiser exceeded his power under the Lease when he selected an appraisal not chosen in accordance with the terms of the Lease, this does not mean that the third appraiser would have acted in excess of his authority.

"The responsibilities of the third appraiser were defined in the Suite 800 Lease. The relevant section stated that '[t]he sole responsibility of the third appraiser shall be to determine which of the determinations made by the first two (2) appraisers is most accurate. The third appraiser shall have no right to propose a middle ground or any modification of either of the determinations made by the first two (2) appraisers.' [Record citation omitted.] The appraiser was therefore tasked with choosing the most accurate appraisal. Camden contends that by choosing Wells Fargo's appraisal, he exceeded his authority because he chose an appraisal that was not obtained in accordance with the terms of the Lease. However, simply because the third appraiser chose an

appraisal that was not obtained in accordance with the terms of the Lease would not mean that he did not choose the most accurate appraisal. . . .

"Arbitrators exceed their powers when they act beyond the unambiguous limits expressly set by the arbitration agreement. [Citation.] This Court cannot conclude that the third appraiser would have exceeded the unambiguous limits of his power simply because he may have chosen an appraisal that was based on an incorrect deduction. The third appraiser could still have chosen that appraisal, even with the incorrect deduction, because it was ultimately the most accurate."

The trial court also granted the motion for judgment on the pleadings. It explained:

"A declaratory action should not parallel the arbitration award and seek the same relief as a petition to vacate, which has already been rejected by this Court. To do so would be to vastly expand the ability of parties to challenge the bases of arbitration rulings in contravention of the express limitations stated in CCP § 1286.2. [Fn. omitted.]

"Because the causes of declaratory relief seek declarations of rights and controversies directly related to the current arbitration proceedings, the causes of action cannot go forward.

"There is no active controversy that exists over the general terms of the contract following this ruling and the Court's ruling in the petitions to confirm or vacate the arbitration award. Therefore, the Court grants no leave to amend."

Camden timely appealed from the judgment and orders confirming the petition to confirm and denying the petition to vacate.

STANDARD OF REVIEW

We review de novo the trial court's order confirming the arbitration award. (*Advanced Micro Devices, Inc. v. Intel Corp*. (1994) 9 Cal.4th 362, 376, fn. 9; *Glaser, Weil, Fink, Jacobs & Shapiro, LLP v. Goff* (2011) 194 Cal.App.4th 423, 433.) We also

review de novo the grant of judgment on the pleadings. (*International Assn. of Firefighters, Local 230 v. City of San Jose* (2011) 195 Cal.App.4th 1179, 1196.)

DISCUSSION

Camden contends that the order confirming the appraisal must be reversed because (1) the trial court violated this court's order in *Wells Fargo I*; (2) the appraisal was based on a source extrinsic to the Lease; and (3) the third appraiser exceeded his authority. Camden also argues that the order granting judgment on the pleadings must be reversed because Wells Fargo failed to establish either a lack of jurisdiction or failure to state a cause of action. For the reasons that follow, we reject each of Camden's contentions.

I. The Trial Court Properly Granted the Petition to Confirm the Arbitration Award

A. Review of Arbitration Awards Generally

Code of Civil Procedure section 1286.2 provides the sole statutory grounds for vacating an arbitration award.[2] That section provides that a court shall vacate an award "(a) . . . 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 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

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[2] All further undesignated statutory references are to the Code of Civil Procedure.

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 . . . ."

The Supreme Court has narrowly construed the statutory bases for vacating an arbitration award. In *Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 9 (*Moncharsh*), the court explained that "'[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.] . . . 'The arbitrators 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.]" (*Id*. at pp. 10-11.) Further, the court said, "it is the general rule that parties to a private arbitration impliedly agree that the arbitrator's decision will be both binding and final. [Fn. omitted.] Indeed, 'The very essence of the term "arbitration" [in this context] connotes a binding award.'" (*Id*. at p. 9.) Thus, "both because it vindicates the intentions of the parties that the award be final, and because an arbitrator is not ordinarily constrained to decide according to the rule of law, it is the general rule that, 'The merits of the controversy between the parties are not subject to judicial review.'" (*Id*. at p. 11.)

For all of these reasons, the *Moncharsh* court said that, with narrow exceptions, an arbitrator's decisions may not be reviewed for errors of fact or law. The court acknowledged that in reaffirming that general rule, "there is a risk that the arbitrator will make a mistake." (*Moncharsh*, *supra*, 3 Cal.4th at p. 11.) It said, however, that the risk is acceptable "for two reasons. First, by voluntarily submitting to arbitration, the parties have agreed to bear that risk in return for a quick, inexpensive, and conclusive resolution to their dispute. [Citation.] As one commentator explains, 'the parties to an arbitral agreement knowingly take the risks of error of fact or law committed by the arbitrators and that this is a worthy "trade-off" in order to obtain speedy decisions by experts in the field whose practical experience and worldly reasoning will be accepted as correct by other experts.' [Citation.] 'In other words, it is within the power of the arbitrator to

make a mistake either legally or factually. When parties opt for the forum of arbitration they agree to be bound by the decision of that forum knowing that arbitrators, like judges, are fallible.'" (*Id*. at pp. 11-12.)

The court concluded: "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. Thus, an arbitration decision is final and conclusive *because the parties have agreed that it be so*. By ensuring that an arbitrator's decision is final and binding, courts simply assure that the parties receive the benefit of their bargain. [Fn. omitted.]" (*Moncharsh*, *supra*, 3 Cal.4th at p. 10.)

B. The Trial Court's Order Confirming the Arbitration Award Does Not Violate This Court's Order in Wells Fargo I

Camden contends that the trial court's order confirming the arbitration award must be reversed because it violates this court's decision in *Wells Fargo I.* Specifically, Camden says that pursuant to our prior ruling, the trial court was required to determine whether Wells Fargo's appraisal accorded with the terms of the lease, and that by refusing to do so, the court "violated an appellate order it was bound to obey." Further, Camden says, the trial court's violation of our order is a basis for vacating the award under *Moncharch* and *City of Palo Alto v. Service Employees Internat. Union* (1999) 77 Cal.App.4th 327 (*City of Palo Alto*). For the following reasons, Camden errs.

In the prior appeal, Camden asked us to construe the Lease and to conclude that Wells Fargo's appraisal was inconsistent with its terms. We held that pursuant to the terms of the Lease, the court's only role at that stage was to direct the appointment of a third appraiser, not to interpret the Lease. We explained: "[T]he Lease explicitly tasks the *appraisers* with making substantive determinations about the content of the appraisals, but provides no such role for the court. Specifically, it provides in paragraph 5.3.2.4 that the initial two appraisers shall use their best efforts to fairly and reasonably appraise and determine rent '*in accordance with the terms of this Lease*,' and it provides

in paragraph 5.3.2.5 that the appraisers' sole function shall be to determine rent '*in accordance with this Section 5.3.2*.' Further, in paragraph 5.3.2.2, it states that the third appraiser shall 'determine which of the determinations made by the first two (2) appraisers *is most accurate*.' Thus, it expressly charges the appraisers with making determinations 'in accordance with' the Lease's terms. In contrast, on its face it seeks no such determination by the court. Instead, it provides only that the presiding judge of the superior court shall appoint a third appraiser if requested to do so by either landlord or tenant. Accordingly, on its face it seeks no substantive determinations by the court regarding the appraisals' content." (*Wells Fargo I*, *supra*, B211396 [at p. 19].)

Camden also contended that if we granted Wells Fargo's petition, we would preclude Camden from ever challenging the third arbitrator's determination. In responding to that argument, we made the following statement, on which Camden now relies:

"We caution that our conclusion does not mean that if Camden is dissatisfied with the third appraiser's determination, it cannot challenge it. To the contrary, section 1286.2 expressly contemplates such a challenge through a petition to vacate an arbitration award. (§ 1286.2, subd. (a) ['the court shall vacate the [arbitration] award if the court determines . . . [¶] (4) [t]he arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted'].) Our conclusion does mean, however, that the third appraiser, not the court, makes the *initial* determination of his or her own powers, and thus that the petition to compel should not have been denied on the basis that the third appraiser *may* exceed the scope of his or her authority.

"Camden argues it will not be able to challenge the third arbitrator's determination because no one will know the basis for his or her decision. We are not persuaded. Camden claims the Wells Fargo appraisal is inherently flawed because the appraiser utilized deductions not authorized by the lease. If its contention is correct and the third appraiser selects Wells Fargo's figure, he or she will have chosen an appraisal that was not obtained in accordance with the terms of the Lease. In any event, as we have

discussed, the parties intended that such arguments be made after the arbitration process is completed." (*Wells Fargo I*, *supra*, B211396 [at p. 22].)

Camden urges that by so stating, we directed the superior court to "thoroughly review[] Wells Fargo's appraisal" in order to "determin[e] in the post-appraisal proceedings whether the conditions for the third appraisal . . . were met." We do not agree. As we have said, the only issue before us in the first appeal was whether judicial review of the appraisals was available before the appraisal process had run its course, and we held that it was not. While we noted the availability of judicial review after a final appraisal had been issued, we had no occasion to discuss the scope of such review or give the superior court any direction in that regard. Assuming our prior opinion could be interpreted as Camden suggests, we did not, and indeed could not, direct the superior court to substantively review the award in a manner inconsistent with section 1286.2 and governing Supreme Court case law.

Even if our prior opinion plausibly could be interpreted as Camden suggests, it still would not provide a basis for vacating the award. Camden is correct that *City of Palo Alto* held that an arbitrator "exceeded [his] powers" (§ 1286.2, subd. (a)(4)) by issuing an award that compelled a party to violate a court order—there, an injunction prohibiting the respondent from coming within a hundred yards of a coworker who respondent had threatened to shoot. (*City of Palo Alto*, *supra*, 77 Cal.App.4th at pp. 331-332, 338-340.) Here, however, Camden has never contended that the arbitration award exceeded the arbitrator's powers because it compelled a party to violate a court order. Rather, it argues that by affirming the arbitration award, the *superior court* itself violated a court order. No conceivable construction of the statutory language permits us to conclude that the superior court's supposed violation of a court order permits us to vacate an award pursuant to a statute that permits such action where an arbitrator acts in excess of his or her power. And since Camden suggests no statutory or other basis for vacating an arbitration award due to the supposed misconduct of the superior court, its argument necessarily fails.

C. There Is No Evidence That the Appraisal Was Based on a Source Extrinsic to the Governing Lease

Camden next contends that the arbitration award must be vacated if "the reviewing court must infer the award was based on a source extrinsic to the parties' agreement." In the present case, Camden says we must vacate the award because we must infer that the third appraiser based his determination on "superseded terms of the parties' lease, not on the operative terms that were required to guide the determination." We do not agree.

Camden cites *Advanced Micro Devices, Inc. v. Intel Corp., supra,* 9 Cal.4th 362, for the proposition that a court should vacate an arbitration award if it must infer the award was based on a source extrinsic to the parties' agreement. While there is language to that effect in the *Advanced Micro Devices* decision, it is in the context of extreme deference to an arbitrator's formulation of a remedy for breach of contract. Under *Advanced Micro Devices,* an arbitration award "will be upheld so long as it was even arguably based on the contract; it may be vacated only if the reviewing court is *compelled* to infer the award was based on an extrinsic source. [Citations.] In close cases the arbitrator's decision must stand. [Citation.]" (*Id*. at p. 381.)

On the basis of the record before us, we are not "compelled to infer" that the third appraisal's award was based on an extrinsic source. Camden contends that Wells Fargo's appraiser calculated fair market rent under the rent formula in the original lease, not the 2004 amendment, and thus that the appraisal was based on "an extrinsic source, namely the definition of Market Rent that the parties discarded when they bargained to amend their lease. Camden further suggests that because the third appraiser adopted Wells Fargo's proposed rent, we "must infer that the third appraiser based his award (the selection of Wells Fargo's appraisal) on an extrinsic source." The problem with Camden's analysis is that it assumes that the third appraiser based his decision on all the same factors that Wells Fargo's appraiser did, an assumption that is not supported by the record. As we have said, the third appraiser neither gave a detailed explanation of his award nor purported to adopt the analysis of Wells Fargo's appraiser. Instead, he explained his award as follows: "Pursuant to your joint authorization, an inspection has

been made of Wells Fargo's leased space on the fifth and twelfth floors as well as all of the more comparable market data items which conform with the criteria set forth in the Original Lease and the two Amendments. While not the preferred approach of the undersigned, the specific language cited in Section 5.3.2.2 requires the Third Appraiser to ascertain which of the two opinions of rental value opined to by each parties' respective appraiser is the most realistic as of October 1, 2008. Assuming a 60-month term and a new expense base year, [Wells Fargo's] valuation is judged the most appropriate."

On the basis of this language, we are not compelled to infer that the award was based on a superseded lease term. Instead, we conclude, as the third arbitrator said, that his award was based on "inspection . . . of Wells Fargo's leased space on the fifth and twelfth floors as well as all of the more comparable market data items which conform with the criteria set forth in the Original Lease and the two Amendments." The third appraiser's asserted reliance on an "extrinsic source" thus provides no support—in fact or in law—for vacating the award.

D. The Arbitrator Did Not Exceed His Authority

Pursuant to section 1286.2, subdivision (a)(4), an arbitration award must be vacated where "[t]he arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted." Camden contends that the third appraiser exceeded his powers by selecting an appraisal that was not made in accordance with the Lease. As we have said, however, an arbitrator does not exceed his power within the meaning of subdivision (a)(4) by making an error of fact or law. Because that is all Camden contends here, we cannot conclude that the final award was in excess of the third appraiser's power.

II. The Trial Court Did Not Err in Granting Judgment on the Pleadings

Camden's action for declaratory relief sought a declaration that Wells Fargo's appraisal was invalid because it was not determined in accordance with the terms of the Lease—specifically, because the "fair market base rent," as that term was used in the

Lease, did not permit a deduction for tenant improvement allowances or customary brokerage commissions, and Wells Fargo's appraisal impermissibly deducted both. The trial court granted judgment on the pleadings without leave to amend after confirming the arbitration award, concluding that because the causes of declaratory relief sought declarations of rights directly related to the arbitration proceedings, the causes of action could not go forward. Camden contends that the trial court erred in granting judgment on the pleadings because "there is an actual controversy over the lease at issue here." For the following reasons, the contention lacks merit.

Both of Camden's causes of action seek declaratory relief pursuant to section 1060. That section provides: "Any person . . . who desires a declaration of his or her rights or duties with respect to another, . . . may, *in cases of actual controversy* relating to the legal rights and duties of the respective parties, bring an original action . . . in the superior court . . . ." (Italics added.) "'Thus, declaratory relief is appropriate only where there is an actual controversy, not simply an abstract or academic dispute.' (*Newland v. Kizer* (1989) 209 Cal.App.3d 647, 657; see also *Fiske v. Gillespie* (1988) 200 Cal.App.3d 1243, 1246 . . . .)" (*Connerly v. Schwarzenegger* (2007) 146 Cal.App.4th 739, 746.)

The existence of an "actual controversy" is a necessary element of a cause of action under section 1060. One court has explained the "actual controversy" requirement as follows: "Courts do not decide abstract questions of law. An indispensable element to jurisdiction is that there be an actual controversy between parties who have an adversarial interest in the outcome of the litigation. As the California Supreme Court explained nearly a century and a half ago: 'When questions are presented in good faith in the regular course of honest litigation, and are necessary to the determination of the case, we shall not hesitate to decide them; but it is no part of our duty to investigate and decide questions not regularly arising in the due course of litigation, for the gratification of the curiosity of counsel, or to serve some ulterior purpose of parties who choose to procure them to be raised against themselves by others who feel no interest in the contest.' (*People v. Pratt* (1866) 30 Cal. 223, 225.)" (*Connerly v. Schwarzenegger*, *supra*, 46 Cal.App.4th at p. 746.)

No actual controversy exists in the present case. Whether Wells Fargo's appraisal was determined in accordance with the terms of the Lease may be relevant to the parties' rent dispute, but that dispute has been completely resolved through the appraisal process. And having been confirmed, the appraisal award "achieves 'the status of a judgment having the same force as [a] judgment in a civil action so as to render it enforceable like any other judgment of the court in which it is entered.' (*Trollope v. Jeffries* [(1976)] 55 Cal.App.3d 816, 823; § 1287.4.) As such, it 'is not subject to collateral attack except for grounds that would be available to attack any other civil judgment.' (*Klubnikin v. California Fair Plan Assn*. (1978) 84 Cal.App.3d 393, 398.)" (*Sandler v. Casale* (1981) 125 Cal.App.3d 707, 713.)

It is true, as Camden contends, that the declaratory relief action does not seek the same relief as Camden's petition to vacate. Nonetheless, the confirmation of the appraisal award (and the corresponding denial of the petition to vacate) rendered the issues raised in the declaratory relief action "abstract questions of law" that are not relevant to any ongoing controversy between the parties. (*Connerly v. Schwarzenegger, supra*, 46 Cal.App.4th at p. 746.) As such, the trial court properly granted the motion for judgment on the pleadings. (§ 438, subd. (b)(1).)

DISPOSITION

The judgment and orders confirming the arbitration award and denying the petition to vacate the arbitration award are affirmed. Wells Fargo's request for monetary sanctions is denied. Wells Fargo shall recover its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

SUZUKAWA, J.

We concur:

WILLHITE, Acting P. J. MANELLA, J.