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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

HOMESITE INSURANCE, INC.,
Plaintiff and Respondent,
v.
BHUPINDER DHALIWAL,
Defendant and Appellant.

A131226

(Solano County
Super. Ct. No. FCS027596)

In this subrogation action between an insurer and a home builder over alleged construction defects, the parties dispute the scope of their agreement to arbitrate the claims and the scope of the arbitrator's authority. The homebuilder, Bhupinder Dhaliwal, unsuccessfully challenged the arbitrator's authority to consider certain claims during the arbitration proceeding, and subsequently filed a petition in the superior court seeking to vacate or correct the arbitration award of both damages and costs against him. The insurer, Homesite Insurance, Inc. (Homesite), petitioned for confirmation. The trial court confirmed the award. We affirm that decision.

I. BACKGROUND

In 2003, Edward Curiel bought a single family residence built and owned by Bhupinder Dhaliwal. The home flooded in 2004, allegedly due to faulty construction, including faulty plumbing, resulting in $33,021.13 in damage. Additional damage of $1,948.46 was claimed due to bathroom leaks in 2005, and Curiel's real estate agent

purportedly paid some of the repair cost totaling $19,156.28.[1] The Contractors State License Board reportedly investigated and concluded Dhaliwal's construction of the home was grossly below accepted trade standards.[2]

Curiel and his real estate agent assigned their claims to Curiel's insurer, Homesite, and in 2006, Homesite filed suit against Dhaliwal for negligence. Dhaliwal answered the complaint with a general denial.

Petition to Compel Arbitration

The purchase agreement between Dhaliwal and Curiel (Purchase Agreement) included a dispute resolution provision requiring mediation of "any dispute or claim arising between them out of this Agreement, or any resulting transaction," and binding arbitration of "any dispute or claim in Law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation." (Purchase Agreement, ¶ 17.) The Purchase Agreement further provided that California law would control the arbitrator's rulings and "[i]n all other respects, the arbitration shall be conducted in accordance with Part III, Title 9 of the California Code of Civil Procedure [§ 1280 et seq.]." (Purchase Agreement, ¶ 17, subd. B(1).)

The Purchase Agreement also included a cost-shifting provision. The original form contract, which constituted Curiel's offer to Dhaliwal, stated, "In any action, proceeding, or arbitration between Buyer and Seller arising out of this Agreement, the prevailing Buyer or Seller shall be entitled to reasonable attorney fees and costs from the non-prevailing Buyer or Seller," with exceptions not relevant here. (Purchase Agreement, ¶ 22.) Both parties initialed the arbitration provision in the Purchase

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[1] An amended complaint filed in July 2006, alleged that the 2004 flooding caused $33,021.13 in damages, and "Curiel also incurred uninsured losses, totaling $21,104.74 [the sum of $1,948.46 and $19,156.28] for repair work."

[2] Dhaliwal contended that most of the damage claimed by Curiel was caused by a leaky water filtration system that Curiel himself installed after the home sale, and the balance of the damage claim was the cost incurred by Curiel in rebuilding a deck for aesthetic reasons.

Agreement, but Dhaliwal's attached counteroffer stated, "In the event of a dispute, each party to pay their own attorney fees." Curiel accepted the counteroffer.

In July 2007, after unsuccessful attempts at mediation, Dhaliwal (then proceeding pro se) petitioned to compel arbitration pursuant to the arbitration provision of the Purchase Agreement. Homesite filed a non-opposition and the court granted the petition in August.[3]

The Subsequent Arbitration Agreement

According to the court's case management minute orders, between August 2007 and November 2008, the parties worked to develop a detailed agreement to govern their arbitration proceeding (Arbitration Agreement). The central focus of the parties in this appeal is on whether there was ever a meeting of the minds on the terms of Arbitration Agreement. As we discuss *post*, we find it ultimately makes no difference.

Two versions of the Arbitration Agreement are in the record: (1) "Trial Exhibit J" and (2) "Exhibit F" to Dhaliwal's pre-arbitration hearing "Motion to Limit Evidence of Damages for Trial." The printed text is the same in both versions.[4] The Arbitration Agreement states, "3. A dispute has arising [*sic*] . . . concerning the condition of the Property as constructed and sold to Curiel by Dhaliwal. . . . [¶] . . . [¶] 5. By this Agreement, the parties agree and hereby stipulate that all claims and causes of action arising out of Dhaliwal's construction of the Property and/or Dhaliwal's sale of the Property to Curiel, including the claims and causes of action alleged in [the superior court

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[3] Homesite argues that Dhaliwal expressly asked the trial court to order all of the parties' disputes, including both tort and contract claims, to arbitration and that the court's order so provided. This is a distortion of the record. Dhaliwal's petition to compel arbitration *quoted* the Purchase Agreement arbitration provision, which applies to "any dispute or claim in Law or equity," but then specifically cited the claims alleged in Homesite's complaint, argued they were covered by the arbitration provision, and asked the court to "issue an order compelling [arbitration of] *this dispute* . . . ." (Italics added.) The court's order simply states, "the court grants the petition to compel arbitration." (Capitalization omitted.)

[4] Only one of the versions (Trial Exhibit J) includes a title page. That title page is captioned, "Agreement Concerning Rules and Procedures for Arbitration Between Homesite Insurance as Assignee of Edward Curiel and Bhupinder S. Dhaliwal."

action] shall be submitted to binding arbitration in accordance with the terms and conditions set forth herein." Paragraph 41 of the Arbitration Agreement states, "Pending an award of costs, the costs of the arbitration shall be shared equally by the parties." The "Award" section authorizes the arbitrator to "grant any remedy or relief that the arbitrator deems just and equitable." The Arbitration Agreement also includes provisions for an expedited arbitration schedule, discovery, briefing, and the hearing itself.

Both submitted versions of the Arbitration Agreement are signed by a Homesite representative (apparently Gregory E. Deetman, Homesite's attorney) and Dhaliwal. On both, Deetman's signature is dated September 26, 2008, and Dhaliwal's signature is dated October 26, 2008. Also, each page of each document is initialed by both Deetman and Dhaliwal.

The significant difference between the two documents relates to the Award provisions on page 6. On both documents, three instances of the word "award" and one instance of the phrase "award of costs" are marked with a handwritten asterisk that references the following note on the bottom of the page: "*Limited to the actual cost (as verified by receipt) incurred by each party in repairing the damage to the house."[5] On Exhibit F, however, but not on Trial Exhibit J, the following additional handwritten note appears to the left of the "*Limited to . . ." note: "Not agreed to, to be decided by the arbitrator."[6]

[5] The full phrase is visible only on the copy of Trial Exhibit J, page 6, that Dhaliwal submitted with his motion to augment the record. We granted that motion on October 17, 2011. (The last few words of the phrase are obscured even on this copy, but Homesite does not dispute that those final words are "the damage to the house," as represented by Dhaliwal in his opening brief.) On Exhibit F, the only visible writing is "*Limited to the actual cost (as verified by receipt)." However, Homesite again does not dispute that the entire phrase quoted in the main text appears on Exhibit F. The discrepancy appears to have been a result of the photocopying process.

[6] Although the copy of Exhibit F in the record before us is only partially legible, the parties agreed in the arbitration proceeding and in the trial court that the note in fact reads, "Not agreed to, to be decided by the arbitrator."

The Arbitration Proceedings

As noted, the parties both ostensibly accepted the Arbitration Agreement in about October 2008. The parties negotiated selection of an arbitrator from November 2008 to June 2009, and ultimately selected the Honorable Margaret J. Kemp, retired. In October 2009, Dhaliwal retained counsel.

Homesite filed a statement of damages that included $287,000 in home repairs that had not been included in the $54,125.87 amount claimed in Homesite's complaint and amended complaint.

In January 2010, Dhaliwal moved to limit evidence of damages in the arbitration proceeding to "subrogation damages as plead" in Homesite's complaint. Dhaliwal argued that, after the parties signed the Arbitration Agreement,[7] Homesite "claimed additional damages against defendant, based on an assignment of rights from [Curiel], for alleged defects [for] which Homesite had made no payment to its insured." Dhaliwal argued that as subrogee Homesite was limited to recovering only the funds it paid to its insured. The arbitrator denied Dhaliwal's motion, ruling that Curiel's assignment of his rights to Homesite was broad and enforceable and that the additional claims fell within the broad scope-of-arbitration language in the Arbitration Agreement.[8]

During the arbitration hearing, Dhaliwal argued there had been no meeting of the minds on the Arbitration Agreement, and it was therefore unenforceable. He argued that the scope of the arbitration should be limited to the causes of action pled in the amended

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[7] Notably, in support of this motion Dhaliwal submitted Exhibit F, the version of the Arbitration Agreement that includes Deetman's note, "Not agreed to, to be decided by the arbitrator." Moreover, Dhaliwal wrote in his moving papers that the parties "entered into a[n] [Arbitration Agreement], a copy of which is attached hereto and marked Exhibit F."

[8] The arbitrator gave Homesite leave to amend its complaint to include additional construction defect issues. In litigating his petition to vacate the arbitration award, Dhaliwal represented that Homesite never amended its complaint following that order, and Homesite does not contest that representation. However, the arbitrator ultimately ruled on and awarded damages for several construction defect claims that were not raised in Homesite's complaint or amended complaint.

complaint (a cause of action for negligence with damages totaling $54,125.87), not additional defect damages. To resolve this issue, the arbitrator asked the parties to submit declarations describing the circumstances of the drafting and signing of the Arbitration Agreement and deferred a ruling on the issue until she issued her final award. The parties offered conflicting accounts of the drafting of the document. Homesite's attorney (Deetman) averred that Dhaliwal proposed the handwritten changes to the Award provisions in October 2008; that Deetman rejected the changes by writing the "Not agreed to . . ." notation on the document at an October 22, 2008 case management conference; that Dhaliwal orally told the court he would sign the agreement at a November 26, 2008 case management conference; and that following that hearing Dhaliwal signed the Arbitration Agreement (which then bore the "Not agreed to . . ." note) but mistakenly dated his signature October 26 rather than November 26. Dhaliwal averred that he wrote his modifications to the Award section of the Arbitration Agreement on October 26 and he signed and initialed the document that same day, prior to Deetman's addition of his "Not agreed to . . ." notation.[9] Dhaliwal alleged that he did not see the "Not agreed to . . ." note until the arbitration hearing.

The arbitrator ruled: "After due consideration, the arbitrator finds the declaration of Mr. Deetman to be the more persuasive. In addition to the declarations, the arbitrator takes judicial notice of the arbitration management telephone conferences which occurred when Mr. Dhaliwal was in propria persona, and in which he repeatedly expressed a desire to wrap up all the claims of [Homesite] in one proceeding. The arbitrator finds that there was a meeting of the minds and a contract of binding arbitration was reached between the parties to resolve all the claims in a single proceeding." The arbitrator then decided the following additional claims arising from the alleged construction defects in the home: misplacement and inadequate bracing of roof trusses; defective installation of stucco; misattachment of roof tiles, flashing and gutters; deficient draining; inadequate support of

[9] Dhaliwal averred that his intent in modifying the Award section of the Arbitration Agreement was to prevent Homesite from expanding the scope of the arbitration beyond the claims that were alleged in its complaint and amended complaint.

and access to the heating, ventilation and air conditioning system; front door defects, low-quality concrete in the patio; plumbing deficiencies; electrical problems; as well as minor miscellaneous expenses totaling $565.45.

On the merits, the arbitrator found that, because the home was new construction, "as is" provisions in the Purchase Agreement were unenforceable under California law. Instead, the home was sold with an implied warranty of good workmanship. The court awarded damages for some of the alleged defects and denied relief for others either because no damage had been proven or because Dhaliwal had not been given the opportunity to repair the defect. The arbitrator awarded $35,297.81 for damage caused by the leaky water filtration system, and over $55,000 for other defects requiring repair, for a total of $93,207.01 in damages.

Arbitrator's Cost Award

Homesite requested $34,831.72 in costs as the prevailing party, including $21,485 in expert witness fees and $10,134 in arbitration fees. Dhaliwal moved to tax costs, specifically objecting to these two items.

In objecting to the arbitration fees, Dhaliwal relied on Code of Civil Procedure section 1284.2, which states, "Unless the arbitration agreement otherwise provides or the parties to the arbitration otherwise agree, each party to the arbitration shall pay his pro rata share of the expenses and fees of the neutral arbitrator . . . ." Homesite relied on paragraph 41 of the Arbitration Agreement, which states that "[p]ending an award of costs, the costs of the arbitration shall be shared equally by the parties." Homesite argued this language clearly implies that the parties intended the arbitrator to have discretion to award arbitration fees as an element of costs. Dhaliwal again contended that Homesite could not rely on provisions of the Arbitration Agreement because there was no meeting of the minds as to that agreement. Dhaliwal argued that the arbitration provision of the Purchase Agreement, incorporating section 1284.2, controlled.

On the expert witness fees, Dhaliwal asserted that section 1033.5, subdivision (b)(1) barred the recovery of expert witness fees as costs unless expert testimony was ordered by the court. Homesite, citing *Bussey v. Affleck* (1990)

225 Cal.App.3d 1162 (*Bussey*), responded that because the Purchase Agreement expressly allowed an award of costs, any type of costs, including expert witness fees could be awarded even if not separately authorized by section 1033.5.

The arbitrator awarded Homesite both the requested arbitration fees and the expert witness fees. Noting that she had already decided the Arbitration Agreement was enforceable,[10] the arbitrator implicitly accepted Homesite's argument that paragraph 41 of the Arbitration Agreement implied that arbitration fees could be awarded as costs. On the expert witness fees, she found that *Bussey, supra,* 225 Cal.App.3d 1162, "holds that the parties may modify by agreement the scope of costs to be awarded. Here the arbitrator finds that such a modification occurred in the [Arbitration Agreement[11]] and awards the expert costs in the amount of $21,485.00."

Petitions to Vacate, Correct or Confirm Arbitration Award

In September 2010, Dhaliwal petitioned the trial court to vacate or correct the arbitration award on the ground that the arbitrator exceeded her powers. He once again argued there had been no meeting of the minds on the Arbitration Agreement. Therefore, the arbitrator did not have authority to expand the scope of the arbitration to encompass claims not alleged in Homesite's complaint or to award damages for those claims. He also challenged the arbitrator's award of arbitration and expert witness fees as legally erroneous. Homesite opposed Dhaliwal's petition and filed its own petition asking the court to confirm the arbitration award.

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[10] The arbitrator wrote, "The arbitrator has already decided in the underlying decision that there was a binding agreement for arbitration in this matter, and that agreement provides that pending an award of costs the fees will [be] shared by the parties." The reference to the language of paragraph 41 of the Arbitration Agreement makes clear that the arbitrator was referring to the Arbitration Agreement and not the arbitration provision in the Purchase Agreement. Similarly, the arbitrator's statement that it had previously found the agreement enforceable demonstrates that she was referring to the Arbitration Agreement. As noted *ante*, the arbitrator found in its decision on the merits that *the Arbitration Agreement* was enforceable.

[11] The arbitrator's order refers simply to the "arbitration agreement." However, for the reasons stated in the previous footnote the arbitrator clearly was referring to the Arbitration Agreement and not the arbitration provision in the Purchase Agreement.

The trial court ruled: "Keeping in mind that the arbitrator's assessment of her contractual authority must be given substantial deference, the Court is unable to conclude that the arbitrator exceeded her authority. (See, Code Civ. Proc.[,] § 1286.2[, subd.](a); *Advanced Micro Devices*[*, Inc.*] *v. Intel Corp.* (1994) 9 Cal.4th 362, 372–373 [(*Advanced Micro Devices*)]; *O'Flaherty v. Belgum* (2004) 115 Cal.App.4th 1044, 1056.) The arbitrator's express finding that there had been a meeting of the minds as to the agreement governing the terms and condition[s] for conducting the arbitration ordered by the Court, based partially on a credibility determination of competing declarations submitted by the parties, is not arbitrary and is supported by the evidence as presented in the petition. This agreement gave the arbitrator broad authority to consider all issues arising out of the construction and sale of the subject property, including claims or causes of action that were not included in the complaint in the court action. ([Arbitration Agreement,] ¶ 5.)

"Moreover, the arbitrator did not exceed her authority in awarding costs of the arbitration to [Homesite], the prevailing party. The [Purchase Agreement] specifically allowed the award of costs to the prevailing party in 'any action, proceeding, or arbitration.' ([Purchase Agreement,] ¶ 22.) Defendant's counteroffer required each party to pay their own attorney's fees in any dispute, but did not alter the term authorizing an award of costs. ([Purchase Agreement.]) Nothing in the [Arbitration Agreement] affected the arbitrator's authority to award costs. ([Arbitration Agreement.]) [¶] Costs normally disallowed by statute or in excess of that prescribed by statute may be authorized by agreement between the parties. (Code Civ. Proc., §§ 1033.5[, subd.](b), 1284.2; [*Bussey, supra,*] 225 Cal.App.3d [at pp.] 1166–1167.)" The court entered judgment consistent with the arbitration award.

II. DISCUSSION

"It is well settled that the scope of judicial review of arbitration awards is extremely narrow. (*Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1 (*Moncharsh*); [*Advanced Micro Devices, supra,*] 9 Cal.4th 362 . . . .) Courts may not review either the merits of the controversy or the sufficiency of the evidence supporting the award.

[Citation.] Furthermore, with limited exceptions, '. . . an arbitrator's decision is not generally reviewable for errors of fact or law, whether or not such error appears on the face of the award and causes substantial injustice to the parties.' (*Moncharsh, supra,* 3 Cal.4th at p. 6; see also pp. 25–28.) These rules 'vindicate[] the intentions of the parties that the award be final' (*id*. at p. 11) and support the ' "strong public policy in favor of arbitration as a speedy and relatively inexpensive means of dispute resolution." ' (*Id*. at p. 9, quoting *Ericksen, Arbuthnot, McCarthy, Kearney & Walsh, Inc. v. 100 Oak Street* (1983) 35 Cal.3d 312, 322 [(*Ericksen*)].)

"Consistent with this policy, the Legislature has specifically set forth, in Code of Civil Procedure section 1286.2, subdivisions [(a)(1) through (a)(6)], the *only* grounds which will justify vacating an arbitration award. Subdivision [(a)(4)] is the relevant subdivision here. Under that subdivision, a court '*shall*' vacate the award if it determines that '[t]he arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted.' (Code Civ. Proc., § 1286.2, subd. [(a)(4)].) In determining whether the arbitrators exceeded their powers, courts must give 'substantial deference to the arbitrators' own assessments of their contractual authority . . . .' ([*Advanced Micro Devices*], *supra,* 9 Cal. 4th at p. 373.) A deferential standard is in keeping with the general rule of arbitral finality and ensures that judicial intervention in the process is minimized. (*Ibid*.) 'A rule of judicial review under which courts would independently redetermine the scope of an arbitration agreement already interpreted by the arbitrator would invite frequent and protracted judicial proceedings, contravening the parties' expectations of finality.' (*Ibid*.)" (*California Faculty Assn. v. Superior Court* (1998) 63 Cal.App.4th 935, 943–944, parallel citations omitted.)

"In determining whether private arbitrators have exceeded their powers, . . . this court conducts a de novo review, independently of the trial court, of the question whether the arbitrator exceeded the authority granted him by the parties' agreement to arbitrate. [Citations.]' [Citations.] In undertaking our review, however, 'we must draw every reasonable inference to support the award. [Citations.]' [Citation.] [¶] In short, we

review the superior court's order de novo, while the arbitrator's award is entitled to deferential review. ([*Advanced Micro Devices*], *supra,* 9 Cal.4th at p. 376, fn. 9.)" (*Ajida Technologies, Inc. v. Roos Instruments, Inc.* (2001) 87 Cal.App.4th 534, 541.)

A. *Scope of Arbitration*

We observe first that the issue here has never been about the arbitrability of the claims against Dhaliwal, but rather about the permissible scope of the arbitration. Dhaliwal argues that the arbitrator was limited to deciding the issues raised in Homesite's complaint and amended complaint. He insists that the arbitrator exceeded her authority by ruling, pursuant to the expanded scope of arbitration in the Arbitration Agreement, on claims involving other alleged construction defects. He contends that the trial court, rather than the arbitrator, should have decided the enforceability issue, that the trial court should have found the Arbitration Agreement unenforceable, and that the trial court should therefore have vacated or corrected the arbitrator's award because she exceeded her powers. (See *Advanced Micro Devices, supra,* 9 Cal.4th at p. 372 [holding an arbitrator may exceed his or her authority by deciding a particular issue]; see also *Morris v. Zuckerman* (1968) 69 Cal.2d 686, 690 (*Morris*).)

It appears that the dispute over the enforceability of the Arbitration Agreement has obscured the point that the parties' original agreement to arbitrate in the Purchase Agreement unquestionably covers all issues that were decided by the arbitrator. "An appellant bears the burden to show not only that the trial court erred, but also that the error was prejudicial in that it resulted in a miscarriage of justice. [Citations.]" (*Hoffman Street, LLC v. City of West Hollywood* (2009) 179 Cal.App.4th 754, 772–773.)

Dhaliwal does not dispute the enforceability of the arbitration provision in the Purchase Agreement. Indeed, Dhaliwal himself successfully petitioned to compel arbitration of the construction defect claims pursuant to that provision. The Purchase Agreement arbitration provision applies to "*any* dispute or claim in Law or equity arising between [the parties] out of this Agreement or any resulting transaction, which is not settled through mediation." (Italics added.) Dhaliwal makes no argument that the additional construction defect disputes raised during the arbitration would not fall within

the scope of this arbitration provision. Nor could he. The additional claims decided by the arbitrator are disputes which arose out of the Purchase Agreement, i.e., arising from the sale of the home under an implied warranty of good workmanship.

Instead, Dhaliwal argues that arbitration pursuant to the Purchase Agreement "was subject to the statutory rules regarding arbitration, including the limitation that the arbitration could only contemplate issues alleged in the most recently filed complaint. Cal. Code Civ. Proc. § 1280 et seq." The cited statutes, however, impose no such restraint. The scope of arbitrable issues is determined not by statute, but by the arbitration agreement itself. (See *Bono v. David* (2007) 147 Cal.App.4th 1055, 1061–1062.)

Because we find that all of the claims decided by the arbitrator were arbitrable under the Purchase Agreement, Dhaliwal's challenge to the scope of arbitration under the Arbitration Agreement is immaterial. Even assuming the trial court had the exclusive authority in the first instance to determine enforceability of the Arbitration Agreement and, in exercising that authority, had found it to be unenforceable, the additional construction defect claims asserted by Homesite were subject to mandatory arbitration in any event under the terms of the Purchase Agreement.

B. *The Cost Award*

Dhaliwal next argues that the arbitrator exceeded her powers in awarding arbitration costs and expert witness fees as costs because they were not authorized by the parties' arbitration agreement (or agreements). The arbitrator clearly relied on the Arbitration Agreement to award the disputed costs. Again, Dhaliwal contends the trial court should have found there was no meeting of the minds, that the Arbitration Agreement was unenforceable, and that this issue is dispositive on the cost award. Dhaliwal also claims legal error in the arbitrator's award of expert witness fees. We find that whether there was a meeting of the minds on the terms of the Arbitration Agreement was a question for the arbitrator to decide, and that neither the arbitrator's decision on that issue nor her interpretation of the Arbitration Agreement are subject to judicial review.

“Unless the parties clearly and unmistakably provide otherwise, the question of whether the parties *agreed to arbitrate* is to be decided by the court, not the arbitrator.” (*United Public Employees v. City and County of San Francisco* (1997) 53 Cal.App.4th 1021, 1026, italics added.) Although the Arbitration Agreement includes such an agreement to arbitrate the parties’ disputes, we have already concluded that the enforceability of that particular provision of the Arbitration Agreement is immaterial to the issue of whether the disputes were properly submitted to arbitration. The parties’ Purchase Agreement, the enforceability of which is not in question, itself requires arbitration of the parties’ disputes.

Once it is established that the parties’ *disputes* are subject to arbitration, all other questions related to the disputes are submitted to the arbitrator, whose decisions are not reviewable for legal or factual error. “It is for the arbitrators to determine which issues [are] actually ‘necessary’ to the ultimate decision [on the submitted disputes]. [Citation.]” (*Morris, supra,* 69 Cal.2d at p. 690; Code Civ. Proc., § 1283.4.) “Likewise, any doubts as to the meaning or extent of an arbitration agreement are for the arbitrators and not the court to resolve. [Citations.]” (*Id.* at pp. 690–691.) Even questions about the enforceability of the very contract that contains the arbitration clause are submitted to the arbitrator as long as there is no dispute that the parties freely agreed to the arbitration clause itself. (See *Ericksen, supra,* 35 Cal.3d at p. 323; *Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 415 (*Rosenthal*), citing *Prima Paint v. Flood & Conklin* (1967) 388 U.S. 395, 404.) “By entering into the arbitration agreement, the parties established their intent that disputes coming within the agreement’s scope be determined by an arbitrator rather than a court; this contractual intent must be respected . . . .” (*Rosenthal*, at p. 416; cf. *Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 973 [where the claim of fraudulent inducement is specifically directed to the arbitration provision itself, issue must be decided by the court].)

Moreover, “arbitrators are not generally limited to making their award ‘ “on principles of dry law.” ’ (*Moncharsh, supra,* 3 Cal.4th at p. 11.) . . . [P]arties who submit their disputes to arbitration ‘ “ ‘may expect not only to reap the advantages that flow from

the use of that nontechnical, summary procedure, but also to find themselves bound by an award reached by paths neither marked nor traceable and not subject to judicial review.' [Citations.]" ' (*Ibid.*)" (*Advanced Micro Devices, supra,* 9 Cal.4th at pp. 388–389.) Specifically with respect to remedies, "[a]rbitrators are not obliged to read contracts literally, and an award may not be vacated merely because the court is unable to find the relief granted was authorized by a specific term of the contract. [Citation.] The remedy awarded, however, must bear some rational relationship to the contract and the breach." (*Id.* at p. 381.)

Here, the principal contested issue is whether the parties actually agreed in the Arbitration Agreement to authorize the arbitrator to award arbitration costs and expert witness fees to a prevailing party. This issue involves not the arbitrability of the parties' disputes, but the arbitrator's choice of remedies after resolving the underlying disputes. The choice of remedy is indisputably an issue for the arbitrator. (*Advanced Micro Devices, supra,* 9 Cal.4th at p. 373 ["[i]n providing for judicial vacation or correction of an award, our statutes . . . do not distinguish between the arbitrators' power to decide an issue and their authority to choose an appropriate remedy"].) The arbitrator ruled that the parties had a meeting of the minds on the Arbitration Agreement and that the cost provisions of that agreement authorized her to award arbitration and expert witness fees to the prevailing party. We have no power to review those decisions for legal or factual error. Thus, we cannot and do not entertain Dhaliwal's argument that *Bussey, supra,* 225 Cal.App.3d 1162 is no longer good law, and that the arbitrator erred in relying on it. The remedies ordered by the arbitrator will be upheld because they are rationally related to the parties' contract. (See *Advanced Micro Devices,* at p. 381.)

The trial court properly denied Dhaliwal's motion to vacate or correct the award and granted Homesite's petition to confirm the award.

III. DISPOSITION

The judgment is affirmed. Dhaliwal shall bear Homesite's costs on appeal.

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Bruiniers, J.

We concur:

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Jones, P. J.

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Simons, J.