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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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

T&S PROPERTIES, INC., Plaintiff and Appellant, v. PACIFIC AVIATION DEVELOPMENT, Defendant and Respondent.	B290611 (Los Angeles County Super. Ct. No. BC620003)

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

Kesselman Brantly Stockinger, S.V. Stuart Johnson and Ryan Davis; Doug Levinson for Plaintiff and Appellant.

Law Offices of Brent Edward Vallens and Brent Edward Vallens; Pine Tillett Pine and Norman Howard Pine for Defendant and Respondent.

Tenant T&S Properties, LLC (T&S) and landlord Pacific Aviation Development, LLC (Pacific) stipulated to arbitrate their dispute over the amount of rent T&S owed for its hangar space at Van Nuys Airport. The arbitrator concluded that the parties failed to enter into a binding sublease because they did not have a meeting of the minds as to the date when the rental rate therein would begin. T&S moved to void the award on due process grounds, arguing that it had no opportunity to be heard on the issue of when the rent commenced. The arbitrator denied the motion.

T&S refiled its motion to void on due process grounds in the trial court. It also filed a petition to correct or vacate the arbitration award on the grounds that the integrated sublease facially demonstrated a meeting of the minds, and that Pacific should have been estopped from attempting to void the sublease. Pacific opposed the filings and filed a petition to confirm the award. The trial court denied T&S's motion and petition, and granted Pacific's. It found that T&S was afforded due process but concluded that it was not authorized to otherwise review the merits of the award.

T&S now contends that the trial court erred by failing to review the arbitration award for legal errors, which the parties stipulated were within the court's purview. T&S also contends that it should have prevailed in the arbitration as a matter of law because the rent commencement date was plain from the integrated agreement, the arbitrator improperly considered parol evidence in concluding otherwise, and the arbitrator deprived T&S of its due process right to present argument on the decisive issue in the case. We agree that the trial court should have reviewed the arbitration award for the legal errors T&S alleged,

but upon de novo review conclude that it reached the correct result. We accordingly affirm.

FACTUAL BACKGROUND

T&S owns a small aircraft and a portable 1,732-square-foot, L-shaped hangar that it stores on a rented plot at the Van Nuys Airport. Robert Turchan and Randy Stabler are the principals of T&S. Pacific was formed in 2007 to develop a new "propeller park" for hangar storage at the Van Nuys airport. Steve Argubright, one of Pacific's principals, also owns Argubright Construction, which employs Ryan Sanders to manage the propeller park. Sanders was an agent of Pacific at all relevant times.

While it waited for Pacific to complete the propeller park, T&S rented temporary space at the airport, an approximately 2,000 square-foot rectangular plot, at a rate of approximately $451 per month. T&S expected its rent to decrease once it moved to the propeller park, to somewhere between $350 and $400 per month.[1]

On September 21, 2013, Pacific issued a memorandum offering so-called "legacy tenants," including T&S, a rental rate of 26 cents per square foot for "a full-term lease, expiring September 1, 2041," if they signed a sublease for space in the still-incomplete propeller park by September 30, 2013. The memorandum stated that rental rates for legacy tenants would rise after that date.

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[1] Stabler testified to three reasons why T&S had this expectation: (1) Argubright made representations to that effect in 2008; (2) the $425 deposit it paid in 2008 to reserve a space in the propeller park was less than its current monthly rent; and (3) the economy was in the throes of an economic recession that depressed real estate prices. The arbitrator found that Argubright made no such representations.

On September 30, 2013, Turchan went to Pacific's office to sign a lease on behalf of T&S. Turchan testified that he viewed the 26-cent rate in the memorandum as a starting offer that could be negotiated down. He had a "target price" of approximately $365 per month, roughly 21 cents per square foot of hangar, not plot, space (1,732 x $0.21 = $363.72). He testified that he successfully negotiated a rental rate of $372.84 per month from Sanders, who had no objection to his proposed rate of 21 cents per square foot of hangar space. Sanders handwrote the monthly rent of $372.84 on the form sublease that Pacific had prepared. Turchan signed the sublease after Sanders orally confirmed the rent amount.

According to Sanders, he was not authorized to negotiate rates lower than 26 cents per square foot, and nobody, including Turchan, requested a lower rate. Sanders did not negotiate with Turchan. Sanders testified that he used a spreadsheet that incorrectly listed the size of T&S's hangar at 1,434 square feet rather than 1,732 square feet to calculate the rent amount he handwrote on the lease, $372.84 (1,434 x $0.26 = $372.84). He orally confirmed the amount when Turchan asked him about it.

The outcome of the September 30, 2013 meeting was a signed "Sub-Ground Lease Agreement" (the sublease) that included a "Base/Rent/Month" of $372.84. The sublease stated that the "Term of Sub-Ground Lease" was "Legacy Tenant, 28-Years," with an "Expiration Date" of September 1, 2041. It did not provide a start date or effective date. The sublease also did not identify the specific plot of land it governed, or the size thereof. Instead, the sublease stated that it applied to "that certain tract of ground located on the Van Nuys Airport . . . as otherwise approved by Landlord." The sublease contained an

integration clause.

After the sublease was signed, T&S kept its hangar on its temporary plot, for which it continued to pay monthly rent of approximately $451. In early 2014, T&S selected a rectangular plot in the propeller park. Pursuant to a separate contract, Argubright Construction poured a 2,020 square-foot concrete slab on the entirety of the plot.

On June 2, 2014, Sanders sent a letter informing T&S and other airport tenants that the propeller park would be opening later that month. The letter included the following paragraph: "Though your new lease at The Park became effective upon signing, your new rental rate will take effect on July 1, 2014. This means your checks will now be made out to 'The Park at VNY' and the monthly rent will be in accordance with the lease you signed, subject to any amendments made due to changes in the configuration of your hangar or concrete slab."

Attached to T&S's letter was a proposed lease amendment. It identified T&S's selected plot in the propeller park—"Hangar Romeo 2"—and stated that the parties entered into a lease agreement for the premises on September 30, 2013. The lease amendment stated that T&S's rent would be rising, effective July 2014, due to a 2 percent increase under Pacific's master lease. The lease amendment also listed the following: "Hangar Square Footage: 1732 Old Rental Rate: $450.32 NEW Rental Rate: $459.3264." T&S never signed the lease amendment; Turchan testified that he had no reason to, as he "was happy with the lease as it stood." T&S did, however, begin paying rent of $459.33 in July 2014, while it remained on its temporary plot.

T&S relocated its hangar to its new plot in the propeller park in September 2014. Effective October 1, 2014, Pacific began

billing T&S $533.05 per month in rent.[2] T&S paid that amount without objection through January 2015.

In a letter dated January 27, 2015, Stabler raised the issue of the increased rent with Sanders. Stabler wrote, "As you know, we signed our new lease with you back in [*sic*] September 30th of 2013, a copy of which I am attaching. Despite this new executed lease, it appears that your accounting department was not informed of its contents and has continued to bill us on a monthly basis for the prior lease rate of $451.00 and not the new monthly lease rate of $372.84 shown in our current lease. In addition, your accounting department increased the monthly rent billing slightly in June 2014 to $459.33 without explanation. . . . Lastly, your accounting department, again, increased the monthly rent billing in October of 2014 to $533.05, without an explanation. Unfortunately, our accounting department has continued to remit payments in accordance with your statements rather than in accordance with the terms contained in our lease agreement." Stabler requested credit in the amount of the alleged overpayments, and proposed that the parties "adjust our lease to the correct figure starting February 1, 2015."

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[2]An email Sanders sent to Stabler after the instant dispute arose stated that the basis for the $533.05 rate was "Your rate for the ENTIRE concrete PAD as was poured on the site. This is based off of the calculation including the CPI . . . factored at 2010 square foot." It appears from this statement that Pacific performed the following calculations; it is unclear why it believed the 2,020 square foot plot was 2,010 square feet. 2,010 square foot plot x $0.26 per square foot of plot space = $522.60 rent, plus an additional $10.45 to reflect the two percent increase mandated by the master lease. ($522.60 x .02 = $10.45; $10.45 + $522.60 = $533.05).

The sublease was not adjusted, and the parties continued to disagree about the amount of rent due. T&S filed suit against Pacific in May 2016.

PROCEDURAL HISTORY

I. Initial Trial Court Proceedings

T&S asserted five causes of action against Pacific: (1) declaratory relief in the form of a judicial declaration that the sublease was valid and that its $372.84 rate was "true and correct"; (2) specific performance; (3) quantum meruit; (4) breach of contract regarding the premises; and (5) breach of contract regarding the rent.[3] In its fifth cause of action, for breach of contract, T&S alleged that "[f]or more than a year, Defendant erroneously charged Plaintiff, and Plaintiff's accounting department inadvertently paid Defendant, more for monthly rent than permitted in the Sublease." It further alleged that Pacific refused to refund the overcharges, and that it was damaged "in an amount to be determined."

Pacific filed a cross-complaint against T&S in July 2016. It alleged six causes of action: (1) declaratory relief in the form of a declaration that the sublease was void due to its failure to specify the "number of square feet rented by T&S" and to otherwise describe the property to be leased; (2) declaratory relief in the form of a declaration that the sublease violated the statute of frauds, due to its failure to describe the property; (3) payment of unpaid rent; (4) reformation of the sublease "as an Alternative Remedy, if and only if the Court determines that there is an enforceable lease," to state that the leased premises consisted of 2,020 square feet and that the initial monthly rent was 26 cents

[3]T&S ultimately dismissed the third and fourth causes of action.

per square foot and totaled $525.20; (5) specific performance of the sublease as reformed; and (6) continuing trespass.

In May 2017, the parties stipulated to arbitrate their dispute. In their stipulation, they agreed "that (a) the Arbitrator shall apply the law of California to the Parties' claims and defenses asserted in the Action; and (b) the precedent of California case law and [*sic*] shall have binding (*stare decisis*) effect on the Arbitrator." They further agreed that "the Arbitrator shall not have the power to commit errors of law or legal reasoning, and the award may be vacated or corrected on appeal to a court of competent jurisdiction for any such error."

II. Arbitration Proceedings

A. Trial Briefs

Prior to the arbitration hearing, the parties filed trial briefs with the arbitrator, a retired superior court judge. In its brief, T&S argued generally that the sublease "should be enforced and not voided or reformed." In its discussion of its claim for declaratory relief, T&S cited case law holding that a lease must include "[t]he term for which the tenant will rent the property," and argued that the sublease met that requirement because it "[i]dentified the Sublease term as 28 years with an end date of September 1, 2041." At least twice, T&S emphasized the language of Pacific's June 2, 2014 letter, in which Pacific stated, "your new lease at The Park became effective upon signing." It also stated, in a footnote, "In June 2017, Pacific Development also alleged for the first time that the Sublease violates the Statute of Frauds for failing to identify the Sublease's start date. This is patently absurd. The Sublease identifies a 28-year term and an expiration date of September 1, 2041. [Citation.] Therefore, the Sublease commenced in September 2013, when it was signed."

In the facts section of its brief, Pacific asserted that the sublease "does not state when the lease of space within the Propeller Park would begin." In the argument portion, it contended that the sublease did not reflect a "meeting of the minds" between T&S and Pacific and failed to satisfy the statute of frauds, because it did not "identify the quantity or location of the space to be leased." Pacific discussed case law holding that a lease lasting longer than one year must include "a definite and agreed term" to satisfy the statute of frauds, but focused its arguments on the lack of a property description rather than the lack of a term. Pacific sought a determination that the sublease "was not a valid, enforceable written lease" and a declaration that "subsequent actions or inactions of the parties after September 30, 2013 did not create a written lease."

B. Arbitration

The arbitrator held a three-day arbitration hearing in July 2017. The facts related above were adduced during that hearing, through numerous exhibits and the testimony of Turchan, Stabler, Sanders, and Argubright. Additionally, the following events occurred relevant to this appeal.

In its opening statement, T&S argued that the sublease should be enforced in part because it "sets forth the lease term, 28 years, expiring September 1, 2041." In its opening statement, Pacific identified the following as the "second point" it wanted to make at trial: "although the lease specifies an end date, it never specifies a start date. They didn't know. In fact, it was signed September 30th. Their hangar physically got moved in the middle of September a year later. No one knew exactly when it would be because it hadn't been constructed yet. And a start date is important. And we cited cases of why not having a start date

is an essential issue."

During Pacific's cross-examination of T&S's first witness, Stabler, Pacific asked about the September 30, 2013 date of the sublease: "Is that the date you signed the agreement or is that the day the lease agreement began?" Stabler responded that the lease began on that date, though he acknowledged that the propeller park was not finished at that time and that "[w]e did not know the date we would be moving" into the new space. Pacific returned to the issue later in the cross-examination, at which time Stabler testified that the sublease changed T&S's rental rate effective September 30, 2013. Stabler also acknowledged at that time that T&S "continued the same payment for way more than a year."

After the arbitration, the parties prepared closing briefs and presented oral arguments to the arbitrator. The parties' closing briefs advanced arguments similar to those made in their trial briefs, though they relied on and cited to evidence admitted at the arbitration hearing. The appellate record does not contain a transcript of the oral argument hearing.

C. Award

The arbitrator issued a written award on September 22, 2017.[4] He made four foundational factual findings, which he noted were not exhaustive: (1) On September 30, 2013, Turchan was prepared and expected to sign a lease with Pacific at a monthly rate of 26 cents per square foot; (2) Turchan realized there had been an error in calculating the rent and therefore did

[4]The award is entitled "Partial Arbitration Award." The arbitrator later ruled that the award was "final as to the Arbitrator and therefore subject to Superior Court confirmation, vacation, or correction."

not agree to pay a monthly rate of 26 cents per square foot; (3) Sanders never communicated to Turchan that day that the rental rate would be corrected if it "turned out to be wrong"; and (4) Argubright acted as an authorized agent of Pacific at all relevant times.

Based on those and other, unstated findings, the arbitrator concluded that "[i]t is absolutely clear that the 9/30 document did not constitute a binding lease between T&S and Pacific. The 9/30 document is missing at least the following essential elements of a lease: [¶] 1. The location of the demised premises; [¶] 2. The size of the demised premises; [¶] 3. The date when rent payments pursuant to the lease will commence." The arbitrator further concluded, however, that the first two "deficiencies" were remedied by the parties' subsequent conduct. He reached the opposite conclusion as to the third deficiency: "The date on which the new rent rate under a lease modifying an existing tenancy would commence is obviously a very material term of such a lease. As noted above, the 9/30 document is silent as to the date on which the new rent would commence. In view of that fact and the fact that the parties take quite different positions on what was agreed upon insofar as that term is concerned, the Arbitrator hereby finds that there was never a meeting of the minds concerning the date on which the new lease rate would commence and therefore that THERE NEVER WAS A BINDING LEASE ENTERED INTO BETWEEN T&S AND PACIFIC."

D. Motion to Void

On October 16, 2017, T&S filed a motion to void the arbitration award. It contended that it was denied its due process rights "because Pacific Development never actually sought to void—much less even gave notice it sought to void—the

Sublease based on the rent commencement date." It argued that Pacific "never raised the rent commencement issue as a claim or defense in its (i) Answer to T&S's Complaint, (ii) Cross-Complaint, (iii) discovery responses, (iv) Opening Trial Brief, (v) Reply to T&S's Opening Trial Brief, or (vi) Closing Trial Brief. Additionally, T&S never presented evidence or argument on the issue at trial. Indeed, T&S had no reason to litigate in discovery, argue at trial, or brief in its trial briefs the issue of whether the lease sufficiently identifies the rent commencement date. Therefore, T&S was denied due process as it had no notice or opportunity to be heard on this issue." T&S alternatively argued that the sublease sufficiently identified the rent commencement date as a matter of law, because it included an end date (September 1, 2041), a duration (28 years) and an execution date (September 30, 2013). T&S asserted that "the rent commenced effective September 1, 2013 and no later than September 30, 2013."

The arbitrator heard the motion before Pacific responded, at a previously scheduled hearing held October 18, 2017. At the beginning of the hearing, before either side presented any argument, the arbitrator remarked, "First, the issue of voidness of the September 2013, I'll call it, purported lease certainly was on the table during the course of our three-day arbitration trial. [¶] Although it certainly was not – certainly, the issue of voidness by reason of the incompleteness of the commencement date in the purported lease . . . was not expressly asserted by the defendant. [¶] But during the trial, there was evidence of incompleteness of the commencement date. . . . [¶] So there was evidence of that during the trial. The pleadings did raise the question of when the lease commenced - - when the rent commenced under the

purported lease, I guess is the better way of saying it, because Pacific sought a declaration or an adjudication of the amount of back rent and . . . that request necessarily involved a determination of when the rent started. [¶] Next, T&S was never refused any opportunity to argue anything, and everybody agrees that it did not argue on the subject which it is now arguing about, namely, the alleged invalidity of the lease because of a failure to state a rent commencement date."

The arbitrator continued, in somewhat contradictory fashion, "And so we are left with the decision of the arbitrator, . . ., that because there was no specification or method of determining an agreed upon start date for rent, the purported lease, even as modified by subsequent events, was void because of that absence. [¶] And during the trial, nobody did anything to the contrary because that matter just wasn't argued at trial. There was evidence on the subject, but it wasn't argued at trial. [¶] And so, no doubt because it wasn't argued at trial, I made what appears to be an erroneous ruling because the purported lease does specify the information necessary to establish the start date. [¶] The purported lease specifies a term of 28 years and specifies the ending date of that term. And it's a simple mathematical calculation to go back 28 years before the ending date, and that's the commencement date. [¶] And I didn't pick up on that, and I'm quite sure that the reason I didn't pick up on it was that it wasn't argued. But it's the position of T&S that it couldn't be expected to argue on that subject."

The arbitrator then noted that the motion was brought outside the 10-day window for written applications to correct arbitration awards provided in Code of Civil Procedure, section

1284.[5] T&S asserted that the motion was not subject to that deadline because it was brought pursuant to section 473, subdivision (d), not section 1284.[6] T&S then informed the arbitrator that it did not "perceive any need[ ]" to orally argue the motion, even though the arbitrator advised it that "this is going to be the only occasion for oral argument on the motion." Pacific likewise stated that it could present its position in writing; it had not prepared oral argument due to the short time span between the filing of T&S's motion and the hearing.

Pacific subsequently filed a written opposition to the motion. It contended that the motion could only have been brought pursuant to section 1284, and that it was untimely under that statute. Pacific further argued that even if the motion was timely, it should fail on the merits because T&S was not denied due process. It is unclear whether Pacific addressed T&S's substantive argument about the rent commencement date; the sole copy of the opposition included in the appellate record is

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[5]All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

[6] Section 1284 provides, in relevant part, that an arbitrator "upon written application of a party to the arbitration, may correct the award upon any of the grounds set forth in subdivisions (a) and (c) of Section 1286.6 not later than 30 days after service of a signed copy of the award on the applicant. Application for such correction shall be made not later than 10 days after service of a signed copy of the award upon the applicant." Section 473, subdivision (d) provides, "The court may, upon motion of the injured party, or its own motion, correct clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed, and may, on motion of either party after notice to the other party, set aside any void judgment or order."

incomplete.

The arbitrator denied the motion to void in a written ruling dated November 29, 2017. He explained that the motion was denied "[b]oth on a procedural ground and, independently, on the merits." As to the procedural ground, the arbitrator accepted T&S's position that it brought the motion under section 473. He nevertheless concluded that he "no longer has the power to correct or vacate his Partial award," because that award "decided all of the issues presented for decision except for those that could not be determined until after that partial award had issued" and therefore was final.

The arbitrator continued, "But even if the Arbitrator had the power to correct or vacate his Partial Award herein, having evaluated the merits of said Motion (and for that purpose, having ignored the procedural impediment described above), the Arbitrator would not correct or vacate that Partial Award." He gave several reasons for that decision, including findings that T&S "was not denied the opportunity of arguing any issue at the arbitration trial" and that "the rent commencement date issue was presented to the Arbitrator by, among other things, (1) Plaintiff's Complaint, (2) Plaintiff's opening Trial Brief [citation] and ( ) [*sic*] Pacific's cross-examination of Randy Stabler . . . on the first day of trial." The arbitrator further found that even if T&S had been denied the opportunity to argue the issue, "any such error was rectified by (1) the fact that Plaintiff was given a full opportunity to argue that issue on its merits at the oral argument on said Motion and in post-trial briefing, (2) the fact that Plaintiff took that opportunity (at least in post-trial briefing), and (3) the fact that in determining said Motion on its merits and for the moment ignoring the procedural impediment

discussed above, the Arbitrator considered said arguments of Plaintiff."

The arbitrator also distanced himself from his October 18, 2017 oral remarks that the rent commencement date was ascertainable from the sublease. He explicitly rejected T&S's assertion that the commencement date was ascertainable from the evidence presented at the arbitration hearing. The arbitrator drew a distinction between the commencement date of a lease and the commencement of rent under that lease, and found that the two were not synonymous in this case. The arbitrator gave four reasons for this finding. First, T&S "in fact paid the old rent . . . through June of 2014, suggesting that Plaintiff did not expect the new rent to begin on September 1, 2013." Second, T&S proffered two different dates on which it believed the new rental rate took effect: September 1, 2013, and September 30, 2013. Third, the arbitrator disbelieved T&S's evidence that Pacific represented "that the rent would go down upon execution of the September 30, 2013 'lease.'" Fourth, he found it "absolutely clear" that Pacific did not intend for the new rent to commence in September 2013, "or in 2013 at all," because it intended the rent to increase, "did not have the chutzpah to assert (and has never asserted) that a higher rate would accrue long before the demised premises were ready for occupancy," and "did not begin billing Plaintiff at the new rate until sometime in 2014."

The arbitrator thus concluded, "Accordingly, there was no meeting of the minds concerning the date on which the new rent would commence, it is not mandated by the law, and the parties reasonably take quite different positions on what was agreed upon insofar as that date is concerned, and therefore – because of the absence of agreement on this critical term of the lease being

negotiated, the Arbitrator hereby finds that there never was a meeting of the minds concerning the date on which the new lease rate would commence and therefore that THERE NEVER WAS A BINDING LEASE ENTERED INTO BETWEEN PLAINTIFF AND PACIFIC."

III. Post-Arbitration Trial Court Proceedings

While the motion to void was pending before the arbitrator, T&S filed a substantively similar "Motion to Void Portion of Arbitration Award" in the trial court. On December 29, 2017, one month after the arbitrator issued his ruling denying the motion to void, T&S also petitioned the trial court to correct or vacate the arbitration award. In that petition, T&S asserted that the arbitrator exceeded his authority by making an "erroneous finding that there was no meeting of the minds as to the rent commencement date" and by voiding the sublease when Pacific was trying to both void and enforce it. Pacific filed a petition to confirm the award on January 2, 2018. In its response to Pacific's petition, T&S again asserted that "the Arbitrator committed an error of law when he disregarded the rent commencement date in the integrated Sublease dated September 30, 2013 . . . and found there was no meeting of the minds between T&S and Defendant Pacific Aviation Development, LLC . . . as to the rent commencement date."

The trial court heard the motion and petitions on March 14, 2018. No reporter's transcript of the hearing is in the record. After the hearing, the court issued a written order granting Pacific's petition to confirm and denying T&S's motion and petition. The order stated that the court "finds and concludes that there was no denial of due process in arbitration." The order further stated that the trial court was bound to accept the

arbitrator's findings of fact, and lacked authorization "to rule on an arbitration award based upon the merits, such as determinations regarding the Sublease based on the Rent Commencement Date." The order cited section 1286.2 and case law to support this proposition, but did not cite the parties' stipulation. The trial court later entered judgment confirming the arbitration award.

T&S timely appealed.[7]

DISCUSSION

I. Scope and Standard of Review

As a general rule, "courts cannot review arbitration awards for errors of fact or law, even when those errors appear on the face of the award or cause substantial injustice to the parties." (*Richey v. AutoNation, Inc.* (2015) 60 Cal.4th 909, 916.) However, parties may "take themselves out of the general rule that the merits of the award are not subject to judicial review" by clearly agreeing "that legal errors are an excess of arbitral authority that is reviewable by the courts." (*Cable Connection, Inc. v. DIRECTV, Inc.* (2008) 44 Cal.4th 1334, 1361.) Such agreements "limit the arbitrators' authority by providing for review of the

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[7]T&S purports to appeal both from the trial court's judgment and "directly from the Arbitrator's Award for errors of law." Although the parties' stipulation to arbitrate provides that "the Arbitrator shall not have the power to commit errors of law or legal reasoning, and the award may be vacated or corrected on appeal to a court of competent jurisdiction for any such error," the arbitration award is not directly appealable to this court. (See § 1294.) We may review the trial court's judgment "and any intermediate ruling, proceeding, order or decision which involves the merits or necessarily affects the order or judgment appealed from, or which substantially affects the rights of a party." (§ 1294.2.)

merits" and afford trial courts the opportunity to establish a record and review the reasoning of the arbitral tribunal. (*Id.* at pp. 1363-1364.)

Here, the parties expressly agreed that "the Arbitrator shall not have the power to commit errors of law or legal reasoning, and the award may be vacated or corrected on appeal to a court of competent jurisdiction for any such error." This language is virtually identical to that found sufficient to provide for legal review in *Cable Connection, Inc. v. DIRECTV, Inc.*, *supra*, 44 Cal.4th at p. 1361, fn. 20. We accordingly conclude that this provision authorized the trial court to review the arbitration award for errors of law. The award remained subject to the general rule prohibiting the trial court from reviewing it for errors of fact, however, because the provision does not specifically render them reviewable.

We review the trial court's order confirming the arbitration award under a de novo standard. To the extent that the trial court's ruling rests upon the determination of disputed factual issues, we apply the substantial evidence standard. (*ECC Capital Corporation v. Manatt, Phelps & Phillips, LLP* (2017) 9 Cal.App.5th 885, 900.)

II. Trial Court's Review

T&S contends that the trial court erred by "refusing to review the award for errors of law," because it was required to do so under the parties' stipulation to arbitrate. T&S points particularly to the trial court's statement that it was "not authorized to rule on an arbitration award based upon the merits, such as determinations regarding the Sublease based on the Rent Commencement Date." It does not otherwise specify in connection with this argument what issues the trial court should

have reviewed, or how it should have done so. Pacific responds that the trial court correctly "examined the merits of the due process allegations" and "deferred to [the arbitrator's] finding that the parties had failed to reach a meeting of the minds."

As discussed above, the parties' stipulation authorized the trial court to review the arbitration award for legal errors, but not factual ones. The primary legal error T&S asserted in its motion to void was a deprivation of due process. (See *Tafti v. County of Tulare* (2011) 198 Cal.App.4th 891, 896.) The trial court's order stated that it had concluded "that there was no denial of due process in arbitration." We conclude from this explicit language that the trial court considered, and rejected, this claim of legal error; there is nothing in the record, such as a reporter's transcript of the hearing, to suggest otherwise.

In its petition to vacate and opposition to Pacific's petition to confirm, T&S also argued that the parties reached a meeting of the minds as a matter of law "because the Sublease is fully integrated and unambiguously provides a rent commencement date of September 1, 2013." "Whether a contract is integrated is a question of law when the evidence of integration is not in dispute." (*Founding Members of the Newport Beach Country Club v. Newport Beach Country Club, Inc.* (2003) 109 Cal.App.4th 944, 954; see also § 1856, subd. (d). Whether a contract is ambiguous also presents a question of law. (*Smith v. Adventist Health System/West* (2010) 182 Cal.App.4th 729, 754-755.) Due to the parties' stipulation, these legal issues were subject to review by the trial court.

On our de novo review, however, we examine the trial court's ruling, not its reasoning or rationale, and may affirm the ruling on any basis presented by the record. (*McClain v. Octagon*

Plaza, LLC (2008) 159 Cal.App.4th 784, 802.) Here, the trial court's ruling confirmed the arbitration award. As we discuss more fully below, we conclude that this ruling was not erroneous.

III. Integration, Ambiguity, and Parol Evidence

T&S contends that it should have prevailed as a matter of law on the rent commencement issue, because "the sublease clearly contains an ascertainable meeting of the minds as to the commencement date," the integration clause prevented the arbitrator from using parol evidence, and Pacific was estopped from attempting to void the sublease because it concurrently sought to enforce the sublease. We disagree.

There is no dispute that the sublease is integrated, or intended to constitute the final expression of one or more terms of the parties' agreement. (*Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Assn.* (2013) 55 Cal.4th 1169, 1174 (*Riverisland*).) It contains an integration clause that states, "This Sublease contains the entire agreement between the parties, and any agreement hereafter made shall be ineffective to change, modify, discharge or effect an abandonment in whole or in part unless such agreement is in writing and signed by the party against whom enforcement of the change, modification, discharge, or abandonment is sought. Each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations and contents of the Sublease itself." The only objectively reasonable interpretation of this clause is that the parties intended the sublease to be the final and exclusive expression of their agreement.

Because the sublease is integrated, it is subject to the parol evidence rule, which despite its name is not a rule of evidence but

rather is a substantive rule of law. (*Riverisland*, *supra*, 55 Cal.4th at p. 1174.) Codified in section 1856 and Civil Code section 1625, the parol evidence rule generally provides "that when parties enter an integrated written agreement, extrinsic evidence may not be relied upon to alter or add to the terms of the writing." (*Riverisland*, *supra*, 55 Cal.4th at p. 1174.) The parol rule has exceptions, however. One of them, codified in section 1856, subdivision (f), provides that parol evidence relevant to the validity of the agreement itself is admissible if that issue is in dispute. (§ 1856, subd. (f).) Another exception permits the admission of parol evidence to show that an agreement is reasonably susceptible of a particular meaning—that is, whether it is ambiguous. (*Wolf v. Superior Court* (2004) 114 Cal.App.4th 1343, 1350-1351.)

T&S contends that the arbitrator impermissibly admitted and relied on parol evidence because the integrated sublease "unmistakably identified" a rent commencement date of September 1, 2013. We are not persuaded that the sublease is unambiguous as to the rent commencement date. The sublease was executed on September 30, 2013. It provides an end date of September 1, 2041, and a term of 28 years. T&S asserts that simple mathematics demonstrates that the rent commenced on September 1, 2013, but the sublease had not even been signed then, and nothing in the document renders it retroactive. If the rent commenced on September 30, 2013, the date the sublease was signed, then the total term would not be 28 years. Parol evidence accordingly was admissible to assist the arbitrator in determining the parties' intentions. It likewise was admissible due to Pacific's counterclaims seeking to invalidate or void the sublease.

When parol evidence is in conflict, the resolution of that conflict is a question of fact. (*Wolf v. Superior Court*, *supra*, 114 Cal.App.4th at p. 1351.) The arbitrator resolved that question of fact by concluding that the parties had not reached a meeting of the minds on the material term of the rent commencement date. The trial court was not authorized to review or disturb that factual finding. It accordingly did not err in confirming the award.[8]

IV. Due Process

T&S also contends that the arbitrator "erred by granting sua sponte relief without any due process," because he denied T&S an opportunity to litigate the rent commencement issue and denied its motion to void the award on that basis. In other words, it argues that the trial court erred by concluding that the arbitration satisfied due process requirements. We disagree.

"[A]rbitration procedures that interfere with a party's right to a fair hearing are reviewable on appeal." (*Hoso Foods, Inc. v. Columbus Club* (2010) 190 Cal.App.4th 881, 888.) Indeed, the Legislature has taken steps to protect the fundamental fairness of the arbitration process. (*Azteca Construction, Inc. v. ADR Consulting, Inc.* (2004) 121 Cal.App.4th 1156, 1165.) Section 1286.2, subdivision (a)(5) provides that an arbitration award must be vacated if "The rights of the party were substantially prejudiced by . . . the refusal of the arbitrators to hear evidence material to the controversy or by other conduct of the arbitrators

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[8]T&S also contends that Pacific should have been estopped from claiming the sublease was void or invalid. Both judicial and equitable estoppel are equitable doctrines, not legal ones, and are subject to vast discretion. (*Gottlieb v. Kest* (2006) 141 Cal.App.4th 110, 132.) The parties' stipulation permitted the trial court to review errors of law, not discretion or equity.

contrary to the provisions of this title." "The party seeking to vacate an arbitration award bears the burden of establishing that one of the six grounds listed in section 1286.2 applies and that the party was prejudiced by the arbitrator's error." (*Royal Alliance Associate, Inc. v. Liebhaber* (2016) 2 Cal.App.5th 1092, 1106.) T&S has not carried that burden.

During the arbitration, the arbitrator gave the parties wide latitude to explore a variety of issues, including those only tangentially raised by the pleadings. Both sides alluded to the rent commencement date in their filings, evidence, and arguments. Most notably, T&S sought the determination and repayment of overcharged rent in its complaint, which necessarily put in issue the rent commencement date. T&S also directly addressed the issue in a footnote in the brief it filed in advance of the arbitration, in which it stated, "In June 2017, Pacific Development also alleged for the first time that the Sublease violates the Statute of Frauds for failing to identify the Sublease's start date. This is patently absurd. The Sublease identifies a 28-year term and an expiration date of September 1, 2041. [Citation.] Therefore, the Sublease commenced in September 2013, when it was signed." Pacific also expressly placed the issue of the lease start date on the table at the hearing during its opening statement, and twice elicited testimony about the issue from one of T&S's principals during cross-examination. We were not provided with a reporter's transcript of the parties' final oral arguments, so we do not know whether or how the issue may have been addressed at that time. But the record as it stands indicates that T&S had both notice of the rent commencement date issue and an adequate opportunity to address it during the hearing, had it chosen to do so.

T&S asserts that the arbitrator's order was like "a bolt from the blue" that caught it unaware. It cites *Monarch Healthcare v. Superior Court* (2000) 78 Cal.App.4th 1282 (*Monarch*), but that case is not on point. In *Monarch*, a plaintiff served non-party Monarch with a records-only subpoena. Monarch did not file a motion to quash but asserted trade secret and privacy objections to certain requests. (See *Monarch*, *supra*, 78 Cal.App.4th at p. 1285.) Later, after it was named as a defendant, Monarch opposed a motion to compel production of the same documents. (*Ibid.*) At the hearing on the motion, "the trial court on its own accord announced that Monarch, as a non-party at the time of the discovery request, could only object via a motion to quash" and ordered it to produce the documents. (*Ibid.*) Monarch sought writ relief from the appellate court. (See *id.* at p. 1291.)

Prior to reaching the merits of the writ request, which it granted, the court of appeal observed that "Monarch should have been given the opportunity to brief the new issue raised by the trial court at the hearing." (*Monarch*, *supra*, 78 Cal.App.4th at p. 1286.) It further stated that "fundamental principles of due process also call for those with an interest in the matter to have notice and the opportunity to be heard, so that the ensuing order does not issue like a 'bolt from the blue out of the trial judge's chambers.' [Citations.]" (*Ibid.*) The court of appeal declined to "consider the matter further, however, since Monarch has failed to preserve it" by seeking a continuance or permission to file a supplemental brief." (*Id.* at pp. 1286-1287.) Thus, the remarks T&S relies on here were mere dicta, not essential to the court's holding.

Even if they were essential to the court's holding, the record here shows that T&S recognized and took the opportunity to address the rent commencement date issue in its trial brief, as an element of its claim that the sublease was a valid contract. Pacific raised the issue during its opening statement and cross-examination of Stabler, but T&S did not follow through with any argument about the issue during the arbitration until it filed its motion to void. Neither T&S nor Pacific developed the issue with significant depth, but it was unquestionably within the scope of the parties' dispute about the validity of the lease and amount of rent owed.

T&S also contends that the arbitrator violated its due process rights by issuing relief that Pacific did not request, and that the award is void on that basis. T&S points to *Garamendi v. Golden Eagle Ins. Co.* (2004) 116 Cal.App.4th 694 (*Garamendi*) to support this contention. In *Garamendi*, a trial court ordered a party not present at the trial to pay personal injury damages and attorney fees to the plaintiffs, who did not seek either form of relief in their operative complaint. (See *id.* at pp. 699-701, 708.) The court of appeal concluded that the judgment was void to the extent it purported to award personal injury damages and attorney fees, because the non-appearing defendant had no notice that such relief was being claimed. (*Id.* at pp. 708-709)

Here, the relief Pacific sought from the moment it filed its cross-complaint was a declaration that the sublease was void. Unlike the defendant in *Garamendi*, T&S was aware of the nature of that request and mounted evidence against it during the arbitration. The theory on which the arbitrator found the sublease void, while not directly pled in the cross-complaint, nevertheless was supported by arguments made and evidence

adduced at the arbitration. Moreover, "[a]bsent 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 contractual interpretation." (*Gueyffier v. Ann Summers, Ltd.* (2008) 43 Cal.4th 1179, 1182.) The relief the arbitrator awarded was both specifically requested and rationally related to his findings.

DISPOSITION

The judgment of the trial court is affirmed. The parties are to bear their own costs of appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

WILLHITE, ACTING P.J.

CURREY, J.