Filed 12/18/17 Negele & Associates v. City of Simi Valley CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

NEGELE & ASSOCIATES, Plaintiff and Respondent, v. CITY OF SIMI VALLEY, Defendant and Appellant.	2d Civil No. B278687 (Super. Ct. No. 16CV00578) (Santa Barbara County)

The City of Simi Valley (the City) appeals from a judgment confirming a binding arbitration award of $533,372.62 in favor of Negele & Associates (N&A). The City argues the award should be vacated because (1) the parties did not agree in writing to binding arbitration and (2) the arbitrators exceeded their powers by awarding an amount greater than the contract rate in violation of public policy. We affirm.

BACKGROUND

After N&A represented the City in a civil lawsuit, it sent an invoice requesting a total of $504,751.13, including

approximately $300,000 in attorney fees.[1] The City disputed the invoice and refused to pay N&A.

N&A sued the City for breach of contract and two common counts for "agreed price" and "reasonable value." N&A claimed the City breached the terms of a Legal Services Agreement (LSA) between the parties when it failed to pay N&A within 30 days after receiving the invoice. N&A alleged it was entitled to terminate the LSA and receive the "reasonable value of its services performed prior to said termination" as provided in the LSA. N&A alleged the reasonable value of services based on its normal hourly rate would be over $500,000.

The City requested binding arbitration with the Beverly Hills Bar Association (BHBA) under the Mandatory Fee Arbitration Act (MFAA). It submitted a standard BHBA form, in which it checked "Yes" to binding arbitration, and included a written explanation identifying the issues to be arbitrated. It also requested the trial court stay trial proceedings so the parties could arbitrate the matter.

The City and N&A agreed to the scope of arbitration in a phone conversation. Attorney James Negele said he would agree to arbitration "provided that all of the claims in [his] [c]omplaint . . . would be handled in the one binding arbitration proceeding." The City's attorney agreed and said the City wanted to resolve all issues in one proceeding.

N&A submitted a standard BHBA reply form in which it checked "Yes" to binding arbitration. N&A attached an "Attorney's Reply and Statement of Facts," which included a provision stating: "N&A agrees that this arbitration will be

---

[1] The City paid some costs from the invoice before arbitration. That amount is not at issue.

binding. However, should the BHBA or the panel of arbitrators decide that the panel cannot hear and rule on all of N&A's claims in N&A's [c]omplaint against the City, N&A expressly reserves its right to reconsider its election that the arbitration be binding, and to reverse that decision so that the arbitration is nonbinding."

Three days later, the City withdrew its request for binding arbitration and requested nonbinding arbitration. It later tried to withdraw from arbitration altogether. N&A objected, arguing the parties formed a contract for binding arbitration.

A panel of arbitrators decided the parties agreed to binding arbitration. The panel found that N&A's declaration along with the signed BHBA forms "establish that at the time of agreement there was no mistake between [N&A] and the City that [all] three (3) claims [in the complaint] would be resolved through binding arbitration."

The arbitrators awarded $524,792.97 in attorney fees, interest, and costs in favor of N&A. The panel found that N&A should be awarded the reasonable value of its services at the rate of $550 per hour for Negele, $450 per hour for associates, and $160 per hour for paralegals.

N&A petitioned to confirm the arbitration award, and the City petitioned to vacate or correct the award. The trial court confirmed the award. It found that the parties agreed to binding arbitration and that the arbitrators did not exceed their authority in awarding fees greater than the amount originally invoiced.

DISCUSSION

The Parties Agreed to Binding Arbitration

The City argues the judgment confirming the arbitration award must be vacated because the parties did not agree to binding arbitration. We disagree.

We review the trial court's order confirming an arbitration award de novo. (*Glaser, Weil, Fink, Jacobs & Shapiro, LLP v. Goff* (2011) 194 Cal.App.4th 423, 433 (*Glaser*).) Whether the parties agreed to make the arbitration binding is a question of law. (*CPI Builders, Inc. v. Impco Technologies, Inc.* (2001) 94 Cal.App.4th 1167, 1171-1172 (*CPI Builders*).) To the extent the trial court's ruling depends on a determination of disputed factual issues, we review for substantial evidence. (*Toal v. Tardif* (2009) 178 Cal.App.4th 1208, 1217.) Here, because the relevant facts are undisputed, we independently review whether the parties agreed to make the arbitration binding. (*Glaser*, at p. 434.)

An agreement for binding fee arbitration under the MFAA requires both parties to "agree in writing to be bound by the award of the arbitrators." (Bus. & Prof. Code, § 6204, subd. (a).) To determine whether the parties formed such an agreement, we apply contract principles. (*Glaser*, *supra*, 194 Cal.App.4th at pp. 441-442.) Contract formation requires "mutual" consent, which exists when "the parties all agree upon the same thing in the same sense." (Civ. Code, §§ 1565, 1580.) Mutual consent is often achieved through a process of offer and acceptance. (*DeLeon v. Verizon Wireless, LLC* (2012) 207 Cal.App.4th 800, 813.) It is determined by an objective standard, "the test being what the outward manifestations of consent would

lead a reasonable person to believe." (*Meyer v. Benko* (1976) 55 Cal.App.3d 937, 942-943.)

The parties agreed in writing to binding arbitration. The City initiated an offer by submitting a standard BHBA form, in which it checked "Yes" to binding arbitration. It further expressed its intention to arbitrate the entire matter when it requested a stay of the trial proceedings so that N&A's claims could be resolved through arbitration. During a telephone conversation, the parties mutually consented to binding arbitration and agreed to the scope—that all of N&A's claims in the complaint would be determined by one arbitration proceeding. N&A subsequently submitted its written acceptance by checking "Yes" on a standard BHBA response form. When it submitted its response, the parties formed a written agreement under the MFAA for binding arbitration on all of N&A's claims. (Bus. & Prof. Code, § 6204, subd. (a).)

This case is like *CPI Builders*, *supra*, 94 Cal.App.4th 1167, 1173, in which the parties agreed to binding arbitration based on an oral agreement between the parties' attorneys and a written stipulation signed by the attorneys. There, after counsel reached an oral agreement to binding arbitration through a telephone call, CPI's counsel sent Impco a written stipulation reflecting the agreement. (*Id*. at p. 1170.) Meanwhile CPI changed its mind about arbitration and sought to revoke its counsel's authority to consent to arbitration. But Impco accepted the offer and signed the stipulation before CPI could communicate the revocation. (*Ibid*.) The court concluded that when Impco accepted the offer by signing the stipulation, the parties formed a contract. (*Id*. at p. 1173.)

Similarly, the City and N&A's oral agreement and signed written forms established an agreement for binding arbitration. The City could not withdraw its offer thereafter. (Civ. Code, § 1586 ["[a] proposal may be revoked at any time before its acceptance is communicated to the proposer, but not afterwards"]; see also Rule 6.2 of the Rules of Procedure for the BHBA Mandatory Fee Arbitration Program [party who requests binding arbitration "may withdraw that request and request a change to [nonbinding] arbitration . . . so long as the other parties have not already agreed to binding arbitration"].)

The City contends that N&A's consent was conditional or qualified. A conditional or qualified acceptance is a rejection of the original offer and is a new proposal. (Civ. Code, § 1585; *Apablasa v. Merritt & Co.* (1959) 176 Cal.App.2d 719, 726.) But N&A did not make a conditional or qualified acceptance. Acceptance of an offer must be unconditional, but that "only means free of conditions which the other party is not bound to perform." (*State v. Agostini* (1956) 139 Cal.App.2d 909, 915 (*Agostini*) [lessee's acceptance of an option to purchase property with the request that the lessor comply with the terms of the option was not a counteroffer].) It is "not essential . . . that the identical language be repeated." (*Schreiber v. Hooker* (1952) 114 Cal.App.2d 634, 639.)

N&A's acceptance of the City's offer was unconditional. Its written response reflects the parties' agreement that all three claims would be resolved through arbitration. N&A's additional statement that it would "reserve its right" to reconsider binding arbitration in the event that all claims could not be resolved in one proceeding was not a new condition because this statement did not require the City to

perform anything more than what the parties had already agreed upon. (*Agostini*, *supra*, 139 Cal.App.2d at p. 915.)

The inclusion of a condition that merely expressed what is already implied in fact or in law does not preclude the formation of a contract. (See *Humphry v. Farmers Union & Milling Co.* (1920) 47 Cal.App. 211, 213 (*Humphry*).) The additional statement was implied in fact because the parties could not be compelled to binding arbitration if the terms of the arbitration agreement were not met. (See *Greenspan v. LADT, LLC* (2010) 185 Cal.App.4th 1413, 1437 [there is no policy compelling parties to arbitrate controversies which they have not agreed to arbitrate].) Arbitrators are limited by the parties' agreement to arbitrate. (*Advanced Micro Devices, Inc. v. Intel Corp.* (1994) 9 Cal.4th 362, 375 (*Intel Corp.*).) To proceed with binding arbitration without compliance with the terms of the agreement would be grounds to vacate the award. (See *California Faculty Assn. v. Superior Court* (1998) 63 Cal.App.4th 935, 944 ["although an arbitrator generally enjoys substantial discretion to determine the scope of his or her contractual authority, courts are bound to uphold the parties' express agreement to restrict or limit that authority"]; *Ajida Technologies, Inc. v. Roos Instruments, Inc.* (2001) 87 Cal.App.4th 534, 543 [arbitrators exceed their powers if they do not comply with the terms of the agreement that limit their authority].)

This case is like *Humphry*, *supra*, 47 Cal.App. 211, where the court concluded that the addition of terms that were implied by law did not preclude the formation of a contract. (*Id.* at p. 214.) There, the buyer accepted all the terms of the seller's offer, but added that it would purchase the goods "subject permission inspection on arrival." (*Id.* at p. 213.) Seller argued

that these additional terms constituted a conditional acceptance or a counteroffer and that it did not assent to these new terms. (*Ibid*.) The court concluded that because the additional language merely expressed the buyer's implied right to inspect the items before acceptance, the new language did not constitute a qualified acceptance. (*Id*. at pp. 213-214.)

We also reject the City's contention that the arbitrators exceeded their powers by issuing a binding award without a written agreement. (Code Civ. Proc., § 1286.2, subd. (a)(4).) Here, the arbitrators issued the award based on a written agreement.

The Award Did Not Violate Public Policy

The City contends the award should be vacated or corrected because the arbitrators exceeded their powers by awarding an amount in fees greater than the City's contractual obligation in violation of public policy. This claim lacks merit.

An arbitration award can be set aside or corrected if the arbitrators exceeded their powers. (Code Civ. Proc., §§ 1286.2, subd. (a)(4), 1286.6, subd. (b).) Arbitrators exceed their powers when their award violates well-defined "public policy" or if they act in a manner not authorized by the contract or by law. (*City of Palo Alto v. Service Employees Internat. Union* (1999) 77 Cal.App.4th 327, 334.) The City relies on the California Constitution, which prohibits a local government from granting extra compensation to a contractor after services have been rendered. (Cal. Const., art XI, § 10, subd. (a); *Jensen v. Traders & General Ins. Co.* (1959) 52 Cal.2d 786, 794.) We independently review whether the arbitrators exceeded their powers. (*Hoso Foods, Inc. v. Columbus Club, Inc.* (2010) 190 Cal.App.4th 881, 888.)

The arbitrators did not exceed their powers when they awarded N&A fees based on the reasonable value of services rendered because the LSA expressly provides for payment in that amount. The termination clause provides that "[i]n the event of termination by either party hereto, CONTRACTOR shall be entitled to the reasonable value of its services performed prior to said termination." Here, the panel found that the City breached the LSA and that it owed N&A the reasonable value of services rendered. The arbitrators determined the reasonable value was greater than the original contract rate of $285 per hour for Negele and $120 per hour for paralegals. They determined the reasonable value was $550 per hour for Negele, $450 per hour for associates, and $160 per hour for paralegals based on the evidence regarding N&A's work on the case and the testimony of an expert, who provided community standard rates. We give great deference to the arbitrators' award. (*Intel Corp.*, *supra*, 9 Cal.4th at p. 373.)

We reject the City's contention that N&A was barred from recovering against a public entity under the quantum meruit theory. This argument erroneously assumes that the arbitrators issued a quantum meruit award. Recovery for reasonable compensation under a quantum meruit theory is an equitable remedy that applies only when there is no express contract that sets forth compensation. (*Fairview Valley Fire, Inc. v. Department of Forestry & Fire Protection* (2015) 233 Cal.App.4th 1262, 1271; *Sheppard v. North Orange County Regional Occupational Program* (2010) 191 Cal.App.4th 289, 314; *Katsura v. City of San Buenaventura* (2007) 155 Cal.App.4th 104, 109-110; *Hedging Concepts, Inc. v. First Alliance Mortgage Co.* (1996) 41 Cal.App.4th 1410, 1419.) Here, because the arbitrators

based the award on the express terms of an agreement providing for payment in the amount of the reasonable value of the services, the equitable doctrine of quantum meruit does not apply.

The City's reliance on *Board of Education v. Round Valley Teachers Assn.* (1996) 13 Cal.4th 269 is also unavailing. There, the arbitrator exceeded his powers when he found the school district in violation of a collective bargaining agreement, which conflicted with and was superseded by the Education Code. (*Id*. at pp. 287-288.) Here, the arbitrators' award is not in conflict with any statute or policy that prevented the arbitrators from basing their award on the express terms of the LSA. Because the award amount did not violate public policy, the arbitrators did not exceed their powers.

DISPOSITION

The judgment is affirmed. N&A shall recover its costs on appeal.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

James E. Herman, Judge

Superior Court County of Santa Barbara

Engle Carobini & Coats, Daniel J. Carobini, Benjamin F. Coats; Ferguson Case Orr Paterson, Wendy C. Lascher and John A. Hribar, for Defendant and Appellant.

Negele & Associates and James R. Negele, for Plaintiff and Respondent.