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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

WATER SOLUTIONS, LTD., Plaintiff and Respondent, v. TALL & STOUT INDUSTRIAL CORPORATION, Defendant and Appellant.	B280987 Los Angeles County Super. Ct. No. BS161780

APPEAL from a judgment of the Superior Court of Los Angeles County, Malcolm Mackey, Judge. Affirmed.

Law Office of Brenda A. Prackup and Brenda A. Prackup for Defendant and Appellant.

Michael J. Perry for Plaintiff and Respondent.

INTRODUCTION

This is an appeal from a judgment confirming an arbitration award in favor of plaintiff and respondent Water Solutions (Hong Kong), Ltd. (Water Solutions). Water Solutions had a manufacturing supply contract with defendant and appellant Tall & Stout Industrial Corporation (Tall & Stout). When a dispute between the parties arose, Water Solutions invoked the arbitration provision of the parties' contract and obtained an arbitration award in excess of $3.7 million.

Arbitration awards are entitled to substantial deference by our courts. This appeal rests primarily on claims that the arbitrator exceeded his authority, one of the few issues a trial court may consider in reviewing an arbitrator's award. Tall & Stout also argues certain procedures during the arbitration deprived it of notice and a fair opportunity to be heard. We see no merit in any of the arguments asserted and therefore affirm the judgment in favor of Water Solutions.

FACTS AND PROCEDURAL BACKGROUND

1. The Arbitration Award

In November 2014, Water Solutions filed a claim (Claim) with the American Arbitration Association (AAA) seeking damages "of no less than $1,000,000, according to proof" for breach of contract and declaratory relief against Tall & Stout Industrial Corporation (Taiwan) and Tall & Stout Industrial Corporation (Shenzen)[1]. The Claim related to a contract (the Contract) signed by the parties in 2007, in which Tall & Stout

[1] We refer to these two companies collectively as Tall & Stout.

agreed, among other things, to manufacture water cooler parts and supplies that Water Solutions would use in the products it sold to its customers. The Contract included the following provision (the arbitration provision):

> "21:10 Choice of Law; Disputes. This Agreement shall be interpreted and enforced according to the laws of the United States of America, State of California, without application of its conflicts or choice of law rules. This Agreement shall be deemed to be performed in Los Angeles County, California. Both parties irrevocably submit to the jurisdiction of the state or federal courts located in Los Angeles County, California, for any action or proceeding regarding this Agreement, and both parties waive any right to object to the jurisdiction or venue of the courts in Los Angeles County, California as an inconvenient forum or otherwise. … In the event of a disagreement between the parties as to their rights and responsibilities or liabilities under this Agreement, they shall first each make a good faith effort to resolve their dispute informally. If necessary and appropriate, such dispute shall be submitted by the parties to arbitration. Arbitration proceedings may be commenced by either party giving the other party written notice thereof and proceeding thereafter in accordance with the rules and procedures of the American Arbitration Association. Any such arbitration shall take place before a single arbitrator only in Los Angeles, California. Any such arbitration shall be governed by and subject to the applicable laws of the State of California (including the discovery provisions of the California Civil Code and the California Code of Civil

> Procedure), and the then prevailing rules of the American Arbitration Association. The arbitrator's award in any such arbitration shall be final and binding, and a judgment upon such award may be enforced by any court of competent jurisdiction."

AAA assigned the matter to its international division, the International Centre for Dispute Resolution (ICDR), and acknowledged receipt of the request for arbitration in a letter sent to Tall & Stout and counsel for Water Solutions. That letter advised the parties about upcoming deadlines as well as other administrative and procedural matters. Tall & Stout "never responded to the Claim or any correspondence from ICDR despite being served by fax, email, and mail of all documents filed with the ICDR and all correspondence issued by the ICDR." And although Tall & Stout received "due notice by mail, fax, and email," it failed to appear at the arbitration proceeding, which was conducted in accordance with the procedures of the ICDR.

After hearing the evidence presented by Water Solutions, the arbitrator concluded the Contract, including the arbitration provision, was binding, valid, and enforceable. He went on to find, by clear and convincing evidence, that Tall & Stout breached multiple sections of the Contract and awarded damages of $3,719,441.96 to Water Solutions, plus costs and attorney's fees. The arbitrator's award reflected an offset of $1,043,071.29 that Water Solutions owed Tall & Stout for products it purchased from Tall & Stout but had not yet paid for. The arbitrator also enjoined Tall & Stout from competing with Water Solutions, using Water Solutions's confidential information and intellectual property, and taking a number of other actions that might impact

Water Solutions's business. The arbitrator signed the final award in October 2015.

2. Proceedings to Confirm the Arbitration Award

In April 2016, Water Solutions filed a timely[2] petition to confirm the arbitration award in the Los Angeles Superior Court.[3] Tall & Stout appeared through its retained counsel.[4]

In its response to the petition to confirm the arbitration award, Tall & Stout argued the award was invalid for several reasons. First, Tall & Stout asserted the arbitration provision, properly interpreted, provided that the default venue for dispute resolution was state or federal court in Los Angeles County and only authorized arbitration by the AAA where arbitration was "necessary and appropriate," a circumstance that had not been shown. Accordingly, Tall & Stout argued, the Contract required Water Solutions to submit the matter to a court rather than to AAA, rendering the arbitrator's award invalid.

Second, Tall & Stout contended it "was never properly served with notice of the arbitration in the appropriate language." Citing the Federal Arbitration Act[5] (FAA) as the

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[2] Code of Civil Procedure section § 1288 provides: "A petition to confirm an award shall be served and filed not later than four years after the date of service of a signed copy of the award on the petitioner."

[3] In June 2016, Water Solutions amended its petition.

[4] Shortly thereafter, Tall & Stout filed a lawsuit against Water Solutions in the Los Angeles Superior Court (BC619932) seeking to vacate the arbitrator's award and "re-litigate those matters at issue and adjudicated in the Arbitration Award." The trial judge in that case granted Water Solutions's motion to compel arbitration.

[5] Under the FAA (9 U.S.C.A. § 1 et seq.), a court may vacate an arbitration award if the arbitrator exceeds his or her authority or

governing law, Tall & Stout stated that arbitration proceedings must meet minimum requirements of fairness, including notice reasonably calculated to apprise the interested parties of the pendency of the action and afford them the opportunity to present their objections. The response to the petition was accompanied by a declaration of K.T. Chang, the president of Tall & Stout, attesting that he does not read, write, or understand English. According to Tall & Stout, any notice relating to the arbitration "should have been translated into Mandarin Chinese." Because all the notices and other materials relating to the arbitration were in English, Tall & Stout claimed it did not receive proper notice of the arbitration, which rendered the award invalid.

Finally, and again citing the FAA, Tall & Stout claimed the arbitrator exceeded his authority in two respects: by entering a default award that exceeded the damages demanded in Water Solutions's Claim, and by awarding damages relating to transactions that occurred after the expiration of the Contract.

In December 2016, Water Solutions moved to confirm the arbitration award and requested costs and attorney's fees. In opposition to the motion, Tall & Stout repeated the arguments just summarized and requested the court vacate the arbitration award. In the alternative, Tall & Stout asked the court to dismiss the motion without prejudice in order to allow Tall & Stout to conduct discovery into the arbitration proceedings.

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engages in misconduct that prejudiced the rights of a party. (9 U.S.C.A. § 10(a)(3), (4).)

The court affirmed the arbitration award but did not issue a statement of decision.[6] The court's minute order noted that the failure to read an agreement is not a valid basis to avoid a contract and that Tall & Stout should have obtained a translation of the Contract, the Claim, and any other notices or documents it received concerning the arbitration. The court further concluded the arbitration agreement encompassed the Claim presented by Water Solutions.

Water Solutions requested prejudgment interest in the amount of $492,639.77 which the court subsequently awarded.

3. Tall & Stout's Appeal

Tall & Stout filed a notice of appeal on February 17, 2017, purporting to appeal from the court's December 23, 2016 order confirming the arbitrator's award. The court subsequently entered judgment in favor of Water Solutions on February 22, 2017 and Water Solutions served notice of entry of that judgment on February 28, 2017. On April 21, 2017, Tall & Stout filed a second notice of appeal (designated an "amended" notice of appeal) from the judgment entered February 22, 2017. On June 20, 2017, we consolidated the two appeals for all purposes.

DISCUSSION

Tall & Stout challenges the arbitration award on myriad grounds, most of which relate to the validity and interpretation of the Contract generally and the arbitration provision in particular. Due to the narrow scope of judicial review of arbitration awards, we do not reach the majority of Tall & Stout's

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[6] Apparently, neither side requested that the court do so.

contentions. We are also not persuaded by Tall & Stout's argument that Water Solutions failed to give proper notice of the arbitration proceedings. Finally, in response to Tall & Stout's objection to the amount of damages and the imposition of injunctive relief, we note that it was well within the arbitrator's discretion to allow Water Solutions to amend its Claim in order to expand the relief it sought.

1. Legal Background and Standard of Review

"Pursuant to Code of Civil Procedure section 1285, any party to an arbitration in which an award has been made may petition the court to 'confirm, correct or vacate the award.' Once a petition to confirm an award is filed, the superior court must select one of only four courses of action: It may confirm the award, correct and confirm it, vacate it, or dismiss the petition. [Citation.] '[I]t is the general rule that, with narrow exceptions, an arbitrator's decision cannot be reviewed for errors of fact or law.' (*Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 11.) Under section 1286.2, the court may vacate the award only under ' "very limited circumstances." ' [Citation.] Neither the trial court, nor the appellate court, may 'review the merits of the dispute, the sufficiency of the evidence, or the arbitrator's reasoning, nor may we correct or review an award because of an arbitrator's legal or factual error, even if it appears on the award's face. Instead, we restrict our review to whether the award should be vacated under the grounds listed in section 1286.2. [Citations.]' " (*EHM Productions, Inc. v. Starline Tours of Hollywood, Inc.* (2018) 21 Cal.App.5th 1058, 1063–1064, final brackets in original, fn. omitted.)

An arbitration award may be vacated on the grounds specified in Code of Civil Procedure section 1286.2, subdivision

(a).[7] (*Moncharsh v. Heily & Blase*, *supra*, 3 Cal.4th at p. 33 ["[A]n award reached by an arbitrator pursuant to a contractual agreement to arbitrate is not subject to judicial review except on the grounds set forth in sections 1286.2 (to vacate) and 1286.6 (for correction)"]; *Oaktree Capital Management, L.P. v. Bernard* (2010) 182 Cal.App.4th 60, 68 ["[G]rounds for vacating an arbitrator's award are statutory and limited"]; *Comerica Bank v. Howsam* (2012) 208 Cal.App.4th 790, 817 (*Comerica Bank*).) As pertinent here, subdivision (a)(4) of that section authorizes a court to vacate an arbitrator's award if " '[t]he arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted.' " What constitutes an excess of power is, however, extremely limited. "Our Supreme Court has delineated the scope of the excess of powers justification for vacatur. (*Pearson Dental Supplies, Inc. v. Superior Court* [(2010)] 48 Cal.4th [665,] 680 ['an arbitrator whose legal error has barred an employee subject to a mandatory arbitration agreement from obtaining a hearing on the merits of a claim based on such right has exceeded his or her powers.']; *Cable Connection, Inc. v. DIRECTV, Inc.* (2008) 44 Cal.4th 1334, 1354–1364 [parties may restrict arbitrator's powers by agreeing to expanded merit-based judicial review of an award]; *Gueyffier v. Ann Summers, Ltd.* (2008) 43 Cal.4th 1179, 1182 ['Absent an express and unambiguous limitation in the contract or the submission to arbitration, an arbitrator has the authority to find the facts, interpret the contract, and award any relief rationally related to his or her factual findings and

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

contractual interpretation.']; *Morris v. Zuckerman* (1968) 69 Cal.2d 686, 691 ['Although the court may vacate an award if it determines that "[the] arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted" ..., it may not substitute its judgment for that of the arbitrators.'].)" (*Comerica Bank,* at pp. 830–831.)

" 'The powers of an arbitrator derive from, and are limited by, the agreement to arbitrate.' (*Advanced Micro Devices* [*Inc. v. Intel Corp.* (1994)] 9 Cal.4th [362, 375 (*Advanced Micro*)].) Although ' "every intendment of validity must be given an arbitration award [citation], it is well settled that an arbitrator derives his power from the arbitration agreement and he cannot exceed his derived power. [Citation.] To confirm an arbitration award in excess of the powers granted by an arbitration agreement would destroy the very purpose of arbitration and be contrary to the sound policy of encouraging the settlement of private disputes by the voluntary agreement of the parties." ' [Citation.]" (*Emerald Aero, LLC v. Kaplan* (2017) 9 Cal.App.5th 1125, 1139–1140.)

We review the court's decision to grant a petition to confirm an arbitration award de novo. (*Advanced Micro*, *supra*, 9 Cal.4th at p. 376, fn. 9.) If the court's ruling on a petition to confirm an arbitration award relies on a determination of disputed factual issues, we apply the substantial evidence test on those particular issues. (*Toal v. Tardif* (2009) 178 Cal.App.4th 1208, 1217.)

2. The court properly confirmed the arbitrator's award.

2.1. The arbitrator did not exceed his authority.

The California Arbitration Act (§ 1280 et seq.) " 'represents a comprehensive statutory scheme regulating private arbitration in this state.' [Citation.]" (*Haworth v. Superior Court* (2010) 50 Cal.4th 372, 380.) " '[I]t is the general rule that parties to a private arbitration impliedly agree that the arbitrator's decision will be both binding and final.' [Citation.]" (*Ibid*.) "Generally, in the absence of a specific agreement by the parties to the contrary, a court may not review the merits of an arbitration award. [Citation.]" (*Ibid*.)

Tall & Stout asserts the arbitrator exceeded his authority here by:

- applying California law to interpret the Contract when he should have applied the law of the People's Republic of China, under which neither the Contract nor the arbitration provision was valid or enforceable;
- concluding the arbitration provision in the Contract was valid and enforceable despite its "hopeless ambiguity;"
- enforcing the arbitration provision against Tall & Stout even though Tall & Stout's principal does not speak English and therefore did not knowingly consent to arbitration in the Contract, which was written in English;

- concluding the parties consented to arbitration notwithstanding the arbitration provision's numerous ambiguities; and
- applying the arbitration provision to disputes that arose after the expiration of the Contract.

Essentially, Tall & Stout asserts the arbitrator incorrectly determined he had jurisdiction to arbitrate the dispute in the first instance and that the court therefore erred in confirming the arbitration award. Tall & Stout urges that the court, not the arbitrator, must decide whether a dispute is arbitrable.

The applicable law is well settled. "In determining whether private arbitrators have exceeded their powers, [we] must accord 'substantial deference to the arbitrators' own assessments of their contractual authority ... .' (*Advanced Micro*[*, supra,*] 9 Cal.4th [at p.] 373.) Nevertheless, except where 'the parties "have conferred upon the arbiter the unusual power of determining his own jurisdiction" [citation], 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.' (*Id*. at p. 375.)" (*Ajida Technologies, Inc. v. Roos Instruments, Inc.* (2001) 87 Cal.App.4th 534, 541.) Stated differently, the question of arbitrability is for judicial determination "[u]nless the parties clearly and unmistakably provide otherwise." (*AT & T Tech., Inc. v. Communications Workers* (1986) 475 U.S. 643, 649.)

Here, for two independent reasons, the decision concerning the arbitrator's jurisdiction was within the arbitrator's purview. First, in the specific context of the arbitration of international

commercial disputes,[8] California law provides, "The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract, and a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause." (§ 1297.161.)

Second, and in any event, the Contract provides, "Arbitration proceedings may be commenced by either party

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[8] "An arbitration or conciliation agreement is international if any of the following applies:

(a) The parties to an arbitration or conciliation agreement have, at the time of the conclusion of that agreement, their places of business in different states.

(b) One of the following places is situated outside the state in which the parties have their places of business:

(i) The place of arbitration or conciliation if determined in, or pursuant to, the arbitration or conciliation agreement.

(ii) Any place where a substantial part of the obligations of the commercial relationship is to be performed.

(iii) The place with which the subject matter of the dispute is most closely connected.

(c) The parties have expressly agreed that the subject matter of the arbitration or conciliation agreement relates to commercial interests in more than one state.

(d) The subject matter of the arbitration or conciliation agreement is otherwise related to commercial interests in more than one state." (§ 1297.13.)

giving the other party written notice thereof and proceeding thereafter in accordance with the rules and procedures of the American Arbitration Association." The applicable AAA rules provide, in turn, "The arbitral tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence, scope, validity of the arbitration agreement(s), or with respect to whether all of the claims, counterclaims, and setoffs made in the arbitration may be determined in a single arbitration." By incorporating the AAA rules into the Contract, the parties clearly and unmistakably indicated their intent to have the arbitrator decide the scope of the arbitration agreement. (See *Dream Theater, Inc. v. Dream Theater* (2004) 124 Cal.App.4th 547, 557 [enforcing AAA rules granting power to arbitrator to decide arbitrability issues].) And any doubt concerning arbitrability must be resolved in favor of arbitration. (*Comerica Bank, supra,* 208 Cal.App.4th at p. 832.)

In sum, the parties delegated to the arbitrator the decision concerning the scope and enforceability of the arbitration provision and the Contract. Accordingly, the arbitrator did not exceed his authority by deciding those issues and the trial court did not err in refusing to vacate the award on that basis.

2.2. Tall & Stout received adequate notice of the arbitration.

Tall & Stout contends, as a general matter, that the procedural flexibility of the arbitral forum does not override participants' fundamental, common law right to a fair proceeding. More particularly, Tall & Stout contends Water Solutions did not provide proper notice of the arbitration proceeding. We disagree.

"Courts have long recognized the fundamental requirement that arbitrations be conducted in a fair and neutral manner.

[Citation.] … Thus, 'arbitration procedures that interfere with a party's right to a fair hearing are reviewable on appeal.' [Citations.] Notice and an opportunity to be heard are essential ingredients to a fair hearing, and these principles apply to arbitration hearings. [Citations.] ' "[A]rbitration procedures violate the common law right to a fair hearing '... when the applicable procedures essentially preclude the possibility of a fair hearing.' [Citation.]" ' [Citations.]" (*Emerald Aero, LLC v. Kaplan*, *supra*, 9 Cal.App.5th at p. 1142.)

Here, the arbitrator found notice was proper, noting that after Water Solutions demanded arbitration and the matter was assigned to the ICDR on November 11, 2014, the ICDR sent a letter to the parties advising them of their involvement and necessary next steps. Further, the arbitrator found Tall & Stout "never responded to the Claim or any correspondence from ICDR despite being served by fax, email, and mail of all documents filed with the ICDR and all correspondence issued by the ICDR." And although Tall & Stout received "due notice by mail, fax, and email," it failed to appear at the arbitration proceeding, which was conducted in accordance with the procedures of the ICDR.[9]

Tall & Stout does not dispute any of the arbitrator's findings—findings we would not disturb in any event. Instead, it argues the *first* notice of the arbitration provided by Water Solutions was ineffective: "The notice allegedly provided to Tall &

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[9] We also note that on November 25, 2014, Tall & Stout's insurer, SINOSURE, acknowledged that Water Solutions "had initiated arbitration against TALL & STOUT." And on December 2, 2014, SINOSURE stated it had asked Tall & Stout's attorney to "either negotiate with Water Solutions for a settlement or respond to the arbitration[.]"

Stout was sent by email to K.T. Chang in Taiwan. It was entirely in English, with no Mandarin Chinese translation. Mr. Chang does not read or understand English." According to Tall & Stout, *that* notice failed to inform Chang of the arbitration and the claims asserted against it and "thus did not secure the arbitrator's jurisdiction over Tall & Stout."

Although the evidence supports Tall & Stout's narrow assertion, it does not undermine or contradict the arbitrator's findings and is, any event, beside the point. The Contract was written in English. And with respect to arbitration, the parties agreed to use the AAA and proceed in conformance with AAA arbitration rules. The applicable rules provide that "[i]f the parties have not agreed otherwise, the language(s) of the arbitration shall be the language(s) of the documents containing the arbitration agreement, subject to the power of the arbitral tribunal to determine otherwise." Pursuant to the Contract, then, providing notice of the arbitration in English was sufficient.

In support of its position, Tall & Stout cites *Ikerd v. Warren T. Merrill & Sons* (1992) 9 Cal.App.4th 1833. That case considered whether a demand for arbitration served on a corporation was sufficient to establish personal jurisdiction over the corporation's principal, who was not a party to the underlying lawsuit. That court's discussion of personal jurisdiction is of no assistance on the issue of notice.

2.3. The arbitrator had the discretion to allow Water Solutions to amend its Claim.

Finally, Tall & Stout complains that the arbitrator improperly allowed Water Solutions to amend its Claim, thereby increasing the amount of damages and expanding the relief it sought. We reject this argument because the decision to allow an

amendment is plainly within the scope of the arbitrator's discretion. Specifically, the applicable AAA rules provide in relevant part that "[a]ny party may amend or supplement its claim … unless the arbitral tribunal considers it inappropriate to allow such amendment or supplement because of the party's delay in making it, prejudice to the other parties, or any other circumstances." In accordance with well-established precedent, we will not substitute our judgment for that of the arbitrator.

DISPOSITION

The judgment is affirmed. Water Solutions to recover its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

LAVIN, J.

WE CONCUR:

EDMON, P. J.

EGERTON, J.