

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2009 CA 1102

KEYSTONE STRUCTURAL CONCRETE, LLC

VERSUS

PERKINS ROWE ASSOCIATES, LLC, PERKINS ROWE ASSOCIATES, II,
LLC, AND MBD CONSTRUCTION COMPANY, INC.

Judgment Rendered: December 23, 2009

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Trial Court Number 565,725

Honorable Janice Clark, Judge

Michael F. Weiner
Mandeville, LA

Attorney for
Plaintiff – Appellee
Keystone Structural Concrete,
LLC

Donnie L. Floyd
Prairieville, LA
and
John B. Brumfield, Jr.
Scott E. Fraizer
Baton Rouge, LA

Attorneys for
Defendants – Appellants
Perkins Rowe Associates, LLC
and Perkins Rowe Associates,
II, LLC

John S. McLindon
Baton Rouge, LA

Attorney for
Defendant – Appellee
MBD Construction Co., Inc.

BEFORE: WHIPPLE, HUGHES, AND WELCH, JJ.

TRW
⊗
v a w by ⊗

WELCH, J.

Perkins Rowe Associates, LLC and Perkins Rowe Associates, II, LLC (collectively referred to as “Perkins Rowe”) appeal a judgment of the district court confirming an arbitration award against them and in favor of MBD Construction Co., Inc. (“MBD”). We affirm in compliance with Uniform Rules—Courts of Appeal Rule 2-16.1(B).

On April 7, 2008, Keystone Structural Concrete, LLC (“Keystone”), a subcontractor, filed a petition relative to certain claims arising out of a subcontract it had entered into with MBD, a general contractor, for work it completed on property owned by Perkins Rowe, pursuant to a contract between MBD and Perkins Rowe. Thereafter, MBD filed an answer and a cross-claim against Perkins Rowe. Apparently, Perkins Rowe failed to pay MBD the total contract balance it owed, which in turn, caused MBD to default on payment to its subcontractors. Notably, there were eight subcontractors that were not paid for the work performed pursuant to subcontracts with MBD on the property owned by Perkins Rowe. Separate suits were filed by those subcontractors in the district court, and those suits were randomly assigned to different presiding district court judges.

Since all of the subcontracts between the subcontractors and MBD and the general contract between MBD and Perkins Rowe provided that all disputes relative to the subcontracts and contract would be arbitrated, the parties entered into a joint motion to stay all proceedings pending arbitration of the parties’ claims, and a consent judgment to that effect was signed by the district court on May 22, 2008. Additionally, the parties entered into an Arbitration Agreement setting forth the parameters of their arbitration.

On July 7, 2008, the arbitrator made a partial award relative to the claims of the other seven subcontractors against MBD and relative to the claims of MBD against Perkins Rowe relating to those subcontracts. However, the arbitrator

specifically excluded from this award claims relating to Keystone, which were to be determined at a later arbitration hearing. On October 6, 2008, the arbitrator's partial award in this regard was confirmed by the presiding district court judge to whom the claims of one of the subcontractors had been assigned.

On January 5, 2009, the arbitrator made an award with regard to the claims of Keystone against MBD and the remaining claims existing between MBD and Perkins Rowe. On January 9, 2009, MBD and Keystone filed a motion in the district court to confirm the January 5, 2009 arbitration award. In response, Perkins Rowe filed a motion to vacate the arbitration award and alternatively, an opposition to the confirmation of the arbitration award. Essentially, Perkins Rowe asserted that the arbitration award should be vacated pursuant to La. R.S. 9:4210(D), which provides that an arbitration award can be vacated if the arbitrator has exceeded his powers or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made. Additionally, Perkins Rowe asserted that the award should be vacated because it was in manifest disregard of the law. After a hearing on the matter, the district court took the matter under advisement. On April 8, 2009, the district court rendered judgment confirming the arbitration award and determined that no grounds to vacate, modify, or correct the award pursuant to La. R.S. 9:4210¹ and 9:4211² existed. A written

¹ Louisiana Revised Statutes 9:4210 provides:

In any of the following cases the court in and for the parish wherein the award was made shall issue an order vacating the award upon the application of any party to the arbitration.

A. Where the award was procured by corruption, fraud, or undue means.

B. Where there was evident partiality or corruption on the part of the arbitrators or any of them.

C. 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.

D. 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.

Where an award is vacated and the time within which the agreement required the award to be made has not expired, the court may, in its discretion, direct a rehearing by the arbitrators.

judgment in favor of MBD and against Perkins Rowe, confirming the award made by the arbitrator, was signed on April 21, 2009, and it is from this judgment that Perkins Rowe has appealed.

On appeal, Perkins Rowe asserts that the district court erred in: (1) denying its motion to vacate the arbitration award and in confirming the award given that the arbitrator exceeded his authority by failing to adhere to the express limitations on his authority, as provided in the parties' arbitration agreement; (2) confirming the arbitrator's award given that the motion to confirm the arbitration award was not properly filed and randomly allotted in the district court; and (3) confirming the arbitration award because it was in manifest disregard of Louisiana law. After a thorough review of the record and applicable law, we find no merit to any of these assignments of error.

Essentially, Perkins Rowe contends that the arbitrator in this matter exceeded his authority because he conducted separate hearings and rendered separate awards regarding the parties' dispute, in contravention of the parties' agreement. However, at the hearing to confirm the arbitrator's award, counsel for Perkins Rowe specifically stated on the record that they stipulated to a separate hearing. Additionally, in the July 7, 2008 partial award, the arbitrator specifically stated "[t]he parties have further stipulated that Perkins Rowe's rights to assess back charges for stucco work, liquidated damages, and [*Keystone*] related issues

² Louisiana Revised Statutes 9:4211 provides:

In any of the following cases the court in and for the parish wherein the award was made shall issue an order modifying or correcting the award upon the application of any party to the arbitration.

A. Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.

B. Where the arbitrators have awarded upon a matter not submitted to them unless it is a matter not affecting the merits of the decision upon the matters submitted.

C. Where the award is imperfect in matter of form not affecting the merits of the controversy.

The order shall modify and correct the award so as to effect the intent thereof and promote justice between the parties.

are not part of this award, and will be determined at the arbitration hearing in August 2008.” (Emphasis added.) Given these express stipulations, we do not find that the arbitrator in this matter exceeded his authority by conducting separate hearings and rendering separate awards regarding the parties’ dispute.

Insofar as Perkins Rowe contends that the district court erred in confirming the arbitrator’s award because the petition to confirm the award was not filed as a new petition and randomly allotted in the district court, we have not found, nor have we been directed to, any requirement mandating such procedure. Instead, we note that Keystone and MBD’s motion to confirm the award against Perkins Rowe was filed in the same proceeding as the initial petition regarding those claims. Pursuant to a consent judgment, those claims were stayed pending arbitration of the parties’ claims. Once the arbitration of those claims ended, Keystone and MBD then properly filed a motion to confirm the arbitration award in the same suit where those claims were pending.

Lastly, with regard to Perkins Rowe’s contention that the arbitrator’s award should not have been confirmed because it was in manifest disregard of Louisiana law, we find that the record before us is devoid of any evidence to support this contention. Accordingly, we find no error in the district court decision to confirm the January 5, 2009 arbitration award, and therefore, the April 21, 2009 judgment of the district court is hereby affirmed.

All costs of this appeal are hereby assessed to the defendants/appellants, Perkins Rowe Associates, LLC and Perkins Rowe Associates, II, LLC.

AFFIRMED.