Filed 4/12/17 Mitchell Anthony Productions v. Hamilton CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

MITCHELL ANTHONY PRODUCTIONS LLC, Plaintiff and Appellant v. JENNIFER HAMILTON, Defendant and Respondent.	B269969 (Los Angeles County Super. Ct. No.BC489787)

APPEAL from an order of the Superior Court of Los Angeles County, Rita J. Miller, Judge. Affirmed.

Orland Law Group and James J. Orland for Plaintiff and Appellant.

Jennifer Hamilton, in pro. per., for Defendant and Respondent.

I. INTRODUCTION

Plaintiff, Mitchell Anthony Productions, LLC, appeals from an order denying a Code of Civil Procedure[1] section 1286.2, subdivision (a) motion to vacate an arbitration award. Plaintiff sued defendant, Jennifer Hamilton, for: negligent and intentional interference with prospective economic advantage; inducing contract breach; interference with contract; defamation; and Business and Professions Code section 17200 violations. Defendant moved to compel arbitration, which the trial court granted. An arbitration hearing was conducted, at which plaintiff failed to appear. The arbitrator awarded in favor of defendant. Plaintiff moved to vacate the award. Plaintiff asserted the arbitrator failed to disclose disqualification grounds and committed fraud, misconduct and corruption. The trial court denied plaintiff's motion. We affirm the order.

II. BACKGROUND

A. Plaintiff's First Amended Complaint

On September 5, 2012, plaintiff and Mitchell A. Pletcher filed a first amended complaint against numerous litigants, including defendant here. We previously discussed plaintiff's claims in a prior appeal. (*Pletcher v. Lavin* (Oct. 13, 2016, B257009) [nonpub. opn.].) We summarize the relevant allegations as follows. Mr. Pletcher owns plaintiff. Mr. Pletcher wanted to produce a burlesque show called "Beautiful." Plaintiff

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[1] Further statutory references are to the Code of Civil Procedure unless otherwise noted.

hired defendant as a choreographer. Defendant allegedly defamed plaintiff and Mr. Pletcher. This allegedly interfered with plaintiff and Mr. Pletcher's prospective economic advantage. Defendant's alleged defamation also induced others to breach their contracts or interfered with their contractual relations with plaintiff. All of these causes of action also constituted violations of Business and Professions Code section 17200.

B. Motion to Compel Arbitration

Defendant moved to compel arbitration on October 17, 2012. Defendant relied on a "deal memo" dated February 14, 2012, with plaintiff. The deal memo provides in pertinent part: "All disputes arising out of this Deal Memo shall be submitted to mediation in accordance with the rules of Arts Arbitration and Mediation Services, a program of California Lawyers for the Arts. If mediation is not successful in resolving the entire dispute, any outstanding issues shall be submitted to final and binding arbitration in accordance with the rules of that program. If such services are not available, the dispute shall be submitted to arbitration in accordance with the laws of the State of California. The arbitrator's award shall be final, and judgment, including reasonable attorney fees to the prevailing party, may be entered upon it by any court having jurisdiction thereof." The trial court granted defendant's motion to compel arbitration on November 8, 2012.

C. Arbitration Proceedings

The initial arbitration proceeding was set for April 7, 2014, before the arbitrator, Paul J. Carter. At the initial scheduling conference on March 4, 2014, plaintiff requested an arbitration hearing in late April 2014. The arbitrator, over defendant's objections, permitted the taking of three depositions per side. Also, the parties were permitted to serve: a production demand; interrogatories with specified limitations; and one set of up to 35 admissions requests. The arbitration hearing was later set for June 23, 2014. The arbitrator directed plaintiff to complete its three depositions by April 30, 2014. Plaintiff then expressed an interest in abandoning its claims. After plaintiff changed its mind and wanted to proceed, the parties agreed to continue the arbitration hearing to August 18, 2014. The parties requested a continuance and the arbitration hearing was set for December 8, 2014. Plaintiff's request to take more depositions was granted. The parties again requested to reschedule the arbitration hearing to May 4, 2015, which was granted. Plaintiff and defendant responded to each other's interrogatories, production demands and admission requests. Plaintiff brought further motions to compel which were substantially granted.

On March 4, 2015, plaintiff requested that Arts Arbitration and Mediation Services and the arbitrator be recused for alleged bias. Plaintiff's request was denied on March 15, 2015. On April 9, 2015, plaintiff requested a continuance of the May 4, 2015 arbitration hearing. The arbitrator denied plaintiff's request for another continuance on April 17, 2015. Plaintiff sought ex parte relief from trial court, which was denied. Plaintiff filed a mandate petition with us, which was denied on April 29, 2015.

(*Mitchell Anthony Productions, LLC v. Superior Court* (Apr. 29, 2015, B263668) [nonpub. order].) On May 1, 2015, plaintiff again requested the arbitrator recuse himself. The arbitrator denied the recusal request and again informed plaintiff that the arbitration hearing would proceed at 9:00 a.m. on May 4, 2015.

On May 4, 2015, plaintiff failed to appear for the arbitration hearing. Defendant appeared represented by counsel. The arbitrator contacted plaintiff's counsel. Plaintiff's counsel stated that he was not told to appear at the arbitration proceeding. The arbitrator also contacted Mr. Pletcher, who stated that he would not appear. Because plaintiff failed to present any evidence, the arbitrator issued an award in defendant's favor. The arbitrator issued his award on June 12, 2015. The arbitrator subsequently issued a *tentative* award on June 26, 2015, which found Mr. Pletcher was jointly liable with plaintiff for costs. On July 12, 2015, the arbitrator ruled the June 12, 2015 award is the final award. Thus, the June 26, 2015 tentative award is not the final award, On August 28, 2015, the trial court issued its judgment confirming the June 12, 2015 arbitration award. In other words, no award of costs including attorney fees exists against Mr. Pletcher.

D. Petition to Vacate the Award

On August 20, 2015, plaintiff moved to vacate the award under section 1286.2. Plaintiff asserted multiple arguments as to why the arbitrator: was corrupt; committed misconduct and fraud; exceeded the scope of his power; or failed to make timely disclosures of disqualification grounds. Plaintiff contended: the arbitrator awarded attorney's fees that were not within the scope

of the arbitration agreement; the arbitrator appointed himself as discovery referee in order to make more money; the arbitrator collected arbitration fees from plaintiff and not defendant in advance; this occurred despite the fact plaintiff allegedly has no assets; by contrast, defendant had the collection of her fees deferred until after the arbitration hearing; and the arbitrator edited his website to hide his representation of talent and talent agents. Plaintiff contended the California Lawyers for the Arts and its arbitrators rule in favor of talent because a substantial majority of its arbitration cases involve the same parties.

Defendant contended: plaintiff had demonstrated no grounds to vacate the award; plaintiff's claims of bias during the arbitration proceedings had no merit; the deferral of payment of her arbitration fees was not grounds for disqualification; she could not pay the arbitration fees upfront because she was pregnant and was not working as much as she was prior to her pregnancy; the arbitrator had discretion to defer her fees, which he exercised; and after she gave birth and began working again, defendant was invoiced for arbitration fees. Defendant requested the trial court deny plaintiff's motion and issue a judgment confirming the arbitration award against it.

On January 7, 2016, the order denying plaintiff's motion to vacate the award was filed. The trial court ruled: the arbitrator's purported failure to disclose prior representation of talent and talent agents did not merit vacating the award; there was no mandatory requirement that the arbitrator disclose a prior relationship with a member of the same industry as the parties; and the purported evidence of arbitrator bias was unpersuasive. The only evidence submitted by plaintiff in support of its failure to disclose argument was a declaration by

plaintiff's prior counsel. The trial court stated the arbitrator disclosed that he had no prior relationship with either of the parties or their attorneys. This was the only enumerated requirement under the mandatory disclosure provisions of section 1281.9, subdivision (a).

As to the deferral of arbitration fees indicating alleged bias, the trial court ruled this argument had no merit. The trial court ruled the arbitrator had broad discretion to defer payment of fees. The trial court also ruled that the arbitrator's decision to resolve discovery disputes failed to demonstrate bias. The trial court ruled the arbitrator had broad discretion under the Arts Arbitration and Mediation Services rules to regulate pre-hearing disclosure disputes. This appeal followed.

III. DISCUSSION

A. Standards of Review

We generally review issues concerning an motion to vacate an award de novo. (*Maaso v. Signer* (2012) 203 Cal.App.4th 362, 371; *SWAB Financial, LLC v. E*Trade Securities, LLC* (2007) 150 Cal.App.4th 1181, 1196.) In terms of arbitrator disclosure issues, we apply the de novo standard of review. (*Haworth v. Superior Court* (2010) 50 Cal.4th 372, 388 (*Haworth*); *Mahnke v. Superior Court* (2009) 180 Cal.App.4th 565, 580, fn. 9.) But insofar as the trial court's decision is based upon disputed facts, we apply a substantial evidence standard of review. (*Maaso v. Signer*, *supra*, 203 Cal.App.4th at p. 371; *Malek v. Blue Cross of California* (2004) 121 Cal.App.4th 44, 55-56.)

B. Disclosure of Alleged Disqualifying Information

Plaintiff argues that the arbitrator had a conflict of interest which he failed to disclose based on his prior representation of talent and talent agents. (See § 1286.2, subd. (a)(6) [failure to disclose ground for disqualification is grounds for vacating award].) Plaintiff relied on a declaration authored by Joel Poremba. Mr. Poremba previously represented plaintiff. Mr. Poremba's declaration states in part: "In April 2015, I discovered that [the arbitrator] altered from his website the fact that he privately represents talent agents and talent agencies which at long last explains the extreme bias and conflicts of interest he has carried out against [plaintiff]. It appears sometime between March 4, 2015 and April 16, 2015, the phrase 'Real Estate' was added in front of 'agents and agencies' and 'Talent' was removed." Mr. Poremba does not expressly state how he knew of this change to the Website. However, at one point in his declaration, Mr. Poremba states, "On or about March 3, 2015, [Mr. Pletcher president of [p]laintiff,] informed me of the instances of bias by both [d]efendant, [the arbitrator], and California Lawyers for the Arts, Incorporated."

As noted, we conduct independent review of arbitrator disclosure issues. (*Haworth*, *supra*, 50 Cal.4th at p. 388; *Mahnke v. Superior Court* , *supra*, 180 Cal.App.4th at p. 580, fn. 9.) Plaintiff contends disclosure was necessary, citing section 1281.9, subdivision (a), which provides in pertinent part, "In any arbitration pursuant to an arbitration agreement, when a person is to serve as a neutral arbitrator, the proposed neutral arbitrator shall disclose all matters that could cause a person aware of the facts to reasonably entertain a doubt that the proposed neutral

arbitrator would be able to be impartial . . . ." The test under section 1281.9, subdivision (a) is objective. (*Haworth*, *supra*, 50 Cal.4th at pp. 388-389; *Agri-Systems, Inc. v. Foster Poultry Farms* (2008) 168 Cal.App.4th 1128, 1139-1140.)

Plaintiff has not demonstrated that a person aware of these facts, even if true, would reasonably entertain a doubt regarding the arbitrator's impartiality Our Supreme Court has held: "'Impartiality' entails the 'absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind.' [Citation.] Judges, like all human beings, have widely varying experiences and backgrounds. Except perhaps in extreme circumstances, those not directly related to the case or the parties do not disqualify them." (*Haworth*, *supra*, 50 Cal.4th at p. 389; *Mt. Holyoke Homes, L.P. v. Jeffer Mangels Butler & Mitchell, LLP* (2013) 219 Cal.App.4th 1299, 1311.) As noted, the arbitrator indicated he did not have a relationship with any party or party's counsel. Mr. Poremba does not explain with adequate foundation how he learned about the alleged modification of the arbitrator's website. Further, representation of talent agencies is not evidence in this case of an arbitrator's bias in favor of a dancer. There is no evidence regarding the nature of the arbitrator's alleged representation of talent and talent agents. And, there is no evidence as to when this alleged representation occurred, who was the represented client, the nature of the representation, or any other similar information. The evidence presented by plaintiff does not warrant disqualification. Plaintiff's disqualification arguments have no merit.

C. Alleged Corruption, Misconduct, Fraud and Exceeding Scope of Power by Arbitrator

Plaintiff also asserts the arbitration award should have been vacated because the arbitrator was corrupt, committed misconduct and fraud, and exceeded his powers. (§ 1286.2, subds. (a)(1)-(4).) Plaintiff contends there are five reasons why the award should have been vacated pursuant to section 1286,2, subdivisions (a)(1) through (a)(4). First, plaintiff argues the arbitrator gave preferential treatment to defendant by deferring payment of her arbitration fees. This is not evidence of fraud, corruption, or misconduct. The arbitration rules expressly state, "[Arts Arbitration and Mediation Services], in the event of hardship on the part of any party, may defer or reduce the fees." Defendant declared that she was unable to work regularly while pregnant. After giving birth, defendant was billed for arbitration fees. An arbitrator's powers are derived from the agreement to arbitrate and the controlling rules. (*Kurtin v. Elieff* (2013) 215 Cal.App.4th 455, 467; *Kelly Sutherlin McLeod Architecture, Inc. v. Schneickert* (2011) 194 Cal.App.4th 519, 528.) Thus, the arbitrator's decision to defer payment of defendant's arbitration fees was well within the arbitrator's discretion.

Second, plaintiff contends the arbitrator engaged in "self-dealing" by assigning himself as a discovery referee for several depositions. This is not evidence of misconduct, corruption or fraud. The arbitration rules permit the arbitrator to do this: "At the request of any party or at the discretion of the arbitrator, consistent with the expedited nature of arbitration, the arbitrator may direct (through [Arts Arbitration and Mediation Services]) [¶] (i) the production of documents and other information . . . [¶]

. . . [¶] The arbitrator is authorized to resolve any disputes concerning the exchange of information." The controlling rules expressly authorized the arbitrator to act as he did in connection with ruling on discovery disputes.

Third, plaintiff contends the arbitrator demonstrated bias by awarding costs against Mr. Pletcher who was not a party to the arbitration. The final award is dated June 12, 2015. No costs were awarded against Mr. Pletcher in the June 12, 2015 final award. The imposition of costs against Mr. Pletcher was contained in a *tentative* arbitration award dated June 26, 2015. However, when the issue with imposing costs against a non-litigant was further litigated, the arbitrator reconsidered the issue. On July 12, 2015, the arbitrator agreed with Mr. Pletcher's objections to being included in the final award. The arbitrator then expressly ruled that the June 12, 2015 award which imposed costs *only* against plaintiff was the final award. Defendant argues the inclusion of Mr. Pletcher in the tentative June 26, 2015 award was evidence of fraud and bias. The June 26, 2015 award was not the operative award. It is undisputed the June 12, 2015 arbitration award was the final award issued against plaintiff. The arbitrator corrected his error on July 12, 2015. This state of affairs is not evidence of bias. And an arbitrator's award may not be set aside for legal error of this type. (*Pearson Dental Supplies, Inc. v. Superior Court* (2010) 48 Cal.4th 665, 677; *Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 28.)

Fourth, plaintiff asserts the arbitrator exceeded the scope of his powers by awarding pre-arbitration attorney fees to defendant. The arbitration rules provide: "The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties . . . . [¶] . . . [¶] The award of the arbitrator may include: [¶] (i) interest at such rate and from such date as the arbitrator(s) may deem appropriate; and [¶] (ii) an award of attorneys' fees if all parties have requested such an award or it is authorized by law or their arbitration agreement." The deal memo between plaintiff and defendant provides for the recovery of "reasonable attorney's fees" by the prevailing party upon entry of judgment. Contrary to plaintiff's assertion, the only limit is that the attorney's fees be "reasonable." There is no evidence the attorney fee award was beyond the scope of the arbitration agreement or excessive.

Fifth, plaintiff contends the arbitrator committed misconduct by failing to disclose the results of all noncollective arbitrations over which he has presided. Plaintiff cites section 1281.9, subdivision (a)(3), which requires disclosure of, "The names of the parties to all prior or pending noncollective bargaining cases in which the proposed neutral arbitrator served or is serving as a party arbitrator for any party to the arbitration proceeding or for a lawyer for a party and the results of each case arbitrated to conclusion." Disclosure is required when the arbitrator has previously or is concurrently acting as an arbitrator in a case involving any party or party's lawyer *to the present dispute*. As noted, the arbitrator in a January 17, 2014 disclosure form indicated that he had "no relationship w/ any party or counsel" in the arbitration proceeding before him. For

the foregoing reasons, the trial court correctly refused to vacate the award.

IV. DISPOSITION

The order is affirmed. Defendant, Jennifer Hamilton, may recover her appellate costs from plaintiff, Mitchell Anthony Productions, LLC. Any request for attorney fees must be pursued pursuant to California Rules of Court, rule 3.1700(c).

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TURNER, P. J.

We concur:

KRIEGLER, J.

BAKER, J.