

IN THE SUPREME COURT OF THE STATE OF NEVADA

NEWS+MEDIA CAPITAL GROUP
LLC, a Delaware limited liability company;
and LAS VEGAS REVIEW-JOURNAL,
INC., a Delaware limited liability
company,

Appellants/Cross-Respondents

vs.

LAS VEGAS SUN, INC., a Nevada
corporation,

Respondent/Cross-Appellant.

Electronically Filed
May 11 2020 05:05 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
Supreme Court No. 2017259
District Court Case No. 17259

**NOTICE OF MAY 1, 2020 DISTRICT COURT MINUTE ORDER
GRANTING APPELLANTS'/CROSS-RESPONDENTS' MOTION TO
SEAL ALL MATERIALS GENERATED IN THE PRIVATE
ARBITRATION**

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Las Vegas Review-Journal, Inc.*

On April 23, 2020, Respondent/Cross-Appellant Las Vegas Sun, Inc. (“Sun”) filed its Motion to Temporarily Seal Exhibit 1 to Reply in Support of Motion to Expedite Appeal But Then Unseal as Not Confidential or Sensitive After Notice and Opportunity to be Heard. The Sun’s motion sought the unsealing of the Award from the parties’ confidential arbitration.

On April 30, 2020, Appellants/Cross-Respondents News+Media Capital Group LLC and Las Vegas Review-Journal, Inc. (collectively, “Review-Journal”) filed their opposition. The Review-Journal’s opposition explained that (1) the parties had been litigating the issue of whether to seal the private arbitration materials, *including the Award*, before the district court since September 2019, (2) the district court was also considering a request to modify the disputed “proviso” language in its protective order, (3) the district court had recently taken these issues under submission and could rule any day, and (4) based on the procedural posture below, this Court should await the district court’s ruling pursuant to SRCR 3(4), 5, and 7. *See Opp.*, at 3–4.

The Review-Journal files this notice to inform this Court that the district court issued a minute order on May 1, 2020, and ruled in favor of the Review-Journal on the sealing and proviso-modification issues. *See Exhibit 1* (5/1/20 Minute Order). The district court held that it “has grave concerns about the use of a motion to vacate and/or confirm an arbitration award as a tool to transform a bargained for private dispute into a public dispute by merely filing a motion.” *Id.* at 3. The district court continued by reiterating that “it was not required to consider the vast majority of the materials sought

to be unsealed” in order to render a decision on the parties’ motions to confirm/vacate the arbitration award, that the parties are bound by their agreement “to specific confidentiality and privacy,” and that it “would be an error if [the district court] were to exceed its limited charge and expand the thrust” of the Arbitrator’s protective order. *Id.* at 3–4.

In reaching its ruling, the district court considered, *inter alia*, “Nevada’s strong public policy in favor of arbitration and securing benefits of a bargained-for exchange,” as well as the “compelling reasons favoring the public’s interest in the access of the information in private arbitration against the [district court]’s duty to guard against court filings that might have become a vehicle for improper purposes.” *Id.* at 3. The district court further found the Arbitrator’s protective order constitutes a “compelling circumstance” under SRCR 3(4)(h) and that “additional compelling circumstances exist in light of the benefits of the arbitration agreement, Nevada’s public policies concerning the public’s right to information and private arbitration, the Newspaper Preservation Acts’ influence on the parties’ agreement, and [the district court]’s restricted review of the Arbitrator’s determinations.” *Id.* at 3.

The district court also found good cause to modify its protective order and held the Arbitrator’s protective order, entered pursuant to the authority provided by NRS 38.233(5), “will be shown deference” and “will continue to control all remaining materials generated in the binding private arbitration that [the district court] did not rely on to fulfill its limited mandate.” *Id.* at 4. The district court also confirmed that “it has

already made public the relevant and limited parts of the record that were required to render its decision in this matter in its December 4, 2019, Minute Order.” *Id.*

DATED this 1st day of May, 2020.

KEMP JONES, LLP

/s/ J. Randall Jones

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CERTIFICATE OF SERVICE

I certify that I am an employee of Kemp Jones, LLP and that on May 1, 2020, I caused the foregoing NOTICE OF MAY 1, 2020 DISTRICT COURT MINUTE ORDER GRANTING APPELLANTS'/CROSS-RESPONDENTS' MOTION TO SEAL ALL MATERIALS GENERATED IN THE PRIVATE ARBITRATION to be served by electronically filing the foregoing with the Clerk of the Supreme Court of Nevada by using the court's electronic filing system, which will send notice of electronic filing to the following:

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DATED this 1st day of May, 2020.

/s/ Ali Augustine
An employee of Kemp Jones, LLP

EXHIBIT 1

A-18-772591-B

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

May 01, 2020

A-18-772591-B Las Vegas Sun Inc, Plaintiff(s)
vs.
News+Media Capital Group LLC, Defendant(s)

May 01, 2020 10:24 AM Minute Order re: Motion to Seal

HEARD BY: Williams, Timothy C. **COURTROOM:** Chambers

COURT CLERK: Christopher Darling

JOURNAL ENTRIES

After a review and consideration of the record, the points and authorities on file herein, and oral argument of counsel, the Court determined as follows:

In Washoe Cty. Sch. Dist. v. White, 133 Nev. 301 (2017), the Nevada Supreme Court discussed the district court's mandate in reviewing an arbitration award. From Washoe, it is apparent that a district courts' review of the arbitration record is substantially limited. Highlighting the restraint district courts should provide to an arbitrators' decision, the Supreme Court cautioned district courts that arbitrators are permitted to make: misinterpretations—even if erroneous provided it is rationally grounded in the agreement, make factual or legal errors, incorrectly decide an issue, and/or incorrectly interpret the law. Id at 304.

Put simply, under Nevada law, "courts are not to deprive the parties of the benefits of arbitration [the parties] have bargained for...." Phillips v. Parker, 106 Nev. 415, 417 (1990). Instead of using the district courts' judgment, the parties have requested to be subject to the informed judgment of the arbitrator in reaching fair solutions to problems that arise during the arbitration. *See* Int' l Ass'n of Firefighters, Local 1285 v. City of Las Vegas, 107 Nev. 906, 910, 823 P.2d 877, 879 (1991). While the arbitrator's authority is not limitless, a district courts' desire to use its own judgment instead of the

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arbitrator's judgment is extremely restricted. *See Washoe Cty. Sch. Dist. v. White*, 133 Nev. 301 (2017).

Further, it is clear under NRS 38.231(1) that the arbitrator's authority includes . . . among other matters, [the ability to] determine the admissibility, relevance, materiality, and weight of any evidence. Additionally, pursuant to NRS 38.233(5), an arbitrator is authorized to issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action in this State. Thus, the role of a private arbitrator in binding arbitration differs little if any from a trial judge and jury.

The Court must point that in reaching its decision, it was of paramount significance that this particular matter involved sophisticated parties who entered into a highly complex Joint Operating Agreement. The parties in this matter have been involved in a very intimate business arrangement for decades predicated on the United States Congress' creation of the Newspaper Preservation Act. This Act allows competing newspapers to enter into a unique operating agreement and yet avoid U.S. antitrust laws. As the parties entered into an agreement that allowed them to share and disclose private and confidential business information related to their respective companies, the Court cannot overlook the import of such a complex arrangement. Under this unique background, the parties ultimately submitted their dispute to binding arbitration under the terms and conditions of their Joint Operation Agreement. Thus, due to the distinct nature of the parties' business relationship described above, the Court took significant notice of the Nevada Supreme Court's mandate not to deprive the parties of the benefits of the arbitration that they bargained for.

Turning to the instant case, the Court must determine whether to overrule the Arbitrator's Order signed on February 18, 2019, which made the materials filed in the underlying private arbitration confidential. In light of an arbitrator's role as the equivalent of a trial judge and jury in a private arbitration, the Court finds that with its limited mandate in confirming, modifying, and/or vacating an arbitration award, it would be improper to replace the Arbitrator's evidentiary judgments with this Court's judgment.

In reaching a determination, the court considered several issues. Consideration was given to the

Court's restricted mandate in the arbitration process, and the limited judicial resources needed to fulfill that mandate. Additionally, the procedural history that followed the Arbitrator's Award and the first party seeking to enforce the fruits of the arbitration were weighed. *See Redeemer Comm. of Highland Credit Strategies Funds v. Highland Capital Mgmt., L.P.*, 182 F. Supp. 3d 128, 133 (S.D.N.Y. 2016). The Court also considered Nevada's strong public policy in favor of arbitration and securing the benefits of a bargained-for private arbitration. The Court further considered the compelling reasons favoring the public's interest in the access of the information in private arbitration against the Court's duty to guard against court filings that might have become a vehicle for improper purposes. *See Kamakana v. City & Cty. Of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006). Also, the parties' relationship and how it related to the Newspaper Preservation Act was of particular concern.

After much consideration, the Court finds that the Arbitrator had the authority to issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure. It is also clear from the history that throughout this case, the Arbitrator used his authority and discretion to determine the admissibility, relevance, materiality, and weight of the evidence. The Arbitrator's Orders sealing the records at issue in this matter constitute a "compelling circumstance" under subsection SRCR 3(4)(h). The Court further finds that additional compelling circumstances exist in light of the benefits of the arbitration agreement, Nevada's public policies concerning the public's right to information and private arbitration, the Newspaper Preservation Acts' influence on the parties' agreement, and this Court's restricted review of the Arbitrator's determinations.

Moreover, the Court has grave concerns about the use of a motion to vacate and/or confirm an arbitration award as a tool to transform a bargained for private dispute into a public dispute by merely filing a motion. The Court reiterates that it was not required to consider the vast majority of the materials sought to be unsealed in order to render a decision on the Plaintiff's motion to confirm arbitration award, in part, and to vacate or, alternatively, modify or correct the award in part. Finally, the parties stipulated to specific confidentiality and privacy under the terms and conditions of a binding arbitration agreement; their decision consequently binds them. Accordingly, when considering the deference given to the arbitrator

in Washoe Cty. Sch. Dist. v. White, as well as this Court's limited mandate, the Court finds that it would be an error if it were to exceed its limited charge and expand the thrust of the Arbitrator's Protective Order. Therefore, **Defendant's News+Media Capital Group LLC' s/Counterclaimant Las Vegas Review-Journal, Inc.'s Motion To Seal Materials Generated In The Private Arbitration Is Granted.**

As a result of this decision, the Court further finds that pursuant to Section V: Modification Of This Order, there is good cause to modify this Court's August 8, 2019, Stipulated Confidentiality and Protective Order. *See Kamakana v. City & Cty. Of Honolulu*, 447 F.3d 1172, 1183 (9th Cir. 2006)(recognizing modification provisions are often contained in stipulated protective orders). Respectively, to the extent that the Stipulated Confidentiality and Protective Order that this Court signed is read to replace or expand the Stipulated Confidentiality and Protective Order that the Arbitrator signed on February 18, 2019, the Arbitrator's Order will be shown deference. Thus, the Arbitrator's Protective Order will continue to control all remaining materials generated in the binding private arbitration that this Court did not rely on to fulfill its limited mandate. Furthermore, the Court finds that it has already made public the relevant and limited parts of the record that were required to render its decision in this matter in its December 4, 2019, Minute Order.

Defendant shall prepare a detailed Order, Findings of Facts, and Conclusions of Law, based not only on the foregoing Minute Order, but also on the record on file herein. This is to be submitted to adverse counsel for review and approval and/or submission of a competing Order or objections, prior to submitting to the Court for review and signature.

CLERK'S NOTE: This Minute Order has been served on counsel electronically through Odyssey eFile