THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Casey L. Manning, Circuit Court Judge

Civil Action No.: 2011-CP-40-8456
Civil Action No.: 2011-CP-40-8459

Appellate Case No.: 2013-000386

Xu Dong Sun, Appellant.

v.

Xiaolan M. Wang, Rui Cao,
and M. Vista Restaurant, LLC,
Respondents,

Shengen Sun, Appellant.

v.

Xiaolan M. Wang, Rui Cao,
and Miyo's at Sandhills, LLC,
Respondent,

PETITION FOR REHEARING

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The Court of Appeals filed its Order in this matter affirming the Circuit Court on June 25, 2014. Appellants Xu Dong and Shengen Sun now petition the Court of Appeals to rehear this matter on the grounds that this Court failed to acknowledge and give proper deference to the arbitrator's findings of fact and interpretation of the contract at issue. The arbitrator clearly founds facts that Respondents were not owed money at the time Respondents availed themselves of their remedy and retook the restaurants. This was based on a clearly reasonable interpretation of the contract at issue. Even if this was not the case, however, this Court failed to acknowledge the precedent that even an erroneous interpretation of a contract by an arbitrator must be upheld.

POINTS MISAPPREHENDED BY THE COURT

The arbitrator did not manifestly disregard the law that the first to breach cannot later complaint of the subsequent breach of the other party as set forth Silver v. Abstract Pools & Spas, Inc., 376 S.C. 585, 658 S.E.2d 539 (Ct. App. 2008). The only way the Circuit Court and now the Court of Appeals could reach their decisions on this point of law is to disagree with the findings of fact of the arbitrator, which is not a proper review of the arbitrator's findings. "The focus is on the conduct of the arbitrator and *presupposes something beyond a mere error in construing or applying the law.*" Gissel, 382 S.C. at 241, 676 S.E.2d at 323. Even the "clearly erroneous interpretation of [a] contract" by an arbitrator cannot be disturbed. Trident Technical Coll. v. Lucas & Stubbs, Ltd., 286 S.C. 98, 108, 333 S.E.2d 781, 787 (1985). It is "exceedingly rare, requiring circumstances far more egregious than mere errors in interpreting or applying the law" to vacate an

arbitration award on the ground of manifest disregard of the law. Id. As long as there is at least an arguable ground for an award, an arbitrator has not manifestly disregarded the law. Batten, 300 S.C. at 549, 389 S.E.2d at 172.

A review of the arbitrator's findings of fact in his Arbitration Award clearly show that this is not the case. The grounds for an award in this case go well beyond just "arguable." The arbitrator clearly went through the various provisions of the contract and the facts and determined that before Appellants could be deemed to have breached the contract for nonpayment over thirty days, Respondents had to give them some kind of notice and thirty days to cure. (R. p. 6, ¶ 9) This is logical and obvious from the plain meaning of the contract. How else is someone supposed to know they breached? Since Michelle Wang did not give notice or any right to cure but locked the doors first, before she had a right to under Section 2.2(b) of the Amended Purchase Agreements, she breached first. That is very clear from the Arbitration Award.

As seen in Paragraphs 14, 15 and 17 of the Arbitration Award not all of the items that Respondents deemed inappropriate were in fact inappropriate. So until there was at least a demand for those items, a refusal to pay and some determination that they were inappropriate the contract simply would not make sense. This is no doubt why the arbitrator determined that until the end of the term of the agreement when final payments were due, any other application of debits and charges to the parties would simply be an "academic exercise." (R. p. 7, ¶ 12) If Respondent's interpretation of the contract were true that no notice was required before the Units reverted back and they could lock out Appellants even if Respondents were wrong about whether some deductions were appropriate the contract is a joke. Are the

parties supposed to arbitrate items whether certain items are appropriately business expenses every month? The contract seems illusory if Respondents can implement the self-help remedy in Section 2.2(b) without even notice, a discussion, or a determination as to what are appropriate expenses.

It is the duty of the arbitrator to synthesize the facts and the law in a matter such as this and make findings consistently therewith. Interpreting a contract is vastly different than re-writing a contract. Clearly the arbitrator has just reviewed the contract, the surrounding facts, and the applicable law. There is nothing remotely unreasonable about his decision. After six days of testimony largely through the use of Chinese translation, he synthesized the facts with the law of the case. The detailed Findings of Fact with citations to the contract and the record bear that out. This is well beyond an "arguable ground" for an award, but even if that is all it is, it was improper for the Circuit Court to vacate the Arbitration Award. This Court failed to fully apprehend that in South Carolina "[e]ven the "clearly erroneous interpretation of [a] contract" by an arbitrator cannot be disturbed. Trident Technical Coll. v. Lucas & Stubbs, Ltd., 286 S.C. 98, 108, 333 S.E.2d 781, 787 (1985).

CONCLUSION

There is at least arguable grounds for an award for Appellants in this case and therefore the arbitrator did not manifestly disregard the law. Even if the arbitrator erroneously interpreted the contract his interpretation cannot be disturbed. This Court should reverse its earlier decision and the decision of the Circuit Court and remand the case with instructions that the Arbitration Award be reinstated and that Appellants Motion to Confirm the Award and Enter Judgment

be granted.

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July 10, 2014
Sumter, South Carolina

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PROOF OF SERVICE

I certify that I have served a copy of Appellant's Petition for Rehearing by serving a copy of the same by hand delivery to John E. Schmidt, III, Esquire and Melissa J. Copeland, Esquire at 1201 Main Street Suite 1100, Columbia, South Carolina, 29201 on July 10, 2014.

SIGNATURE PAGE FOLLOWS

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July 10, 2014

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VIA HAND DELIVERY
The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1205 Pendleton Street
Columbia, South Carolina 29201

RE: Xu Dong Sun (Shengen Sun) v. Xiaolan M. Wang, Rui Cao, and M Vista LLC
Appellate Case No. 2013-000386
AJB File Nos.: 7027/1500 and 7028/1500

Dear Ms. Kitchings:

Enclosed for filing please find the original and eight (8) copies of 1) Appellant's Petition for Rehearing and 2) Proof of Service. Please file the originals and six (6) copies and return two (2) copies of each for me so that I might serve a copy on Respondents' counsel and retain one for my file. Enclosed also is a $25 money order to cover the cost of filing. I very much appreciate your assistance with this matter.

Very truly yours,

A. Jackson Barnes

cc: John E. Schmidt, III, Esquire (via hand delivery)
Melissa J. Copeland, Esquire (via hand delivery)