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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

AZOULAY ENTERPRISES, INC., et al., Plaintiffs and Respondents, v. STAPLETON PLAZA HOTEL AND FITNESS CENTER, Defendant and Appellant.	B129241 (Super. Ct. No. BC170779)

APPEAL from a judgment of the Superior Court of Los Angeles County, Frances Rothschild, Judge. Affirmed and remanded with directions.

Greenberg Glusker Fields Claman Machtinger & Kinsella and Norman H. Levine for Defendant and Appellant.

Lana Borsook for Plaintiffs and Respondents.

This is an appeal from a judgment on an order confirming an arbitration award. We affirm the judgment, grant the respondent's request for an award of contractual attorney's fees incurred on appeal, and remand to the trial court to determine the appropriate fee award.

FACTS

In May 1996, Azoulay Enterprises, Inc. (a California corporation doing business as Beverly Hills Premier Tour Operator) booked 200 guest rooms at the Stapleton Plaza Hotel and Fitness Center in Denver, Colorado, for a week in May 1997. In a written contract drafted by Stapleton Plaza, Azoulay and Stapleton Plaza agreed to arbitrate any dispute in accordance with the rules of the American Arbitration Association. They also agreed that the "laws of the City and County of Denver and the State of Colorado" would apply, that any arbitration would be in Denver, Colorado, and that a judgment upon the arbitrator's award "may be entered in any Court having jurisdiction."

In April 1997, Azoulay cancelled its reservation for 100 of the 200 rooms and a dispute arose, apparently about who owed whom and how much. On May 8, in the Los Angeles Superior Court, Azoulay (and its principal, who is included in our references to Azoulay) filed this action against Stapleton Plaza, asking for tort and contract damages, specific performance, and injunctive relief. At the end of June, Stapleton Plaza answered and raised the arbitration agreement as an affirmative defense (invoking the California and Federal Arbitration Acts in support of its right to arbitrate this dispute). In August, by stipulation of the parties and order of the trial court, this action was stayed while the parties arbitrated their dispute in Denver.

In November 1997, Azoulay sent a demand for arbitration to the AAA, and the dispute was ultimately arbitrated in Denver. In October 1998, the arbitrator issued an award in favor of Azoulay in the amount of $87,435. On November 2, 1998, in this action, Azoulay filed a petition to confirm the arbitrator's award. On November 4, in Denver, Stapleton Plaza filed a petition to vacate the arbitrator's award on the ground that Azoulay was represented at the arbitration by California counsel who was not admitted to practice in Colorado. On November 23, in Los Angeles, Stapleton Plaza filed its opposition to Azoulay's petition to confirm the award. Later (while this appeal was pending), the Colorado court denied Stapleton Plaza's motion to vacate the arbitration award, finding that Stapleton Plaza had waived any defect in the arbitration proceedings.

By orders entered in December 1998, in this action, the trial court granted Azoulay's petition to confirm the arbitration award and entered a judgment on that order on the ground that "Colorado law does not require [a California] court to deny confirmation because counsel for [Azoulay] was not licensed to practice" in Colorado. On January 25, 1999, Stapleton Plaza filed a notice of appeal from the judgment.[1]

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[1] While this appeal was pending, Azoulay registered its judgment in Colorado and took steps to collect from two Colorado corporations related to Stapleton Plaza, Cosmopolitan Hotel Systems, Inc. and Plaza Midway Corporation. The corporations asked the Colorado court to set aside the California judgment, but their request was denied on the ground that Azoulay was "entitled to enforce [the] judgment .. . against [the related corporations] to the same extent as against Stapleton Plaza .. . ." On the related corporations' appeal, the Colorado Court of Appeals vacated the judgment and remanded the matter to the Denver trial court to determine certain facts. (*Azoulay Enterprises Inc. v. Stapleton Plaza Hotel and Fitness Center* (June 15, 2000, Colo. Ct. of App. No. 99CA0930) [nonpub. opn.].) On remand, the Denver trial court concluded that the related corporations had appeared in California through an authorized agent and had waived any objection to the jurisdiction of the California court by affirmatively asking the California court to enforce the arbitration agreement. The related corporations' appeal from

DISCUSSION

I.

Stapleton Plaza contends the Colorado court has exclusive jurisdiction to confirm the arbitration award. This is so, according to Stapleton Plaza, because the Colorado arbitration statute defines "court" to mean "any court of competent jurisdiction of this state." (Colo. Rev. Stat., § 13-22-219.) It follows, goes the argument, that only a Colorado court can confirm the arbitration award. We disagree.

The parties agreed that their arbitration would proceed "in accordance with the rules of the American Arbitration Association," and that the arbitrator's award "may be entered in ***any*** court having jurisdiction thereof . . . ." (Emphasis added.) By the parties' express agreement and by the rules of the AAA, they are thus both "deemed to have consented that judgment upon the arbitration award ***may be entered in any federal or state court having jurisdiction thereof."*** (Am. Arbitration Assn., Com. Arbitration Rules (July 1, 1996) §47(c), emphasis added; *Columbine Valley Const. Co. v. Bd. of Directors* (Colo. 1981) 626 P.2d 686, 691.) Since there is no authority for Stapleton Plaza's suggestion that the Colorado statute gives the Colorado courts *exclusive* jurisdiction, and since the California courts have jurisdiction over the subject matter of this arbitration (*In re Lauritzen Kosan Tankers And Chemical Trading, Inc.* (S.D.N.Y. 1995) 903 F.Supp. 635, 637 [an arbitration award made in one state may be confirmed in another state]; *Delta Dental v. Massachusetts, Inc.* (R.I. 1996) 918 F.Supp. 46, 49 [same]), and since Stapleton Plaza consented to the California court's personal

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those further findings is still pending. We deny Stapleton Plaza's request to defer our ruling until after the Colorado appeal is resolved.

jurisdiction when it made a general appearance in this action by answering Azoulay's complaint and affirmatively invoking California's arbitration law (Code Civ. Proc., § 1014; 2 Witkin, Cal. Procedure (4th ed. 1996) Jurisdiction, §§ 184, 190, pp. 747-748, 756-757), that jurisdiction continued to the conclusion of this case, including the confirmation of the arbitration award. (*California Teachers Assn. v. Governing Board* (1984) 161 Cal.App.3d 393, 399-400; *Condee v. Longwood Management Corp.* (2001) 88 Cal.App.4th 215, 219.)

The cases cited by Stapleton Plaza are inapposite. (*Stephanie's v. Ultracashmere House, Ltd.* (Ill.Ct.App. 1981) 424 N.E.2d 979; *Tru Green Corp. v. Sampson* (Ky.Ct.App. 1991) 802 S.W.2d 951; *State ex rel. Tri-City Const. Co. v. Marsh* (Mo.Ct.App. 1984) 668 S.W.2d 148.) While it is true that the reviewing courts in each of these cases held that one state should not enforce an arbitration award made in another state, they did so on plainly distinguishable facts -- there had been no pre-arbitration proceedings in the states in which confirmation was sought. In any event, these cases are inconsistent with the cases decided under the Federal Arbitration Act -- which plainly applies to this interstate dispute and which was relied on by Stapleton Plaza as an affirmative defense. (*Cortez Byrd Chips, Inc. v. Bill Harbert Constr. Co.* (2000) 529 U.S. 193, 201-202.)[2]

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[2] In light of the Colorado court's order denying Stapleton Plaza's motion to vacate the arbitration award, we summarily reject Stapleton Plaza's suggestion that a Colorado court would reach a different conclusion than that reached by the trial court and by us in this action. For the same reason, we reject Stapleton Plaza's suggestion that principles of comity compel us to yield to the Colorado courts.

II.

Lana Borsook, a California lawyer, has represented Azoulay since June 1998 (she substituted in as attorney of record in this case on June 23, and she represented Azoulay at the arbitration, which was held in July 1998). She is not admitted to practice law in Colorado. Based on Ms. Borsook's involvement in the arbitration, Stapleton Plaza contends (as it did in the Colorado court) that the arbitration award is void as matter of law. We disagree.

Assuming (1) that Colorado law prohibits the unauthorized practice of law (which it does [Colo. Rev. Stat., § 12-5-101]), and assuming (2) that Ms. Borsook could not appear in a Colorado court (which she couldn't [*Bennie v. Triangle Ranch Co.* (Colo. 1923) 216 P. 718]), and (3) ignoring the rules of the American Arbitration Association -- which provide that a party to an arbitration may be "represented by counsel or other authorized representative" (Am. Arbitration Assn., Com. Arbitration Rules, *supra*, § 22; but see *Birbrower, Montalbano, Condon & Frank v. Superior Court* (1998) 17 Cal.4th 119, 134, fn. 4 [where the California Supreme Court refused to allow unlicensed legal practice in arbitration proceedings]) -- and assuming (4) that Stapleton Plaza has standing to complain about its opponent's representation by a non-admitted lawyer, and assuming (5) that Stapleton could somehow show prejudice (which it has not even attempted to do), the bottom line is that Stapleton Plaza's failure to timely object to Ms. Borsook's participation in the arbitration -- at the arbitration, at which time Stapleton Plaza knew everything it knows now about Ms. Borsook's admission to practice law -- constituted a waiver of whatever objection Stapleton Plaza might otherwise have had. (*In re the Matter of Arbitration Between Stapleton Plaza Hotel and Fitness Center v. Azoulay Enterprises, Inc.*, District Court, City and County of Denver, State of Colo., Case No. 98CV8430,

Order of Feb. 23, 1999, p. 2 [Stapleton Plaza's "failure to timely object to Azoulay's counsel constitutes a waiver of that objection"].)[3]

III.

In its respondent's brief, Azoulay contends it is entitled to its attorney's fees if it prevails on this appeal. We agree (and note that Stapleton Plaza has conceded the point by its failure to contend otherwise in its reply brief).

In the contract it drafted, Stapleton Plaza included a provision that permitted it to recover any reasonable "cost of collection, including reasonable attorney's fees." Under Civil Code section 1717, subdivision (a), that provision must be interpreted to permit the prevailing party, not just Stapleton Plaza, to recover its attorney's fees. Under *Ajida Technologies, Inc. v. Roos Instruments, Inc.* (2001) 87 Cal.App.4th 534, 552, a contract provision that provides for the recovery of fees incurred in an arbitration will be construed to provide for the recovery of fees in judicial proceedings, including an appeal from the judgment

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[3] In its opening brief, Stapleton Plaza states that "it did not know Ms. Borsook's status at the time of the arbitration hearing," but it does not cite to the record and it does not explain when or how it later discovered this fact. The record, which includes a declaration from Ms. Borsook, shows that Stapleton Plaza knew from Ms. Borsook's resume -- a copy of which was sent to Stapleton Plaza five weeks before the arbitration award was issued -- and from her letterhead that she was not admitted to practice in Colorado. Had a timely objection been made, Ms. Borsook could have made the appropriate application to appear *pro hoc vice* in the Colorado arbitration. (*Marino v. Writers Guild of America, East, Inc.* (9th Cir. 1993) 992 F.2d 1480, 1484 [a party may not sit idle through an arbitration procedure and then collaterally attack that procedure on grounds not raised before the arbitrator when the result turns out to be adverse].) The only other document in the record is a declaration from the "Attorney Registration Clerk" of the Colorado Supreme Court attesting, on November 19, 1998 (after the arbitration hearing) that Ms. Borsook is not admitted to practice in Colorado. The date of the certificate is immaterial since it has nothing to do with what Stapleton Plaza knew or when it knew it, and there is nothing in the certificate to controvert Ms. Borsook's testimony.

confirming the award. Since Azoulay is the prevailing party on this appeal, it is entitled to recover both its attorney's fees and its costs.

DISPOSITION

The judgment confirming the arbitration award is affirmed, and the cause is remanded to the trial court with directions to determine the amount of attorney's fees and costs reasonably incurred by Azoulay in responding to this appeal, and to order Stapleton Plaza to pay that amount to Azoulay and its lawyer.

NOT TO BE PUBLISHED.

VOGEL (MIRIAM A.), J.

We concur:

SPENCER, P.J.

ORTEGA, J.