

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

**UDI MANAGEMENT, INC.,**

**PLAINTIFF,**

**v.**

**CHRISTOPHER TREMBLAY,**

**DEFENDANT.**

**SX-13-CV-045**

**CITE AS: 2019 VI SUPER 22U**

**ACTION FOR INJUNCTION,  
DECLARATORY RELIEF, AND  
DAMAGES**

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**TREMCORP HOLDINGS, INC.,**

**PLAINTIFF,**

**v.**

**SCOTT HARRIS, JOHN McCANN, CAR  
HUNTERS NORTH CAROLINA, AND CAR  
HUNTER AUTO SALES OF NORTH CAROLINA,**

**DEFENDANTS.**

**SX-13-CV-085**

**CITE AS: 2019 VI SUPER 22U**

**ACTION FOR FRAUD, LENDER  
LIABILITY, RICO/CICI, AND DAMAGES**

NOT FOR PUBLICATION

**Appearances:**

**Edward Barry, Esq.**

Law Offices of Edward L. Barry  
Christiansted, USVI  
*For Tremcorp Holdings, Inc.*

**Michael Sanford, Esq.**

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Christiansted, USVI  
*For UDI Management, Inc., Scott Harris, and John McCann*

**MEMORANDUM OPINION**

**WILLOCKS, Administrative Judge**

¶1 **THIS MATTER** is before the Court on Tremcorp Holdings, Inc.'s (hereinafter "Tremcorp") Motion to Vacate Arbitration Award (hereinafter "Motion"), filed February 20, 2015. The Motion

requests that the Court vacate an arbitration award from October 2, 2014. UDI Management, Inc., Scott Harris and John McCann (collectively the “Defendants”) filed their Statement of Opposition (hereinafter “Opposition”) on March 9, 2015. Tremcorp did not initially file a reply but rather filed a supplement to its Motion on October 22, 2018 with the Court’s permission. Thereafter, the Defendants filed an additional opposition (hereinafter “Supplemental Opposition”) on November 27, 2018, and the ultimate Reply from Tremcorp was submitted on December 3, 2018. Finally, the Motion came before the Court for oral argument on January 11, 2019. For the following reasons, Tremcorp’s Motion will be denied.

#### **RELEVANT FACTS**

¶2 In August 2012, Tremcorp Holdings, Inc., a Canadian company owned by plaintiff Chris Tremblay, signed a Stock Purchase Agreement (hereinafter “the Agreement”) with Scott Harris and John McCann.<sup>1</sup> The Agreement was for the purchase of all the stock of UDI Management, Inc., a Virgin Islands corporation.<sup>2</sup> Tremcorp paid \$300,000 down on the Agreement in addition to executing two promissory notes.<sup>3</sup> The first note was for \$500,000 to be repaid within 90 days, and the second was for \$400,000 to be repaid in three years.<sup>4</sup> Tremcorp was unable to repay the 90 day note and chose to extend it to February 2013 by paying \$100,000.<sup>5</sup> Ultimately, Tremcorp defaulted on the notes.<sup>6</sup> In response, Scott Harris and John McCann “declared a default and commandeered the business in February 2013.”<sup>7</sup>

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<sup>1</sup> Mot. 1.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* 2.

<sup>4</sup> Arbitrator’s Award 3. *See* Mot. 2.

<sup>5</sup> Arbitrator’s Award 4.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* (citation omitted). To the best of the Court’s knowledge, that UDI Management Inc. was “commandeered” is the reason the company was included in the Opposition.

¶3 Tremcorp alleges that Harris and McCann significantly misrepresented the value and income of the businesses owned by UDI Management, Inc.<sup>8</sup> In 2013, Tremcorp brought suit for, among other things, securities fraud and statutory rescission of the Agreement under Section 659 of Title 9 of the Virgin Islands Code, also known as the Virgin Islands Uniform Securities Act (hereinafter “Section 659”).<sup>9</sup> Section 659 creates liability for the sale of a security by means of “an untrue statement of a material fact...,” among other things. 9 V.I.C. §659(b). Harris and McCann counter with arguments that all representations were placed in the Agreement with the option for alteration should investigation and due diligence indicate a need for such amendment.<sup>10</sup> They allege that Tremcorp did not do its due diligence.<sup>11</sup>

¶4 Tremcorp, Scott Harris, and John McCann agreed to arbitration in 2014. The Arbitrator issued the award on or about October 2, 2014. Therein, the Arbitrator explained that the claimant, Tremcorp, had not made its case for recovery:

[T]he Claimant has not sustained its burden of establishing that it is entitled to damages or a rescission of the parties’ Agreement. The Arbitrator finds that the facts of this matter demonstrate that Claimant was negligent in its failure to conduct any due diligence especially in light of the significant cost of the anticipated sale, the considerable time provided Claimant to conduct due diligence, and Claimant’s admitted ignorance about the business and real property at issue. The Arbitrator is convinced neither of Respondents’ deliberate misrepresentations or Claimant’s alleged lack of knowledge or opportunity to conduct due diligence regarding this sale.<sup>12</sup>

¶5 Thereafter, Tremcorp filed its Motion to Vacate Arbitration Award, arguing that the Arbitrator exceeded his authority by manifestly disregarding the law in making his award.<sup>13</sup>

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<sup>8</sup> Mot. at 3-4.

<sup>9</sup> *Id.* at 4.

<sup>10</sup> Arbitrator’s Award 2.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Mot. 5.

That is, the Arbitrator 1) knew of the law; 2) appreciated that it should control the outcome of the arbitration; and 3) willfully refused to apply it, leading to a tainted decision.<sup>14</sup>

¶6 The Defendants counter that the Federal Arbitration Act (FAA) provides for only a narrow set of circumstances under which an arbitration award may be vacated.<sup>15</sup> This suggests that if manifest disregard is the standard that governs this case, then it must be based on and subject to the FAA.<sup>16</sup> The Defendants further assert that the parties agreed to arbitration and should therefore be bound by the Arbitrator's decision.<sup>17</sup> Finally, the Defendants claimed that, contrary to Tremcorp's assertion, the Arbitrator did not manifestly disregard Section 659, but rather addressed it expressly in the award and discussed Tremcorp's failure to make its case in light of the law.<sup>18</sup>

#### **DISCUSSION**

¶7 At the time the Motion was filed, the Virgin Islands had not considered the manifest disregard standard. The standard has since been addressed and the Supreme Court of the Virgin Islands (hereinafter "Supreme Court").

¶8 The Supreme Court specifically adopted the manifest disregard rule in 2017.<sup>19</sup> The rule is beneficial to the Virgin Islands because courts have an obligation to facilitate the intent of parties who contract to arbitrate, and the manifest disregard rule allows them to fulfill that function.<sup>20</sup>

¶9 However, the Virgin Islands Supreme Court did not give an express definition of "manifest disregard." Nevertheless, in considering what standards other jurisdictions had adopted, the Supreme

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<sup>14</sup> See *id.* (citing *Mustafa v. Amore St. John, LLC*, 2013 WL 841755, \*2 (V.I. Super. Ct. 2013)).

<sup>15</sup> Opp'n 7-8.

<sup>16</sup> See *id.* at 9 (suggesting that the adoption of the manifest disregard standard would avoid the express provisions of the FAA to outline the grounds for vacating an award).

<sup>17</sup> Supplemental Opp'n 2.

<sup>18</sup> Opp'n 10.

<sup>19</sup> See *Gov't of the Virgin Islands, Dep't of Ed. v. St. Thomas/St. John Educational Administrators Ass'n, Local 101*, 67 V.I. 623 (V.I. Sup. Ct. 2017).

<sup>20</sup> *Id.* at 638

Court cited two cases which indicate that manifest disregard has occurred when an arbitrator “knowing the law and recognizing that the law required a particular result, simply disregarded the law.”<sup>21</sup> The Supreme Court also made clear that “any award that exceeds the scope of the authority conferred by the [arbitration] contract must be subject to judicial impeachment because it does not reflect the parties’ bargain.”<sup>22</sup>

¶10 The Supreme Court also recognized that a contract to arbitrate “relinquish[es] the legal and procedural safeguards that accompany judicial proceedings.”<sup>23</sup> Therefore, “unless...bargained for, a mistaken application of the law does not expose an award to judicial review.”<sup>24</sup> “Similarly, so long as an award derives from the legitimate exercise of an arbitrator’s power, a court may not alter an award based on its own notions of justice or sound public policy, as doing so evidences a judicial disregard for the parties’ chosen form of dispute resolution.”<sup>25</sup>

¶11 Since the manifest disregard standard is now precedential as common law in the Virgin Islands, there is no reason to inquire as to the applicability of the standard in light of the FAA or whether the Court has the power to vacate an arbitration award. The only issue for review is whether the Arbitrator manifestly disregarded the law when finding in favor of the Defendants. The Court finds that he did not.

¶12 It is indisputable that the Arbitrator knew the law to be applied. As Tremcorp points out, it “went to considerable lengths in the arbitration proceedings to explain in detail the elements and defenses of a rescission claim under the Virgin Islands Uniform Act § 659, and exactly how those

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<sup>21</sup> *Clark County Educ. Ass’n v. Clark County Sch. Dist.*, 122 Nev. 337 (2006) (citation omitted). See *Bradford Dyeing Assocs. V. J. Stog Tech GmbH*, 765 A.2d 1226 (R.I. 2001) (citing *Westminster Const. Corp. v. PPG Industries, Inc.*, 376 A.2d 708, 711 (R.I. 1977)).

<sup>22</sup> *Gov’t of the Virgin Islands, Dep’t of Ed.*, 67 V.I. at 638.

<sup>23</sup> *Id.* at 639.

<sup>24</sup> *Id.* (citing *Goodwine v. Miller*, 32 Ind. 419, 421-22 (1869)).

<sup>25</sup> *Gov’t of the Virgin Islands, Dep’t of Ed.*, 67 V.I. at 639.

differ from those of common law fraud....”<sup>26</sup> Further, the Arbitrator discussed Section 659 in his October 2, 2012 award and noted that Tremcorp has based its claim on it.<sup>27</sup> The Arbitrator was unable to apply a Virgin Islands precedent to the statute, due to a lack of interpreting case law, and was diligent in searching for case law from other jurisdictions to aid in his decision.<sup>28</sup> The Arbitrator was thereby able to flesh out and give full meaning to the statute.

¶13 The Arbitrator also recognized that Section 659 required a particular result, but not the one desired by Tremcorp. After investigating the meaning of Section 659, the Arbitrator specifically found “that given the ‘total mix’ of the information provided,” any misrepresentations by Harris and McCann “do not meet the standard that the alleged misrepresentations ‘significantly affected the investment decisions’ of [Tremcorp].”<sup>29</sup> The Arbitrator then concludes that Section 659 is not applicable to Tremcorp’s claims.<sup>30</sup>

¶14 Finally, the fact that the Arbitrator took the time to discuss Section 659 and the limits of the evidence against Harris and McCann indicates that the Arbitrator did not disregard the law. Rather, the Arbitrator provided a reasoned analysis of why Tremcorp’s claims had to fail.<sup>31</sup>

### CONCLUSION

¶15 Considering all the above, the Motion to Vacate Arbitration Award must be denied. Though the Virgin Islands recognizes the manifest disregard standard as a basis for curing unfit arbitration awards, Tremcorp has not met its burden of proving that the Arbitrator manifestly disregarded the law. The Arbitrator did not act beyond the scope agreed by the parties and took care to specifically find that Section 659 of the Virgin Islands Uniform Securities Act does not apply to Tremcorp’s claims.

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<sup>26</sup> Mot. 9.

<sup>27</sup> Arbitrator’s Award 5.

<sup>28</sup> *Id.* 6.

<sup>29</sup> *Id.* at 7.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 5-7.

Accordingly, the Arbitrator's award must be affirmed. An order consistent with this Memorandum Opinion is forthcoming.

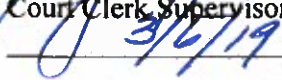
DONE this 6<sup>th</sup> day of March 2019.

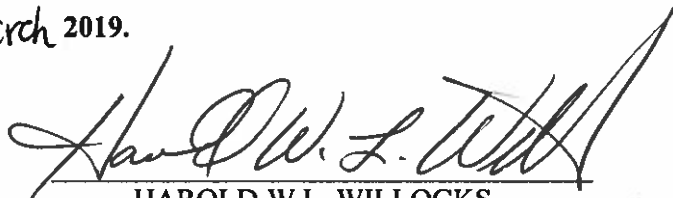
**ATTEST:**  
Estrella H. George  
Clerk of the Court

By:

  
\_\_\_\_\_  
Court Clerk Supervisor

Dated:

  
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3/6/19

  
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HAROLD W.L. WILLOCKS  
Administrative Judge of the Superior Court