**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A08-1472**

American Employers
Insurance Company, et al.,
Respondents,

vs.

Robinson Outdoors, Inc.
f/k/a Robinson Laboratories, Inc,
Appellant.

**Filed June 9, 2009**
**Affirmed**
**Crippen, Judge**[*]

Goodhue County District Court
File No. 25-CV-06-702

Kevin R. Lewis, Foley & Mansfield, PLLP, 250 Marquette Avenue, Suite 1200, Minneapolis, MN 55401 (for respondents)

Michael C. Mahoney, Mahoney Anderson, LLC, 539 East Lake Street, Wayzata, MN 55391 (for appellant)

Considered and decided by Johnson, Presiding Judge; Ross, Judge; and Crippen, Judge.

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

## U N P U B L I S H E D  O P I N I O N

**CRIPPEN**, Judge

Appellant Robinson Outdoors, Inc. challenges the district court order denying its motion to vacate, amend, or modify the arbitration panel's order requiring it to sign a security agreement. Appellant primarily contends that the arbitration panel did not have authority to order it to sign a security agreement. Because the parties' arbitration agreement provides authority for the arbitration panel to order the execution of a security agreement, we affirm.

## FACTS

In December 2005, the parties agreed to arbitrate whether the policies issued by respondents American Employers Insurance Company, et al., covered a judgment against appellant. As part of an agreement to arbitrate, respondents entered into an agreement with appellant regarding indemnification. The parties finalized this agreement to arbitrate in a "Memo of Understanding."

In paragraph two of the memo, the parties agreed that the arbitration should address whether the policies provide coverage to fully or partly indemnify appellant for a judgment it had suffered. The same paragraph states that "[i]n the event that it is determined there is no coverage, or an amount less than the sum paid to settle the litigation, [appellant] will be obligated to repay [respondents] all such amounts."

In paragraph three of the memo, the parties agreed that "[a]ll other claims known or unknown, including legal fees and defense costs are hereby waived except as expressly allowed herein." And in paragraph six, the parties agreed that, in the event of a

determination that appellant must reimburse respondents, due to an arbitration decision against coverage, "[appellant] agrees to provide a security interest in the assets of [appellant] for such amount, together with interest at the judgment rate, until paid."

Finally, in paragraph nine, the parties agreed that "there shall be no further litigation, of any type, over any issue, except as provided herein. The parties expressly release and/or waive all such other claims, against the other."

In June 2007, after the presentation of evidence, the arbitration panel concluded that insurance coverage was excluded and then ordered appellant to repay respondents $3,400,000. Following the January 2008 district court order confirming the arbitration award, directing respondents to pay $425,747.55 to appellant for attorney fees, and instructing that the two debts should offset, appellant challenged the judgment in an appeal to this court. *Am. Employers Ins. Co. v. Robinson Outdoors, Inc.*, No. A08-510, 2009 WL 305462, at *1 (Minn. App. Feb. 10, 2009). In the first appeal, appellant argued that the arbitration panel exceeded its authority when it examined the merits of the underlying litigation to determine coverage. *Id.* at *3-*5. This court affirmed, concluding that the scope of the arbitration was broader than the explicit terms of the memo. *Id.*

Following the initial decision by the arbitration panel, the parties disagreed as to the terms of the security-interest agreement as stated in the arbitration memo. Before the district court had acted on respondents' motion to confirm the initial award, the arbitration panel issued a show-cause order requesting appellant to submit a proposed security agreement for review. Appellant objected to the show-cause order, but finally

submitted its proposed agreement late in October 2007, after respondents submitted a proposed agreement. In November 2007 the arbitration panel issued an order directing appellant to "sign [respondents'] proposed Security Agreement." Subsequently, the district court issued an order confirming the initial award; still later, the court confirmed the arbitration demand for signing a security agreement and denied appellant's motion to vacate, amend, or modify this signing-requirement order.

## D E C I S I O N

### 1.

Appellant argues that the district court erred in denying appellant's motion to vacate, amend, or modify the arbitration award because the arbitration panel exceeded its authority when it ordered appellant to sign the proffered security-interest agreement.

Respondents contend that when appellant executed the security-interest agreement, its appeal regarding that agreement was rendered moot. Following the district court's last confirmation order, appellant executed the security agreement in October 2008 under the threat of the court's contempt order.

"An issue is not moot if a party could be afforded effectual relief." *Hous. & Redev. Auth. ex rel. City of Richfield v. Walser Auto Sales, Inc.*, 641 N.W.2d 885, 888 (Minn. 2002). In the context of property rights, "[w]here a landlord's right to possession of property rests only on an unlawful detainer judgment, execution of the associated writ of restitution does not moot an appeal of the underlying judgment." *Real Estate Equity Strategies, LLC v. Jones*, 720 N.W.2d 352, 355 (Minn. App. 2006) (quotation omitted) ("Because REES obtained possession of the property based on the eviction judgment, the

owners' vacation of the property was not voluntary, and this appeal is not moot."). Appellant's execution of the security-interest agreement does not render the appeal moot. Appellant's execution was merely an enforcement of the district court's order, and the execution was contingent upon the propriety of the court's order. Thus, if appellate review resulted in correcting either the district court's confirmation decisions or its later contempt order, appellant's execution of the security-interest agreement would not be valid. Accordingly, this court is capable of granting effectual relief, and appellant's challenge to the legality of the arbitration panel's security-agreement order is not moot.

"[W]hether a party has agreed to arbitrate a particular dispute is a matter of contract interpretation," which "is subject to de novo review." *EEC Prop. Co. v. Kaplan*, 578 N.W.2d 381, 384 (Minn. App. 1998), *review denied* (Minn. Aug. 31, 1998). An arbitration award "will be vacated only upon proof of one or more of the grounds stated in Minn. Stat. § 572.19 . . . and not because the court disagrees with the decision on the merits." *AFSCME Council 96 v. Arrowhead Reg'l Corr. Bd.*, 356 N.W.2d 295, 299-300 (Minn. 1984). The court is to vacate an award where the arbitrators "exceeded their powers." Minn. Stat. § 572.19, subd. 1 (2008). And the court is not to vacate an arbitration award because it "could not or would not be granted by a court of law or equity." *Id.*

Upholding the purpose of the statute, the Minnesota Supreme Court has held that vacation must occur upon a showing that arbitrators "clearly exceeded [their] powers under the agreement to submit a dispute to arbitration." *State v. Berthiaume*, 259 N.W.2d 904, 910 (Minn. 1977). When making this decision, "this court considers whether an

award draws its essence from the parties' agreement." *Wolfer v. Microboards Mfg., LLC*, 654 N.W.2d 360, 366 (Minn. App. 2002), *review denied* (Minn. Feb. 26, 2003). "[W]e should resolve any doubts concerning the scope of arbitrable issues in favor of arbitration . . . ." *Johnson v. Piper Jaffray, Inc.*, 530 N.W.2d 790, 795 (Minn. 1995). "When parties voluntarily stipulate to an order to arbitrate, it is fair to hold [them] to a broad reading of [the] scope." *Morrison v. N. States Power Co.*, 491 N.W.2d 675, 677 (Minn. App. 1992) (alterations in original) (quotation omitted), *review denied* (Minn. Jan. 15, 1993).

The record demonstrates that the arbitration panel had authority to order appellant to execute the security agreement. First, the memo expressly provides for a security agreement; paragraph six of the memo explicitly states that if the arbitration panel determines that appellant owes money to respondents, then appellant must provide respondents with a security interest in its assets. Because the arbitration panel determined that appellant owed respondents money, it is evident that the memo contemplated appellant executing a security agreement.

Second, the language in the memo detailing the scope of the arbitration further shows that the arbitration panel had authority. Paragraphs three and nine of the memo expressly state that all issues, except those provided in the memo are waived; and these paragraphs do not directly restate the covered issues. Accordingly, given that paragraph six explicitly provides for the security agreement, it is necessary to conclude that the memo contemplates the arbitration panel issuing orders regarding the security agreement.

And nothing in the memo suggests that respondents intended to waive their declared right to a security agreement.

This reasoning is consistent with this court's broad reading of the memo in the first appeal. In that appeal, this court concluded that if the parties had intended to limit the arbitration panel's authority to specific issues, "it is reasonable to presume that they would have clearly said so . . . ." *Am. Employers Ins. Co.*, 2009 WL 305462, at *4. Similarly, because the memo does not limit the scope of the arbitration to any specific issues and specifically contemplates appellant providing the security agreement, the arbitration panel did not clearly exceed its authority when it ordered appellant to execute the security agreement.

Third, as identified in the first appeal, "[w]hen parties voluntarily stipulate to an order to arbitrate, it is fair to hold [them] to a broad reading of [the] scope." *Morrison*, 491 N.W.2d at 677 (alterations in original) (quotation omitted). In addition, "[w]e should resolve any doubts concerning the scope of arbitrable issues in favor of arbitration . . . ." *Johnson*, 530 N.W.2d at 795. Because the memo provides for a security agreement and does not expressly limit the arbitration panel from deciding issues regarding the security agreement, to hold that the arbitration panel exceeded its authority here would violate the established policies favoring arbitrations.

Finally, it is significant to observe that the arbitration panel awarded respondents $3,400,000 in reimbursement because it found that there was no insurance coverage. It is undisputed that the arbitration panel was authorized to determine the amount of money owed if there was no insurance coverage, and appellant agreed in the memo to reimburse

respondents in the event of such a decision, but nowhere in the memo does it explicitly allow the arbitration panel to order reimbursement. Yet appellant has not contested this authority of the arbitration panel, likely because the order for reimbursement effectuates the intent of the memo. Similarly, although the memo does not explicitly state that the arbitration panel can order appellant to provide the security interest, the memo states that appellant is obligated to provide a security interest if it owes respondents money. In order to effectuate the intent of the memo, the arbitration panel had the authority to order appellant to provide a security interest to respondents.

In addition, appellant contends that when the arbitration panel issued its order relating to whether there was insurance coverage, the panel lost its authority to order appellant to provide the security interest.[1] A final decision on arbitrated issues generally ends the arbitrator's authority to issue further orders. *See Menahga Educ. Ass'n v. Menahga Indep. Sch. Dist. No. 821*, 568 N.W.2d 863, 867 n.3 (Minn. App. 1997), *review denied* (Minn. Nov. 18, 1997). Because we conclude that the arbitration panel had the authority to issue the order directing appellant to execute the security interest, the arbitration panel still had authority to act on this topic after its order for reimbursement.

**2.**

Appellant also argues that the district court erred in ordering the attorney fees and insurance repayment judgments to offset. But "issues considered and adjudicated on a first appeal become the law of the case and will not be reexamined or readjudicated on a

[1] Respondents argue that appellant has waived the consideration of a related question arising from the resignation of an arbitration panel member. Appellant neither briefed nor argued this issue; accordingly, any argument regarding this point is waived.

second appeal of the same case." *Lange v. Nelson-Ryan Flight Serv., Inc.*, 263 Minn. 152, 155, 116 N.W.2d 266, 269 (1962). In appellant's first appeal, it contended that the district court erred in offsetting the two debts into a single, lump-sum obligation. *Am. Employers Ins. Co.*, 2009 WL 305462, at *5. This court held that the memo "does not preclude a lump-sum reimbursement award." *Id.* Because this issue was already raised and decided in a prior appeal, the doctrine of the law of the case precludes review of this issue.

**Affirmed.**