[Cite as *Technigraphics, Inc. v. MIT, L.L.C.*, 2010-Ohio-2946.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF WAYNE	)	

TECHNIGRAPHICS, INC.	C. A. No. 09CA0005
Appellee	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
MIT, LLC, et al.	COURT OF COMMON PLEAS COUNTY OF WAYNE, OHIO
Appellants	CASE No. 07-CV-0880

DECISION AND JOURNAL ENTRY

Dated: June 28, 2010

BELFANCE, Judge.

{¶1} Appellants MIT, LLC ("MIT") and William and Shirley Inge appeal the judgment of the Wayne County Court of Common Pleas which modified and then confirmed an arbitration award in favor of Appellee Technigraphics, Inc. ("TGS") and denied MIT's and the Inges' motions to vacate the award, for an extension of time, and to schedule a hearing. For reasons set forth below, we affirm.

BACKGROUND

{¶2} Both TGS and MIT were involved in the sale of software and related support services to nursing homes. The Inges are the principals and owners of MIT. In March 2007, TGS and MIT entered into an asset purchase agreement whereby the seller, TGS, agreed to sell, and MIT agreed to buy, certain assets including the "MxCase" and "MxVision" software and "[a]ll interest of [TGS] (including all unpaid subscription fees covering periods beginning January 1, 2007) under outstanding license agreements or maintenance contracts related to the

[a]ssets * * * , as more specifically set forth in Schedule 1(c)[.]" The purchase price under the agreement was $500,000. The agreement included an arbitration provision providing that any dispute arising from, or related to, the agreement would be resolved by arbitration.

{¶3} The parties subsequently executed multiple addenda to the agreement. The third addendum included financing provisions for a portion of the purchase price. Specifically, it provided that MIT would execute a promissory note for $350,000 in favor of TGS, the Inges would personally guarantee the note, and TGS would retain a security interest in the assets.

{¶4} Subsequently, MIT stopped making payments. TGS sued MIT and the Inges in the Wayne County Court of Common Pleas seeking foreclosure on its security interest, $347,312.43 plus interest, i.e. the alleged balance owed under the financing agreement, and attorney fees. MIT and the Inges filed counterclaims alleging that TGS breached the agreement by failing to transfer to MIT eighty-two license agreements or maintenance agreements provided for under the agreement and that TGS fraudulently induced MIT to rely on TGS's false representations concerning the license and maintenance agreements. MIT and the Inges then filed a motion to stay the proceedings pending arbitration which was subsequently granted by the trial court.

{¶5} The matter proceeded to arbitration and the arbitrator held an evidentiary hearing. The arbitrator ruled in favor of TGS on its claims and against MIT and the Inges on their counterclaims. The arbitrator awarded TGS $405,074.04 along with post-judgment interest.

{¶6} Thereafter, TGS filed a motion in the Wayne County Court of Common Pleas to lift the stay and confirm the arbitration award. MIT and the Inges filed a response and asserted that the pre-judgment interest calculation in the award was incorrect. In addition, MIT and the Inges moved the court for an extension in order to file the transcript of the arbitration hearing

and moved the court for an oral hearing. Subsequently, MIT and the Inges filed a motion to vacate the arbitration award pursuant to R.C. 2711.10. TGS filed a response in which it agreed that the pre-judgment interest calculation was incorrect, but otherwise disputed MIT's and the Inges' assertions. MIT and the Inges then filed a reply brief. The trial court, after reviewing the motions, denied MIT's and the Inges' motions, including their motions for an extension of time to file the transcript and for an oral hearing. The trial court incorporated the arbitrator's award into its entry. The trial court modified the interest calculation award to comport with MIT's and the Inges' calculations but otherwise confirmed the award. The trial court found that "[n]o additional grounds exist for vacation, modification or correction of the Final Award[.]"

{¶7} MIT and the Inges have appealed, raising two assignments of error for our review.

R.C. 2711.10

{¶8} In MIT's and the Inges' first assignment of error, they argue that the court of common pleas erred in failing to vacate the arbitration award.

{¶9} "Ohio courts give deference to arbitration awards and presume they are valid." *Lauro v. City of Twinsburg*, 9th Dist. No. 23711, 2007-Ohio-6613, at ¶5, citing *Findlay City School Dist. Bd. of Edn. v. Findlay Edn. Assn.* (1990), 49 Ohio St.3d 129, paragraph one of the syllabus, superseded by statute on other grounds as stated in *Cincinnati v. Ohio Council 8, Am. Fedn. of State, Cty. & Mun. Employees., AFL-CIO* (1991), 61 Ohio St.3d 658. "A trial court's review [of an arbitration award] is rather limited as it is precluded from reviewing the actual merits upon which the award was based." *Cty. of Summit v. City of Cuyahoga Falls*, 9th Dist. No. 21799, 2004-Ohio-1879, at ¶7. Further, "an appellate court may only review the lower court's order to discern whether an error occurred as a matter of law." *Lauro* at ¶7. "The original arbitration proceedings are not reviewable." (Citation and quotation omitted.) Id.

"[M]ere error in the interpretation or application of the law will not suffice [to vacate an arbitration award]. The arbitrators' decision must fly in the face of clearly established legal precedent to support a vacation of the award." (Internal quotations and citations omitted.) *Cty. of Summit* at ¶7.

{¶10} Pursuant to R.C. 2711.10, the court of common pleas shall vacate an arbitration award if any of the following apply:

> "(A) The award was procured by corruption, fraud, or undue means.
>
> "(B) There was evident partiality or corruption on the part of the arbitrators, or any of them.
>
> "(C) 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.
>
> "(D) 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."

{¶11} MIT and the Inges assert that the award should have been vacated pursuant to R.C. 2711.10(D). MIT and the Inges first contend that the arbitrator failed to make a mutual, final, and definite award upon the subject matter submitted. MIT and the Inges do not appear to claim that the arbitrator ruled on an issue not submitted, but instead assert that the arbitrator's award is subject to vacation because "it is so materially incomplete in its analysis[]" and the arbitrator's interpretation of the agreement "effectively rendered the Agreement illusory." However, we have stated that "[o]nly when the award is so imperfect that there was no award on the subject matter does [that portion of] R.C. 2711.10(D) apply." *Morgan v. Ohio Council 8* (Feb. 1, 1989), 9th Dist. No. 13812, at *2.

{¶12} In the instant matter, the parties agreed to submit "all their disputes arising out of TGS's sale of assets to MIT, including their claims in the pending Wayne County Common Pleas

Case, for binding arbitration pursuant to Ohio Rev. Code Chapter 2711." In its complaint, TGS sought foreclosure on its security interest and money it believed it was due under the contract. In their counterclaims, MIT and the Inges asserted that TGS was not entitled to the money because TGS breached the contract and made fraudulent representations that induced MIT and the Inges to enter into the contract. The arbitrator in its award concluded that

> "[MIT and the Inges] have not shown by a preponderance of the evidence that TGS misrepresented the nature or amount of assets it sold for this transaction, failed to transfer all the assets it promised to sell, or otherwise breached the Asset Purchase Agreement. Therefore, the arbitrator finds that [MIT and the Inges] failed to support their affirmative defenses. There was no fraudulent misrepresentation or mutual mistake of fact, so the arbitrator likewise denies [MIT's and the Inges'] counterclaims[.]"

The arbitrator further concluded that TGS was entitled to recover $405,074.04 from MIT and the Inges and that if MIT and the Inges failed to pay, TGS was entitled to recover and sell the assets it sold to MIT. It is apparent that the arbitration award flowed from an analysis of the appropriate provisions of the contract and the application of the facts to those provisions. See *Morgan*, at *2. Thus, this Court cannot conclude that the arbitrator "so imperfectly executed [his powers] that a mutual, final, and definite award upon the subject matter submitted was not made." R.C. 2711.10(D). Therefore, we likewise cannot conclude that the trial court erred in failing to vacate the award for this reason.

{¶13} MIT and the Inges also contend that the trial court erred in failing to vacate the arbitration award because the arbitrator exceeded his authority because the award "does not properly 'draw its essence from the contract[.]'" MIT and the Inges assert that the arbitrator impermissibly subtracted or altered the language of the contract; they argue that the arbitrator's focus on the word "interest" in Paragraph 1(c) of the contract "re-wrote the parties' agreement,

requiring no performance whatsoever of [TGS], beyond mere delivery of the software for MxVision and MxCase[.]"

{¶14} "An arbitrator exceeds his power when an award fails to draw its essence from the agreement of the parties. This occurs when there is an absence of a rational nexus between the agreement and the award, or when the award is arbitrary, capricious, or unlawful." (Internal quotations and citations omitted.) *Cty. of Summit* at ¶7.

{¶15} The heart of the parties' disagreement centers around what TGS was required to transfer pursuant to Paragraph 1(c) of the contract. In its opinion, the arbitrator recited the full paragraph at issue, stating that TGS agreed to "sell, convey, transfer, set over, and deliver" to MIT: [] [a]ll interest of [TGS] (including all unpaid subscription fees covering periods beginning January 1, 2007) under outstanding license agreements or maintenance contracts[1] related to the Assets * * * , as more specifically set forth in Schedule 1(c)[.]" It was undisputed that no Schedule 1(c) document was attached to the agreement. It is clear from reading the parties' briefs and the arbitrator's decision that the parties disputed what documents served the purpose of acting as Schedule 1(c). The arbitrator noted that Paragraph 1(c) of the contract required TGS to transfer "license agreements" and "maintenance contracts," rather than customers, as contended by MIT and the Inges. The arbitrator concluded that the evidence presented did not establish that TGS failed to deliver any license agreement or maintenance contract. Thus, the arbitrator made factual findings based upon the evidence. It is clear that courts are not charged with reviewing an arbitrator's factual findings. See *The Goodyear Tire &*

[1] The agreement itself refers to "maintenance agreements" and not "maintenance contracts[.]" MIT and the Inges do not contend that the arbitrator's use of the word "contracts" as opposed to "agreements" was improper or material to the issues raised.

Rubber Co. v. Local Union No. 200, United Rubber, Cork, Linoleum & Plastic Workers of Am. (1975), 42 Ohio St.2d 516, paragraph two of the syllabus ("R.C. 2711.10 limits judicial review of arbitration to claims of fraud, corruption, misconduct, an imperfect award, or that the arbitrator exceeded his authority."). The arbitrator issued a detailed entry in which it made a decision based upon the contract and the evidence presented. MIT and the Inges have failed to demonstrate that the arbitrator exceeded his powers by failing to draw the award's essence from the contract. See *Cty. of Summit* at ¶7. "How this or another court might have decided the issue presented to the arbitrator is irrelevant; that decision, by voluntary contract, was left to arbitration and no abuse of authority appears which would justify the courts in reversing that decision." *Goodyear*, 42 Ohio St.2d at 523.

{¶16} In essence, the sum of MIT's and the Inges' arguments here amounts to a challenge to the merits of the arbitrator's decision and to his interpretation of the provisions of their contract with TGS. As noted above, a trial court "is precluded from reviewing the actual merits upon which the award was based." *Cty. of Summit* at ¶7. Further, this Court has stated that:

> "when a provision in an agreement is subject to more than one interpretation, and the parties have agreed to submit their contract interpretation disputes to final and binding arbitration, the arbitrator's interpretation of the contract, and not the interpretation of a reviewing court, governs the rights of the parties. This is so because the arbitrator's interpretation of the contract is what the parties bargained for in agreeing to submit their disputes to final and binding arbitration. The arbitrator's interpretation must prevail regardless of whether his or her interpretation is the most reasonable under the circumstances." (Internal citations and quotations omitted.) Id. at ¶10.

{¶17} In light of the foregoing, we cannot conclude that the trial court erred as a matter of law in failing to vacate the arbitration award. MIT's and the Inges' assignment of error is therefore overruled.

RIGHT TO A HEARING PURSUANT TO R.C. 2711.09

{¶18} In MIT's and the Inges' second assignment of error they argue that the trial court erred in confirming the arbitrator's award without holding a hearing as required by R.C. 2711.09 and without having a transcript of the arbitration proceedings.

{¶19} R.C. 2711.09 provides that:

> "[a]t any time within one year after an award in an arbitration proceeding is made, any party to the arbitration may apply to the court of common pleas for an order confirming the award. Thereupon the court shall grant such an order and enter judgment thereon, unless the award is vacated, modified, or corrected as prescribed in sections 2711.10 and 2711.11 of the Revised Code. Notice in writing of the application shall be served upon the adverse party or his attorney five days before the hearing thereof."

MIT and the Inges argue that the last sentence of the section requires that the trial court hold a hearing before confirming an arbitration award. While there is authority to support this proposition, see, e.g., *MBNA Am. Bank, N.A. v. Anthony*, 5th Dist. No. 05AP090059, 2006-Ohio-2032, at ¶14; *MBNA Am. Bank, N.A. v. McArdle*, 6th Dist. No. L-06-1319, 2007-Ohio-2033, at ¶14, it is unnecessary for us to resolve this precise issue at this time.

{¶20} Assuming, without deciding, that R.C. 2711.09 requires the trial court to hold a hearing before confirming an arbitration award, under the particular facts of this case we believe any error in the trial court failing to do so was harmless. While MIT and the Inges have couched their arguments in terms of R.C. 2711.10(D), what they really desire is for the trial court to review the merits of their claims. This is something the trial court cannot do. *Cty. of Summit* at ¶7. Therefore, any hearing on the matter based upon these arguments would not change the result.

{¶21} To the extent that MIT and the Inges assert in their assignment of error that the trial court could not affirm the award absent a transcript, MIT and the Inges have not developed

any argument on the issue. See App.R. 16(A)(7). Therefore, we will not reach this part of their argument.

CONCLUSION

{¶22} In light of the foregoing, we affirm the judgment of the Wayne County Court of Common Pleas.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Wayne, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellants.

EVE V. BELFANCE
FOR THE COURT

WHITMORE, J.
DICKINSON, P. J.
CONCUR

APPEARANCES:

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