



Bayside Construction, LLC v. Smith et al

2021 | Cited 0 times | Virgin Islands | August 18, 2021

DISTRICT COURT OF THE VIRGIN ISLANDS DIVISION OF ST. THOMAS AND ST. JOHN
BAYSIDE CONSTRUCTION, LLC,

Petitioner, v. JEFFREY M. SMITH and SARAH A. SMITH,

Respondents.

Case No. 3:20-cv-0117

ATTORNEYS: David J. Cattie The Cattie Law Firm, P.C. St. Thomas, U.S.V.I. For Plaintiff Bayside Construction, LLC, Christopher A. Kroblin Kellerhals Ferguson Kroblin PLLC St. Thomas, U.S.V.I.

For Defendants Jeffrey M. Smith and Sarah A. Smith.

MEMORANDUM OPINION MOLLOY, C.J.

BEFORE THE COURT (ECF No. 8) and

Memorandum in Support thereof (ECF No. 9) . Also before the Award. ECF No. 1. For the reasons set forth herein, the Court will

and confirm the arbitration award and will issue a Judgment confirming the award.

I. FACTS AND PROCEDURAL HISTORY On April 26, 2018, Bayside and the Smiths entered into a contract wherein Bayside exchange for a total of \$734,516.83. ECF No. 1-3, at 1, 16. Contained in the contract was an

agreement to resolve any disputes arising from the contract, or its breach, through binding arbitration. Id. at 6.

A dispute between the parties eventually arose, with the Smiths alleging inadequate performance and Bayside alleging nonpayment. Bayside filed a lawsuit in this Court on April 25, 2019. Bayside Construction, LLC. v. Smith, Case No. 3:2019-cv-00029. On June 4, 2019, the Smiths moved to compel arbitration. Id. at ECF No. 8. On June 13, 2019, the parties stipulated to the dismissal of their action, and proceeded to arbitration. Id. at ECF No. 9.



Bayside Construction, LLC v. Smith et al

2021 | Cited 0 times | Virgin Islands | August 18, 2021

On October 1, 2020, the arbitrator issued his award, finding for Bayside in the amount of \$242,253.46 with interest accruing at the contractual rate of 18% per annum starting November 4, 2020. ECF No. 1-1, at 6. Bayside petitioned the Court to confirm that award on November 17, 2020. ECF No. 1. On December 30, 2020, the Smiths filed their instant motion to vacate the arbitrators award, arguing that the arbitrator exceeded his authority and demonstrated a manifest disregard for the law. ECF No. 9, at 1-2. On January filed their response thereto.

II. LEGAL STANDARD *Sutter v. Oxford health Plans LLC*, 675 F.3d 215, 219 (3d Cir. 2012) (citing *First*

Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 947-48 (1995)). Indeed, upon application of grant such an order unless the award is vacated, modified, or corrected as prescribed in

sections [9 U.S.C. § 10] and [9 U.S.C. § § 9. A district court may, however, vacate in the following circumstances:

(1) where the award was procured by corruption, fraud, or undue means; (2) where there was evident partiality or corruption in the arbitrators, or

either of them; (3) where the arbitrators were guilty of misconduct in refusing to postpone

the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or (4) where the arbitrators exceeded their powers, or so imperfectly executed

them that a mutual, final, and definite award upon the subject matter submitted was not made. 9 U.S.C. § 10(a). The grounds listed in 9 U.S.C. § 10 are the exclusive statutory grounds under which a district court xpanded, even by agreement of the parties. See *Hall St. Assocs. v. Mattel, Inc.* . . . the text compels a reading of the §§ ; see also *Sutter*, 675 F.3d at 219

III. DISCUSSION The crux of because the arbitrator manifestly disregarded applicable law and exceeded his authority by

not applying Virgin Islands law, as the Smiths contend is required by their contract with Bayside. ECF No. 9, at 5.

he decides an issue not submitted to him, grants relief in a form that cannot be rationally

or issues an award that is so *Sutter*, 675 F.3d at 219-20 (citing *Ario v. Underwriting Members of Syndicate 53 at Lloyds for the 1998 Year of Account*, 618 F.3d 288, 295-96 (3d Cir. 2010)). ds, the task of an arbitrator is to interpret and enforce a contract. When he makes a good faith attempt to do so,



Bayside Construction, LLC v. Smith et al

2021 | Cited 0 times | Virgin Islands | August 18, 2021

even serious errors of law or fact Sutter, 675 F.3d at 220 (citing Brentwood Med. Assocs. v. United Mine Workers of Am., 396 F.3d 237, 243 (3d Cir. 2005) (upholding an arbitration levant agreement)).

Here, the arbitration agreement, and its requirement that disputes be resolved consistent with Virgin Islands law, is not as clear as the Smiths present. On one hand, the attachments will be governed by and construed, interpreted and enforced in accordance with the laws of the -3, at 6. On the other, however, r remains unresolved and any other claim or dispute of any kind or nature between the Parties arising out of or relating to this Agreement, or the breach of it, or the Project must be resolved by binding arbitration, an Id. While the Smiths claim that the arbitrator Rule R-48 of the American Arbitration Association Construction Industry Arbitration Rules in

fashioning his remedy, ECF No. 1-1, at 5. More importantly, the arbitration agreement does not state that the arbitrator was required to cite to Virgin Islands law in rendering his decision. ECF No. 1-3, at 6. that the arbitrator made a good faith attempt to interpret and enforce the parties agreement.

Because of this evident good faith attempt, the Court will not inquire into whether the Sutter, 675 F.3d at 220 (internal citations omitted).

1

While there are various judicially crafted formulations for precisely what constitutes manifest disregard of the law, these formulations broadly approximate the lodestar of requiring arbitrators were fully aware of the existence of a clearly defined governing legal principle,

Bellantuono v. ICAP Securities USA, LLC, 557 Fed. Appx. 168, 174 (3d Cir. 2014) (quoting A/S, 333 F.3d 383, 389 (2d Cir. 2003)). rm a basis for vacatur. Nonetheless as

discussed supra, while the arbitration agreement states that the agreement be governed by, construed, interpreted, and enforced in accordance with the laws of the Virgin Islands, the

1 Hall Street, a circuit split has emerged regarding whether manifest disregard of the law Paul Green Sch. Of Rock Music Franchising, LLC. v. Smith, 389 Fed. Appx. 172, 176 (3d Cir. 2010); see also id. at 176 n. 6 (collecting cases). It remains an open question in the Third Circuit as of 2019. See Sabre GBL, Inc. v. Shan, 779 Fed. Appx. 843, 849 (3d Cir. 2019). Indeed, the Supreme Court has posited that manifest disregard can be read as merely referring to the §10 grounds collectively, rather than adding to them, or as shorthand for the §10 See Hall Street, 552 U.S. at 585. Nevertheless, without weighing in on whether manifest disregard of the law, in itself, creates an independent non-statutory ground for vacatur, or if the Smiths fall short of establishing entitlement to relief on this basis.

agreement also states that that the matter be resolved by binding arbitration, and the rules and procedures of the arbitrator. ECF No. 1-3, at 6. Thus, it can hardly be said to be clearly defined that



Bayside Construction, LLC v. Smith et al

2021 | Cited 0 times | Virgin Islands | August 18, 2021

Virgin Islands law would be the sole source of governing legal principles in this case. Whether the arbitrator, by applying his own rules and procedures, erred in his interpretation is of no import. Because the arbitrator evidently made a good faith effort in Sutter, 675 F.3d at 220 (internal citations omitted). The Court will therefore deny

grant such § 9. This is not an involved proceeding. Teamsters

Local 177 v. United Parcel Svc., 966 F.3d 245, 248 (3d Cir. 2020) (quoting Florasynth, Inc. v. Pickholz, 750 F.2d 171, 176 (2d Cir. 1984)).

Here, the arbitrator issued an award in favor of Bayside and against the Smiths in the amount of \$242,253.46. ECF No. 1-1, at 6. The arbitrator further held that that amount would accrue interest at a rate of 18% per annum, accruing from November 4, 2020, which comes to a rate of \$119.46 per day. 2

Id. contract. ECF No. 1-3, at 1. As of August 18, 2021, 287 days have passed since November 4,

2020. Thus, \$34,285.02 of interest have accrued to date, for a current total of \$276,538.48.

2 0.18)/365.

ard.

IV. CONCLUSION the arbitrator manifestly disregarded applicable law or exceeded his authority. As such, the

arate Order. Absent a basis for vacatur, modification, or correction, the Court must confirm the

Dated: August 18, 2021 /s/ Robert A. Molloy _____ ROBERT A. MOLLOY Chief Judge

