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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

GREAT AMERICAN INVESTMENTS, INC., et
al.,

Plaintiffs and Respondents,

v.

ZEYAD ELALAMI,

Defendant and Appellant.

F088718

(Super. Ct. No. 21CECG03674)

OPINION

APPEAL from a judgment of the Superior Court of Fresno County. Jonathan M. Skiles, Judge.

Wilke Fleury and Suzanne M. Nicholson for Defendant and Appellant.

Law Office of Amy R. Lovegren-Tipton and Amy R. Lovegren-Tipton for
Plaintiffs and Respondents.

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Appellant Zeyad Elalami challenges the trial court's confirmation of a final award following arbitration, arguing he was denied due process by the trial court in his challenge of that award. He further challenges the denial of his subsequent motion for reconsideration of that decision, as well as the court's refusal to issue an order shortening time for a hearing on a motion to set aside the judgment. Following our review of the

record and the applicable standards of review, we conditionally reverse the judgment and remand for further proceedings in the trial court.

PROCEDURAL SUMMARY

On December 13, 2021, Great American Investments, Inc. (Great American) filed a verified complaint against Zeyad Elalami, Mamdouh Elalami,¹ Shashi Sharma, and Harv Wyman. The complaint alleged six different causes of action against the defendants for actions involving the lease and potential sale of a commercial property in Fresno, California. Not every cause of action was alleged against every named defendant. In the prayer, the complaint sought injunctive relief, compensatory damages, and attorney fees and costs.

Two days after filing the complaint, Great American submitted an ex parte application for a temporary restraining order (TRO) and an order to show cause related to its request for a preliminary injunction. On December 16, 2021, the trial court found good cause for Great American's application, granted the request for a TRO and set a hearing for January 4, 2022, on the order to show cause. However, on the date set for the hearing, the TRO was dissolved after there was a failure to prove the summons and complaint had been served on all defendants. On January 13, 2022, following a request from Great American, defendant Harv Wyman was dismissed without prejudice from the case.

On February 1, 2022, Sharma filed a cross-complaint against Great American, A.J. Rassamni, and Zeyad. This cross-complaint alleged four causes of action against Zeyad alone, and two additional causes of action against Great American and Rassamni together. The allegations of the cross-complaint involved an agreement Sharma entered into with Zeyad for the purchase of the subject commercial property, and the potential

¹ Zeyad Elalami and Mamdouh Elalami will be referenced by their first names in this opinion, and by their last name if referenced together. No disrespect is intended in this effort at clarity.

interference with that agreement by tenants Great American and Rassamni. Through his cross-complaint, Sharma informed the parties that he would be seeking to arbitrate this claim, pursuant to the terms of the purchase agreement. Sharma also filed an answer to Great American's verified complaint on this same date, generally denying all allegations and raising 25 affirmative defenses. On February 4, 2022, the Elalamis answered Great American's verified complaint.

A new request for a TRO and order to show cause for a preliminary injunction was granted on February 3, 2022. Following a hearing held on February 24, 2022, the request for the preliminary injunction was granted. The order required Great American to post a bond in the amount of \$100,000 by March 21, 2022. The record on appeal does not reveal whether such a bond was posted.

On March 2, 2022, Great American and Rassamni answered the Sharma cross-complaint, and filed their own cross-complaint against the Elalamis and Sharma seeking contribution and equitable indemnity. On April 6, 2022, Zeyad answered the cross-complaint brought by Sharma, as well as the cross-complaint brought by Great American and Rassamni.

On September 19, 2022, a stipulation to stay the action pending arbitration was filed on behalf of all the parties. An order staying the action in light of the stipulation was entered on September 21, 2022.

An evidentiary arbitration hearing was held on April 5, 6, and 7, 2023. In both the tentative and final awards issued, the arbitrator noted that Sharma, Zeyad, Great American, and Rassamni were all present for the entirety of the hearing and were represented by counsel throughout. In an interim award issued on July 6, 2023, the arbitrator provided his findings on the issues presented and identified the prevailing parties for purposes of further briefing on the question of attorney fees and costs.²

² The interim award is not actually part of the record we have been provided.

According to a declaration submitted by Zeyad's attorney, the arbitrator also directed Zeyad and Rassamni to negotiate a purchase price for the subject property in its altered state, but then to keep the purchase price they agreed to confidential. Counsel for Rassamni informed counsel for Zeyad on July 14, 2023, that the men had reached an agreement for the sale of the property. Counsel for Zeyad stated in a declaration that she contacted Zeyad to inquire about this agreement and that he responded he would "get back to me."

Zeyad had apparently not gotten back to his attorney on July 19 or 20, 2023, when counsel for Rassamni informed the arbitrator that an agreement had been reached, and that Zeyad had been paid in full. No information is provided indicating whether Zeyad and his attorney talked at this time, or at any time before the final arbitration award was issued. In a declaration she prepared for a later motion, Zeyad's attorney admitted she mistakenly believed this representation to be true and conveyed that to the arbitrator.

The final arbitration award was issued on August 2, 2023, and directed Zeyad to pay Sharma \$255,000, plus attorney fees of \$55,860.50, and costs in the amount of \$12,988.74. Zeyad was also directed to secure the return of a deposit Sharma had made of \$35,000 in escrow, and to pay Sharma interest on the escrow deposit. Zeyad was further ordered to pay Great American and Rassamni, jointly, \$255,000 plus attorney fees in the amount of \$28,222.50 and costs equaling \$9,017.17. Finally, the arbitrator found that because Zeyad was fully paid for the subject commercial property, he was required to transfer title to the property to MAR Capital Investments, LLC³ within 30 days.

On August 18, 2023, Great American petitioned the trial court to confirm the arbitration award. After filing a response opposing the petition to confirm the arbitration award, Zeyad filed a separate petition on September 26, 2023, to correct and/or vacate the arbitration award. Zeyad specifically alleged the arbitrator was mistaken when reaching

³ This is an entity connected to Rassamni.

the conclusion an agreement had been reached between Zeyad and Rassamni on a purchase price for the property, blaming this mistake on representations made to the arbitrator by their respective attorneys. Rassamni filed an opposition to this petition to correct and/or vacate the arbitration award on October 17, 2023.

On November 17, 2023, the parties filed a joint status conference statement. Besides summarizing the various filings made by all the parties in this matter, the statement revealed that Great America's corporate status had been terminated on August 4, 2023. The joint statement expressed a concern by the parties that Great American might not be able to move forward in this action or in any manner necessary to confirm the arbitration award.

On February 23, 2024, Sharma filed his own petition to confirm the arbitration award and further filed a notice of hearing for the petition to confirm the award for March 21, 2024. This became necessary after the trial court judge in this case ordered Sharma on January 17, 2024, to refile his petition to confirm the arbitration award. Sharma had initiated a new case file by not filing his petition to confirm the arbitration award in the existing case. Sharma's petition was, therefore, pending in the same court, but in a different department. Because both cases were addressing the same arbitration award, the court wanted to resolve both petitions at the same time.⁴

On February 29, 2024, Great American filed a notice of calendar setting, stating a hearing had been set to request the court to issue an order directing the California Secretary of State to reinstate its corporate status. In the memorandum of points and authorities filed on Great American's behalf, it was argued good cause existed for its

⁴ The other case is referenced in a few places in this file. It is a separate action Sharma initiated on September 12, 2023, specifically to confirm the arbitration award. (23CECG03765). The joint status conference statement filed by the parties in November 2023 acknowledged the summons for this related case had been served on Zeyad Elalami.

reinstatement because the dissolution had not complied with the requirements in the statute governing the voluntary dissolution of corporate status. On March 8, 2024, Sharma submitted his opposition to any reinstatement of Great American's corporate status, believing it was an effort by the Elalamis and Rassamni to transfer title fraudulently in order to avoid paying anything to Sharma in the event the arbitration award was confirmed. However, Zeyad also opposed Rassamni's effort to reinstate Great American's corporate status. Zeyad disputed any claim of mistake in the loss of corporate status and felt Rassamni sought reinstatement simply because he finally realized he needed that step to move his case forward.

On March 12, 2024, Zeyad filed a notice of a related action involving case 23CECG03765, alerting the court that a separate case with the same parties and involving the same or similar claims was pending in the trial court.⁵

A hearing held on March 27, 2024, addressed Sharma's petition to confirm the arbitration award. A tentative ruling had already been issued by the court on this matter. Following the hearing, the trial court adopted its tentative ruling as its final order. The ruling confirmed the arbitration award and at the same time denied Rassamni's request for an order directing the California Secretary of State to reinstate Great American's corporate status. The ruling also directed Sharma to prepare a judgment for the court's signature in 10 days. The document adopting the tentative ruling as the final order was submitted by Great American and signed and filed by the court on April 2, 2024.⁶

⁵ This is the same case referenced in footnote 4 above. Presumably, the court was already aware of this other case file when it directed Sharma to refile his petition to confirm the arbitration award in this case.

⁶ Because Sharma is not part of this appeal, we assume that any separate order prepared by Sharma was not included in the record on appeal submitted for this case. The record does not contain a notice of final order or judgment that was served on the parties.

On April 5, 2024, Zeyad filed a notice of motion for reconsideration of the court's order confirming the arbitration award. After opposition papers were filed and a tentative ruling issued, a hearing on the motion to reconsider was held on June 5, 2024. Following the hearing, the trial court adopted its tentative ruling denying the motion for reconsideration.

On August 20, 2024, Zeyad filed a notice of motion to set aside the judgment arguing the judgment was due to a mistake and was the result of his being denied due process. The hearing date for this motion was scheduled for October 8, 2024. On August 27, 2024, Zeyad filed an ex parte notice to advance the hearing date on the motion to set aside the judgment. That motion to advance the hearing date was denied on August 30, 2024.

Zeyad's motion to set aside the judgment was eventually taken off the calendar without any consideration of the merits after he filed a notice of appeal challenging the order confirming the arbitration award on September 30, 2024.

FACTUAL SUMMARY

The facts of this case are taken from the decision of the arbitrator identified as the "Final Award." A full transcript of the arbitration hearing is not part of the record on appeal. We have only been provided excerpts of the transcript which appear in the record as exhibits to various motions brought by the parties in the trial court.

Rassamni previously owned the subject property, where he operated the Great American Carwash. In 2014, Rassamni defaulted on a loan from Wells Fargo Bank and faced foreclosure. At this point, Rassamni owed Wells Fargo \$954,444.

Rassamni contacted Zeyad to see if he could assist him to avoid foreclosure. Through an entity he owned with his brother Mamdouh, Zeyad purchased the Wells Fargo note for a " 'price less than how much was being defaulted on.' " Zeyad then proceeded with foreclosing on the property. When there were no bidders, an entity owned by Zeyad and his brother Mamdouh, took ownership of the property. Eventually,

ownership of the property was transferred from that entity to Zeyad and Mamdouh individually on a 50/50 basis. The summary provided by the arbitrator states Zeyad intended to keep the property, allowing Rassamni to continue operating the Great American Car Wash. At some point Zeyad expected to sell it back to Rassamni.

In January 2015, Zeyad and Mamdouh, as landlords, entered into a 30-year lease of the subject property with Great American⁷ as the tenant. The lease also gave Great American the option to purchase the property. An addendum to the lease signed in January 2015 provided:

“ ‘If landlord has an offer to sell the property, landlord must give tenant a written notice of intent to sell and offer the property to tenant at fair market value. Tenant is entitled to 180 days to complete due diligence, get an appraisal, and secure funding. Due diligen[ce] period may be extended upon tenant request.’ ”

This right to purchase has been referred to throughout these proceedings as a “right of first refusal.”

The lease was amended in 2018, reducing the amount of rent, and making Great American responsible for all operating expenses. Under this amendment, Great American was also required to hold Zeyad and Mamdouh harmless for any loss or liability, and to carry a minimum of \$1 million dollars of insurance on the property and the business.

Zeyad decided to sell the property sometime in late 2020 or early 2021 after concluding Rassamni could not make the rent payments even after the amount owed was reduced. Zeyad engaged Wyman to list and sell the property. According to the arbitrator’s final award, the listing agreement stated, “ ‘[s]eller will evict tenant prior to close of escrow.’ ” Zeyad understood the broker “would advise any potential buyer the [p]roperty would be sold without a tenant.”

⁷ Great American Investments, Inc., was incorporated in 2012 by Rassamni and his wife, Sharon Rassamni.

Sharma owned and operated several car wash businesses and convenience stores. Sharma wanted to buy the subject property because he believed it would benefit his overall business. On January 29, 2021, Sharma signed a purchase agreement to buy the subject property and its business assets for \$1,190,000. Zeyad signed the purchase agreement on February 1, 2021, the same day an escrow account was opened. Sharma then made an “earnest money deposit” of \$35,000 into the escrow account. While Zeyad alone signed the purchase agreement, both Zeyad and Mamdouh signed the escrow instructions in February 2021. The close of escrow was extended numerous times.

According to the factual summary in the final arbitration award, after escrow was opened, Sharma met with a contractor to discuss remodeling the property and met Rassamni two to three times, who told him he “would be gone after Sharma got the deed.” According to Sharma, Rassamni never mentioned wanting to purchase the property.

On or around March 2, 2021, an addendum was presented to Sharma and his lender to provide some assurance that Sharma would be purchasing the subject property “free of any lease.” The document appeared to be “DocuSigned” by Rassamni and both Elalamis. The document contained the date of March 1, 2019, for when it was allegedly signed. The arbitrator found this document to be fraudulent because it was actually “signed” on March 2, 2021. Zeyad admitted the document was fraudulent because he backdated the document and signed Rassamni’s name without asking for permission. Zeyad even admitted to the arbitrator that the addendum would not be enforceable against Rassamni.

On March 6, 2021, a fire at the carwash caused substantial damage to the building and equipment. Rassamni filed an insurance claim for “business interference and property damage.” Elalami did not have a separate insurance policy for fire damage. Despite this event, Sharma stated he planned to move forward with the purchase of the

property. Sharma even consulted with Rassamni while the repairs were being made following the fire.

On August 5, 2021, Zeyad contacted the escrow company and told them to cancel the sale to Sharma. On August 9, 2021, Sharma's attorney contacted Zeyad to inform him Sharma wanted to enforce the purchase agreement, and if Zeyad refused, arbitration would be pursued. When Sharma pursued this matter again through his attorney on August 19, Zeyad claimed the property could not be transferred due to problems with the tenant. Thereafter Sharma agreed he would accept a two month extension on the escrow to allow Zeyad to resolve the issues with the "tenant" and the fire insurance. On August 31, 2021, Rassamni informed the escrow officer that he was exercising his right of first refusal.

On November 4, 2021, Sharma, through his attorney, wrote the escrow officer that Rassamni no longer had a right of first refusal because his lease had been cancelled through the addendum dated March 1, 2019. Zeyad then responded that " 'the tenants have a claim and they have a right to such a claim.' " Later in November 2021, Rassamni's attorney wrote to the escrow officer informing him that Rassamni had never seen the addendum and that the lease with the right of first refusal was still in effect. In December 2021, Sharma refused to cancel the escrow.

By January 2022, Rassamni's fire insurer had paid a total of \$1,025,944.57 for the property damage caused by the fire and the cost of repairs. These proceeds were used to pay the Elalamis' loan to a bank and for debts owed by Rassamni to Zeyad, individually. The remaining funds were paid to Rassamni. Rassamni also received an additional \$204,000 for his lost revenue for one year. As of the date of the issuance of the final arbitration award, "[t]here is no evidence Rassamni or Elalami made any repairs of the fire damage or have any plans to repair the fire damage."

An additional finding made by the arbitrator concerned the status of Mamdouh. Zeyad claimed during arbitration that the sales contract did not satisfy the statute of

frauds because it was not signed by Mamdouh. The arbitrator rejected the claim, stating that “Mamdouh was Zeyad’s silent partner and Zeyad had actual authority to act for Mamdouh.”

DISCUSSION

In this appeal, Zeyad does not directly challenge the trial court’s decision to confirm the arbitrator’s final award. Instead, Zeyad’s challenge focuses on his belief the court refused to properly consider his efforts to either correct or vacate the final award of the arbitrator. Zeyad asks this court to allow him to pursue setting aside the judgment of the trial court confirming the final arbitration award.

The only parties to this appeal are Zeyad Elalami as the appellant, and Great American⁸ and Rassamni as respondents. Mamdouh is not a named party although he has been referred to throughout these proceedings as a silent partner in the property at the center of this case. Sharma was not served with the opening brief in this case and has not participated in this appeal.

The provision that sent the parties to arbitration was in the written agreement entered into by Zeyad and Sharma. The specific arbitration provision stated in relevant part:

“Any dispute or claim in law or equity arising out of this contract, or any resulting transaction shall be decided by neutral binding arbitration in accordance with the rules of the American Arbitration Association, and not by court action except as provided by California law for judicial review of arbitration proceedings....By initialing in the space below you are agreeing to have any dispute arising out of the matters included in [this] provision decided by neutral, binding arbitration as provided by California law and you are giving up any rights you may possess to have the dispute litigated in a court or jury trial[.]”

⁸ Great American is listed as a party to this appeal even though we have been provided no information as to whether it is now a properly recognized legal entity. No documentation exists in the record showing Great American’s corporate status has been restored.

Both Zeyad and Sharma initialed the provision and acknowledged they had read and understood the provision, agreeing to have any disputes submitted to a neutral, binding arbitrator.

I. The Statutory Scheme Governing Our Review of a Final Award in Arbitration

Civil arbitrations in state actions are governed by provisions found in the Code of Civil Procedure.⁹ (§ 1280, et. seq.)

“ ‘California has a long-established and well-settled policy favoring arbitration as a speedy and inexpensive means of settling disputes. [Citation.] This policy is reflected in the comprehensive statutory scheme set out in the California Arbitration Act [(CAA)]. (§ 1280 et seq.) ‘The purpose of the act is to promote *contractual arbitration*, in accordance with this policy, as a more expeditious and less expensive means of resolving disputes than by litigation in court.’ ” (*Taska v. RealReal, Inc.* (2022) 85 Cal.App.5th 1, 7 (*Taska*).)

The CAA sets forth procedures to enforce arbitration agreements (§§ 1281.2–1281.95), establishes rules for how arbitration proceedings will be conducted “except as the parties otherwise agree” (§§ 1282–1284.2), describes how a party may seek to have an arbitrator’s award judicially vacated, corrected, confirmed, or enforced (§§ 1285–1288.8), and specifies “where, when, and how court proceedings relating to arbitration matters shall occur” (§§ 1290–1294.2). (*Taska, supra*, 85 Cal.App.5th at pp. 7–8.) To enforce the finality of arbitration, the CAA minimizes judicial intervention.

(*Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 10 (*Moncharsh*).)

In *Pierotti v. Torian* (2000) 81 Cal.App.4th 17 (*Pierotti*), the Court of Appeal wrote as follows:

“[O]ur Supreme Court made it clear that the grounds for judicial review of a contractual arbitration award are extremely limited. Under *Moncharsh*, we cannot review the merits of the controversy, the arbitrator’s reasoning, or the sufficiency of the evidence supporting the award. [Citation] Even

⁹ All further statutory references are to the Code of Civil Procedure. 1

‘an error of law apparent on the face of the award that causes substantial injustice does not provide grounds for judicial review.’ ” (*Pierotti, supra*, 81 Cal.App.4th at p. 23.)

A. The Procedures Required When Challenging a Final Arbitration Award

Once a signed final arbitration award is served on the parties, any party to the arbitration may submit an application to correct the award to the arbitrator within 10 days. (§ 1284.) The application must contain grounds for the request to correct the award found in section 1286.6, subdivisions (a) and (c). (§ 1284.) The specific grounds available at this point in the procedure include:

“(a) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;

“... or

“(c) The award is imperfect in a matter of form, not affecting the merits of the controversy.” (§ 1286.6.)

The arbitrator who receives such a request may then make corrections to the award up to 30 days after the award was served on the applicant. (§ 1284.)

The record does not support the conclusion Zeyad sought to have the arbitrator “correct” or modify the final award before pursuing a motion in the trial court. The specific finding Zeyad sought to remove from the arbitrator’s final award was:

“Respondent Zeyad Elalami, having been fully paid for the real property located at 3854 N. Blackstone Avenue, Fresno, California ("Property"), is Ordered to transfer title to the Property to MAR Capital Investments, LLC within thirty (30) days of this Final Award.”

B. Motions to Confirm, Correct, or Vacate a Final Arbitration Award

Pursuant to section 1285:

“[a]ny party to an arbitration in which an award has been made may petition the court to confirm, correct or vacate the award. The petition shall name as respondents all parties to the arbitration and may name as respondents any other persons bound by the arbitration award.”

In this case, Great American was the first to file a motion to confirm the arbitration award in the trial court, on August 18, 2023. Great American filed this petition in the same case in which Zeyad, Mamdouh, and Sharma were named defendants.

“A response to a petition under this chapter may request the court to dismiss the petition or to confirm, correct or vacate the award.” (§ 1285.2.) Again, to correct the award, a party had to show there was a mistake in calculations or descriptions, the award was imperfect in form, or the arbitrator exceeded the powers they were given. (§ 1286.6.) The intent underlying the statutory language is that the merits of the decision should not be impacted by any request to correct an award. (*Ibid.*) To vacate an award, a party must show the existence of fraud or that the parties were prejudiced by the misconduct of the arbitrator. (§ 1286.2.)

“ ‘Arbitrators do not ordinarily exceed their contractually created powers simply by reaching an erroneous conclusion on a contested issue of law or fact, and arbitral awards may not ordinarily be vacated because of such error[.]’ ” (*Cable Connection, Inc. v. DIRECTTV, Inc.* (2008) 44 Cal.4th 1334, 1360.) The expectation of finality from binding arbitration requires any judicial intervention to be minimized. (*Moncharsh, supra*, 3 Cal.4th at p. 10.) “Absent a clear expression of illegality or public policy undermining this strong presumption in favor of private arbitration, an arbitral award should ordinarily stand immune from judicial scrutiny.” (*Id.* at p. 32.) Therefore, to avoid the extra delay, uncertainty, and the costs associated with judicial review, we refrain from substituting our judgment for that of the arbitrator. “In close cases, the award must stand.” (*Caro v. Smith* (1997) 59 Cal.App.4th 725, 735.)

Zeyad filed a response to Great American’s petition to confirm on August 25, 2023. Zeyad specifically asked the trial court to correct the final award on the grounds of mistake. The response by Zeyad specifically stated:

“The mistake set out in the Final Award is the determination that a confidential settlement has been reached and Respondent has been paid full

consideration for the purchase of the real property located at 3854 N. Blackstone Avenue, Fresno, California 93726 and Respondent is required to transfer said real property to Petitioner within thirty (30) days of the final award.”

Zeyad further stated that no such agreement existed, that he was never paid “full consideration for the property,” and that his attorney was under the mistaken belief she had authority to inform the arbitrator that such information could be included in the final award. Fraud by any of the parties was not alleged or documented in this response in any specific way. Therefore, in this responsive pleading Zeyad could only hope to correct the final arbitration award if he could show the arbitrator’s conclusion a valid settlement had been reached requiring the transfer of title was mistaken and would not alter the merits of the decision. Again, to correct the award, a party has to establish there was a mistake in calculations or descriptions, the award was imperfect in form, or the arbitrator exceeded the powers they were given. (§ 1286.6.)

Approximately one month later, Zeyad filed a separate petition to correct or vacate the final arbitration award in the same case. Within that petition Zeyad raised the same claim he made in his initial response about the need to correct the final award by citing the provision requiring the transfer of the property. However, in this petition Zeyad asked the court to vacate the final award because it was “obtained by corruption, fraud, or other unfair means.” In support of this petition were two declarations, one from Zeyad and one from his attorney. In her declaration, Zeyad’s attorney admitted she mistakenly believed there was an agreement and a corresponding payment “in full” for the property.

Allegations of fraud require specificity. General allegations stating there was fraud are insufficient. (See *Committee on Children’s Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 216, superseded by statute on other grounds as stated in *Branick v. Downey Savings & Loan Assn.* (2006) 39 Cal.4th 235, 242.)

In his declaration supporting the petition, Zeyad stated:

“I never informed Rassamni, my attorney, or anyone else that Rassamni paid me for the Real Property or that Rassamni and I entered into a confidential agreement as to the purchase of the Property. Notwithstanding, Rassamni proceeded to inform his counsel, who then informed the Arbitrator, my attorney, and Sharma's attorney that we reached an agreement and full consideration had been paid. Rassamni/Great American Investments did not pay full consideration for the transfer of the Real Property.”

Additional information provided by Zeyad in the declaration discussed a meeting with Rassamni:

“On or about September 13, 2023, my attorney and I met with Rassamni and Ms. Tipton in her office. Mamdouh Elalami was also present. During the meeting, I repeatedly demanded that Rassamni produce the alleged agreement and produce proof that I was paid in full. Rassamni did not and could not produce an agreement or proof of payment. Mamdouh also reiterated that he was neither a party nor a participant to the arbitration proceedings, that he did not give me authority to represent his interests in the proceedings, and that he did not consent to a transfer of his 50% interest in the Real Property. At the conclusion of the meeting, I again requested that Rassamni stipulate to correct the Final Award. Rassamni would not stipulate.”

Whether the statements in the declarations amounted to mistake or fraud would normally be addressed following a hearing on the specific petitions filed with the court.

II. Was Zeyad Elalami Denied Due Process When Seeking to Vacate or Correct the Arbitration Award

Zeyad contends his opposition to Rassamni's petition to confirm the arbitration award, and his own petition to correct or vacate the arbitration award, were harmed because he was denied due process. It should be noted neither Great American's petition to confirm the arbitration award, or Zeyad's petition to correct or vacate the arbitration award, set specific hearing dates for the petitions, and no notices of hearings were

attached to either petition.¹⁰ However, both petitions were referenced in a Joint Status Conference Statement filed with the court on November 17, 2023.

Pursuant to the local court rules, Zeyad was required to set a hearing date for his petition before filing it. (See Fresno County Superior Court (FCSC) Rule 2.2.1.) This requirement also applied to Rassamni's petition to confirm the arbitration award. (*Ibid.*) We believe that if Zeyad wanted to preserve his due process rights, he was required to set his petition to correct or vacate the arbitration award for a hearing then send out a notice of that hearing date to the parties. Without these actions, the court would be hampered in its ability to track the progress of a motion in a given case file. (FCSC Rule 2.1.3.)

The record in this appeal reveals that while the trial court was considering Sharma's motion to confirm the arbitration award, the court also had before it the opposition filed by Zeyad to Sharma's petition. In that petition, Zeyad set out his argument that the arbitrator was mistaken when he stated Zeyad was paid fully for the property. During the hearing held on Sharma's petition following the issuance of the tentative ruling, Zeyad's attorney addressed the point there was no payment to Zeyad from Rassamni, that representations she made to the arbitrator were mistaken, and that the arbitrator acted beyond his scope of authority. These are the same arguments Zeyad made in his opposition to Rassamni's petition to confirm the arbitration, or even his own petition to correct or vacate the arbitration award.

However, the record before this court does not allow us to determine whether the failure to hear Zeyad's own petition to vacate or correct the arbitration award or his opposition to Great American's own petition to confirm the final arbitration award was the fault of Zeyad or the court's own calendaring process. To say that the post arbitration hearing procedures in this case are convoluted is an understatement.

¹⁰ Fresno County Superior Court Rule 2.2.1 states, "[p]rior to the filing of any law and motion matter, a date and time for hearing *shall* be reserved with the law and motion clerk." (Italics added.)

For these reasons, we will grant the request for a conditional remand so that Zeyad's due process rights can be preserved. Consequently, the arguments raised by Zeyad in his appellate brief challenging the trial court's orders on the motion for reconsideration and the ex parte petition for an order shortening time will now be considered moot.

DISPOSITION

The judgment confirming the final arbitration award in favor of respondent Great American is conditionally reversed. The trial court is directed to schedule and hear the petition submitted by appellant Zeyad Elalami on September 26, 2023, to vacate or correct the final arbitration award as it applies to Great American only. This court expresses no opinion on how the trial court should resolve the issues raised in this petition. Each party shall bear its own costs.

SNAUFFER, J.

WE CONCUR:

HILL, P. J.

DE SANTOS, J.