

2022 WL 17549107 (Cal.Super.) (Trial Order)
Superior Court of California,
Gordon D Schaber Courthouse.
Sacramento County

SCA PACIFIC HOLDINGS INC,
v.
SUTTER HEALTH.

No. 34-2022-00318465-CU-PA-GDS.
November 14, 2022.

***1 MINUTE ORDER**
[X] Amended on 11/14/2022
TIME: 01:30:00 PM
DEPT: 53
CLERK: T. Morgan
BAILIFF/COURT ATTENDANT: None
CASE INIT.DATE: 04/19/2022
CASE CATEGORY: Civil - Unlimited

Tentative Ruling

[Richard K. Sueyoshi](#), Judge.

REPORTER/ERM: None

Nature of Proceeding: Ruling on Submitted Matter (Petition to Vacate Arbitration Award) Taken under submission on 11/9/2022

The petition to vacate arbitration award filed by SCA Pacific Holdings, Inc., SCA Santa Rosa, Inc., SCA San Luis Obispo, LLC, Surgery-Centers-West Holdings, LLC, Surgical Care Affiliates, LLC, and SC Affiliates, LLC (collectively, "SCA") is DENIED.

Respondent Sutter Health's ("Sutter") concurrent petition to confirm arbitration award is GRANTED.

The Court addresses the competing petitions in this single ruling.

Background

This dispute arises from a series of joint ventures entered into between SCA and Sutter from 2007 to 2012. The joint ventures involved the ownership and operation of ambulatory surgical centers located in Northern and Central California. The underlying operating agreements included a provision that limited the parties' ability to transfer their ownership interest to an entity not in control of nor controlled by SCA or Sutter. If such a change in control occurred, a buyout provision would be triggered wherein the other party would have the right to purchase the ownership interests of the party who underwent the change in control party's at 50% of the interests' appraised value.

The parties' arbitration agreement gave the arbitrators broad authority to grant any remedy available under California law, including specific performance, but expressly disempowered the arbitrators from awarding penalties or forfeitures. Specifically, section 19.14 of the arbitration agreement stated, in relevant part:

“Decision and Final Award. The Arbitrator(s) shall have the power to grant all legal and equitable remedies available under California law, including but not limited to, preliminary and permanent private injunctions, specific performance, reformation, cancellation, accounting and compensatory damages; provided however, that the Arbitrator(s) shall not be empowered to award punitive damages, penalties, forfeitures or attorneys' fees (except as sanctions, as specified herein).”


In 2017, the parent of Petitioner Surgical Care Affiliates, LLC, a company known as Surgical Care Affiliates, Inc., was purchased by an outside entity not affiliated with any of the parties. In response, Sutter invoked the buyout provision and instituted arbitration proceedings pursuant to arbitration clause in the applicable operating agreements. The matter was arbitrated in front of the Hon. Cecily Bond (Ret.), the Hon. Rebecca Westerfield (Ret.), and Barbara A. Reeves, Esq. On March 22, 2022, the panel ruled in favor of Sutter, finding that when SCA was purchased by an outside entity, a change in control occurred that triggered the buyout provision and allowed Sutter to purchase SCA's interest in the joint ventures at 50% of the appraised value at the time of the triggering event. The panel also found that SCA anticipatorily repudiated its duty to sell its interest to Sutter, and thus ordered that the distributions SCA received after its repudiation be credited against the purchase price.

*2 SCA contends that the panel exceeded its powers in issuing its award on the basis that the award constitutes an improper penalty or forfeiture. Sutter counters that the award is well within the panel's authority as a grant of specific performance of the buyout provision, which controls over the general clause exempting forfeitures and penalties from the available remedies.


SCA also makes an alternative argument that the panel exceeded its powers because the award violates public policy. First, SCA argues that California has a strong public policy against forfeitures and penalties. This argument is essentially the same as SCA's prior argument and merely substitutes Civil Code statutes for the contract provisions. Second, SCA argues that the award violates California's public policy against unreasonable restraints on the alienation of property. In response, Sutter contends that SCA's policy arguments are improper because they fall outside of the specific statutory grounds on which a court may vacate an arbitration award. Sutter further argues that even if the policy arguments are permissible, they fail on the merits.

Discussion

Legal Standard

Pursuant to  Code of Civil Procedure (“CCP”) section 1286.2(a), the grounds to vacate an arbitration award are as follows:

- The award was procured by corruption, fraud or other undue means.
- There was corruption in any of the arbitrators.
- The rights of the party were substantially prejudiced by misconduct of a neutral arbitrator.
- The arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted.
- The rights of the party were substantially prejudiced by the refusal of the arbitrators to postpone the hearing upon sufficient cause being shown therefor or by the refusal of the arbitrators to hear evidence material to the controversy or by other conduct of the arbitrators contrary to the provisions of this title.
- An arbitrator making the award either: (A) failed to disclose within the time required for disclosure a ground for disqualification of which the arbitrator was then aware; or (B) was subject to disqualification upon grounds specified in Section 1281.91 but failed upon receipt of timely demand to disqualify himself or herself as required by that provision. However, this subdivision does not apply to arbitration proceedings conducted under a collective bargaining agreement between employers and employees or between their respective representatives.

Judicial review of a contractual arbitration award is extremely limited. This deferential standard is based on “the strong public policy in favor of private arbitration.” ( *Cotchett, Pitre & McCarthy v. Universal Paragon Corp.* (2010) 187 Cal.App.4th 1405, 1416 (*Cotchett*)). Indeed,

“an award reached by an arbitrator pursuant to a contractual agreement to arbitrate is not subject to judicial review except on the grounds set forth in [section 1286.2](#) (to vacate) and 1286.6 (for correction).” ([Moncharsh v. Heily & Blase \(1992\) 3 Cal.4th 1, 33.](#)) “As a general rule, the courts may not review an arbitrator's decision for errors of fact or law.” ([Cotchett, supra, 187 Cal.App.4th at p. 1416.](#)) Generally, an arbitrator's factual or legal error is not sufficient grounds to vacate an award “because the arbitrator's resolution of the issues is what the parties bargained for.” (*Ibid.*)

*3 “It is well settled that ‘arbitrators do not exceed their powers merely because they assign an erroneous reason for their decision.’ [Citations.]” ([Moncharsh, supra, 3 Cal.4th at p. 28.](#)) Moreover, “the normal rule of limited judicial review may not be avoided by a claim that a provision of the contract, construed or applied by the arbitrator, is ‘illegal,’ except in rare cases when according finality to the arbitrator's decision would be incompatible with the protection of a statutory right.” ([Id. at p. 33.](#)) Additionally, absent specific restrictions in the arbitration rules or agreement, “the remedy an arbitrator fashions does not exceed his or her powers if it bears a rational relationship to the underlying contract as interpreted, expressly or impliedly, by the arbitrator and to the breach of contract found, expressly or impliedly, by the arbitrator.” ([Advanced Micro Devices, Inc. v. Intel Corp. \(1994\) 9 Cal.4th 362, 367.](#))

“An exception to the general rule assigning broad powers to the arbitrators arises when the parties have, in either the contract or an agreed submission to arbitration, explicitly and unambiguously limited those powers. ([Gueyffier v. Ann Summers, Ltd. \(2008\) 43 Cal.4th 1179, 1185.](#)) Moreover, “[t]he scope of an arbitrator's authority is not so broad as to include an award of remedies ‘expressly forbidden by the arbitration agreement or submission.’” (*Ibid.*) But even this standard is deferential to the arbitrators. In reviewing whether an arbitrator exceeded her powers by imposing a remedy that was contrary to the provisions of a collective bargaining agreement, the First District Court of Appeal stated, “The extremely deferential standard of review under which we operate defers to the arbitrator's interpretation of the collective bargaining agreement.” ([San Francisco Housing Authority v. Service Employees Internat. Union, Local 790 \(2010\) 182 Cal.App.4th 933, 944.](#)) Thus, the question before the Court was “whether the remedy imposed by the arbitrator was ‘even arguably based on the contract’ [citation] or, stated otherwise, whether the award ‘conflicts with express terms of the arbitrated contract.’” (*Id. at 945*, quoting *Advanced Micro Devices, supra*, at p. 381.)

“An arbitrator may exceed her powers within the meaning of [[CCP section 1286.2\(a\)\(4\)](#)] by issuing an award that violates an explicit legislative expression of public policy.” ([Cotchett, supra, 187 Cal.App.4th at p. 1416.](#)) However, “[a]bsent 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.” (¶ *Moncharsh, supra*, 3 Cal.4th at p. 32.)

Analysis

- Whether the Award Exceeded the Arbitrators' Powers Under the Operating Agreements

As noted above, SCA advances two primary arguments in support of its petition to vacate the award, both of which assert that the arbitrators exceeded their powers. First, SCA contends that the remedy ordered—ordering SCA to sell its ownership interest to Sutter at 50% value and crediting distributions received by SCA since the triggering change in control against the purchase price—constitutes a forfeiture or penalty, which is expressly prohibited in the arbitration agreement. To support its claim that this relief is a forfeiture or penalty, SCA notes that Sutter was not actually damaged by the triggering change in control.

The Court is not persuaded that SCA has satisfied the high threshold required to establish that the arbitrators exceeded their powers. Rather, SCA's argument appears to be an attempt to readjudicate the arbitrators' interpretation of the contract. The operating agreements expressly call for the party who has not undergone a change in control to have the opportunity to purchase other party's interest at 50% value if a triggering change in control occurs. The arbitrators found that such a triggering event occurred—indeed, SCA does not challenge this finding—and crafted relief accordingly. Requiring SCA to sell its interest at 50% of the value as provided for by the agreement is not a “completely irrational construction of the contract.” (*Cal. Dept. of HR, supra*, 209 Cal.App.4th at p. 1430.)

*4 The provision in the arbitration agreement relied upon by SCA grants the arbitrators' broad authority in crafting a remedy. To the extent it may be argued that the limitation on awarding a forfeiture or penalty potentially creates an ambiguity, the arbitrators' resolution of such argued ambiguity will not be second guessed unless it is completely irrational. (See *Cal Dept. of HR, supra*, 209 Cal.App.4th at p. 1430 [affirming an award where “the arbitrator's interpretation, choosing between two plausible constructions, was not irrational”].) The panel's enforcement of the buyout provision as specific performance is not an irrational interpretation. Implicit in this interpretation is that the buyout provision is not a forfeiture or penalty at all, and thus SCA's argument that the panel failed to address the forfeiture/penalty issue is unfounded.

Furthermore, SCA's proposed interpretation would render the buyout provision superfluous, which would violate basic contract law. (See *Civ. Code* § 1641; see also *Gilkyson v. Disney Enterprises, Inc.* (2021) 66 Cal.App.5th 900, 920 [rejecting an interpretation that “would require [the court] to disregard the express limiting language” in the contract at issue].) The Court is persuaded by Sutter's application of *General Precision, Inc. v. International Asso. Of Machinists* (1966) 241

Cal.App.2d 744. There, a collective bargaining agreement called for employees to work a half shift on Christmas Eve at holiday pay rates, but also gave the employer the exclusive right to manage the workplace, including the right to schedule days worked. The arbitration provision also limited the arbitrator's power to interpreting and applying the existing provisions of the agreement, and prohibited the arbitrator from altering the agreement. One year, the employer announced that no shifts would be scheduled for Christmas Eve, and instead ordered employees to work the following Saturday. The arbitrator found that this violated the employees' contractual right to work a half shift on Christmas Eve at holiday rates. The employer contended that the arbitrator exceeded his powers by altering the agreement. In rejecting this, the appellate court found that the employer “magnif[ied] one clause of the contract at the expense of its other relevant provisions,” and accepting the employer's interpretation would render these provisions meaningless. (*Id.* at 746.)

SCA's interpretation similarly magnifies the general clause prohibiting forfeitures and penalties against the specific buyout provision, rendering the buyout provision meaningless. Such an interpretation violates the principle of contract interpretation that specific provisions prevail over inconsistent general provisions. (See *Jackson v. Donovan* (1963) 215 Cal.App.2d 685, 691.) The panel's interpretation gives meaning to the contract as a whole, as required by basic contract law. The Court will not second guess the merits of this interpretation.

Although it is true that arbitrators may exceed their powers when the award “conflicts with express terms of the arbitrated contract,” (📌 *Advanced Micro Devices, supra*, 9 Cal.4th at p. 381), that is not what has occurred here. The arbitrators' award was expressly called for in the contract via the buyout provision. Therefore, because “the remedy imposed by the arbitrator[s] was ‘even arguably based on the contract,’” it must be upheld. (*San Francisco Housing Authority v. Service Employees Internat. Union, Local 790* (2010) 182 Cal.App.4th 933, 945.)

2. Whether the Award Exceeded the Arbitrators' Powers Because It Violated Public Policy

“Arbitrators may exceed their powers by issuing an award that violates a party's unwaivable statutory rights or that contravenes an explicit legislative expression of public policy.” (📌 *Richey v. AutoNation, Inc.* (2015) 60 Cal.4th 909, 916.) This basis to vacate an arbitration award constitutes a departure from the general rule of arbitral finality and “applies only in ‘limited and exceptional circumstances.’” (📌 *Branches v. Neighborhood Corp. v. CalAtlantic Group, Inc.* (2018) 26 Cal.App.5th 743, 751, quoting 📌 *Moncharsh, supra*, 3 Cal.4th at p. 32.) “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 for such error,” (📌 *Gueyffier, supra*, 43 Cal.4th at p. 1184.)

*5 On October 6, 2022, SCA filed a notice of supplemental authority citing to the recently filed opinion in [Honchariw v. FJM Private Mortgage Fund, LLC \(2022\) 83 Cal.App.5th 893](#). In that case, after the petitioners defaulted on a \$5.6 million loan, the lender invoked a late payment provision in the loan agreement that included a one-time 10 percent fee assessed against the overdue payment and a default interest charge of 9.99 percent per annum assessed against the total unpaid principal balance of the subject loan. The Court of Appeal concluded (1) that this provision constituted an unenforceable penalty under [Civil Code section 1671](#), (2) that [Civil Code section 1671](#) expresses a well-defined and dominant public policy, and (3) and that the arbitrator thus exceeded their power by enforcing the provision. ([Honchariw, supra, 83 Cal.App.5th at pp. 899-901.](#))

The Court is not persuaded that *Honchariw* is helpful to SCA. SCA argued at the arbitration that the buyout provision was not a liquidated damages provision, so [Civil Code section 1671](#) would not be applicable, which is what the arbitrators concluded. Further, “[w]hen the concern about oppressive coercion is absent, [Civil Code section 1671](#) does not apply.” (*Constellation-F, LLC v. World Trading 23, Inc. (2020) 45 Cal.App.5th 22, 28.*) The Court in *Honchariw* quoted the following passage from *Constellation-F*: “[Civil Code section 1671](#) and the case law interpreting it aim to combat unfair and unreasonable *coercion* arising from an imbalance of bargaining power.” ([Honchariw, supra, 83 Cal.App.5th at p. 900](#), quoting *Constellation-F*, at p. 27.) Here, there is no imbalance of bargaining power between SCA and Sutter.

SCA contends that “courts have held forfeitures invalid based in part on the policies against forfeiture and penalties, even where a particular Civil Code section regarding forfeiture was found not to apply.” (Petition to Vacate at p. 20:22-23.) But this is not the proper standard when reviewing whether arbitrators exceeded their powers by issuing an award that contravenes “an explicit legislative expression of public policy.” ([Richey, supra, 60 Cal.4th at p. 916.](#)) Given the strong policy favoring arbitration and arbitral finality, a vacatur argument based on public policy must point to a clear legislative enactment. ([Honchariw, supra, 83 Cal.App.5th at p. 899.](#)) SCA argued three statutory provisions precluded enforcement of the buyout provision, and the arbitrators rejected these arguments. The arbitrators' conclusions on these issues are entitled to significant deference, particularly given that SCA is essentially asserting that a portion of the operating agreements (the buyout provision) is illegal. ([Moncharsh, supra, 3 Cal.4th at p. 32-33.](#))

Disposition

Based on the foregoing, SCA's petition to vacate the arbitration award is DENIED. Sutter's cross-petition to affirm the arbitration award is GRANTED.

The minute order is effective immediately. No formal order pursuant to [CRC Rule 3.1312](#) or further notice is required.

COURT RULING

The matter was argued and submitted. The matter was taken under submission.

SUBMITTED MATTER RULING

Having taken the matter under submission on 11/09/22, the Court now rules as follows:

The Court has considered the oral arguments of the parties. SCA requested an appearance and argued, as it did in its supporting filings, that the arbitration award exceeded the authority of the arbitrators as restricted by the applicable operating agreements and that the award also violates public policy. The Court has given due consideration to the parties' oral arguments and briefing in this matter. Having done so, the Court is not persuaded that its tentative ruling must be altered. Therefore, the Court **AFFIRMS** the tentative ruling.

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