DOCKET NO.: HHD-CV23-6170267-S	:	SUPERIOR COURT
QSR STEEL CORPORATION, LLC	:	JUDICIAL DISTRICT OF HARTFORD
V.	:	AT HARTFORD
HAYNES CONSTRUCTION COMPANY	:	APRIL 30, 2024

MEMORANDUM OF DECISION

After due consideration, QSR's application to vacate the arbitration award (Docket Entry Nos. 100.31, 113.00) is denied and Haynes' cross-application to confirm the arbitration award (Docket Entry No. 123.00) is granted.

FACTUAL AND PROCEDURAL HISTORY

On or about December 17, 2019, QSR and Haynes entered into a written subcontract agreement (subcontract), whereby QSR agreed to furnish and install structural steel and miscellaneous metals for the project known as the Washington Boulevard Apartments (project) located at 1315 Washington Boulevard, Stamford, Connecticut (property). During QSR's performance of the subcontract, certain disputes arose between QSR and Haynes. The subcontract included a provision which stated that, at Haynes' sole discretion, disputes would be resolved by arbitration in Hartford, Connecticut, in accordance with the Construction Industry Rules of the American Arbitration Association. On or about February 9, 2020, Haynes demanded arbitration in accordance with the subcontract (the arbitration). On or about March 15, 2021, QSR submitted an answering statement and a counterclaim. On December 21, 2020, QSR recorded a mechanic's lien against the property in the amount of $878,374.75 (lien).

On or about February 22, 2021, Haynes filed an application for discharge of mechanic's lien with the Superior Court of the State of Connecticut for the Judicial District of Stamford-Norwalk in which Haynes sought to discharge the lien or, in the alternative, substitute a bond for

the lien (the court action). By March 2021, the parties were involved in two separate proceedings arising out of the subcontract and/or the project. On or about March 12, 2021, QSR filed a motion to disqualify Hinckley, Allen & Snyder LLP (Hinckley Allen), or, in the alternative, prevent certain individual attorneys with that firm from representing Haynes in relation to the court action or the arbitration (motion to disqualify). The motion to disqualify was filed in the court action because the arbitration was in its initial stages and an arbitrator had not yet been appointed. QSR sought to disqualify Hinckley Allen and/or prevent certain individual attorneys from representing Haynes in the court action or the arbitration because of their prior representation of QSR. In the motion to disqualify, QSR alleged that Hinckley Allen and/or certain individual attorneys with that firm previously represented QSR in at least eleven (11) substantially similar matters over an eight (8) year period, and having Hinckley Allen and/or certain individual attorneys with the firm represent Haynes in the court action or the arbitration would be prejudicial to QSR because of the risk that QSR's confidential information would be used by its prior counsel to further Haynes' interests.

On June 10, 2021, the parties reported to John C. Zaccaro, Jr., Esq., who had agreed to serve as the arbitrator (arbitrator), that QSR had filed the motion to disqualify. During a June 10, 2021, telephone call with the arbitrator, the parties stipulated that rather than submitting the motion to disqualify to the arbitrator, the decision of the Superior Court would control the issue. Thus, the arbitrator was aware that the issue had been raised and was being determined by the Superior Court. On or about July 29, 2021, the Honorable Kenneth B. Povodator issued an order pertaining to the motion to disqualify (order). In the order, Judge Povodator stated that: "Accordingly, despite the court's almost universal avoidance of conditional orders and the complementary concern as to whether the court has authority to enter an order affecting

arbitration in this framework, the motion is granted to the extent that the court does have authority to enter an order affecting the arbitration proceeding that is not technically before it, based on the inclusion of CUTPA claims therein which present a substantial risk of utilization of information acquired by counsel during representation of the defendant in prior matters. If the court's authority is limited – as reflected by the actual pleadings of record in this case – to this case (or if the CUTPA claims were to be abandoned in arbitration), the motion is (would be) denied."

After the issuance of the order, the parties requested that the arbitrator decide whether Haynes needed to withdraw the CUTPA claim with prejudice or without prejudice in order to proceed with Hinckley Allen as counsel for Haynes. After further briefing on this issue, the arbitrator determined that the CUTPA claim would have to be withdrawn with prejudice. On October 28, 2021, Haynes withdrew its CUTPA claim, with prejudice, and Hinckley Allen continued to represent Haynes in the arbitration proceeding. No further challenges were made by QSR to Hinckley Allen remaining as counsel at any time during the arbitration proceedings, and the issue was not raised again until the application to vacate the award was filed.

Arbitration hearings were on November 1, 2, 3, 8, 9, 10, 30, 2022, and December 2, 5, 14, 19, 20, 22, 2022. Thereafter, on or about May 12, 2023, the arbitrator made a written award entitled "Partial Final Award of Arbitrator" (award). On May 12, 2023, QSR was duly notified of the award by way of a correspondence from the American Arbitration Association. In the award, the arbitrator found in favor of Haynes on its claims and on QSR's counterclaims and awarded Haynes damages and interest in the amount of $1,664,227.63, plus attorney's fees and costs in an amount to be determined.

On June 9, 2023, QSR filed the underlying application to vacate the arbitrator's award along with a pre-hearing memorandum of law. QSR filed an amended application to vacate the arbitration award on August 18, 2023. That same day, Haynes filed a memorandum in opposition to the application to vacate. On September 12, 2023, Haynes filed an opposition to the amended application to vacate and a cross-application to confirm the arbitration award. After the matter was fully briefed, the court heard extensive argument on January 3, 2024. [1]

QSR argues that the arbitration award should be vacated because confirming it would violate a clear public policy, to wit, protection of the attorney-client relationship. QSR seeks to vacate the award claiming that Hinckley Allen, QSR's prior counsel, should have never been allowed to represent Haynes in the underlying arbitration, and alleging that Hinckley Allen used QSR's confidential information during the arbitration. Thus, QSR claims, the arbitration award violates Connecticut's strong public policy of protecting the attorney-client relationship including, but not limited to, the confidential information a client provides to its attorney.

Haynes argues that the award should be confirmed because QSR waived its right to challenge Judge Povodator's ruling on the motion to disqualify when it agreed in arbitration to

[1] During oral argument, Attorney Martin, on behalf of Haynes, requested the opportunity to submit the second answering statement of QSR as an additional exhibit in support of its motion. Attorney Orenstein opposed the request based on his inability to authenticate the document and on relevance grounds. So as not to delay this matter with further briefing and further hearings on the authenticity and relevancy of the proposed additional exhibits, the court has not considered any of the filings that were the subject of the motion to quash, specifically, the second answering statement and related documents at docket entry 140.00. However, for a complete and accurate record, the court permitted either party to file the final and operative answering statement filed by QSR in the arbitration proceeding to be submitted as an exhibit and be made part of the record. Haynes filed QSR's third answering statement and Attorney Martin affirmed it was the operative answering statement at the time of the arbitration hearings (docket entry 152, Exhibit is II). While the third answering statement has not been considered as part of this decision, the court felt it important that the record be complete because QSR mentions in its brief that it raised a special defense in its first answering statement relating to Hinckley Allen's prior representation of QSR. That first operating statement was filed before the issue of disqualification was submitted to Judge Povodator for decision. Further, there has been no argument by QSR that it raised or pursued that defense in the arbitration proceeding and as such, the contents of the third operative answering statement were not necessary to consider and have not been considered in rendering this decision. However, it is part of the record (Docket entry 152, Exhibit II only).

be bound by the court's decision, and that even if that is not the case, QSR has failed to establish that confirming the arbitration award violates a clear public policy. In sum, Haynes asks this court to deny the motion to vacate the arbitration award and instead confirm the arbitration award for the following reasons: (a) the law of the case doctrine; (b) that no confidential information was used by Hinckley Allen in the arbitration; (c) QSR's waiver of any claims regarding Hinckley Allen's representation of Haynes; and (d) the lack of public policy violation necessary to vacate the award.

For the following reasons, the court agrees with Haynes, and the motion to vacate the arbitration award is denied and the cross-application to confirm the arbitration award is granted.

DISCUSSION

"Arbitration is favored by courts as a means of settling differences and expediting the resolution of disputes. . . . There is no question that arbitration awards are generally upheld and that we give great deference to an arbitrator's decisions since arbitration is favored as a means of settling disputes. . . . The limited scope of judicial review of awards is clearly the law in Connecticut." (Internal quotation marks omitted.) *Clasby* v. *Zimmerman*, 191 Conn. App. 143, 155, 213 A.3d 1144, cert. denied, 333 Conn. 919, 217 A.3d 1 (2019).

"Because we favor arbitration as a means of settling private disputes, we undertake judicial review of arbitration awards in a manner designed to minimize interference with an efficient and economical system of alternative dispute resolution. . . . Furthermore, in applying this general rule of deference to an arbitrator's award, [e]very reasonable presumption and intendment will be made in favor of the [arbitration] award and of the arbitrators' acts and proceedings. . . . When the parties agree to arbitration and establish the authority of the arbitrator through the terms of their submission, the extent of our judicial review of the award is delineated

by the scope of the parties' [arbitration] agreement. . . . This is because [a]rbitration is a creature of contract and the parties themselves, by the terms of their submission, define the powers of the arbitrators." (Citation omitted; internal quotation marks omitted.) *ARVYS Protein, Inc.* v. *A/F Protein, Inc.*, 219 Conn. App. 20, 28-29, 293 A.3d 899, cert. denied, 347 Conn. 905, 297 A.3d 198 (2023).

Public Policy

"When considering a motion to vacate an unrestricted arbitration award, a trial court should not substitute its judgment for that of the arbitrators. Judicial review of arbitral decisions is narrowly confined. . . . When the parties agree to arbitration and establish the authority of the arbitrator through the terms of their submission, the extent of our judicial review of the award is delineated by the scope of the parties' agreement. . . . When the scope of the submission is unrestricted, the resulting award is not subject to de novo review even for errors of law so long as the award conforms to the submission. . . . In other words, [u]nder an unrestricted submission, the arbitrators' decision is considered final and binding; *thus, the courts will not review the evidence considered by the arbitrators nor will they review the award for errors of law or fact. . .* . Furthermore, every reasonable presumption and intendment will be made in favor of the award and of the arbitrator's acts and proceedings." (Emphasis in original; internal quotation marks omitted.) *Kellogg* v. *Middlesex Mutual Assurance Co.*, 326 Conn. 638, 645-46, 165 A.3d 1228 (2017). "In light of these constraints, a court may vacate an unrestricted arbitration award only under certain limited conditions: (1) the award rules on the constitutionality of a statute . . . (2) the award violates clear public policy . . . [or] (3) the award contravenes one or more of the statutory proscriptions of § 52–418." (Internal quotation marks omitted.) Id., 646.

QSR argues that the public policy exception applies here in that Connecticut has a long-standing strong public policy of protecting the attorney-client relationship including, but not limited to, the confidential information a client provides to its attorney. QSR argues that, based upon Hinckley Allen's prior representation of QSR, Haynes used confidential information against them in the arbitration and as such the award should be vacated. QSR also urges the court to apply a de novo standard of review on the basis of its claim that the award violates public policy. Haynes counters that there has been no violation of clearly mandated public policy and that QSR is not entitled to a de novo review.

"The public policy exception applies only when the award is clearly illegal or clearly violative of a strong public policy. . . . A challenge that an award is in contravention of public policy is premised on the fact that the parties cannot expect an arbitration award approving conduct which is illegal or contrary to public policy to receive judicial endorsement any more than parties can expect a court to enforce such a contract between them. . . . When a challenge to the arbitrator's authority is made on public policy grounds, however, the court is not concerned with the correctness of the arbitrator's decision but with the lawfulness of enforcing the award. . . . Accordingly, the public policy exception to arbitral authority should be narrowly construed and . . . is limited to situations where the contract as interpreted would violate some explicit public policy that is well defined and dominant, and is to be ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interests. . . . *The party challenging the award bears the burden of proving that illegality or conflict with public policy is clearly demonstrated. . . . Therefore, given the narrow scope of the public policy limitation on arbitral authority, the [defendant] can prevail in the present case only if it demonstrates that the [arbitrator's] award clearly violates an established public policy mandate.*" (Emphasis added;

internal quotation marks omitted.) *Bumbolow* v. *Foreman*, 151 Conn. App. 307, 312-13, 95 A.3d 1153, cert. denied, 314 Conn. 916, 100 A.3d 405 (2014).

"When reviewing a claim that an arbitration award violates public policy, our Supreme Court has established a two step analysis. First, the court must determine whether an explicit, well-defined and dominant public policy can be identified. In making this determination, the court looks to statutes, administrative decisions, and case law to determine the existence of public policy. Second, if the court finds that there is a well-defined and dominant public policy, the court must next consider the specific facts and circumstances to determine if the relevant public policy was in fact violated." *ARVYS Protein, Inc.* v. *A/F Protein, Inc.*, supra, 219 Conn. App. 40. Moreover, "precedent . . . contemplates that the public policy must be not only clear, well-defined and dominant but implicate the award itself." Id., 42.

QSR is not seeking to vacate the arbitration award on the basis of events that occurred during the arbitration proceeding itself, nor any misapplication of law by the arbitrator, nor any erroneous factual determinations; instead, QSR requests that this court vacate the arbitration award on the basis of a decision made by Judge Povodator well over a year before any evidence was presented, and importantly, a decision which the parties agreed would be binding upon the arbitration. Simply, Judge Povodator indicated that the decision as to whether Hinckley Allen should be disqualified would be determined by whether the CUTPA count remained in the case; if it remained, they would be disqualified, and if it was removed, they would not be disqualified. The parties appeared to accept this and moved on to ask the arbitrator whether the CUTPA count would need to be withdrawn with or without prejudice in order for Hinckley Allen to remain. The arbitrator decided the CUTPA count would have to be withdrawn with prejudice, which

Hinckley Allen proceeded to do. There seemed to be no further discussion or concern about Hinckley Allen's representation of Haynes until this application to vacate was filed.

While QSR argues there is a public policy in this state to protect the attorney-client privilege and confidentiality of information, the court notes a very strong public policy in permitting a party to select its own counsel. "In view of the strong public policy favoring a party's right to select its own counsel, the law places the burden of showing that disqualification upon the moving party." *Mettler* v. *Mettler*, 50 Conn. Supp. 357, 361, 928 A.2d 631 (2007); see *Neumann* v. *Tuccio*, Superior Court, judicial district of Danbury, Docket No. CV-07-5002831-S (July 17, 2009, *Shaban, J.*) (48 Conn. L. Rptr. 298, 298-99) (moving party "must meet a high standard of proof" and "bears the burden of proving facts which indicate disqualification is necessary"). "The party moving for disqualification bears the burden of proving facts which indicate that disqualification is necessary. . . . The disqualification of a party's chosen counsel is a harsh sanction, and an extraordinary remedy which should be resorted to sparingly . . . ." (Citation omitted; internal quotation marks omitted.) *Temkin* v. *Temkin*, Superior Court, judicial district of Litchfield, Docket No. 057629 (September 28, 1993, *Pickett, J.*) (10 Conn. L. Rptr. 127, 127). "[T]he burden of proving the basic facts of the prior representation, its actual scope, i.e., what legal work was done, for whom, on what timetable, and the like, rests on the party seeking disqualification." *Klein* v. *Bristol Hospital*, 50 Conn. Supp. 160, 166, 915 A.2d 942 (2006). "The courts should act very carefully before disqualifying an attorney and negating the right of a client to be represented by counsel of choice." (Citation omitted; internal quotation marks omitted.) *Neumann* v. *Tuccio*, supra, Superior Court, Docket No. CV-07-5002831-S.

In the present case, QSR has failed to meet its burden to show that the arbitration award conflicts with public policy because QSR has failed to demonstrate the violation of a well-

defined and dominant public policy. While QSR claims it was a violation of public policy that Hinckley Allen continued to represent Haynes in the arbitration while it had confidential information about QSR, that argument had already been made in full and decided by Judge Povodator prior to the commencement of the arbitration. QSR cannot rightfully argue that the public policy that was violated during the arbitration was the act of complying with a prior judicial ruling. Simply put, QSR has failed to meet its burden of a clear violation of a public policy mandate.

In its memorandum, QSR argues that the question of whether the award violates public policy requires a de novo judicial review, citing to *Derose* v. *Jason Robert's, Inc.*, 191 Conn. App. 781, 804, 216 A.3d 699, cert. denied, 333 Conn. 934, 218 A.3d 593 (2019). The rationale for a de novo judicial review on public policy grounds is that "courts have greater expertise and knowledge than arbitrators in the identification and application of the public policy of this state." (Internal quotation marks omitted.) *C.R. Klewin Northeast, LLC* v. *Bridgeport*, 282 Conn. 54, 95, 919 A.2d 1002 (2007). However, that rationale does not apply in this case. There is no claim here that during the arbitration, QSR objected on the basis of some impropriety of Hinckley Allen using confidential information in questioning a witness, and the arbitrator overruled said objection. In fact, QSR is making no claim whatsoever that the decision of the arbitrator was flawed or erroneous in any respect. It simply is arguing that the decision of Judge Povodator in not disqualifying Hinckley Allen well over one year prior to the arbitration proceeding was error. Again, QSR is not challenging any factual findings made by the arbitrator, nor the propriety of evidence submitted during the arbitration, nor any legal conclusions reached by the arbitrator. As such, there is no basis for a de novo review of the arbitrator's decision. What QSR is really seeking is from this court is a de novo review of another judge's decision, after the parties agreed

to be bound by the decision, after QSR failed to raise any objection to the decision in the arbitration proceeding, and when that judge's decision predated the commencement of any of the substance of the arbitration. The court can see no basis for vacating the award on these grounds. Even if the court was to consider the policy argument, it finds no error in Judge Povodator's persuasive analysis that disqualification was not warranted if the CUTPA claim was withdrawn, which it was, and that therefore, the public policy of protecting the attorney-client relationship is not violated by confirming the arbitrator's award.

Here, QSR has failed to demonstrate a clear violation of a public policy mandate, and as such, the court giving due deference to the decision of the arbitrator, denies the application to vacate the award.

Waiver

The fact that QSR agreed to be bound by Judge Povodator's ruling on the motion to disqualify for purposes of the arbitration, only to now ask a different judge of the Superior Court to vacate the arbitration award based solely on the premise that the motion was incorrectly decided, gives rise to various concerns that further bar QSR's challenge.

To start, the court agrees with the defendant's argument that the general principles regarding waiver articulated by our Supreme Court in *C.R. Klewin Northeast, LLC* v. *Bridgeport*, supra, 282 Conn. 54, support the proposition that QSR procedurally waived its right to challenge Judge Povodator's ruling on the motion to disqualify when it agreed to be bound by said ruling and did not raise the issue again during the subsequent arbitration proceedings. "Waiver is the intentional relinquishment or abandonment of a known right or privilege. . . . [V]arious statutory and contract rights may be waived. . . . Waiver is based upon a species of the principle of estoppel and where applicable it will be enforced as the estoppel would be enforced. . . . Estoppel

has its roots in equity and stems from the voluntary conduct of a party whereby he is absolutely precluded, both at law and in equity, from asserting rights which might perhaps have otherwise existed. . . . Waiver does not have to be express, but may consist of acts or conduct from which waiver may be implied. . . . In other words, waiver may be inferred from the circumstances if it is reasonable to do so. The waiver doctrine applies to arbitration because [w]e have made it clear that we will not permit parties to anticipate a favorable decision, reserving a right to impeach it or set it aside if it happens to be against them, for a cause which was well known to them before or during the trial." (Citations omitted; internal quotation marks omitted.) *C.R. Klewin Northeast, LLC* v. *Bridgeport*, supra, 282 Conn. 87.

In the arbitration context, a party's failure "to object or claim prejudice because of" an issue during the arbitration process, only to later challenge the arbitration award by raising that same issue after receiving an unfavorable decision, may be sufficient to constitute a waiver. (Emphasis omitted; internal quotation marks omitted.) See *Diamond Fertilizer & Chemical Corp.* v. *Commodities Trading Intl Corp.*, 211 Conn. 541, 553-54, 560 A.2d 419 (1989) (finding no error in arbitration award where the QSR waited "until after the announcement of the arbitral award" to object that award was untimely because such objection constituted an "attempt to manipulate the arbitration process" that effectively operated as a waiver); see also *AFSCME* v. *New Britain*, 206 Conn. 465, 468, 538 A.2d 1022 (1988) (failure to raise issue of timeliness prior to issuance of arbitration award operates as waiver of party's right to assert award's lack of timeliness).

In this case, it is undisputed that both parties agreed to be bound by Judge Povodator's ruling for the purposes of the arbitration proceedings. See Amended Application to Vacate Arbitration Award, Exhibit F (arbitrator's order dated October 5, 2021, provides that, "the parties

stipulated that rather than submitting the [m]otion to [d]isqualify [c]laimant's counsel to the arbitrator, the decision of the Superior Court would control the issue"). Waiver may be implied by a party's conduct; *C.R. Klewin Northeast, LLC* v. *Bridgeport*, supra, 282 Conn. 87; and at no point following Judge Povodator's decision did QSR file a motion for reargument or reconsideration in the Superior Court regarding the ruling or raise the issue with the arbitrator in any capacity. Indeed, although denial of a motion to disqualify counsel is generally not immediately appealable; *Burger & Burger, Inc.* v. *Murren*, 202 Conn. 660, 664, 522 A.2d 812 (1987); QSR also made no attempt to pursue an interlocutory appeal under the doctrine of *State* v. *Curcio*, 191 Conn. 27, 463 A.2d 566 (1983), which may have been permissible given the circumstances of the case.[2]

Moreover, QSR argues that until this application, there was nothing that could have been done to address this issue until after the arbitration award. However, QSR had several opportunities to raise and argue why it believed Hinckley Allen should be disqualified. As stated, after Judge Povodator's decision, QSR did not file a motion to reargue or reconsider. If QSR believed the decision contained inconsistencies, it could have sought further clarification or articulation. QSR could have informed opposing counsel and the arbitrator that it intended to appeal the decision on the motion to disqualify to alert them it did not believe it should be bound by the decision. At any time, if QSR felt so strongly that the decision was erroneous and so prejudicial, it certainly could have raised the issue again during the arbitration when the issue of the CUTPA claim was being considered. And certainly, when QSR thought confidential

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[2] *Curcio* permits interlocutory appeals of certain non-final judgments if "the order or action terminates a separate and distinct proceeding, [and] . . . the order or action so concludes the rights of the parties that further proceedings cannot affect them . . . ." (Internal quotation marks omitted.) *Hartford Accident & Indemnity Co.* v. *Ace American Reinsurance Co.*, 279 Conn. 220, 225, 901 A.2d 1164 (2006). Here, the plaintiff could have at least plausibly claimed that Judge Povodator's ruling terminated a separate and distinct proceeding from the arbitration and implicated rights that could not be affected by further arbitration proceedings.

information was being utilized by Hinckley Allen in its questioning of a QSR witness, it could have raised the issue with the arbitrator. But in fact, QSR did not object, seek a stay, appeal, seek further judicial intervention, or do anything whatsoever to preserve the objection that it now raises.

This conduct indicates that if QSR received a favorable outcome at arbitration, it would not have challenged the award on these grounds, and our Supreme Court has emphasized that the waiver doctrine is appropriately applied in cases where vacating the arbitration award would "permit parties to anticipate a favorable decision, reserving a right to impeach it or set it aside if it happens to be against them, for a cause which was well known to them before or during the trial." (Internal quotation marks omitted.) *C.R. Klewin Northeast, LLC* v. *Bridgeport*, supra, 282 Conn. 87. Consequently, in addition to finding the lack of a public policy violation to warrant the vacatur of the award, the court further determines that QSR waived its right to challenge Judge Povodator's ruling by its conduct.

Law of the Case

A final reason the motion to vacate is denied is the law of the case doctrine, which, when applied, precludes the court from determining whether the motion to disqualify was correctly decided, because that issue was already litigated and decided during the proceedings that took place in front of Judge Povodator. QSR's application to vacate effectively asks the court to reconsider and overturn, or at the very least ignore, Judge Povodator's decision on the motion to disqualify. See Docket Entry No. 102, p. 9 ("QSR seeks to vacate the [a]ward because QSR's prior counsel should have never been allowed to represent [the defendant] in the underlying arbitration"); Docket Entry No. 132, p. 2 ("[t]he problem was that there was no basis for Judge

Povodator to limit this finding [of conflict] to [the defendant's] CUTPA claim because all of Haynes' claims were [predicated] on the same conduct").

"The law of the case doctrine expresses the practice of judges generally to refuse to reopen what [already] has been decided . . . . New pleadings intended to raise again a question of law which has been already presented on the record and determined adversely to the pleader are not to be favored. . . . [When] a matter has previously been ruled [on] interlocutorily, the court . . . may treat that [prior] decision as the law of the case, if it is of the opinion that the issue was correctly decided, in the absence of some new or overriding circumstance. . . . A judge should hesitate to change his own rulings in a case and should be even more reluctant to overrule those of another judge. . . . Nevertheless, if . . . [a judge] becomes convinced that the view of the law previously applied by his coordinate predecessor was clearly erroneous and would work a manifest injustice if followed, he may apply his own judgment." (Internal quotation marks omitted.) *Brown* v. *Otake*, 164 Conn. App. 686, 702-703, 138 A.3d 951 (2016).

QSR's application to vacate essentially seeks to relitigate the issue of whether the motion to disqualify should have been granted, as evidenced by the significant amount of briefing that it devoted to substantively addressing that issue. See Docket Entry No. 102, pp. 8-14; Docket Entry No. 125, pp. 15-28. It is true that in its application to vacate, QSR characterizes this argument as a claim that the public policy of protecting the attorney-client relationship was violated by the award, but in order to make that determination, the court would still need to determine whether the motion to disqualify should have been granted in the first place, which was the exact issue that was decided by Judge Povodator. See *Toland* v. *Toland*, 179 Conn. App. 800, 812, 182 A.3d 651 (2017) (in a challenge to an arbitration award, "[t]he substance, not the form, of the

challenge will govern" [internal quotation marks omitted]), cert. denied, 328 Conn. 935, 183 A.3d 1174 (2018).

That issue was fully and fairly litigated in front of Judge Povodator, who considered the parties' arguments on the motion to disqualify and actually decided it. The ruling was also necessary to resolve the issues presented by the motion and is now claimed by QSR to have been essential to the outcome of the arbitration proceedings. Further, it dealt with substantially identical facts concerning the history and nature of counsel's representation of both parties. Moreover, the parties agreed the decision of Judge Povodator would be binding on the arbitration proceeding.

Accordingly, because determining whether the claimed public policy violation exists would depend upon the court's consideration and resolution of the exact issues that were considered and resolved in Judge Povodator's well-reasoned and comprehensive ruling on the motion to disqualify, and because there has been no evidence to suggest that the decision was in any way erroneous, let alone clearly erroneous, the decision remains the law of the case.

CONCLUSION

For the foregoing reasons, in the absence of a clear violation of a public policy mandate, waiver, and the law of the case doctrine, QSR's application to vacate the arbitration award is denied and Haynes' cross-application to confirm the arbitration award is granted.

Vatti, Neeta, J.

Checklist for Clerk

Docket Number: HHD CV23-6170267

Case Name: QSR v. HAYNES

Memorandum of Decision dated: 4/30/2024

File Sealed: **Yes** **No** X

Memo Sealed: **Yes** **No** X

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HHD-CV23-6170267-S QSR STEEL CORPORATION LLC v. HAYNES CONSTRUCTION COMPANY

Prefix/Suffix: [none] **Case Type:** M40 **File Date:** 06/09/2023 **Return Date:** 06/09/2023

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Information Updated as of: 04/30/2024

Case Information

Case Type: M40 - Misc - Arbitration
Court Location: HARTFORD JD
List Type: No List Type
Trial List Claim:
Last Action Date: 04/30/2024 (The "last action date" is the date the information was entered in the system)

Disposition Information

Disposition Date:
Disposition:
Judge or Magistrate:

Party & Appearance Information

Party		No Fee Party	Category
P-01	**QSR STEEL CORPORATION LLC** **Attorney:** GERBER CIANO KELLY BRADY LLP (439912) File Date: 06/09/2023 100 CORPORATE PLACE SUITE 210 ROCKY HILL , CT 06067		Plaintiff
D-01	**HAYNES CONSTRUCTION COMPANY** **Attorney:** HINCKLEY ALLEN & SNYDER LLP (428858) File Date: 06/21/2023 20 CHURCH STREET HARTFORD , CT 06103		Defendant

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- Documents, court orders and judicial notices in an electronic (paperless) file can be viewed at any judicial district courthouse during normal business hours.*
- Pleadings or other documents that are not electronic (paperless) can be viewed only during normal business hours at the Clerk's Office in the Judicial District where the case is located.*
- An Affidavit of Debt is not available publicly over the internet on small claims cases filed before October 16, 2017.*

*Any documents protected by law Or by court order that are Not open to the public cannot be viewed by