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The Business Court of Texas,
1st Division

DEALER NATION AUTOMOTIVE, LLC and DNA AUTOS, LLC, *Plaintiffs* v. CITY VENTURES, LLC; MADISON AUTOMOTIVE GROUP, LLC; UPTOWN CDJR, LLC; BUICK GMC SDNC, LLC; and SUB OF EL CAJON, LLC, *Defendants*	§ § § § § § § § § § §	Cause No. 26-BC01B-0068

MEMORANDUM OPINION AND ORDER

[¶ 1] This case concerns (i) under what circumstances does an arbitrator's award impose a fiduciary-like duty of good faith on one party when that party is given the power to exercise complete control over an opposing party's assets and obligations involving ongoing litigation; (ii) when is an arbitrator's award non-confirmable because it is not "mutual, final, and

definite" under 9 U.S.C. § 10(a)(4); and (iii) what is the proper remedy if the award cannot be confirmed because of that reason.

[¶ 2] Here, the court concludes that the award is non-confirmable, in part, because it (i) gives one party complete control over the other party's rights and obligations in on going third-party litigation and thereby (ii) leaves open future debates regarding whether the prevailing party abused a legal duty to exercise its control fairly. The court exercises its discretion to not remand that issue to the arbitrator because future awards would be subject to the same infirmity.

Background

[¶ 3] Plaintiffs Dealer Nation Automotive, LLC and DNA Autos, LLC's (together, Dealer Nation), filed their Petition for Confirmation of Arbitration Award and Motion for Entry of Conforming Judgment (Petition to Confirm). Defendants City Ventures, LLC, Madison Automotive Group, LLC, Uptown CDJR, LLC, Buick GMC SDNC, LLC, and Sub of El Cajon, LLC (collectively, the Dealerships) filed their Answer and Application to Vacate Arbitration Award.

[¶ 4] The parties agreed to remove the case to this court, after which the Dealerships filed an Amended Original Answer and Application to Vacate

Arbitration Award (Motion to Vacate). Dealer Nation responded, and the Dealerships replied.

[¶ 5] Dealer Nation asks the court to confirm the following award (Final Award):

i. Buick GMC SDNC, LLC shall pay to DNA Autos, LLC **$449,657.20** ($275,000 damages + $138,000 attorneys' fees + $36,657.20 interest);

ii. Sub of El Cajon, LLC shall pay to DNA Autos, LLC **$552,059.16** ($338,000 damages + $169,000 attorneys' fees + $45,059.16 interest);

iii. Buick GMC SDNC, LLC and Sub of El Cajon, LLC, jointly and severally, shall pay to DNA Autos, LLC **$164,410.25** ($36,185.93 damages + $15,000 attorneys' fees + $4,825.45 interest + $108,398.87 expenses);

iv. Uptown CDJR, LLC, City Ventures, LLC, and Madison Automotive Group, LLC, jointly and severally, shall pay to Dealer Nation Automotive, LLC **$6,600,130.10** ($4,890,555 damages + $950,000 attorneys' fees + $651,176.23 interest +$108,398.87 expenses);

v. Should the Dealerships seek, but fail, to obtain vacatur of the final award, the Dealerships owe Dealer Nation: $35,000 for a contested District Court Confirmation Proceeding; $25,000 for an appeal to the Fifth Circuit or Dallas Courts of Appeals; $10,000 for a Petition to the Texas Supreme Court or the United States Supreme Court; and $25,000 for Briefing and Oral Argument at either the Texas Supreme Court or the United States Supreme Court; and

vi. Buick GMC SDNC, LLC and Sub of El Cajon, LLC shall pay for the ongoing defense of DNA Autos, Thomas Hervey, and Ron

> Bowie II in *Martin Lozano et al v. Sub of El Cajon, LLC et al.*, No. 37-2023-00028567-CU-OE-CTL, as well as fully fund any settlement and/or a final, non-appealable judgment in that matter.

[¶ 6] Dealer Nation also asks for its reasonable and necessary attorneys' fees incurred in this confirmation proceeding.

[¶ 7] The Dealerships ask the court to vacate the entirety of the Final Award under 9 U.S.C. § 10(a)(4), but at a minimum to vacate (i) damages arising out of the parties' bulk-sale agreement, (ii) prospective relief concerning the *Lozano* lawsuit (the prospective *Lozano* lawsuit relief), (iii) the $950,000 award of attorney's fees, and (iv) the conditional judicial-review fees.

[¶ 8] Having considered the pleadings, applicable law, and the parties' submissions, and oral argument; the court GRANTS-IN-PART and DENIES-IN-PART the Motion to Vacate. Specifically, the court grants the Motion to Vacate only as to the prospective *Lozano* lawsuit relief.

Discussion

[¶ 9] Paragraph F on page 19 of the arbitrator's Corrected Final Judgment states the following:

> Buick GMC SDNC, LLC and Sub of El Cajon, LLC shall (i) pay for the ongoing defense of DNA Autos, LLC, Thomas Hervey, and

> Ron Bowie II in Lozano (sic) in *Martin Lozano et al v. Sub of El Cajon, LLC et al.*, No. 37-2023-00028567-CU-OE-CTL and (ii) fund fully a settlement, if any, of the claims against them or a final, non-appealable judgment, if any, against them.

[¶ 10] The Dealerships argue, *inter alia*, that the court should vacate Final Award "Paragraph F" because it is not "mutual, final, and definite." *See* 9 U.S.C. § 10(a)(4). The court agrees.

[¶ 11] A court may vacate an arbitration award under only narrow circumstances. One such circumstance is "where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made." 9 U.S.C. § 10(a)(4).

[¶ 12] "As a general rule, a final and definite arbitration award must both resolve all the issues submitted to arbitration, and determine each issue fully so that no further litigation is necessary to finalize the obligations of the parties under the award." *Lummus Glob. Amazonas S.A. v. Aguaytia Energy del Peru S.R. Ltda.*, 256 F. Supp. 2d 594, 639 (S.D. Tex. 2002) (internal quotations omitted).

[¶ 13] An award that does not state a specific figure is not indefinite for that reason alone. For example, an arbitrator may leave some part of the award to be determined later if the calculation requires "only the ministerial

computation of the amount owed to [the awardee]" based on a "computation [that is] easily ascertainable from the documents" at issue. *Id.* at 640 (internal quotations omitted); *compare id.* at 641 ("If an arbitrator's award not only fails to state a sum certain, but also provides a formula that leaves disputes and is likely to require further proceedings, the courts vacate those portions of the award and remand.").

[¶ 14] Here, the *Lozano* lawsuit is a California wage and hour class action filed by former employees of Buick GMC SDNC, LLC and Sub of El Cajon, LLC (together, the Stores). The *Lozano* plaintiffs sued DNA Autos, LLC, Thomas Hervey, and Ron Bowie II (collectively, DNA Autos) together with Daniel White and the Stores, claiming unpaid wages and statutory damages. The lawsuit remains pending with no settlement or final judgment.

[¶ 15] The Dealerships complain that Paragraph F leaves open future disputes between the parties because it "provides no amount, formula, rate, cap, covered-claim standard, allocation among beneficiaries, allocation between covered and uncovered claims, settlement-consent procedure,

defense-control mechanism, or proof-of-payment process."[1] The court agrees at least as to issues of consent and control.

[¶ 16] Paragraph F (i) makes the Stores entirely responsible for the *Lozano* lawsuit costs, but (ii) DNA Autos controls its own defense and settlement decisions. Stated simply, the award gives DNA Autos sole control over how it spends the Stores' money.

[¶ 17] The court concludes that this situation imposes on DNA Autos a fiduciary-like responsibility to act fairly towards the Stores, because the award gives DNA Autos sole and unfettered control over the Stores' property (cash) and obligations in the *Lozano* suit. Thus, the Stores must trust that DNA Autos will spend the Stores money fairly and in good faith. *See Tex. Bank & Tr. Co. v. Moore*, 595 S.W.2d 502, 507 (Tex. 1980) (an informal fiduciary duty—that is, not a technical fiduciary relationship like an attorney client relationship—arises "whenever one party trusts and relies upon another, …" (citing *Kinzbach Tool Co. v. Corbett-Wallace Corp.,* 160 S.W. 509, 513 (Tex. 1942)).

[1] Motion to Vacate at 17.

[¶ 18] This resulting separation of control and "ownership" (here, DNA Autos' complete control over the Stores' litigation obligations) is why the law imposes certain fiduciary-like responsibilities. *See, e.g.*, *Crenshaw v. Swenson*, 611 S.W.2d 886, 890 (Tex. App.—3d Dist. 1980, writ ref'd n.r.e.) (a general partner in a limited partnership owes a fiduciary duty to the limited partners because of its control over the entity); *Strebel v. Wimberly*, 371 S.W.3d 267, 279-82 (Tex. App.—1st Dist. 2012, pet denied.) (party exercising control over limited partnership owes duties to the partnership); *see also Matter of Bennett*, 989 F.2d 779, 789 (5th Cir. 1993) ("[T]he issue of control has always been the critical fact looked to by the courts in imposing [fiduciary] responsibilities.").

[¶ 19] Similarly, executive mineral interest-rights cases recognize a fiduciary-like duty of utmost good faith and fair dealing because the non-executive "owns the minerals in place but does not have the right to lease them," and "[t]he law has never left non-executive interest owners wholly at the mercy of the executive." *Lesley v. Veterans Land Bd. of State*, 352 S.W.3d 479, 487-89 (Tex. 2011). The duty "emerged in recognition of the potential for abuse inherent in this division of rights." *KCM Fin. LLC v. Bradshaw*, 457 S.W.3d 70, 81-82 (Tex. 2015).

[¶ 20] Because Paragraph F imposes a fiduciary-like duty on DNA Autos regarding how it manages the *Lozano* litigation using the Stores' resources and rights, there may be future disputes between the parties regarding DNA Autos' exercise of its control over the Stores' Lozano lawsuit obligations.

[¶ 21] Moreover, the conclusion is the same if Paragraph F were in substance construed as an indemnity. The defining feature of indemnity is a duty to bear another party's liability to a third party. *See B & B Auto Supply, Sand Pit, & Trucking Co. v. Cent. Freight Lines, Inc.*, 603 S.W.2d 814, 16 (Tex. 1980) ("Application of the doctrine of indemnity results in shifting the entire burden of loss from one tortfeasor to another"). Paragraph F requires the Stores to pay, out of their own funds, the defense costs and any settlement or judgment incurred by DNA Autos arising from third-party claims.

[¶ 22] Courts ask whether an indemnitee's settlement was "reasonable" before shifting its cost. *See S&B Engineers & Constructors, Ltd. v. Scallon Controls, Inc.*, 734 S.W.3d 869, 875 (Tex. 2026). Here, Paragraph F made no mention of this requirement. Its unconditional command to the Stores to (i) "pay for the ongoing defense of DNA Autos" and (ii) "fund fully a settlement, if any" may be read to displace any such limit or to leave it in

place. Resolving that question would require this court to construe the award, which it may not do. *See Flender Corp. v. Techna-Quip Co.*, 953 F.2d 273, 279-80 (7th Cir. 1992).

[¶ 23] Therefore, pursuant to 9 U.S.C. § 10(a)(4) the court vacates Paragraph F of the Final Award for being non-final or non-definite. *See Lummus*, 256 F.Supp.2d at 641 (an award that "does not resolve the parties' anticipated disputes" must be vacated).

[¶ 24] The next issue concerns what remedy the court may apply to the vacated part of the award. If an award is vacated and the time within which *the arbitration agreement* required the award to be made has not expired, the court may, in its discretion, direct a rehearing by the arbitrators. 9 U.S.C. § 10(b).

[¶ 25] That time limit does not affect this case because the parties' Management Agreements do not restrict the timing of the arbitration award. Specifically, although the Management Agreements incorporate American Arbitration Association Commercial Rules, and Rule R-47 imposes a thirty-day time limit, courts have declined to treat an incorporated institutional deadline as a bar to remand. *See Thomas Kinkade Co. v. Hazlewood*, No. C 06 7034 MHP, 2007 WL 2462149 at *2 (N.D. Cal. Aug. 29, 2007).

[¶ 26] However, this case does not involve a failure by the arbitrator to determine an issue required to be decided. Rather, it represents an attempt to adjudicate an inherently speculative future issue. Even upon remand, absent a final resolution of the *Lozano* lawsuit, the arbitrator would remain unable to determine the reasonableness or lawfulness of future defense costs and settlement amounts controlled by DNA Autos without the risk of an anticipated dispute. Thus, the court exercises its discretion to not remand the case to the arbitrator to address this issue. Accordingly, the court vacates that part of the Final Award.[2]

Conclusion

[¶ 27] Accordingly, the Motion to Vacate is otherwise DENIED. Therefore, the Petition to Confirm is GRANTED as to all grounds except the prospective *Lozano* lawsuit relief. The court orders the parties to confer on a plan to resolve Dealer Nation's request for attorneys' fees incurred in this action and to submit a proposed final judgment (or proposed final judgments if they cannot agree) consistent with this Memorandum Opinion and Order.

[2] The court's ruling is without prejudice to the parties' ability to arbitrate the *Lozano* lawsuit issue in the future—for instance, once the litigation has concluded.

It is so ORDERED.

BILL WHITEHILL
Judge of the Texas Business Court,
First Division

SIGNED: November 2, 2026

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