

Boviet Solar United States v. Melpro Corp.

United States District Court for the Northern District of California

July 3, 2019, Decided; July 3, 2019, Filed

Case No. 19-cv-01621-NC

Reporter

2019 U.S. Dist. LEXIS 178549 *

BOVIET SOLAR USA, LTD., Petitioner, v.
MELPRO CORP., Respondent.

Core Terms

arbitration, parties, arbitration award, confirm, forum selection clause, arbitration clause, RECOMMENDS, personal jurisdiction, arbitration process, magistrate judge, federal court, consented, costs, binding

Counsel: [*1] For Boviet Solar USA, Ltd., a Delaware corporation, Petitioner: Jeffrey Roy Klein, Fisher Wolfe LLP, Beverly Hills , CA USA.

Judges: NATHANAEL M. COUSINS, United States Magistrate Judge.

Opinion by: NATHANAEL M. COUSINS

Opinion

REQUEST FOR REASSIGNMENT; REPORT AND RECOMMENDATION TO CONFIRM ARBITRATION AWARD

Re: Dkt. No. 1

Before the Court is Boviet Solar USA's petition for an order to confirm an arbitration award issued against respondent **Melpro Corp.** The Court finds that Melpro consented to arbitration under the terms of its agreement with Boviet. Additionally, the Court finds no flaws in the arbitration process or result. The undersigned therefore

RECOMMENDS confirmation of the arbitration award in the amount of \$468,778.50, which includes interest through July 3, 2019.

I. Background

A. Factual Allegations

On September 21, 2016, Boviet and Melpro entered into a written consignment agreement. Dkt No. 1-4 ("Agreement"). Boviet alleges it agreed to consign solar module products to Melpro for Melpro to sell in Puerto Rico. Dkt. No. 1 at 4 ("Pet."). Boviet claims it shipped its first products to Melpro in September 2016, and completed its final shipment in January 2017. *Id.* According to Boviet, Melpro does not dispute that [*2] it received the products, or that it owes Boviet money for those products. *Id.*

The Agreement includes a section titled "Arbitration of Disputes." Agreement § 15. This section contains an arbitration clause requiring that the parties arbitrate any disputes related to the Agreement in San Jose, CA:

"Any dispute, controversy, difference or claim arising out of or in connection with this Agreement, or the breach, termination or validity of this Agreement, which cannot be amicably resolved by the Parties shall be submitted to final and binding arbitration in San Jose, CA . . ."

Id. § 15.1. The Agreement also specifies that the arbitration awards "shall be conclusive, final and binding" and "the sole and exclusive remedy

between the Parties." *Id.* § 15.2.

In addition, the parties agreed to a forum selection clause designating federal court in San Jose for purposes of jurisdiction and venue:

"Each Party consents and agrees that all legal proceedings relating to the subject matter of this Agreement shall be maintained in the appropriate federal court sitting in San Jose, CA, and each Party consents and agrees that jurisdiction and venue for such proceedings shall lie exclusively with such court."

Id. § 17.

The Agreement [*3] contains clear headings and subheadings, with consistent and readable font, sizing, and spacing throughout. *See generally id.*

B. Procedural History

Boviet initiated arbitration proceedings on February 28, 2018. Dkt. No. 1-3 at 1. Boviet claims both parties submitted preliminary briefing prior to arbitration. *Id.* at 2. The arbitration hearing occurred before Arbitrator Thomas Klitgaard in San Jose, California on October 4, 2018. *Id.* at 7. After arbitration, Klitgaard entered an interim award. *Id.* at 8. Both parties objected to the interim award. *Id.* at 11-12. Melpro objected to: (1) the inclusion of interest and collection fees in the total amount; and (2) the amount of Boviet's attorney's fees and legal costs. *Id.* at 12. Klitgaard agreed with Melpro's position on interest and collection fees, but found the attorney's fees and legal costs reasonable. *Id.* Accordingly, Klitgaard adjusted the award and rendered a final and binding award in favor of Boviet on December 5, 2018. *Id.* at 13. Klitgaard awarded: (1) \$395,263.61 to Boviet for the principal; (2) \$36,807.30 for fees and costs; (3) \$11,089.30 for arbitration costs advanced by Boviet; and (4) 10% interest from these sums from the date of his final award. *Id.* at 12. He served a signed copy of the [*4] award on both parties. Pet. at 2. Boviet alleges Melpro has not satisfied the arbitration award. *Id.* at 5.

On March 28, 2019, Boviet petitioned the Court to confirm the arbitration award and consented to magistrate judge jurisdiction. *Id.* at 1-6; Dkt. No. 6. The Court requested supplemental briefing on the Court's personal and subject matter jurisdiction, which Boviet provided. Dkt. Nos. 12, 13.

Melpro has not appeared before the Court and has not consented to magistrate judge jurisdiction.

II. Legal Standard

"Confirmation is a summary proceeding that converts a final arbitration award into a judgment of the court." [*Ministry of Def. & Support for the Armed Forces of the Islamic Republic of Iran v. Cubic Def. Sys., Inc.*, 665 F.3d 1091, 1094 n.1 \(9th Cir. 2011\)](#). In deciding whether to confirm an arbitration award, federal courts afford a high degree of deference to arbitration agreements. *See Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25, (1983) (stating that "as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration . . ."). A federal court may only modify, strike, or vacate "an award that evidences affirmative misconduct in the arbitral process or the final result or that is completely irrational or exhibits a manifest disregard for the law." [*Kyocera Corp. v. Prudential-Bache Trade Servs., Inc.*, 341 F.3d 987, 998 \(9th Cir. 2003\)](#). Thus, district courts have "extremely limited review authority." *Id.*

III. Discussion

A. Jurisdiction [*5]

1. Subject Matter Jurisdiction

The Court has diversity jurisdiction over this matter. Federal courts have jurisdiction over citizens of Puerto Rico. [28 U.S.C. § 1332\(e\)](#). A corporation is a citizen of the state where it is

incorporated and the state where it has its principal place of business. [§ 1332\(c\)\(1\)](#). Melpro, as a Puerto Rico corporation with its principal place of business in Puerto Rico, is a citizen of Puerto Rico. *Id.*; Dkt. No. 13-1 (Klein Declaration), Ex. A. Boviet is a Delaware corporation and its principal place of business is California. Klein Decl., Ex. B. The amount in controversy exceeds \$75,000, so diversity jurisdiction applies. [28 U.S.C. § 1332](#).

2. Personal Jurisdiction

The Agreement's forum selection clause confers personal jurisdiction to the Court. *See* Agreement § 17. Parties may contract around standard personal jurisdiction requirements. [Burger King Corp. v. Rudzewicz, 471 U.S. 462, 473 \(1985\)](#) (concluding that "personal jurisdiction requirement is a waivable right"). As such, parties may limit the proper forum for their claims to a particular court. [Dow Chem. Co. v. Calderon, 422 F.3d 827, 831 \(9th Cir. 2005\)](#) (explaining that "parties to a contract may agree in advance to submit to the jurisdiction of a given court.") (quoting [Nat'l Equip. Rental, Ltd. v. Szukhent, 375 U.S. 311, 316 \(1964\)](#)). Such forum selection clauses "should be enforced absent strong reasons to set them aside." [E. & J. Gallo Winery v. Andina Licores S.A., 446 F.3d 984, 992 \(9th Cir. 2006\)](#) (quoting [\[*6\] Northrop Corp. v. Triad Int'l Mktg., S.A., 811 F.2d 1265, 1270 \(9th Cir.1987\)](#)). But, the parties must agree to the clause for it to apply and confer personal jurisdiction. *See* [Holland Am. Line Inc. v. Wartsila N. Am., Inc., 485 F.3d 450, 458 \(9th Cir. 2007\)](#) (explaining that "a forum selection clause may give rise to waiver of objections to personal jurisdiction . . . provided that the defendant agrees to be so bound").

Here, the Agreement signed by the parties includes a forum selection clause opting for federal court in San Jose. *See* Agreement § 17. First, the forum selection clause clearly identifies San Jose federal court as the agreed upon forum. *See id.* And, second, Boviet's petition for confirmation falls

within its scope because the Agreement includes a detailed section on arbitration. *See id.* § 15. Because the parties agreed to a forum selection clause that encompasses arbitration proceedings, the Court should enforce the forum selection clause and find personal jurisdiction satisfied.

B. Confirmation of Award

"Arbitration is undeniably a matter of contract and parties are bound by arbitration awards only if they agreed to arbitrate the matter." [Fortune, Alsweet & Eldridge, Inc. v. Daniel, 724 F.2d 1355, 1356 \(9th Cir. 1983\)](#). Courts enforce noticeable arbitration clauses. *See* [Kilgore v. KeyBank, Nat. Ass'n, 718 F.3d 1052, 1059 \(9th Cir. 2013\)](#) (deeming arbitration clause sufficiently conspicuous given its placement "in its own section, clearly labeled, [and] in boldface"). Parties may [\[*7\]](#) expressly or implicitly agree to arbitrate. [Fortune, 724 F.2d at 1356](#). Participation in the process implies consent to arbitration. *See id. at 1357* (concluding it "unreasonable and unjust to allow [appellant] to challenge the legitimacy of the arbitration process, in which he had voluntarily participated over a period of several months . . ."). Here, Melpro agreed to arbitration both expressly and implicitly.

First, Melpro expressly agreed to arbitration. The Agreement contains an unambiguous arbitration clause. *See* Agreement § 15. The clause appears in its own section, under its own heading. *See* [Kilgore, 718 F.3d at 1059](#); Agreement § 15. Moreover, the font and size of the arbitration clause match the rest of the document, and the clause is easily readable. *See* [Hall v. Prudential-Bache Sec., Inc., 662 F. Supp. 468, 471 \(C.D. Cal. 1987\)](#) (finding arbitration clause fair in part because "[a]ll of the clauses are printed in the same size print"); [Wright v. Sirius XM Radio Inc., No. 16-cv-1688-JVS, 2017 WL 4676580, at *6 \(C.D. Cal. June 1, 2017\)](#) (reasoning arbitration clause noticeable due in part to "paragraphs contain[ing] sufficient white space and subheadings to make the clause readable"); Agreement § 15. Because the Agreement contains a

conspicuous, unambiguous arbitration clause, Melpro expressly agreed to arbitrate any disagreements with Boviet.

Second, even if Melpro had not [*8] expressly agreed to arbitration, it implicitly agreed by participating in the arbitration process. Melpro submitted briefing to the arbitrator prior to arbitration. Dkt. No. 1-3 at 2. After arbitration, Melpro offered specific objections to the interim award proposed by the arbitrator. See *id. at 11-12*. Notably, Melpro objected to the amount and calculation of the award, not to the arbitrator's other findings. See *id.* Therefore, Melpro implicitly agreed to arbitration by voluntarily participating in it, as well as by not contesting the crux of the arbitrator's findings.

Third, the arbitration process appears fair and valid. After the arbitration hearing, the arbitrator offered Melpro the opportunity to object. See *id. at 7*. The arbitrator weighed Melpro's objections, and even found in Melpro's favor regarding interest and collection fees. See *id. at 12*. No aspect of the arbitration appears "completely irrational or exhibits a manifest disregard for the law." See *Kyocera Corp., 341 F.3d at 998*. Thus, the Court should uphold the arbitrator's findings and award.

In light of Melpro's express and implied agreement to arbitrate, the Court finds the arbitrator's decision valid and binding. See *Nghiem v. NEC Elec., Inc., 25 F.3d 1437, 1442 (9th Cir. 1994)* (concluding "that the arbitrator had authority over the [*9] claim because Nghiem voluntarily submitted to binding arbitration and is, therefore, bound by the arbitrator's decision"). Therefore, the Court recommends granting the arbitration award issued against Melpro.

C. Magistrate Jurisdiction

Magistrate judges require consent to confirm arbitration awards. See *28 U.S.C. § 636(c)*; *Am. President Lines, Ltd. v. Trans Atl. Assocs., Inc.*, No. 04-cv-1515-EDL, 2004 WL 1837923, at *1 (N.D.

Cal. Aug. 17, 2004). In motions to confirm arbitration where the respondent has neither appeared nor consented, magistrate judges reassign cases to a district court judge along with a report and recommendation. See, e.g., *id.*; *BraunHagey & Borden LLP v. GMP Hawaii, Inc.*, No. 13-cv-05253-TEH, 2014 WL 662496, at *1 (N.D. Cal. Feb. 20, 2014); *Injazat Tech. Fund, B.S.C. v. Najafi*, No. 11-cv-4133-*PJH*, 2012 WL 1535125, at *1 (N.D. Cal. May 1, 2012).

The Court lacks Melpro's consent to magistrate judge jurisdiction pursuant to *28 U.S.C. § 636(c)*. Accordingly, the Court requests reassignment of the case to a district court judge with the accompanying report and recommendation for confirmation of the award.

III. Conclusion

The undersigned REQUESTS that the Clerk of Court reassign this case to a district court judge. Given Melpro's agreement to arbitrate, and the validity of the arbitration process and result, the Court RECOMMENDS under *Federal Rule of Civil Procedure 72* that Petitioner's Motion to [*10] Confirm Arbitration Award for be granted.

The undersigned RECOMMENDS that judgment be entered in favor of Boviet and against Melpro in the amount of **\$468,778.50**: (1) \$395,263.61 in damages for breach of contract; (2) \$36,807.30 in attorneys' fees and costs; (3) \$11,089.30 in administration fees and costs; (4) \$25,618.29 in interest (10% interest from December 6, 2018 through July 3, 2019).

Boviet is ordered to serve this order upon Melpro within 10 days. Any party may object to this report and recommendation within 14 days of it being served. *Fed. R. Civ. P. 72(b)(2)*.

IT IS SO ORDERED.

Dated: July 3, 2019

/s/ Nathanael M. Cousins

NATHANAEL M. COUSINS

United States Magistrate Judge

End of Document