SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: ANIL C. SINGH Justice PART 45

Index Number : 650782/2016
SELVI SINGAPORE TRADING PTE
vs
HARRIS FREEMAN ASIA LIMITED
Sequence Number : 001
VACATE OR MODIFY AWARD

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to 3, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). 1
Answering Affidavits — Exhibits _____ | No(s). 2
Replying Affidavits _____ | No(s). 3

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the annexed memorandum opinion and judgment.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: July 14, 2016

ANIL C SINGH, J.S.C.

1. CHECK ONE: ..... ☒ CASE DISPOSED ☐ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: .....MOTION IS: ☐ GRANTED ☒ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ..... ☐ SETTLE ORDER ☐ SUBMIT ORDER
☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 45

----------X

SELVI SINGAPORE TRADING PTE LTD.,

JUDGMENT

Petitioner,

Index No.
650782/2016

-against-

HARRIS FREEMAN ASIA LIMITED,

Respondent.

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HON. ANIL C. SINGH, J.:

Petitioner moves for an order pursuant to CPLR 7511(b) and the Federal Arbitration Act, vacating the final arbitration awards in the Matter of the Arbitration Between Harris Freeman Asia Limited v. Selvi Singapore Trading Pte Ltd., American Spice Trade Association ("ASTA") cases No. 907 and 908, contending that the arbitration panel acted in manifest disregard of the law in rendering the awards. Respondent opposes the motion and cross-moves to confirm the awards.

Petitioner Selvi Singapore Trading Pte Ltd. ("Selvi"), is a spice-trading company based in Singapore.

Respondent Harris Freeman Asia Limited ("Harris Freeman"), one of the leading suppliers of spices to North America, is a spice and tea company based in

Hong Kong.

In October 2013, Selvi entered into contracts to supply 1,000 metric tons of black pepper to Harris Freeman for an average price of $7,272.50 per ton for a total value of $7,252,500.00 beginning in July 2014.

Selvi's main supplier of pepper defaulted on its contract to supply pepper.

The parties entered into amended contracts in which they agreed that Selvi would be required to ship only 500 metric tons to Harris Freeman, instead of the 1,000 metric tons originally called for by the parties' contracts.

On February 13, 2015, Harris Freeman notified Selvi that it would not honor the amended contracts and would initiate arbitration. In its arbitration demand, Harris Freeman asserted that it was entitled to $1.989 million, which is the amount that it claimed it paid because it was forced to purchase substitute goods.

An arbitration hearing was held in New York on September 9, 2015. The matter was heard by a panel of three arbitrators. None of the arbitrators were attorneys. One witness testified on behalf of Selvi, and two witnesses testified on behalf of Harris Freeman.

Harris Freeman's witnesses did not deny that the parties had entered into the agreements to modify the contracts. Instead, Harris Freeman's attorney argued that the amended contracts were void on the grounds that they lacked

consideration; Harris Freeman executed the contracts under economic duress; and enforcement of the contracts would be unconscionable.

On September 11, 2015, the arbitration panel issued two awards. Under ASTA arbitration award number 2063, the panel awarded Harris Freeman the sum of $340,000, plus the arbitration fee. Under ASTA arbitration award number 2064, the panel awarded Harris Freeman the sum of $260,000, plus the arbitration fee. The arbitration panel did not provide any reasons or grounds of decision.

Subsequently, Selvi sought review before the ASTA Arbitration Board under its internal arbitration procedures. Selvi contended in its brief that the arbitration panel's compromise solution of awarding $600,000, rather than either nothing or the full amount of $1.989 million, had no basis in the law, stating: "There is simply no applicable legal principle which would allow the panel to award Harris Freeman the sum of $600,000 (out of the requested $1.9 million). The panel erred completely in this respect." (Petition, exhibit 15, p. 15).

On December 11, 2015, the Arbitration Board denied Selvi's appeal and affirmed the $600,000 award.

Discussion

A dispute involving an international commercial contract is governed by the Federal Arbitration Act ("FAA") and federal law (Hirschfeld Prods. v. Mirvish, 88

N.Y.2d 1054, 1055 [1996]). Under the FAA, a party moving to vacate an arbitration award has the burden of proof, and the showing required to avoid confirmation is very high (D.H. Blair & Co., Inc. v. Gottdiener, 462 F.3d 95, 110 (2d Cir. 2006)). Arbitration awards are subject to very limited review in order to avoid undermining the twin goals of arbitration – namely, settling disputes efficiently, and avoiding long and expensive litigation (Willemijn Houdstermaatschappij, BV v. Standard Microsystems Corp., 103 F.3d 9, 12 (2d Cir. 1997)).

The Court of Appeals summarized the doctrine of "manifest disregard of law" in Wien & Malkin LLP v. Helmsley-Spear, Inc., 6 N.Y.3d 471 [2006]). The Court wrote:

> An arbitration award must be upheld when the arbitrator offers even a barely colorable justification for the outcome reached. Indeed, we have stated time and again that an arbitrator's award should not be vacated for errors of law and fact committed by the arbitrator and the courts should not assume the role of overseers to mold the award to confirm to their sense of justice.
>
> The FAA permits vacatur of an arbitration award on four grounds which all involve fraud, corruption, or misconduct on the part of the arbitrators, grounds which are inapplicable to the present matter. In addition to those four grounds, an award may be vacated under federal law if it exhibits a "manifest disregard of law." But manifest disregard of law is a severely limited doctrine. It is a doctrine of last resort limited to the rare occurrences of apparent egregious impropriety on the part of the arbitrators, where none of the

> provisions of the FAA apply. The doctrine of manifest disregard, therefore, gives extreme deference to arbitrators. The Second Circuit has also indicated that the doctrine requires more than simple error in law or a failure to understand or apply it; and, it is more than an erroneous interpretation of the law. We agree with that premise. To modify or vacate an award on the ground of manifest disregard of the law, a court must find both that (1) the arbitrators knew of a governing legal principle yet refused to apply it or ignored it altogether, and (2) the law ignored by the arbitrators was well defined, explicit, and clearly applicable to the case.

(Wien & Malkin, 6 N.Y.3d at 479-481 (internal citations and quotation marks omitted)).

Under the two-part test, the error must be so palpably evident as to be readily perceived as such by the average person qualified to serve as an arbitrator (Duferco Intern. Steel Trading v. T. Klaveness Shipping A/S, 333 F.3d 383, 385 (2d Cir., 2003). "Any plausible reading of an award that fits within the law will sustain it" (id.).

Selvi maintains that the arbitration panel dreamed up a theory of "partial duress" – a theory with no basis whatsoever in the law – in deciding both that the amended contract was enforceable (because it did not award Harris Freeman the full amount it would be owed if the contract was not enforceable) and that it should only be partially adhered to (because it still awarded Harris Freeman some amount of damages, despite Selvi having completely performed the amended

contract). Selvi argues that this result is entirely unsupportable by any contract theory raised by Harris Freeman in the arbitration; is unsupported by any doctrine of contract law; and was a manifest disregard of the law.

Selvi's hypothesis that the arbitration panel creatively concocted a novel theory of "partial duress" and fashioned a remedy based on such theory is conclusory, speculative and has no evidentiary support. Likewise, the record is devoid of any evidence that the panel refused to apply any governing legal principle, ignored it altogether, or defied the law. Accordingly, the Court finds that Selvi has failed to meet its burden of demonstrating that the arbitration panel committed a manifest disregard of the law.

As noted above, the arbitration panel provided no explanation or grounds for the award. An arbitration award will be confirmed if a justiciable ground for the decision can be inferred from the facts of the case even where the explanation for the award is deficient or nonexistent (Tullett Prebon Fin. Servs. v. BGC Fin., L.P., 111 A.D.3d 480, 481 [1st Dept., 2013]).

At the arbitration hearing, Harris Freeman maintained that the amended agreements were not enforceable because it had purportedly signed them under economic duress. Harris Freemen demanded $1.989 million, a figure reflecting the additional amount that Harris Freeman allegedly had to pay to obtain black

pepper from suppliers at a higher price.

Selvi contends that a basic principle of contract law is that contracts are either valid and fully enforceable, or void and without legal effect; the arbitrators knew this basic principle; yet the arbitrators refused to apply the principle or ignored it altogether. Based on this fundamental principle, Selvi contends that the arbitrators had a stark and unalterable decision – namely, they were bound to award the full amount of $1.989 million demanded, or they were bound to award nothing at all. Accordingly, Selvi asserts that on its face the $600,000 award must have been a compromise in a situation where the law of contracts made any flexibility a legal impossibility.

In response, Harris Freeman contends that Selvi's argument that the arbitration should have been an all-or-nothing affair starts from a false premise. Harris Freeman asserts that, while it is obvious that the arbitrators determined that Harris Freeman was harmed, they did not believe Harris Freeman was harmed in the full amount sought in the arbitration. Harris Freeman asserts that, at the time of the amended agreements, Selvi had already defaulted on the previously agreed delivery dates, so it is possible that the panel decided to only award damages based on the breaches that occurred prior to the execution of the amended agreements.

Harris Freeman exhibits a copy of the rules governing the ASTA arbitration program (NYSCEF Doc. No. 29). Part C of the rules state in part:

> Whenever it shall be decided by arbitration that either party has failed to fulfill the terms of the contract, the party shall be deemed to be in default.
>
> The arbitrator(s) shall award the actual damages resulting from the default. When these damages are not ascertainable with exactness, the arbitrator(s) may award against the party in default the difference between the contract price and the market value on the date of default....
>
> * * *
>
> The decision of the arbitrator(s) shall be based on the evidence submitted and testimony given. However, the market value on the date of default may be determined at the discretion of the arbitrator(s).

(ASTA Rules, p. 5).

In light of the fact that: a) the record does not reflect the date of default determined by the arbitration panel; and b) the ASTA rules unambiguously vested the panel with discretion to determine the market value on the date of default, we find that there is a colorable basis for the awards on account of the unknown variables used by the panel to calculate damages. Accordingly, it is

ADJUDGED that the petition to vacate the final arbitration awards is denied; and it is further

ADJUDGED that the cross-motion to confirm the final arbitration awards is

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ORDERED AND ADJUDGED that the petition to vacate the final arbitration awards is denied; and it is further

ORDERED AND ADJUDGED that the cross-motion to confirm the final

arbitration awards is granted, and the awards rendered in favor of respondent and against petitioner are confirmed; and it is further

ORDER AND ADJUDGED that the Clerk is directed to enter judgment in favor of respondent Harris Freeman Asia Limited and against petitioner Selvi Singapore Trading Pte Ltd., in the amount of $600,000, together with interest at the statutory rate from the date of September 11, 2015, as calculated by the Clerk, together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs.

Date: July 14, 2016
New York, New York

Anil C. Singh