UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 13-4949 PSG	Date	February 03, 2016
Title	Tony Didio, et al. v. Dean Jones, et al.		

Present: The Honorable	Philip S. Gutierrez, United States District Judge
Wendy Hernandez	Not Reported
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiff(s):	Attorneys Present for Defendant(s):
Not Present	Not Present

Proceedings (In Chambers): **Order GRANTING Plaintiffs' Application to Confirm the Arbitrator's Findings and Award of Costs and DENYING Plaintiffs' Application for Entry of Judgment**

Before the Court is Plaintiffs Aquarius Films LLP ("Aquarius") and TBM III Movie, LLC's ("TBM III Movie") (collectively, "Plaintiffs") Application to Confirm Arbitration Findings and Award of Costs and Entry of Judgment for Plaintiffs. **Dkt. # 247.** After considering the arguments in the parties' briefs, the Court GRANTS Plaintiffs' Application to Confirm the Arbitrator's Findings and Award of Costs and DENIES Plaintiffs' Application for Entry of Judgment.

I. Background

This action arises out of Defendants Dean Jones ("Jones"), PFG Entertainment, Inc. ("PFG"), Atlantic & Pacific Pictures, LLC ("Atlantic"), and Ted Rosenblatt's ("Rosenblatt") alleged infringement of Plaintiffs' copyrights to the "Toolbox Murders (2003)" and "Toolbox Murders 2" movies (the "TBM Movies"). On June 4, 2013, Plaintiffs filed a First Amended Complaint ("FAC") in Los Angeles Superior Court alleging copyright infringement, among other claims. Id. On July 10, 2013, Defendants removed the action to federal court. Dkt. # 1. On May 13, 2014, Plaintiffs filed the operative Third Amended Complaint ("TAC"). Dkt. # 134. Eventually, the parties stipulated to dismiss Defendants Jones and Atlantic.[1] Dkt. # 185. After the dismissal of Jones and Atlantic, the only remaining claims in the action were Plaintiffs' claims against Rosenblatt and PFG for (1) copyright infringement, (2) declaratory relief, and (3) unjust enrichment.

[1] On July 19, 2013, Defendants each filed counterclaims against Plaintiffs and other parties. Dkt. ## 10-12. The parties eventually stipulated to dismiss all of Defendants' counterclaims. Dkt. ## 186, 201.

On March 3, 2015, the remaining parties entered into an Arbitration Agreement. Dkt. # 247 at 10 ("Declaration of Stephen M. Doniger") ¶ 1, Ex. 1. On March 6, 2015, the remaining parties filed a Joint Request pursuant to the Arbitration Agreement requesting an arbitration of Plaintiffs' copyright infringement claim "only as to the questions of (1) ownership of valid copyrights, and (2) infringement of those copyrights" and reserving "[t]he issues of willfulness and damages" for "resol[ution] by a jury." Dkt. # 233. On March 10, 2015, the Court approved the request. Dkt. # 234.

On March 24, 2015, Judge Schiavelli ("Arbitrator") entered an Arbitration Verdict Form stating that Plaintiffs owned valid copyrights to the TBM Movies and that Defendants had infringed on those copyrights. Declaration of Stephen M. Doniger ¶ 2, Ex. 2. Plaintiffs subsequently filed with the Court their Memorandum of Contentions of Fact and Law in which they stated that they would abandon their claims for unjust enrichment and declaratory relief, leaving Plaintiffs' copyright infringement claim as their sole remaining claim. Dkt. # 237 at 8. On May 21, 2015, the Arbitrator awarded Plaintiffs $28,279 for recovery of attorneys' fees and other costs incurred in connection with the arbitration. *Id.* ¶ 3, Ex. 3. On June 16, 2015, the Arbitrator clarified the order awarding attorneys' fees. *Id.* ¶ 5, Ex. 4.

On August 25, 2015, Plaintiffs filed the subject Application to confirm the arbitrator's award and to enter judgment consistent therewith. Dkt. # 247. On October 13, 2015, Defendants filed an Opposition.[2] Dkt. # 248. On October 19, 2015, Plaintiffs filed a Reply. Dkt. # 249.

II. Legal Standard

Under the Federal Arbitration Act ("FAA"), federal courts have "only limited authority to review arbitration decisions, because broad judicial review would diminish the benefits of arbitration." *Lifescan, Inc. v. Premier Diabetic Servs., Inc.*, 363 F.3d 1010, 1012 (9th Cir. 2004). Under 9 U.S.C. § 9, a party may seek a judicial order confirming and entering an arbitration award, and "the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title." 9 U.S.C. § 9. Thus, federal judicial review of an arbitral decision and award is significantly limited, and confirmation is required "even in the face of erroneous findings of fact or misinterpretations of law." *French v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 784 F.2d 902, 906 (9th Cir. 1986) (quotation marks omitted); *see also United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29, 38, 108 S.Ct.

[2] On October 29, 2015, Defendants filed an ex parte for the Court to consider their late-filed Opposition. Dkt. # 251. The Court will consider Defendants' Opposition in spite of its discretion to decline to do so. *See* L.R. 7-12.

364, 98 L.Ed.2d 286 (1987). The burden of proof in a proceeding to confirm an arbitration award is on the party defending against enforcement. *Injazat Tech. Fund, B.S.C. v. Najafi*, 2012 WL 1535125, at *2 (N.D. Cal. May 1, 2012) (citing *Imperial Ethiopian Gov't v. Baruch–Foster Corp.*, 535 F.2d 334, 336 (5th Cir. 1976)).

III. Discussion

As stated above, the Arbitrator determined that (a) Plaintiffs owned the copyrights to the TBM Movies and Defendants infringed on those copyrights and (b) Defendants owed Plaintiffs $28,279 for recovery of attorneys' fees and other costs. Plaintiffs now seek confirmation of the Arbitrator's award and entry of judgment in their favor.

a. Application to Confirm Arbitrator's Award

Plaintiffs contend that their Application should be granted because the Arbitrator determined liability and awarded reasonable costs and attorneys' fees to Plaintiffs "with due regard to the law and evidence." Dkt. # 247 at 8. The Arbitration Agreement explicitly provides that the parties agreed that an Arbitrator would (1) determine liability and (2) award attorneys' fees and costs. Dkt. # 247-1. As such, the Arbitrator's award was within the scope of the Arbitration Agreement, and the Court should affirm it. *See U.S. Life Ins. Co. v. Superior Nat. Ins. Co.*, 591 F.3d 1167, 1177 (9th Cir. 2010) (holding that "the court must defer to the arbitrator's decision 'as long as the arbitrator . . . even arguably constru[ed] or appl[ied] the contract'").

Defendants' sole argument in opposition is that the Arbitrator failed to honor the parties' Arbitration Agreement because the arbitration was not completed by March 18, 2015 and, in doing so, exceeded his powers. Dkt. # 248 at 1, 3; *see also* 9 U.S.C. § 10(a)(4); 9 U.S.C. § 11(b). Defendants' argument is unavailing. The Arbitration Agreement provides: "The parties have agreed to hold [arbitration] on March 18, 2015. If for any reason arbitration is not completed by that date, this agreement shall become null and void unless a new written agreement is reached by the parties." Dkt. # 247-1 ¶ 3. The plain reading of the clause is that the arbitration must be held on March 18, 2015, not that a decision must be rendered on that date. In fact, as Plaintiffs contend, the Agreement provides that "[t]he Arbitrator shall send to the parties or their counsel by email a written verdict within seven (7) days of the conclusion of the hearing." Dkt. # 247-1 ¶ 6. As the Agreement explicitly contemplates the issuance of a verdict seven days after the March 18, 2015 hearing, the Arbitrator did not exceed his powers under the Agreement in issuing his verdict on March 24, 2015, and Defendants have failed to meet their burden to show that the Court should not affirm the award.

Because Defendants have not presented any argument showing that the arbitration award should be vacated pursuant to 9 U.S.C. § 10 or § 11, Plaintiffs' Application as to confirmation of the Arbitrations' Findings and Award of Costs is GRANTED.

b. Application for Entry of Judgment

Plaintiffs request that the Court should enter judgment for Plaintiffs based on the Arbitrator's award. In support of their request, Plaintiffs cite to 9 U.S.C. § 9 and to the Court's March 10 order sending the case to arbitration ("March 10 Order"), dkt. # 234. However, neither Section 9 nor the March 10 Order mandates that the Court should enter judgment. Section 9 provides:

> If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration . . . then at any time within one year after the award is made any party to the arbitration may apply to the court . . . for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title.

9 U.S.C. § 9 (emphasis added). While the Arbitration Agreement does state that "[j]udgment may be entered on the Award rendered in this case," Section 9 does not mandate that the Court must enter a judgment. The March 10 Order similarly does not mandate that the Court enter judgment, only that it has authority to do so. Dkt. # 234 ("[T]his Court will enter an order or judgment based on the findings of the arbitrator, with said findings being binding on the Court and Parties.") (emphasis added).

The Federal Rules of Civil Procedure provide that in a case involving multiple claims, "the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay." Fed R. Civ. P. 54(b) (emphasis added). Such a determination is exclusively within the sound discretion of the court. *See Illinois Tool Works, Inc. v. Brunsing*, 378 F.2d 234, 236 (9th Cir. 1967) ("We are not to be understood as suggesting that the district court should or should not make the express determination or give the express direction mentioned in Rule 54(b). These are matters exclusively within the discretion of the district court."); *Massa v. Jiffy Products Co.*, 238 F.2d 228, 229 (9th Cir. 1956) (same).

In determining whether the Court should enter judgment pursuant to Rule 54(b), the Court must first assess whether the disputed ruling is final under 28 U.S.C. § 1291. *See Arizona State Carpenters Pension Trust Fund v. Miller* (*Miller*), 938 F.2d 1038, 1039 (9th Cir. 1991) ("Rule

54(b) does not relax the finality required of each decision, as an individual claim, to render it appealable.") (internal quotation marks omitted); *see also Spiegel v. Trustees of Tufts Coll.*, 843 F.2d 38, 42 (1st Cir. 1988) ("When considering the wisdom of Rule 54(b) certification in a given case, the trial court must first assess the finality of the disputed ruling."). A decision is final under 28 U.S.C. § 1291 if it "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 275, 108 S.Ct. 1133, 1136, 99 L.Ed.2d 296 (1988). "The partial adjudication of a single claim is not appealable, despite a rule 54(b) certification." *Miller*, 938 F.2d at 1040 (quoting *Sussex Drug Products v. Kanasco, Ltd.*, 920 F.2d 1150, 1154 (3d Cir. 1990)).

Plaintiffs have explicitly conceded, by means of the Arbitration Agreement, that the "willfulness" element of their copyright infringement claim, as well as a determination of damages, remains to be adjudicated. As such, Plaintiffs fail to demonstrate that their copyright infringement claim is final under 28 U.S.C. § 1291.

Therefore, the Court exercises it discretion in DENYING Plaintiffs' application for entry of judgment.

IV. Conclusion

In conclusion, the Court GRANTS Plaintiffs' Application to Confirm the Arbitrator's Findings and Award of Costs and DENIES Plaintiffs' Application for Entry of Judgment.

IT IS SO ORDERED.