Matter of Signal Perfection, Ltd. v Litespeed Elecs., Inc.
2014 NY Slip Op 32026(U)
May 22, 2014
Supreme Court, New York County
Docket Number: 652823/13
Judge: Alice Schlesinger
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 16

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In the Matter of the Application of
SIGNAL PERFECTION, LTD, d/b/a SPL
INTEGRATED SOLUTIONS,

Petitioner,

Index No. 652823/13
Mot. Seq. 001

For an Order Pursuant to CPLR 7511
Vacating an Arbitration Award concerning

LITESPEED ELECTRICS, INC.,

Respondent.

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SCHLESINGER, J.:

This proceeding is brought by petitioner Signal Perfection, LTD d/b/a SPL Integrated Solutions (SPL), pursuant to CPLR § 7511, to vacate or modify the May 13, 2013 Arbitration Award rendered in favor of respondent Litespeed Electrics, Inc. (Litespeed) in the sum of $232,989.00 (Award, Petition, Exh. A). Litespeed professes to cross-petition for confirmation of the Award.[1]

Nonparty Structure Tone, Inc. (Structure Tone) was the general contractor on a construction project. Structure Tone contracted with SPL to have SPL perform audio-visual work, and SPL and Litespeed then entered into a written lump-sum subcontract, in the amount of $346,325, for the performance by Litespeed of electrical work on the project in relation to SPL's audio-visual work (Petition, Exh I-R1). It is undisputed that Litespeed performed under the subcontract, and there is no complaint as to the quality of Litespeed's work.

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[1]SPL complains that Litespeed's response to the petition is flawed, as there is no proper cross petition before the Court, only the affirmation of Litespeed's attorney in opposition to the petition and in support of a cross petition. This purported defect is not a problem, however, because a failed motion to vacate will always result in confirmation of the award, whether or not there is a proper cross petition. CPLR § 7511(e).

The work performed by Litespeed was subject to change orders and modifications along the way. A dispute arose concerning the amount owed by SPL to Litespeed at the conclusion of the work. Under the terms of the subcontract, Litespeed and SPL proceeded to mediation, but to no avail. The parties then agreed to arbitrate the matter, also pursuant to the subcontract.

In its Demand for Arbitration (Demand), Litespeed asked the Arbitrator for an award in the sum of $242,696.00. (Demand, Cross Petition, Exh. 1). Hearings were held over four days in March 2012. Numerous exhibits were offered and many witnesses testified. After the hearings were concluded, the Arbitrator allowed each side to submit a post-hearing brief, but he did not allow the sides to view one other's submissions.

In a two-page Award dated May 13, 2013, the Arbitrator granted Litespeed $240,262, less a credit to SPL of $7,273.00 for deleted work, for a total of $232,989.00. Basically, the Arbitrator awarded Litespeed close to the entirety of its Demand, less the single credit to SPL. The Arbitrator did not explain in his decision how he arrived at the $240,262 figure (which is less than the amount in the Demand), but that figure is precisely the one urged by Litespeed in its post-hearing brief.

Upon receipt of the Award, SPL made a request to the Arbitrator for modification of the Award (Request for Modification). (Petition, Exh. C). In the detailed five-page Request for Modification, SPL listed numerous, very specific, mistakes it claimed that the Arbitrator had made in the calculation of the Award, by considering some items of work and not considering others, such as credits allegedly due SPL, and by other miscalculations. In the Request for Modification, SPL complained that the total amount

Litespeed had ever sought in the arbitration was $226,430.15, and that there were obvious errors made, as the Award was for an amount greater than $226,430.15. SPL insisted in the Request for Modification that "In sum, the Arbitrator, if he were inclined to give [Litespeed] 100% of what it attempted to prove at the arbitration, should have used the sum of $226,430.15 as the baseline award." (Request for Modification, at 3).

Litespeed wrote to the Arbitrator in objection to the Request for Modification (Objection to Modification). (Petition, Exh D). Litespeed argued that, under Rule R-48 of the arbitration proceedings, modification can only be sought for the corrections of "clerical, typographical, technical or computational errors in the award." *(Id.*, at unnumbered page 1). In the Objection to Modification, Litespeed complained that SPL was merely trying to revisit the entirety of the evidence to compel the Arbitrator to change his mind, an impermissible use of Rule R-48. Regardless, Litespeed responded to some of SPL's arguments. It asserted that it had always sought the amount of $242,696, and that that was the amount it had billed, the amount it had claimed in the Demand for Arbitration, and the amount referenced in the testimony at the hearing of its CFO, Mehul Changani (Changani).

SPL then commenced this proceeding, contending that the Award has numerous calculation errors and that the Arbitrator failed to consider SPL's superior evidence, enumerating at length all of the alleged mistakes. SPL's most serious complaint, however, is that the Arbitrator allegedly made his determination based on a document improperly provided to him by Litespeed along with Litespeed's post-hearing brief, which the Arbitrator had told counsel not to serve upon SPL. SPL further claims that it never saw the document because it had not been introduced into evidence before the

Arbitrator at the hearings. SPL seeks either the vacatur of the Award, or at least a modification of the Award to correct these, and the many other, alleged miscalculations.

SPL also argues that, although Litespeed may have made a demand for $242,696.00 originally, Litespeed relied solely, throughout the hearings, on a spreadsheet marked "exhibit C-20" at the Arbitration (Petition, Exh. B) (Spreadsheet A). The typewritten portion of that spreadsheet allegedly sums up Litespeed's damages as $173,044.70, not $242,696.00, though there are some handwritten notations on the side. The document which SPL claims the Arbitrator eventually, and improperly, relied on is a spreadsheet allegedly showing Litespeed's damages as $242,696.00 (Petition, Exh. F) (Spreadsheet B). SPL also complains that Spreadsheet B contains an item referenced as "P.O. 673902," in the amount of $13,470, which was never addressed at the hearings and was not part of the subcontract containing the arbitration clause; nevertheless, it was apparently considered by the Arbitrator upon receipt of Litespeed's post-hearing brief.

In sum, SPL argues that: "It is obvious, then, that the arbitrator adopted [Litespeed's] post-hearing brief and based his Award entirely on [Litespeed's] counsel's self-serving post-hearing calculations, rather than the evidence presented at the arbitration, which was ignored." (Petition, ¶ 57). SPL concludes that "the spreadsheet document C-20 that both parties had allegedly relied exclusively upon at the hearings was rendered irrelevant, and the hearings were rendered pointless as well." *Id.* SPL does not explain why it claimed in its Request for Modification that the total amount Litespeed had attempted to prove at the hearings was $226,430.15 (as opposed to the $173,044.70 that it now claims was proven via the introduction of C-20). There, he

asserted that the Arbitrator should have used the $226,430.15 amount as a "baseline" to be reduced by certain credits (Request for Modification, at 3).

At oral argument, this Court invited Litespeed to submit, in a brief letter, transcript references to establish that Spreadsheet B was, in fact, included among the documents admitted into evidence at the arbitration and not offered for the first time with the post-hearing brief. Litespeed has provided such a letter, dated April 3, 2014, specifically answering this Court's request. The letter also expands upon Litespeed's arguments by submitting a copy of the post-hearing brief presented by Litespeed's attorney to the Arbitrator at the close of the arbitration hearings; as indicated earlier, the post-hearing brief was not served on SPL under the arbitrator's rules. Through the submission, counsel seeks to demonstrate that Spreadsheet B was never sent to the Arbitrator as part of the closing arguments, and he claims that Litespeed's arbitration attorney denies having sent any documents at all to the Arbitrator with his post-hearing brief.

Litespeed's post-hearing brief in the Arbitration contain an analysis of the testimony and direct reference to only a few documents, none of them being Spreadsheet B. However, Litespeed's arbitration attorney is not Litespeed's attorney in this proceeding here, and as he has not provided an affidavit confirming the contents of his post-hearing brief, the claim that the document was not submitted with the brief is not probative here, even though arbitration counsel did appear at oral argument before this Court and made similar assertions over petitioner's objection.

Litespeed refers this Court to testimony that appears to indicate that the documents relied on by Litespeed to seek its full $242,696.00 demand were included in

"Arbitrator's Exhibit A," an exhibit consisting of a goodly number of documents presented to the Arbitrator as attachments to the Arbitration Demand. The testimony of Changani indicates that the documentation provided with the Demand included back-up documents supporting the Demand that had been given to SPL along with the Demand, as well as at the failed mediation. (Changani TR at 28). Litespeed's attorney from the arbitration also claims in the letter to this Court that the "very document [SLP's attorney] now claims I produced post arbitration" was marked separately in the Arbitration. (April 3, 2014 letter, at unnumbered page 2).

Changani testified concerning Arbitrator's Exhibit B, speaking of the contract as consisting of two parts, one part in the sum of $171,035 with AVI and the second in the sum of $175,290 with SPL. (TR at 58-59). These are the same figures that appear in Spreadsheet B. Changani testified that this document had been provided to SPL as "the first thing which was actually sent out . . . ." *Id.* at 58.

In his responsive letter to this Court dated April 8, 2014, SPL's attorney objects to the length of Litespeed's reply to this Court's request, as well as to the appearance of Litespeed's former counsel. However, SPL has not refuted the testimony of Changani where he refered to a document at the Arbitration containing the same amounts that appear on Spreadsheet B. SPL flatly states that the "new" document, Spreadsheet B, "was simply never identified at the hearings." (April 8, 2014 letter at 2).

The only issue before this Court is the question of whether the Arbitrator received and relied upon a new document produced as part of the post-hearing brief that had never been produced at the Arbitration. The remainder of SPL's arguments merely question the Arbitrator's reasoning, in detail, and express, floridly, SPL's belief

that the Arbitrator failed to properly review the evidence, which would have required him to find in SPL's favor.

"It is a bedrock principle of arbitration law that the scope of judicial review of an arbitration proceeding ... is extremely limited ...." *Frankel v Sardis*, 76 AD3d 136, 139 (1st Dept 2010)(citations omitted). "Courts are reluctant to disturb the decisions of arbitrators lest the value of this method of resolving controversies be undermined." *Matter of Goldfinger v Lisker*, 68 NY2d 225, 231 (1986). "Accordingly, an award will not be overturned 'unless it is violative of a strong public policy, or is totally irrational, or exceeds a specifically enumerated limitation on [the arbitrator's] power.'" *Frankel*, 76 AD3d at 139, quoting *Matter of Silverman (Benmore Coats)*, 61 NY2d 299, 308 (1984).

"Once a case is referred to arbitration, 'all questions of fact and of law are within the judicially unreviewable purview of the arbitrator'." *Matter of Raisler Corp. (New York City Hous. Auth.)*, 32 NY2d 274, 282 (1973), *quoting Matter of S & W Foods [Office Employees Int. Union]*. 8 AD2d 130, 131, *aff'd* 7 NY2d 1018. "Absent provision to the contrary in the arbitration agreement, arbitrators are not bound by principles of substantive law or rules of evidence." *Id., quoting Lentine v Fundaro*, 29 NY2d 382, 385 (1972). However, an arbitrator "may not receive evidence from one party without the knowledge of the other." *Id.* at 282-283.

This Court finds that the testimony and exhibits relied upon in this proceeding support Litespeed's contention that Spreadsheet B, and most of the information contained therein, was part of the arbitration evidence, was available to SPL, was specifically referred to in the Arbitration Demand admitted at the arbitration, and was

properly part of the Arbitrator's final decision. SPL has not established that Spreadsheet A was the only document relied upon by Litespeed in the arbitration or that the Award should be limited to the $173,044.70 figure included in the typewritten portion of that document. Further, it is significant that SPL did not raise that claim in the Request for Modification it submitted to the Arbitrator; as indicated above, it simply argued that the Award exceeded the $226,430.15 sought by Litespeed in the arbitration.

The only modification of the Award that appears necessary is the deletion therein of item PO # 637902, in the sum of $13,470 (Petition, ¶16). Although it seeks to have the Award confirmed in its entirety, Litespeed does not specifically deny that this item refers to an unrelated project not subject to arbitration, and Litespeed has not shown that the applicability of this charge was ever addressed in the arbitration. Therefore, the Award shall be modified to delete this item.

Accordingly, it is

ADJUDGED that the petition to vacate or modify the May 13, 2013 Arbitration Award is granted solely to the extent of reducing the awarded sum of $232,989.00 by $13,470.00, for a total award of $219,519.00, and is otherwise denied; and it is further

ADJUDGED that the Award of the Arbitrator in this matter is confirmed as modified.

Either party may settle a judgment on notice to opposing counsel by submission to Room 119.

Dated: May 22, 2014

ALICE SCHLESINGER J.S.C.