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STATE OF MINNESOTA
IN COURT OF APPEALS
A16-2011

Minnkota Architectural Products Co., Inc.,
Respondent,

vs.

Rice Lake Construction Group,
Appellant.

Filed June 19, 2017
Affirmed
Jesson, Judge

Hennepin County District Court
File No. 27-CV-16-9111

Vincent J. Fahnlander, James R. Magnuson, Mohrman, Kaardal & Erickson, P.A., Minneapolis, Minnesota (for respondent)

Gregory T. Spalj, Nathan R. Sellers, Fabyanske, Westra, Hart & Thomson, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Bratvold, Judge; and Smith, John, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

JESSON, Judge

After respondent-subcontractor Minnkota Architectural Products Co., Inc., demanded arbitration, seeking payment for a 2012 construction job in Des Moines, Iowa, appellant-contractor Rice Lake Construction Group counterclaimed that Minnkota performed defective work on a 2009 construction job in St. Peter, Minnesota. The arbitrator rejected this counterclaim, and Rice Lake asserts that the arbitrator exceeded his powers in doing so. We affirm.

FACTS

In 2009, Rice Lake and Minnkota entered into a construction contract for a project in St. Peter, Minnesota. Minnkota was to perform roofing work as a subcontractor for Rice Lake. The contract contained an arbitration clause: "Any disputes arising between [Rice Lake] and [Minnkota] under this Sub-Contract shall be settled by arbitration as provided in the General Contract, if any provision for arbitration exists."[1] The St. Peter project was completed in 2010.

In 2012, Rice Lake and Minnkota entered into a construction contract for a project in Des Moines, Iowa. Minnkota was to again perform roofing work as a subcontractor for Rice Lake. The Des Moines contract contained an arbitration clause:

> **19. Disputes Between Contractor and Subcontractor.** Any dispute between [Rice Lake] and [Minnkota] or claim related to, or arising out of, this Subcontract that are not "Pass Through" disputes, shall be resolved exclusively through final and binding arbitration in accordance with the Construction

[1] It is unclear from the record if the general contract contained any arbitration clause.

> Industry Arbitration Rules of the American Arbitration Association. Any arbitration shall be brought in Minneapolis, Minnesota before a retired judge or an individual with no less than ten (10) years experience in the construction industry.

In January 2015, Minnkota sued Rice Lake in Iowa state court seeking compensation for work performed on the Des Moines project. Rice Lake successfully moved to stay the Iowa proceedings and compel arbitration. Shortly thereafter, Minnkota filed an arbitration demand, and in response, Rice Lake filed an answer and counterclaim, alleging that Minnkota had failed to properly perform work on the St. Peter project. Minnkota objected to Rice Lake's counterclaim, arguing that it was unrelated to the Des Moines project. The parties submitted to the arbitrator the issue of whether he should consider the counterclaim. The arbitrator, in a brief letter decision, rejected the counterclaim, but stated that it "would be accepted if BOTH parties agreed, [and] this the parties did not agree to do," and that the counterclaim "could have been filed as a separate arbitration action and then consolidated but this independent filing was not done either." After this ruling, Rice Lake stipulated to an arbitration award in Minnkota's favor.

In the summer of 2016, in Minnesota state district court, Minnkota moved to confirm and Rice Lake moved to vacate the arbitration award. Upon reviewing the Des Moines contract's arbitration clause, which referenced the American Arbitration Association's construction industry arbitration rules, the district court confirmed the arbitration award, concluding that the arbitrator had not exceeded or imperfectly executed his powers by refusing to accept Rice Lake's counterclaim concerning the St. Peter project. This appeal follows.

D E C I S I O N

The parties agree that this case is governed by the Federal Arbitration Act (FAA), 9 U.S.C. §§ 1-16 (2012), which was enacted to encourage arbitration and place arbitration agreements "on equal footing with all other contracts." *Hall St. Assocs., LLC v. Mattel, Inc.*, 552 U.S. 576, 581, 128 S. Ct. 1396, 1402 (2008) (quotation omitted). We apply the FAA and federal caselaw interpreting the FAA in analyzing arbitration clauses in contracts involving or affecting interstate commerce. *Onvoy, Inc. v. SHAL, LLC*, 669 N.W.2d 344, 351 (Minn. 2003).

Rice Lake seeks to vacate the arbitration award in this case. Section 10(a) of the FAA provides the exclusive grounds for vacating an arbitrator's award, *Hall St. Assocs.*, 552 U.S. at 584, 128 S. Ct. at 1403, and it sets out four circumstances when an arbitration award may be vacated:

(1) where the award was the result of fraud, corruption, or undue means;

(2) where the arbitrator engaged in "evident partiality or corruption";

(3) where the arbitrator committed misconduct in hearing the matter and receiving evidence or otherwise misbehaved resulting in prejudice to a party; or

(4) where the arbitrator exceeded his powers, "or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made."

Rice Lake relies exclusively on section 10(a)(4) of the FAA and argues that the arbitration award should be vacated because the arbitrator exceeded his powers. "A party seeking relief under [section 10(a)(4)] bears a heavy burden." *Oxford Health Plans LLC*

v. Sutter, 133 S. Ct. 2064, 2068 (2013). "Only if the arbitrator act[s] outside the scope of his contractually delegated authority . . . may a court overturn his determination." *Id.* (quotation omitted). If an arbitrator's decision *even arguably* construes or applies the contract, it must stand. *Id.* (emphasis added).

Rice Lake asserts that the arbitrator exceeded his authority in two ways: (1) by adding extra-contractual terms to the parties' arbitration agreement; and (2) by ignoring and failing to interpret and enforce the plain language of the arbitration agreement. We address each argument in turn.

I.

We first consider whether the arbitrator exceeded his powers by adding extra-contractual terms. After explicitly stating that Rice Lake's counterclaim was "rejected," the arbitrator noted simply that the counterclaim "would be accepted if BOTH parties agreed, [and] this the parties did not agree to do." According to Rice Lake, this shows that the arbitrator imposed the extra-contractual term that the parties needed to agree to arbitration of the counterclaim. The arbitrator also stated that the counterclaim "could have been filed as a separate arbitration action and then consolidated but this independent filing was not done either." Rice Lake argues that this statement is further proof that the arbitrator "created his own preferred remedy." We disagree for two reasons.

First, Rice Lake conceded at oral argument that the arbitrator was not obliged to offer any express justification for his decision. Although the arbitrator made some general statements after rejecting the counterclaim, noting that the parties could agree to have the matter heard and informing Rice Lake that there were procedures available for

consolidation, there is no indication that these general statements were the basis for his decision to reject the counterclaim. And the arbitrator was not required to justify the decision in the first place. We therefore cannot conclude that the statements evidence the imposition of extra-contractual terms in that decision.

Second, the arbitrator's statements are arguably references to the American Arbitration Association's construction industry arbitration rules, which were incorporated into the parties' arbitration clause. Under the Des Moines contract's arbitration clause, the parties agreed to resolve disputes "in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association." Rule R-7(a) of those rules permits the consolidation of "related arbitrations" and contemplates consolidation by agreement of the parties, stating "[i]f the parties are unable to agree to consolidate related arbitrations . . . the [American Arbitration Association] shall directly appoint a single arbitrator . . . for the limited purpose of deciding whether related arbitrations should be consolidated." And the construction industry arbitration rule R-9(a) states, "[t]he arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement." The arbitrator's statements regarding consolidation of related arbitrations arguably are reference to these governing industry rules. As a result, he acted within the confines of the contract.

In summary, the arbitrator's rejection of Rice Lake's counterclaim was not based on extra-contractual language; the parties' own agreement gave the arbitrator broad authority to render such decisions. We conclude that the arbitrator did not exceed his powers by adding extra-contractual terms.

II.

We next address whether the arbitrator failed to interpret and enforce the plain language of the arbitration agreement.[2] Under the Des Moines contract's arbitration clause, "[a]ny dispute between [Rice Lake] and [Minnkota] or claim related to, or arising out of, this Subcontract that are not 'Pass Through' disputes, shall be resolved exclusively through final and binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association."

Rice Lake contends that this plainly requires arbitration of all disputes between the parties. We disagree. This provision can easily be read to only require arbitration of disputes arising out of "this Subcontract," meaning the Des Moines subcontract, not the St. Peter subcontract. Because we must uphold an arbitrator's interpretation of a contract if it even arguably constitutes a reasonable construction, Rice Lake cannot demonstrate that the arbitrator exceeded his authority.[3] *Oxford Health*, 133 S. Ct. at 2068.

This deference is required not only by the FAA, but by the arbitration rules selected and adopted by the parties, which gave the arbitrator broad authority to determine the scope

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[2] Minnkota asserts that this argument was not raised below and has been forfeited. Generally, we will not consider matters not argued to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). However, Rice Lake argued before the district court that the arbitrator's order did not draw from the contract's language. As such, we conclude that the argument was properly raised below.

[3] Even if we agree with Rice Lake's reading of the contract language and conclude that any dispute between the parties needed to be arbitrated, as the district court pointed out in its careful opinion, "it does not automatically follow that [Rice Lake's counterclaim involving the St. Peter project] must be included as part of the Des Moines Project arbitration proceeding." Nothing in the clause states that all disputes must be heard in a single arbitration proceeding.

of the arbitration proceeding. Rule R-9(a) gave the arbitrator "the power to rule on his or her own jurisdiction," including the scope of the agreement. And rule R-9(c) gave the arbitrator the authority to rule on the arbitrability of a counterclaim. Therefore, the arbitrator did not act outside of his contractually delegated authority by refusing to hear Rice Lake's counterclaim when he acted according to the rules selected by the parties.

Rice Lake likens this case to *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.* and contends that the arbitrator exceeded his authority because he did not interpret and enforce the parties' arbitration agreement. 559 U.S. 662, 130 S. Ct. 1758 (2010). In *Stolt-Nielsen*, the Supreme Court held that an arbitration panel exceeded its authority by resting its decision on a public policy argument rather than the parties' contractual intentions. 559 U.S. at 663, 671-72, 130 S. Ct. at 1767-68. An arbitrator's role, the Supreme Court ruled, is to interpret and enforce a contract, not rely on its own "conception of sound policy." *Id.* at 675, 682, 130 S. Ct. at 1769, 1773-74. But here, the arbitrator's decision did not rest on public policy arguments or other matters outside the agreement. Rather, the arbitrator interpreted the subcontract to require arbitration only of disputes related to the Des Moines subcontract. A reasonable interpretation of the subcontract supports that decision, as do the American Arbitration Association's construction industry arbitration rules. Unlike *Stolt-Nielsen*, we find no overreaching by the arbitrator.

The parties submitted the arbitrability issue for the arbitrator to decide, and in rejecting Rice Lake's counterclaim, the arbitrator applied the contractual language. We conclude that the arbitrator did not exceed his authority. *See Oxford Health*, 133 S. Ct. at 2068.

Affirmed.