

SUPREME COURT OF CONNECTICUT

C. R. Klewin Northeast, LLC v. City of Bridgeport; City of Bridgeport v. C. R. Klewin Northeast, LLC, 282 Conn. 54

919 A.2d 1002 (2007) · No. No. 17590 · Decided April 17, 2007

SUMMARY

The Connecticut Supreme Court reviewed consolidated appeals concerning an arbitration award arising from a municipal public works contract for a sports arena project. The court held that a challenge alleging that the underlying contract was illegally procured and void ab initio was for the arbitration panel to consider in the first instance, unless the challenge specifically targeted the arbitration clause. The court further held that the city waived its illegality and related public-policy arguments by failing to timely raise them during arbitration, and affirmed confirmation of the award.

CASE DETAILS

COURT	Supreme Court of Connecticut
WRITING FOR THE COURT	Norcott, J.; Katz, J.; Palmer, J.; Vertefeuille, J.; Zarella, J.
JURISDICTION	Connecticut
DECIDED	April 17, 2007
DOCKET	No. 17590
DISPOSITION	affirmed
PROCEDURAL POSTURE	The City of Bridgeport appealed, and C. R. Klewin Northeast, LLC cross-appealed, from a consolidated trial-court judgment confirming an arbitration award under Conn. Gen. Stat. § 52-417 and denying the City's application to vacate under § 52-418(a).
STANDARD OF REVIEW	Questions of law, including arbitrability, waiver, interpretation of the arbitration agreement and applicable arbitration rules, and public-policy review, were reviewed plenary. Waiver ordinarily is a question of fact reviewed for clear error, but plenary review applied where the trial court relied on pleadings and documents. Judicial review of a public-policy challenge is de novo as to the legal policy question, with deference to the arbitrator's factual findings. Review of denial of reargument was for abuse of discretion.
PRECEDENTIAL VALUE	published precedential opinion

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QUESTIONS PRESENTED

1. Whether a challenge that the entire municipal contract containing an arbitration clause was illegally procured and void ab initio must initially be decided by the court or the arbitration panel.
2. Whether the City waived its contract-illegality defense by delaying its assertion during the arbitration and participating in the proceedings.
3. Whether the panel's failure to decide the illegality defense rendered the award incomplete, defective, or nonfinal.
4. Whether the City could relabel its waived contract-illegality defense as a public-policy challenge to vacatur of the arbitration award.
5. Whether the trial court was required to conduct an evidentiary hearing on the alleged illegal procurement and whether it abused its discretion in denying reargument.
6. Whether the arbitration panel properly continued with two arbitrators after a vacancy when the agreement incorporated the American Arbitration Association's commercial rules and did not specifically require three arbitrators.
7. Whether Klewin was entitled to offer-of-judgment interest under Conn. Gen. Stat. § 52-192a.

HOLDINGS

1. A challenge to the validity or legality of the entire underlying contract, rather than a challenge specifically directed at the arbitration clause, is for the arbitrator to decide in the first instance.
2. The City waived its contract-illegality defense by waiting until twenty hearing days had occurred, despite having notice of the factual basis for the defense, and by failing to pursue the panel's later offer to consider the claim.
3. The panel's incorrect statement that it lacked jurisdiction over the illegality defense did not require vacatur because the City had waived the defense and the panel had separately determined that the defense was untimely.
4. When a public-policy challenge to an arbitration award is functionally identical to a contract-illegality defense that the party waived before the panel, the party cannot raise the issue in the confirmation or vacatur proceeding because the courts lack the necessary arbitral factual findings.
5. The arbitration panel properly continued with two arbitrators after one member became unavailable because the agreement incorporated the AAA commercial rules and did not specifically require that all

subsequent proceedings be conducted before three arbitrators.

6. The court declined to decide whether Klewin was entitled to offer-of-judgment interest under Conn. Gen. Stat. § 52-192a because the trial court did not rule on the issue and the record was inadequate for review.

KEY QUOTATIONS

“First, as a matter of substantive federal arbitration law, an arbitration provision is severable from the remainder of the contract. Second, unless the challenge is to the arbitration clause itself, the issue of the contract's validity is considered by the arbitrator in the first instance. Third, this arbitration law applies in state as well as federal courts.” (282 Conn. at 1017)

“We agree with the trial court's determination, however, that the city's attempt was, in essence, too little, too late.” (282 Conn. at 1024)

“We decline to accept what we view as the city's invitation to turn public policy challenges into the arbitration equivalent of a “mulligan” by inviting de novo factual review of illegal contract issues.” (282 Conn. at 1031)

FACTUAL BACKGROUND

The City and Klewin entered into a March 2000 construction-management agreement for a sports arena, parking garage, and related facilities, with a guaranteed maximum arena price of \$44,524,515. After disputes arose over design changes and alleged contract breaches, Klewin demanded arbitration and the City asserted counterclaims. During the arbitration, one arbitrator became ill and the remaining two continued over the City's objection. The City later sought to raise a defense that the contract had been procured through corruption and was void ab initio, but the panel rejected the defense as untimely and the City did not pursue the panel's later offer to consider the issue.

PROCEDURAL HISTORY

Klewin and the City entered into a municipal public-works contract containing an arbitration clause. After a 37-day arbitration, the panel awarded Klewin \$6,020,231. Klewin applied to confirm the award, while the City applied to vacate it based on alleged illegal procurement, public-policy concerns, alleged panel misconduct, and the panel's continuation with two arbitrators after a vacancy. The trial court confirmed the award and denied vacatur, and the Connecticut Supreme Court affirmed; it declined to review Klewin's cross-appeal seeking offer-of-judgment interest because the trial-court record did not show that the issue had been decided.

DISPOSITION

affirmed

CASES CITED

- Nussbaum v. Kimberly Timbers, Ltd., 271 Conn. 65, 856 A.2d 364 (2004)
- Buckeye Check Cashing, Inc. v. Cardegna, 546 U.S. 440, 126 S. Ct. 1204, 163 L. Ed. 2d 1038 (2006)

- *Prima Paint Corp. v. Flood & Conklin Manufacturing Co.*, 388 U.S. 395 (1967)
- *Southland Corp. v. Keating*, 465 U.S. 1 (1984)
- *AFSCME, Council 4, Local 704 v. Department of Public Health*, 272 Conn. 617, 866 A.2d 582 (2005)
- *Diamond Fertiliser & Chemical Corp. v. Commodities Trading International Corp.*, 211 Conn. 541, 560 A.2d 419 (1989)
- *New Haven v. Local 884, Council 4, AFSCME, AFL-CIO*, 237 Conn. 378, 677 A.2d 1350 (1996)
- *White v. Kampner*, 229 Conn. 465, 641 A.2d 1381 (1994)
- *Schoonmaker v. Cummings & Lockwood of Connecticut, P.C.*, 252 Conn. 416, 747 A.2d 1017 (2000)
- *MedValUSA Health Programs, Inc. v. MemberWorks, Inc.*, 273 Conn. 634, 872 A.2d 423 (2005)
- *United Paperworkers International Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29 (1987)
- *Bridgeport v. Kasper Group, Inc.*, 278 Conn. 466, 899 A.2d 523 (2006)
- *Bernstein v. On-Line Software International, Inc.*, 232 App. Div. 2d 336, 648 N.Y.S.2d 602 (1996)
- *Szuts v. Dean Witter Reynolds, Inc.*, 931 F.2d 830 (11th Cir. 1991)
- *Harty v. Cantor Fitzgerald & Co.*, 275 Conn. 72, 881 A.2d 139 (2005)
- *Grimm v. Grimm*, 276 Conn. 377, 886 A.2d 391 (2005)
- *Nunno v. Wixner*, 257 Conn. 671, 778 A.2d 145 (2001)
- *Connecticut Importing Co. v. Janowitz*, 128 Conn. 433, 23 A.2d 514 (1941)
- *Tator v. Valden*, 124 Conn. 96, 198 A. 169 (1938)