

## **“Reasoned” Arbitration Award Sinks Builder**

The Ryans of the Northeast were hard working long time pilots for a commercial airline with a dream in 2005 to retire and set out to begin their second life by building a 67’ catamaran which they intended to use to travel the world and charter. After much personal research and due diligence, the couple cultivated a relationship with Walter Schurtenberger and Multihull Technologies Inc. (“MTI”) of Key West, Florida to build their yacht. On February 4, 2005, the Ryans entered into a written construction agreement with MTI on a cost plus basis for the construction of their catamaran. The construction spiraled out of control, well beyond the estimates, budget and representations made by MTI to the Ryans. Budget estimates steadily crept from a couple million dollars to three and four million dollars according to testimony at trial. Construction of the yacht was never completed by MTI and the Ryans were forced to file a claim with the American Arbitration Association (“AAA”) in October 2008 in Miami, Florida pursuant to the arbitration clause in their construction agreement.

MTI represented itself and its owner and principal, Schurtenberger, as accomplished, experienced, and skilled builders of catamarans and other multi-hull vessels. Indeed, Schurtenberger had stated to the Ryans in the pre-contract discussions that he had built at least three similar boats in the recent past.

Over a period of several years thereafter, Schurtenberger developed a relationship of trust with the Ryans, presenting himself as a “friend” and not as an arm’s length manufacturer. In arbitration testimony, Schurtenberger himself admitted that he “cultivated a social, friendly, relationship with the Ryans,” that his relationship with them was “quite close,” and that he knew the Ryans “relied on [his] advice” on the “technical side” of the vessel construction

The evidence presented during arbitration was undisputed – the Ryan’s relied completely on MTI for the engineering and cost estimates for the yacht, and Schurtenberger not only knew of but cultivated and encouraged this reliance. Prior to the contract signing, for instance, Schurtenberger told the Ryans over and over again that “I can build this. I have built three of these hulls...I know exactly what it is going to cost...I know every nail that will go in.” Another example of the Ryans reliance on Schurtenberger/MTI, and their acceptance of that trust, was Schurtenberger’s statement to Mrs. Ryan in mid-2007 to allay her concerns that the cost of the boat was going out of control: “I won’t let you make any mistakes.” Schurtenberger’s manipulation of the parties’ relationship was the foundation for the breach of fiduciary claim.

The Ryans filed their Statement of Claims with AAA based on the following claims: (1) Florida Deceptive and Unfair Practices Act (“FDUPTA”), seeking damages.; (2) rescission of contract with MTI based on fraud and misrepresentation by MTI and Schurtenberger; (3) breach of contract; (4) fraud and misrepresentation against MTI and Schurtenberger seeking compensatory and punitive damages; (5) breach of fiduciary duty against MTI and Schurtenberger seeking compensatory and punitive damages; and (6) civil theft for criminal practices under Florida Law against MTI and Schurtenberger seeking treble damages.

The decision and award of the arbitrators was in favor of the Ryan’s against MTI and Schurtenberger individually for violation of the Florida Deceptive and Unfair Practices Act (“FDUPTA”); breach of contract against MTI; attorney’s fees and costs inclusive of arbitrators’ fees. The award for the Ryans

jointly and severally against MTI and Shurtenberger was the sum of \$1,934,544.00 for the principal sum paid towards construction and purchase of the vessel, plus \$67,380.00 additional damages for a total of \$2,001,924 together with accruing legal interest and attorney's fees.

The unanimous award was granted after a five day hearing which proceeded under the Commercial Arbitration Rules of the AAA before a panel of three arbitrators. The parties had stipulated the arbitration panel provide a "reasoned award." The award touched on each of the Ryans' claims as outlined above, and was based on the finding that the Ryans had proven their claim against MTI by "the greater weight of the evidence", but the panel's evidentiary finding provided reason for later litigation.

The Ryans moved to secure a federal court confirmation of the arbitration award and, remarkably, the federal court failed to confirm the award by asserting that it was not a "reasoned" decision. On appeal, however, the United States Court of Appeals for the Eleventh Circuit unanimously disagreed and reversed the decision of Federal District Judge Michael Moore:

"In the present case, three validly-appointed arbitrators oversaw a five day hearing and rendered a thoughtful, reasoned award. We decline to narrowly interpret what constitutes a reasoned award and overturn an otherwise apparently seamless proceeding. The parties received precisely what they bargained for—a speedy, air resolution of a discrete controversy by an impartial panel of arbitrators skilled in relevant areas of the law. To vacate the Award and remand for an entirely new proceeding would insufficiently respect the value of arbitration and inject the courts further into the arbitration process than Congress has mandated. As such, the Award should be confirmed and this controversy should be put to rest once and for all."

The Court found that the arbitrators determined that the credibility in the case was with the Ryans, and such a determination provided more than a "standard award." The Court additionally noted that the reasoned award was sufficient in light of the failure of Schurtenberger/MTI or their counsel to request further detail from the arbitration panel.

This case does not reshape the law in the 11th Circuit, however, it will stand as an excellent reminder to parties contemplating or involved in arbitration that, unlike the courts, arbitrators are not necessarily required to provide a great deal of detail in their decisions. This could surprise some parties, even in situations where they have asked for a "reasoned award."

The case also highlights potential arbitration issues, namely, when is it appropriate to ask for a "reasoned award." Often parties in arbitration prefer to avoid the "findings of fact and conclusions of law" standard, because such a standard can result in an easily appealable decision in situations where an arbitrator makes a mistake. As we have seen here, a "reasoned" or "standard" award makes an appeal much more difficult. This is fantastic for prevailing parties and a nightmare to those that may be liable for damages. If you find yourself facing or amidst arbitration, you should discuss with your attorney the level of detail or reasoning that may need to be present in the arbitrators' award to minimize confirmation issues.

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