

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2010 CA 1205

KYOCERA MITA AMERICA, INC.

VERSUS

KEY OFFICE EQUIPMENT, INC.  
AND KENNETH GREGORY

Judgment Rendered: February 11, 2011.

\* \* \* \* \*

On Appeal from the  
19th Judicial District Court,  
In and for the Parish of East Baton Rouge,  
State of Louisiana  
District Court No. 526,184

The Honorable Todd Hernandez, Judge Presiding

\* \* \* \* \*

Thomas J. Lutkewitte  
Brad P. Scott  
New Orleans, La.

Attorneys for Plaintiff-Appellee,  
Kyocera Mita America, Inc.

Steven E. Adams  
Baton Rouge, La.

Attorney for Defendants-Appellants,  
Key Office Equipment, Inc. and  
Kenneth Gregory

\* \* \* \* \*

BEFORE: CARTER, C.J., GAIDRY AND WELCH, JJ.

*Welch J. concurs without reasons*

**CARTER, C. J.**

This case arises out of a commercial contractual dispute regarding a balance due on an open account for copy machines. By joint stipulation and pursuant to an express provision in the contract, the matter was resolved by arbitration. However, defendants, Key Office Equipment, Inc. and Kenneth Gregory, now appeal the district court judgment confirming the arbitration award in favor of plaintiff, Kyocera Mita America, Inc., and denying defendants' motion to vacate the award.<sup>1</sup> Defendants argue on appeal that the arbitration award should have been vacated because the underlying award was procured by fraud and/or undue means, the arbitrator exceeded his powers, and the arbitrator's actions constituted a manifest disregard of the law. In opposition, plaintiff maintains that there were no statutory grounds for vacating the award and therefore, the district court did not err in confirming the arbitration award. For the reasons assigned in this memorandum opinion, we affirm the district court judgment.

Arbitration awards are presumed to be valid and must be affirmed unless grounds for vacating, modifying, or correcting the award are established by the party attacking the award.<sup>2</sup> **National Tea Co. v. Richmond**, 548 So.2d 930, 933 (La. 1989); **Gilbert v. Robert Angel Builder, Inc.**, 45,184 (La. App. 2 Cir. 4/14/10), 34 So.3d 1109, 1113. Errors of fact or law do not invalidate a fair and honest arbitration award. **National Tea Co.**, 548 So.2d at 932; **Pennington v. Cuna Brokerage Securities, Inc.**, 08-0589 (La. App. 1 Cir. 10/1/08), 5 So.3d 172, 176, writ

---

<sup>1</sup> The record reveals that Kenneth Gregory personally guaranteed the payment of the indebtedness owed by Key Office Equipment, Inc. to Kyocera Mita America, Inc.

<sup>2</sup> This case does not present any issue regarding modification or correction of the arbitration award pursuant to LSA- R.S. 9:4211.

denied, 08-2600 (La. 1/9/09), 998 So.2d 723. The exclusive grounds for vacating an arbitration award in Louisiana are set forth in LSA-R.S. 9:4210, which provides in pertinent part as follows:

In any of the following cases the court in and for the parish wherein the award was made shall issue an order vacating the award upon the application of any party to the arbitration.

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.)

It is well-settled that a district court ordinarily does not sit in an appellate capacity when reviewing an arbitration award, but confines its determination to whether there exists one or more of the specific grounds provided by statute to vacate. **MMR-Radon Constructors, Inc. v. Continental Ins. Co.**, 97-0159 (La. App. 1 Cir. 3/3/98), 714 So.2d 1, 5, writ denied, 98-1485 (La. 9/4/98), 721 So.2d 915. This court has generally adhered to the exclusivity of the statutory provisions and has not embraced the additional jurisprudentially-created circumstance of “manifest disregard for the law” as a legal basis for vacating an arbitration award. **JK Developments, LLC v. Amtek of Louisiana, Inc.**, 07-1825 (La. App. 1 Cir. 3/26/08), 985 So.2d 199, 202, writ denied, 08-0889 (La. 6/20/08), 983 So.2d 1276. Moreover, an appellate court’s function is to determine if the

arbitration proceedings have been fundamentally fair. **Pennington**, 5 So.3d at 176.

Accordingly, we have reviewed the basis of the district court's denial of defendants' motion to vacate the arbitration award within the very limited framework of LSA-R.S. 9:4210. Defendants have only presented substantive arguments related to the merits of whether the arbitrator had a basis for awarding judgment in favor of plaintiff. Even if we were to disagree with the arbitrator's decision on the merits, there is no evidence that the arbitrator exceeded or imperfectly executed his powers in this matter, nor is there any evidence of corruption, fraud, undue means, partiality, or other misconduct in the proceedings.

Thus, there were no grounds for the district court to vacate the arbitration award and this court is prohibited from reviewing the merits of the arbitrator's decision. **Gilbert**, 34 So.3d at 1113; **Hill v. Cloud**, 26,391 (La. App. 2 Cir. 1/25/95), 648 So.2d 1383, 1388, writ not considered, 95-0486 (La. 3/17/95), 651 So.2d 260. To hold otherwise, without evidence, would allow judicial intervention into arbitration and expand the remedy available by statute, thereby defeating the purpose of arbitration, which is the speedy resolution of disputes outside the court system. See **Firmin v. Garber**, 353 So.2d 975, 978 (La. 1977); **JK Developments, Inc.**, 985 So.2d at 204. Simply put, defendants may not seek review of the merits of a case that has been submitted to arbitration by couching their argument in terms of the arbitrator having exceeded his authority. See **Gilbert**, 34 So.3d at 1113; **Hill**, 648 So.2d at 1388. Furthermore, an arbitrator's conclusions drawn from conflicting evidence does not equate to misconduct or use of undue means in resolving disputed facts, and consequently, does not provide a

basis for vacating an arbitration award. See **Gilbert**, 34 So.3d at 1115. A court may well have reached different conclusions as to certain aspects of this case, but we emphasize that a court may not substitute its conclusions for those of the arbitrator. See **MMR-Radon Constructors, Inc.**, 714 So.2d at 6; **Gilbert**, 34 So.3d at 1115. Defendants failed to prove that they did not obtain a fair arbitration proceeding; therefore, the district court's judgment confirming the arbitration award will not be disturbed on appeal.

Hence, we affirm the district court judgment denying defendants' motion to vacate and granting plaintiff's motion to confirm the arbitration award that was rendered in favor of plaintiff, Kyocera Mita America, Inc. Costs of this appeal are assessed to defendants, Key Office Equipment, Inc. and Kenneth Gregory. We issue this memorandum opinion in accordance with Uniform Rules – Courts of Appeal, Rule 2-16.1B.

**AFFIRMED.**