

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2008 CA 0994

EAST BATON ROUGE SEWERAGE COMMISSION

VERSUS

THE MOSTAFA AND DONNA KHOSRAVANIPOUR  
CHILDREN'S TRUST NO. 1

C/W

2008 CA 0995

PARISH OF EAST BATON ROUGE

VERSUS

THE MOSTAFA AND DONNA KHOSRAVANIPOUR  
CHILDREN TRUST NO. 1

**DATE OF JUDGMENT:** FEB 13 2009

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT  
(NOS. 382,698 AND 398,966), PARISH OF EAST BATON ROUGE  
STATE OF LOUISIANA

THE HONORABLE CURTIS A. CALLOWAY, JUDGE

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BEFORE: KUHN, GUIDRY, AND GAIDRY, JJ.

**Disposition:** AFFIRMED.

*Guidry, J. concurs in the result.*

**KUHN, J.**

Plaintiffs appeal a district court judgment denying their motion to confirm an arbitration award and granting the reconventional demand of defendant to vacate the award. We affirm, concluding the arbitration award was properly vacated because the arbitrator exceeded his authority in making the award after his power had terminated pursuant to La. C.C. art. 3132(1).

### **PROCEDURAL AND FACTUAL BACKGROUND**

In 1992, the East Baton Rouge Parish Sewerage Commission filed suit to expropriate property owned by the Mostafa and Donna Khosravanipour Children's Trust No. 1 for a sewer servitude. To compensate for the estimated value of the servitude, the Sewerage Commission deposited \$33,247.00 into the court registry. The following year, the Parish of East Baton Rouge filed suit to expropriate property located in the same tract of land for a drainage servitude and roadway right-of-way. The Parish deposited \$372,769.00 into the registry of the court as the estimated value of the property taken. The Trust filed an answer and reconventional demand in each expropriation suit seeking additional compensation. The two suits were ultimately consolidated for trial. The Trust eventually obtained an order to withdraw the deposited funds.

The parties discussed arbitration of this matter, but never confected a written arbitration agreement. Nevertheless, John Perry was selected as arbitrator and an arbitration hearing was scheduled for September 6, 2006. A few days before the hearing, the Parish produced new appraisals performed by John Doiron that indicated for the first time the Parish might be entitled to a partial refund of the amounts originally deposited as compensation. The Trust filed a motion in limine to exclude Mr. Doiron's testimony and report on the basis that: (1) the

Trust had insufficient time to prepare a response to the appraisal report due to its late receipt; and (2) the Parish did not specially plead “special benefits” within twenty days of trial as required by La. R.S. 48:456.1. The arbitrator denied the motion in limine, but held the matter open for another hearing on December 5, 2006, to allow the Trust an opportunity to present additional evidence in response to the new appraisal report. The final evidence was submitted on that date.

The arbitrator issued a preliminary arbitration opinion on July 6, 2007. Following a conference call with counsel, he issued his final arbitration opinion on July 25, 2007. The arbitration award provided that the Parish was entitled to a refund from the Trust in the amount of \$210,000.00, together with legal interest from the date the deposited funds were withdrawn from the court registry. The Trust was also ordered to reimburse the Parish \$12,500.00 for expert fees and costs.

On August 13, 2007, the Parish filed a motion in district court to confirm the arbitration award as the judgment of the court pursuant to La. R.S. 9:4209. The Trust answered and filed a reconventional demand to vacate the award on the following grounds: (1) the arbitrator lacked or exceeded his power or engaged in misconduct by conducting the arbitration without a written arbitration agreement; (2) the arbitrator exceeded his power or engaged in misconduct by conducting the arbitration without taking an oath; (3) the arbitrator either exceeded his power or lacked power to render an arbitration award more than three months after the evidence was submitted to him for decision; and (4) the arbitrator exceeded his power or engaged in misconduct in denying the motion in limine to exclude the deposition and appraisal report of John Doiron.

Following a hearing, the district court denied the motion to confirm and rendered judgment in favor of the Trust vacating the arbitration award. In its written reasons for judgment, the court stated:

The final arbitration award was rendered on July 25, 2007. LA CC Art. 3105 states that an arbitrator has three months from submission to make a decision. Under LA C.C. Art. 3132, the award is null if given after the expiration of the three month period provided by law. ... Further, it is clear that the arbitrator did not render a decision for ten (10) months. The ten month period of time exceeded the time allowed to render a valid award.

The parties had no written arbitration agreement. Furthermore, [the arbitrator] rendered his decision more than three months after the evidence was submitted to him for decision. [The arbitrator] did not take an oath to his duties and responsibilities as required by LA CC 3111. Finally, [the arbitrator] relied upon the appraisal of John Doiron, which was not supplied to the Trust until five days before the hearing.

The Parish took the instant appeal, arguing the district court erred in vacating, rather than confirming, the arbitration award.

### **LAW AND ANALYSIS**

The Parish contends the district court erred because it was required by La. R.S. 9:4209 to grant its motion to confirm the arbitration award since none of the statutory grounds for vacating, modifying, or correcting an arbitration award were established. This provision provides that, upon timely motion for an order confirming an arbitration award, a district court “shall” grant the order unless the arbitration award is vacated, modified, or corrected as provided by La. R.S. 9:4210 and 9:4211. The Parish maintains the Trust has failed to establish any of the statutory grounds enumerated in La. R.S. 9:4210 and 9:4211.<sup>1</sup>

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<sup>1</sup> Louisiana Revised Statutes 9:4211 provides grounds for modifying or correcting an arbitration award. Since the district court vacated the arbitration award in this case, rather than modifying or correcting it, the provisions of La. R.S. 9:4211 are not relevant.

Louisiana Revised Statutes 9:4210 provides the following grounds for vacating an arbitration award:

A. Where the award was procured by corruption, fraud, or undue means.

B. Where there was evident partiality or corruption on the part of the arbitrators or any of them.

C. Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy, or of any other misbehavior by which the rights of any party have been prejudiced.

D. **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. [Emphasis added.]

Louisiana jurisprudence provides that the statutory grounds enumerated in La. R.S. 9:4210 are the exclusive grounds for vacating an arbitration award. See *Firmin v. Garber*, 353 So.2d 975, 977 (La. 1977); *JK Developments, LLC v. Amtek of Louisiana, Inc.*, 07-1825, pp. 5-7 (La. App. 1st Cir. 3/26/08), 985 So.2d 199, 202-03, *writ denied*, 08-0889 (La. 6/20/08), 983 So.2d 1276.

Based on our review, we disagree with the Parish's assertion that no statutory ground exists to justify the district court vacating the arbitration award. The record reveals the final submission of evidence was made to the arbitrator on December 5, 2006, and his final arbitration award was not rendered until July 25, 2007, a period in excess of seven months. Louisiana Civil Code article 3105A provides that "[i]f the submission<sup>[2]</sup> does not limit any time, the power of the arbitrators may continue in force during three months from the date of the

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<sup>2</sup> Louisiana Civil Code article 3099 provides, "A *submission* is a covenant by which persons who have a lawsuit or difference with one another, name arbitrators to decide the matter and bind themselves reciprocally to perform what shall be arbitrated."

submission, unless the parties agree to revoke it.” Additionally, La. C.C. art. 3132(1) specifically provides that “[t]he submission and power given to the arbitrators are put at an end by ... the expiration of the time limited, either by the submission or by law, though the award should not be yet rendered.”

In *Hart v. Dupont*, 138 La. 15, 69 So. 858 (1915), the Louisiana Supreme Court applied the civil code articles on arbitration to hold that, in the absence of an agreement fixing a different duration, a submission terminates at the expiration of three months, the delay fixed by law. The Supreme Court further held that an arbitration award given after the expiration of the delay is null, in the absence of an agreement extending the duration of the arbitrator’s power. *Hart*, 138 La. at 17, 69 So. at 858; see also *E.V. Benjamin Co. v. Royal Mfg. Co.*, 172 La. 965, 975, 136 So. 19, 22 (1931) (failure to make an award within three months of submission fatal to the award).

Since there was no submission or agreement otherwise fixing or extending the duration of the arbitrator’s power in this case, his power was limited to the three-month period provided by La. C.C. art. 3105(A), upon the expiration of which his power terminated by operation of law. See La. C.C. art. 3132(1); see also *Hart*, 138 La. at 17, 69 So. at 858. The arbitrator failed to make his award within this delay. Accordingly, at the time the arbitration award was made, the arbitrator did not possess the power to make the award. The arbitrator exceeded his power in making an award after his power as arbitrator had terminated pursuant to article 3132(1). Under La. R.S. 9:4210(D), an arbitration award shall be vacated when the arbitrator exceeded his power in making the award. Thus, the district court properly vacated the arbitration award.

In reaching this conclusion, we reject the Parish's contention that the provisions of La. C.C. arts. 3105 and 3132 are inapplicable herein, because they conflict with La. R.S. 9:4210. This court has held that the adoption of the Louisiana Arbitration Law, La. R.S. 9:4201 et seq., repealed only those civil code articles on arbitration that are inconsistent therewith. *Jung v. Couvillion*, 07-1154, p. 5 (La. App. 1st Cir. 2/20/08), 984 So.2d 838, 841. Contrary to the Parish's assertions, we find nothing in the application of articles 3105 and 3132 to the facts of this case that conflicts with La. R.S. 9:4210. These provisions deal with entirely different subject matters; the civil code articles deal, in pertinent part, with the duration of the arbitrator's power, whereas La. R.S. 9:4210 provides the exclusive grounds for vacating an arbitration award. See *Jung*, 07-1154 at p. 6, 984 So.2d at 842 (concurring opinion). There is no inconsistency in holding that the arbitration award should be vacated under La. R.S. 9:4210(D) because the arbitrator exceeded his powers in making the award after his power terminated pursuant to La. C.C. art. 3132(1).

Citing *In re Dissolution of Mouton and Jeansonne*, 573 So.2d 257 (La. App. 3rd Cir.), *writ denied*, 577 So.2d 34 (La. 1991), the Parish further argues that, because the Trust failed to object during the proceedings to the greater than three-month delay, it was estopped from doing so after the award was rendered. This contention lacks merit. First, the entire discussion of estoppel in *Mouton* is dicta, since the court therein held that the civil code articles on arbitration were inapplicable, the parties having agreed the arbitration proceedings would be governed by the Louisiana Arbitration Law. Secondly, the requirements of equitable estoppel are not met in the instant case. Equitable estoppel is defined as

“the effect of the voluntary conduct of a party whereby he is precluded from asserting rights against another who has justifiably relied on such conduct and changed his position so that he will suffer injury if the former is allowed to repudiate the conduct.” *Dupont v. Hebert*, 06-2334, p. 7 (La. App. 1st Cir. 2/20/08), 984 So.2d 800, 806, *writ denied*, 08-0640 (La. 5/9/08), 980 So.2d 695. In this case, the Parish made no change to its detriment based on the Trust’s failure to object after the expiration of the three-month period provided by La. C.C. art. 3105.

### **CONCLUSION**

For the above reasons, the judgment of the district court is affirmed. The Parish is to bear all costs of this appeal, in the amount of \$1,926.00.

**AFFIRMED.**