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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1616-20

JAMES WARD, WARD
PROPERTY MANAGEMENT
LLC, WARD TRINITY REAL
ESTATE LLC, and WARD &
O'DONNELL WESTFIELD, LLC,

Plaintiffs-Respondents,

v.

MARY JOSEPHINE WARD-
GALLAGHER, individually
and in the right and on behalf of
WARD REALTY GROUP LLC,

Defendants-Appellants.

Argued May 12, 2022 – Decided May 24, 2022

Before Judges Haas and Mitterhoff.

On appeal from the Superior Court of New Jersey,
Chancery Division, Union County, Docket No. C-
00110-20.

Richard D. Gallucci, Jr., argued the cause for appellants
(Jacobs Law Group, PC, attorneys; Richard D.
Gallucci, Jr., on the briefs).

John P. Lacey argued the cause for respondents (Connell Foley, LLP, attorneys; John P. Lacey, of counsel and on the brief; Lauren F. Iannaccone, on the brief).

PER CURIAM

Defendants Mary Josephine Ward-Gallagher (Josephine)¹ and Ward Realty Group LLC appeal from the trial court's January 8, 2021 order confirming an arbitration award issued in favor of plaintiffs James Ward (James), Ward Property Management LLC, Ward Trinity Real Estate LLC, and Ward & O'Donnell Westfield, LLC. We affirm substantially for the reasons set forth in the court's January 8, 2021 oral decision. We add the following comments.

James and Josephine are siblings who immigrated to the United States from Ireland with their parents and three other siblings over forty years ago. The family settled in Union, where James started a construction and real estate development business. The siblings and their spouses derived their income from their positions in the business. During the arbitration, Josephine claimed she and her father were initially in charge of the business. However, the arbitrator found this claim was not credible and that "James was the master planner, builder, and driving force" of the operation.

¹ We refer to the parties by their first names for ease of reference, intending no disrespect.

Sometime between 2015 and 2016, James learned that Josephine had mismanaged Morningstar Senior Citizens LP, a senior residential facility the family owned. He also discovered his sister Eileen and her husband misappropriated approximately \$900,000 from other companies. James attempted to meet with his siblings to discuss the matter, but they refused. James then terminated Josephine, Eileen, and Eileen's husband from their positions with the family business. Nevertheless, James told Josephine he would pay her reasonable living expenses in lieu of her former salary.

Eileen sued James for monies she alleged he owed her. James and Eileen settled the lawsuit in a written "term sheet" they executed in September 2017. Although Josephine was not a party to that action, she agreed to join in the settlement negotiations, and the siblings entered a second written settlement agreement in December 2017, which was further supplemented by an oral agreement between James and Josephine. As part of that agreement, James and Josephine obtained a property known as "Ferris Place" from Eileen. The agreement did not specify their individual ownership shares in the property.

James and Josephine continued to argue about ownership of the family's various businesses and properties, and Josephine filed an action against James in the Chancery Division. The parties failed to successfully mediate their

dispute and decided to submit the matter to binding arbitration.² The parties agreed that the central issue to be determined by the arbitrator was the percentage of ownership interest they each should receive in two entities: Ward & O'Donnell Westfield, LLC, and Ward Trinity Real Estate LLC (and its lone asset, Morningstar), and in three contiguous development properties the family owned in Westfield.

The arbitrator conducted a seventeen-day hearing to address these issues. At the conclusion of the hearing, the arbitrator rendered a seventy-six-paragraph written decision.³ The arbitrator found that based on James' credible testimony, he should remain the managing member of each of the companies that were the subject of the arbitration. The arbitrator also determined the three development properties should be placed into a newly formed limited liability company owned 80% by James and 20% by Josephine.

James filed an order to show cause seeking confirmation of the arbitration award. Josephine opposed this request. She argued that the arbitrator should have either named her the managing member of each of the companies or simply

² The arbitrator was a retired Superior Court judge.

³ The parties are fully familiar with the terms of the arbitrator's award and, therefore, we only briefly summarize them here.

dissolved all of the companies. Josephine asserted she was an "oppressed shareholder" and that the award violated public policy.

The trial court rejected Josephine's contentions in its thoughtful oral decision. The court found that the arbitrator considered and properly rejected Josephine's claim she was an oppressed shareholder because James "generously paid" her expenses⁴ and "because [Josephine's] investments were made for the purpose of ultimate reinvestment and increase of capital rather than periodic distributions." The court also determined the award did not violate public policy.

On appeal, Josephine raises the same contentions she unsuccessfully presented to the trial court. Because a trial court's decision confirming an arbitrator's award is a decision of law, an appellate court reviews that decision de novo, but with a recognition of the wide authority bestowed upon the arbitrator by statute. Minkowitz v. Israeli, 433 N.J. Super. 111, 136 (App. Div. 2013). Essentially, appellate review entails a determination whether the arbitrator and the trial court have each adhered to the requirements of the controlling statute. Ibid.

⁴ Among other things, the award required James to pay Josephine \$50,000 per year, provide her with health insurance, and forgive \$1.3 million in debt guarantees she was responsible for on three properties.

The arbitration statute, N.J.S.A. 2A:23B-23(a), only permits a court to vacate an arbitration award on very narrow grounds. Those grounds do not include an arbitrator's alleged mistakes of law. Tretina Printing, Inc. v. Fitzpatrick & Assocs., Inc., 135 N.J. 349, 357-58 (1994). In Tretina, the Court espoused the following language from Chief Justice Wilentz's concurring opinion in Perini Corp. v. Greate Bay Hotel & Casino, Inc., 129 N.J. 479 (1992):

Basically, arbitration awards may be vacated only for fraud, corruption, or similar wrongdoing on the part of the arbitrators. [They] can be corrected or modified only for very specifically defined mistakes as set forth in [the arbitration statute]. If the arbitrators decide a matter not even submitted to them, that matter can be excluded from the award. For those who think the parties are entitled to a greater share of justice, and that such justice exists only in the care of the court, I would hold that the parties are free to expand the scope of judicial review by providing for such expansion in their contract; that they may, for example, specifically provide that the arbitrators shall render their decision only in conformance with New Jersey law, and that such awards may be reversed either for mere errors of New Jersey law, substantial errors, or gross errors of New Jersey law and define therein what they mean by that. I doubt if many will. And if they do, they should abandon arbitration and go directly to the law courts.

[Tretina, 135 N.J. at 358 (quoting Perini, 129 N.J. at 548-49 (Wilentz, C.J., concurring)) (first alteration in the original).]

Under the arbitration statute, a court may vacate an arbitration award if the challenger establishes one of a few limited grounds:

(1) the award was procured by corruption, fraud, or other undue means;

(2) the court finds evident partiality by an arbitrator; corruption by an arbitrator; or misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;

(3) an arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to section 15 of this act, so as to substantially prejudice the rights of a party to the arbitration proceeding;

(4) an arbitrator exceeded the arbitrator's powers;

(5) there was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection pursuant to subsection c. of section 15 of this act not later than the beginning of the arbitration hearing; or

(6) the arbitration was conducted without proper notice of the initiation of an arbitration as required in section 9 of this act so as to substantially prejudice the rights of a party to the arbitration proceeding.

[N.J.S.A. 2A:23B-23(a).]

Based on our review of the record, we conclude that none of those grounds apply here.

The arbitrator did not employ undue means or refuse to consider evidence. Instead, the arbitrator allowed both parties to present all of their evidence. The arbitrator evaluated witness credibility and made appropriate findings of fact based on the evidence. The arbitrator reached legal conclusions based on the facts as she found them to be.

Based upon the credible testimony, James was plainly the "driving force" for the family businesses. Therefore, the arbitrator acted reasonably by leaving him as the managing member of the companies moving forward, while ensuring Josephine continued to receive generous compensation and benefits based on her limited role in the enterprises. Contrary to Josephine's contention, the arbitrator's decision not to dissolve the limited liability companies did not contravene public policy. The arbitrator found that James had not treated Josephine as an oppressed shareholder. Therefore, dissolution was certainly not required. See Minkowitz, 433 N.J. Super. at 135 n.2 ("[A]n arbitration award may be vacated where it violates 'a clear mandate of public policy' . . . [but] such intervention is appropriate only where 'the public-policy question is not reasonably debatable.'" (quoting Weiss v. Carpenter, 143 N.J. 420, 443 (1996))).

In sum, we discern no grounds to disturb the arbitrator's legal conclusions or to vacate the award. We affirm substantially for the reasons set forth in the trial court's comprehensive oral decision.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION