IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

CELIA DANIEL and LLOYD DANIEL, Plaintiffs,	Case No. SX-10-CV-206
v.	ACTION FOR DAMAGES
TREASURE BAY VIRGIN ISLANDS CORP., GRAPETREE SHORES, INC. d/b/a DIVI CARINA BAY RESORT & CASINO, Defendants.	

MEMORANDUM OPINION and ORDER DENYING MOTION TO VACATE ARBITRATION AWARD

THIS MATTER is before the Court on Defendant Grapetree Shores, Inc. d/b/a Divi Carina Bay Resort's (Divi) Motion to Vacate Arbitration Award and Enter Judgment as a Matter of Law, filed August 14, 2018;[1] Plaintiff Celia Daniel and Lloyd Daniel's (jointly Daniel) Response, filed September 14, 2018 and September 18, 2018 Supplemental Filing; and Defendant's Reply, filed September 28, 2018. For the reasons set forth below, the Court finds the Award of Arbitrator is not subject to vacatur and, as such, Divi's Motion will be denied.

By the May 15, 2015 Order referring Celia Daniel's claims to arbitration, Lloyd Daniel's non-arbitral separable derivative claims were stayed. As such, now that the arbitration has concluded, the stay with regard to Lloyd's claims will be lifted.[2] Lloyd and Defendants will be required to meet and confer and to report to the Court regarding the future proposed course for the resolution of those claims.[3]

[1] Both Divi and co-Defendant Treasure Bay Virgin Islands Corp. successfully moved for stay of the litigation and to compel arbitration. *See* Memorandum Opinion and Order, entered May 15, 2015. Both are noted as parties Respondent in November 29, 2016 and January 3, 2017 letters of the American Arbitration Association (Case No. 01-16-0004-6386). *See* exhibits to Daniel's filings of December 21, 2016 and January 18, 2017. Yet, for reasons unexplained in the record, the March 16, 2018 Award of Arbitrator notes only Divi as Respondent. *See* Motion, Exhibit F. The present Motion is presented by Divi alone.

[2] Reference to each Plaintiff individually is made by use of his or her first name only to avoid confusion.

[3] Although concluded in arbitration and subject to dismissal herein, the Complaint will not presently be dismissed as to Celia's claims, pending the conclusion of Lloyd's claims, to avoid the unintended consequence of a challenge to the viability of Lloyd's derivative claims following the dismissal of Celia's primary action.

LEGAL STANDARD

Virgin Islands law recognizes the common law right of contracting parties to determine to select binding arbitration as the mechanism by which disputes arising from their relationship will be resolved. The Supreme Court has held that while section 10 of the Federal Arbitration Act (9 U.S.C. § 10) is not a substantive provision of the Act binding upon courts of the Virgin Islands in determining whether to vacate an award in arbitration, parties are free to "contract for the provisions in section 10 to govern the judicial review of an arbitrator's award." *Gov't of Virgin Islands, Dep't of Educ. v. St. Thomas/St. John Educ. Administrators' Ass'n, Local 101, o.b.o. Forde,* 67 V.I. 623, 632 (V.I. 2017). The parties have done so in this case by their Beachcomber's Gold Club Membership Agreement.[4]

Section 10 of the FAA sets forth the framework for vacatur of the Award in Arbitration to which the parties contractually agreed.[5] Judicial review of arbitration awards is narrowly drawn, and "the courts play only a limited role when asked to review the decision of an arbitrator. The courts are not authorized to reconsider the merits of an award even though the parties may allege that the award rests on errors of fact or on misinterpretation of the contract." *United Paperworkers Int'l Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29, 36 (1987). The parties here agreed that the award of the arbitrator is to be "final and binding." "Because the parties have contracted to have disputes settled by an arbitrator chosen by them rather than by a judge, it is the arbitrator's view of the facts and of the meaning of the contract that they have agreed to accept. Courts thus do not sit to hear claims of factual or legal error by an arbitrator as an appellate court does in reviewing decisions

[4] "This Agreement is governed by the Federal Arbitration Act, 9 U.S.C. §1, *et seq.*, and not by any state or Virgin Islands law concerning arbitration. ...The arbitrator's decision will be final and binding, except for any appeal right under the FAA." Motion to Compel Arbitration and for Stay of Proceedings, filed July 2, 2010, Ex.1.

[5] Section 10(a) of the FAA provides:

> In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration —
>
> (1) where the award was procured by corruption, fraud, or undue means;
>
> (2) where there was evident partiality or corruption in the arbitrators, or either of them;
>
> (3) where 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; or
>
> (4) where 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.

of lower courts." *Id.* 484 U.S. at 37-38. It is in this context that Divi asks the Court to vacate the March 16, 2018 Award of Arbitrator and to enter judgment as a matter of law on behalf of Divi. [6]

BACKGROUND

On September 25, 2008, Plaintiffs attended a memorial service together on the ground floor of Divi's premises, when the chair Celia sat upon broke underneath her, causing her to fall and sustain bodily injury. Divi does not contend that Celia contributed to the fall. Plaintiffs filed their Complaint April 8, 2010, which was followed by identical Motions to Compel Arbitration filed separately by each Defendant on July 2, 2010, on the grounds that Celia (but not Lloyd) was a member of Beachcomber's Gold Club and that by her Membership Agreement, she and Defendants agreed that in the event that either party elected to arbitrate a claim relating to the member's use of Defendants' facilities, "the claim shall be resolved by arbitration." Celia opposed the motions arguing that the Beachcomber's Club related to her as a patron of the casino only and that the intention of the parties' Membership Agreement did not extend to arbitration of claims arising from her attendance at a memorial service wholly unrelated to the casino operation. Based upon the broad plain language of the Membership Agreement, Defendants' motions were granted by May 15, 2015 Order, this action was stayed and Celia's claims were referred to arbitration.

Arbitration was conducted through the American Arbitration Association, and Arbitrator Liana Colon-Valentin issued her Award of Arbitrator, dated March 16, 2018, finding Divi liable to Celia and required Divi to compensate Celia for "physical damages and pain and suffering related to the fall" in the amount of $20,000.00 as well as administrative fees and expenses of the Arbitrator. Award of Arbitrator, at 2-3. The Arbitrator reasoned that "While there were no obvious signs that the chair would break, the Respondent [Divi] is responsible for providing adequate chairs in its premises. Adequate meaning that a chair can perform its intended purpose and hold a person while sitting." Award of Arbitrator, at 2.

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[6] Although not necessarily of legal significance, the irony of Divi's present position is worthy of note. Over a period of years, from the initial July 2, 2010 Motion to Compel Arbitration and for Stay of Proceedings, Divi and/or its affiliated co-Defendant submitted five different filings, arguing repeatedly that "Plaintiffs' claims should be resolved in arbitration." Reply to Plaintiff's' Opposition to Motion to Compel Arbitration, July 22, 2010, at 3. Upon the resolution of those claims in Divi's preferred forum, Divi now returns to the Superior Court, Plaintiffs' selected forum, seeking the repudiation of the arbitration award and resolution of Plaintiffs' claims in this Court by "entry of judgment as a matter of law on behalf of Divi."

Divi's Motion asks the Court to vacate the Award, arguing that "the Arbitrator demonstrated a 'manifest disregard for the law,' and issued a contradictory award that 'is completely irrational.'" Motion, ¶ 27.

DISCUSSION

By its Motion, Divi presents no claim that the Award of Arbitrator was the product of corruption, fraud, or undue means (FAA § 10(a)(1)); or that there was evident partiality or corruption on the part of the Arbitrator (§ 10(a)(2)); or that the Arbitrator was guilty of misconduct in refusing to postpone the hearing, in refusing to hear evidence, or by any other misbehavior resulting in prejudice to Divi (§ 10(a)(3)). The thrust of the Motion is that because the Arbitrator must have applied the wrong legal standard, the Award is subject to vacatur under § 10(a)(4), as the Arbitrator so imperfectly executed her powers that a mutual, final, and definite award upon the subject matter submitted was not made.

The Arbitrator did not exceed her powers, or so imperfectly execute them that a mutual, final, and definite award upon the subject matter submitted was not made.

Divi cites Superior Court case law to urge that common law bases for vacatur are inherently included as "subsets of Section 10(a)(4)." Specifically, where an arbitrator's award exhibits a manifest disregard for the law, as opposed to the commission of legal error, or where the award is "completely irrational," it may be vacated because the arbitrator has "exceeded [her] powers" by issuing such an award.[7]

Divi argues that the Arbitrator "manifestly disregarded" the controlling law of premises liability in the Virgin Islands, in that Celia's proof failed to establish that the Divi had actual or constructive notice of a defective condition on its premises, in the absence of which the accident of which Plaintiffs complain was unforeseeable to Defendants. Without notice that the chair upon which Celia sat was defective, Divi submits that it cannot be held accountable for Celia's resulting injuries. Divi points to the statement within the Award that "there were no obvious signs that the chair would break" as a factual finding by the Arbitrator that Divi had no notice of the defective condition of the chair, which had been delivered to it for the occasion by a third party. Because "there is clearly an absence of any evidence that would suggest that DIVI had actual notice of the condition of the chair, [and] there was also no evidence presented that would suggest that DIVI

[7] Motion, at 6, citing *Mustafa v. Amore St. John, LLC,* 58 V.I. 74 (V.I. Super. 2013).

had constructive notice," Divi contends that there is no evidence to establish that Divi owed a duty of reasonable care to protect Celia from a dangerous condition on its premises. Motion, Ex. D, at 2-3. Rather, Divi argues that the Arbitrator's finding of liability against Divi necessarily must mean that she exceeded her powers, exhibiting a manifest disregard for the law, by applying a strict liability standard, rather than the properly applicable Virgin Islands premises liability negligence standard.

The three-page Award includes no legal analysis as to its conclusion. Divi points out that the issues relative to the proper legal standards were fully briefed in arbitration by the parties, and argues that simply because "the arbitrator failed to use the words 'strict liability' doesn't mean the standard used is unclear," and that "it is obvious from the language the Arbitrator used that she held Defendants strictly liable for Ms. Daniels injuries." Reply, at 4.

Divi's inference that the Arbitrator applied the wrong legal basis in issuing her Award fails to establish that the Arbitrator exceeded her powers by exhibiting a manifest disregard for the law. Indeed, in her closing brief to the Arbitrator, Celia argued that it was "foreseeable that [Divi's] failure to perform the simple tasks of selecting sturdy chairs and inspecting them prior to placing them outside for guests to use would lead to a guest being injured due to a broken chair." Motion, Ex. E, at 5. An inference that the Arbitrator was swayed by Celia's argument on foreseeability is just as plausible as Divi's inference that the Arbitrator applied the wrong legal standard.

Although the parties agreed that the Arbitrator should issue a reasoned decision, the informality and more expedited conclusion of the arbitral forum was ordered here at Defendants' request. By contracting for and seeking arbitration in this case, Divi eschewed the more detailed legal analysis and reasoning that may have been afforded by judicial review.[8] "[B]y consenting to binding arbitration, parties relinquish the legal and procedural safeguards that accompany judicial proceedings." *Forde,* 67 V.I. at 639. Generally, arbitrators are not required to provide explanations in reaching their decisions. *See Virgin Islands Nurses Ass'n's Bargaining Unit v. Schneider*, 18 V.I. 259, 261 (D.V.I. 1981). Here the reasoned decision of the Arbitrator, including her "brief explanation of the basis for the award," does not include the level of legal analysis and precision

[8] The Beachcomber's Gold Club Membership Agreement states: "Upon the request of either party, the arbitrator must write a <u>brief</u> explanation of the basis for the award." Motion to Compel, Ex. 1, emphasis added. The Award's "findings" include, among others, that the "fall occurred through no fault of Claimant;" and that "the Respondent is responsible for providing adequate chairs in its premises. Adequate meaning that a chair can perform its intended purpose and hold a person while sitting." Award, at 2.

that Divi now seeks. "A mere ambiguity in the opinion accompanying an award, which permits the inference that the arbitrator may have exceeded his authority, is not a reason for refusing to enforce the award. Arbitrators have no obligation to the court to give their reasons for an award. To require opinions free of ambiguity may lead arbitrators to play it safe by writing no supporting opinions." *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 598 (1960).

In its "limited role" in this matter, this Court is "not authorized to reconsider the merits of an award even though the parties may allege that the award rests on errors of fact or on misinterpretation of the contract." *United Paperworkers*, 484 U.S. at 36. The Court's "basic objective in this area is ...to ensure that... arbitration agreements, like other contracts, are enforced according to their terms and according to the intentions of the parties." *Forde,* 67 V.I. at 638. The parties obtained the arbitral resolution of their dispute according to the bargain they struck in the Beachcomber's Membership Agreement. "A refined quality of justice is not the goal in arbitration matters. Indeed, such a goal is deliberately sacrificed in favor of a sure and speedy resolution." *Id.*, at 639 (citing *Reicks v. Farmers Commodities Corp.*, 474 N.W.2d 809, 811–12 (Iowa 1991)).

Accordingly, Divi's claim that the Arbitrator exceeded her authority by manifestly disregarding the law must fail, and the Award will not be vacated.

CONCLUSION

The Award was not the product of corruption, fraud, or undue means; the Arbitrator was not guilty of partiality or corruption; the Arbitrator was not guilty of misconduct in the scheduling or conduct of the hearing resulting in unfair prejudice against either party; and the Arbitrator did not exceed or so imperfectly execute her powers such that a mutual, final, and definite Award on the submitted dispute was not made. As such, there is no basis for vacating the Award under section 10 of the FAA, the parties' agreed appeal mechanism, and Divi's Motion will be denied. The stay of these proceedings as to Lloyd's claims will be vacated, and Lloyd and Defendants will be required to confer and submit a plan regarding the prompt resolution of his claims.

In light of the foregoing, it is hereby

ORDERED that Defendant Divi's Motion to Vacate Arbitration Award and Enter Judgment as a Matter of Law is DENIED. It is further

ORDERED that the STAY of these proceedings as to the claims of Plaintiff Lloyd Daniel is LIFTED. It is further

ORDERED that Plaintiffs' counsel shall within 14 days of the date of entry of this Order contact Defendants' counsel to arrange for the parties to meet and confer pursuant to V.I. R. Civ. P. 26(f) to consider, among other things: (1) the nature and basis of Lloyd's claims and the defenses of Defendants; (2) the possibilities for promptly settling or otherwise resolving those claims; (3) making or supplementing disclosures required by V.I. R. Civ. P 26(a)(1); (4) any issues relating to preservation of discoverable information; and (5) joint preparation of a proposed discovery plan as to any remaining discovery to be conducted regarding Lloyd's claims and Defendants' defenses. While Plaintiffs' counsel is responsible for arranging the conference, each counsel is responsible for attempting in good faith to confer regarding those matters to be discussed, and to agree to the proposed plan for any remaining discovery to be conducted. Each counsel is also jointly responsible for submitting to the Court within 30 days of the entry of this Order a written report outlining the parties' discovery plan and advising of other matters requiring the Court's attention.

November 13, 2018

DOUGLAS A. BRADY, Judge

ATTEST:
ESTRELLA GEORGE
Clerk of the Court

By: Court Clerk Supervisor
11/13/18