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IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

CHARLES LILLIE et al.,

Plaintiffs and Appellants,

v.

CHANNEL VIEW
CONDOMINIUM ASSOCIATION,

Defendant and Respondent.

B316761

(Los Angeles County
Super. Ct. No. SC098144)

APPEAL from an order of the Superior Court of Los Angeles County, Mark H. Epstein, Judge. Affirmed.

Turner Law Firm, Keith J. Turner, and Justin Escano for Plaintiffs and Appellants.

Lewis Brisbois Bisgaard & Smith, Jeffrey A. Miller,
Ernest Slome, Barry G. Kaiman, and Jeffrey B. Stoltz for
Defendant and Respondent.

INTRODUCTION

Appellants Charles Lillie and Donna Marie Trapp appeal from the trial court’s denial of their petition to vacate or correct an arbitration award in favor of respondent Channel View Terraces regarding changes appellants sought to make to their condominium unit.¹ Appellants contended below that the court was required to review the award and the record on which it was based de novo because it violated their “fundamental statutory rights.” The trial court denied appellants’ petition on jurisdictional grounds, finding it untimely filed. The court rejected appellants’ request for relief under Code of Civil Procedure section 473, subdivision (b), finding the filing deadline jurisdictional and further

¹ The record refers to respondent as both “Channel View Condominium Association” and “Channel View Terraces.” Because no party has argued this distinction makes a difference, and because respondent refers to itself in its appellate brief as “Channel View Terraces” or “CVT,” we do the same.

finding that appellants had made no showing for relief.² In an “abundance of caution,” the court addressed the merits of appellants’ petition, rejecting their legal challenge, concluding the arbitrator’s factual findings were not subject to review, and determining that those findings supported the arbitrator’s award.

On appeal, appellants contend the court erred both in finding their petition untimely filed, and in finding they were not entitled to relief under section 473. Appellants also argue the court erred in refusing to review the entire record to arrive at its own factual findings. We affirm.

Code of Civil Procedure section 1288 provides that a petition to vacate or correct an arbitration award must be filed within “100 days after the date of the service of a signed copy of the award on the petitioner.” (Code Civ. Proc., § 1288.) As applicable here, section 1288.8 provides that if an application is made to correct the award and no signed correction or denial is served, the “date of the service of the award” will be deemed “[t]he date that such application is deemed to be denied under Section 1284.” (§ 1288.8, subd. (b).) Section 1284, in turn, provides that if an arbitrator does not rule on an application to correct an award within 30 days after the award was served on the applicant, it is deemed denied on the 30th day. (§ 1284.)

² Undesignated statutory references are to the Code of Civil Procedure.

Here, the arbitration award was served on October 31, 2020. Appellants asked the arbitrator to correct it, but the arbitrator issued neither a denial nor a correction of the award. Accordingly, under sections 1284, 1288, and 1288.8, appellants' petition to vacate or correct the award was required to be filed within 100 days of November 30, 2020, or by March 10, 2021. Because appellants did not file their petition until April 9, 2021, the petition was untimely. Moreover, because that 100-day deadline was jurisdictional, the trial court correctly concluded it lacked jurisdiction to consider appellants' request for relief under section 473.³

STATEMENT OF RELEVANT FACTS

A. *Arbitration Proceedings*

In 2003, Lillie purchased a condominium in the Channel View Terraces building so that he, Trapp, and Trapp's mother could live together. Sometime after the purchase, Trapp became disabled, and Lillie wanted to modify the condominium to accommodate her disability. After a dispute with CVT regarding what modifications were permissible, appellants filed suit in 2008. In September

³ Because we agree the trial court lacked jurisdiction to consider the petition, we need not address the court's additional findings that (a) even if section 473 applied, appellants failed to make an adequate showing for relief, or (b) on the merits, the court was bound by the arbitrator's factual findings, the findings supported the arbitrator's decision, and appellants were not entitled to relief or to de novo review.

2011, appellants and CVT entered into a “Settlement Agreement / Stipulation,” settling the monetary portion of their lawsuit, and agreeing that the non-monetary portion, including disputes about the proposed and already completed modifications, would be resolved through binding arbitration.

The arbitration was held before an arbitrator from Signature Resolution and spanned three days in January 2018. On October 31, 2020, the arbitrator served a final award, permitting some of the proposed modifications but rejecting others.

On November 13, 2020, appellants informed the arbitrator they were still reviewing the award and requested an extension until November 30 to file a request to correct the award. The arbitrator granted the extension.⁴

⁴ Signature Resolution Rule 28 provided, in pertinent part: “Any Party or the Arbitrator may seek to correct the Arbitration Award within fifteen (15) days of its issuance. Any Party may request the Arbitrator correct the Award whether based upon computational or other errors in calculation, or evident mistake in the description of any person, thing or property referred to in the Award. . . . In addition, the Arbitrator shall have the authority to correct any Award on any basis by advising the Parties not less than ten (10) days of any such intention to do so. The Arbitrator may extend the time for corrections upon a finding of good cause. The Arbitrator shall either deny the application or correct the Award in writing and shall serve such denial or correction on each Party. If no denial of the application or correction of the Award is served within thirty (30) days, then the application for correction shall be deemed denied on the last day thereof.”

On November 30, 2020, appellants asked the arbitrator to correct the award. On February 13, 2021, having received no ruling, appellants asked whether the application had been automatically denied as of December 30, 2020. The arbitrator responded affirmatively.

B. *Court Proceedings*

On April 9, 2021, appellants filed with the court a “Notice of Petition for Order Vacating/Correcting Arbitration Award.” Appellants argued the award violated their “fundamental statutory rights” because Civil Code section 4760 permitted them to modify their condominium to accommodate Trapp’s disability. CVT opposed the petition, and appellants replied.

Following an initial hearing, the court ordered supplemental briefing on “the issue of timing.” Appellants’ supplemental brief asserted the petition was timely filed and additionally argued that should the court decide otherwise, they were entitled to relief under section 473, subdivision (b). CVT’s supplemental brief asserted that the court lacked jurisdiction to consider appellants’ petition because it was untimely.

In a written order, the court denied appellants’ petition, finding it lacked jurisdiction to consider it. The court observed that “Code of Civil Procedure section 1288 requires that a petition to vacate or correct an award be filed and served within 100 days ‘after the date of service of a

signed copy of the award.” The award was served on either October 31 or November 2, 2020; April 9, 2021, was more than 100 days after both dates. The court further addressed section 1288.8, governing dates of service when an application to correct an award has been filed. Section 1288.8 provides that where an application to correct an award has been made, “the date of the service of the award for the purposes of this article shall be deemed to be whichever of the following dates is the earlier: [¶] . . . [¶] (b) The date that such application is deemed to be denied under Section 1284.” (§ 1288.8, subd. (b).) The court further noted that “Section 1284 states that the arbitrators may correct the award ‘not later than 30 days after service of a signed copy of the award on the applicant,’ and after that, the application to correct is deemed denied.”⁵ The court found that under section 1284, appellants’ application to correct the award was therefore deemed denied on either November 30, or December 2, 2020 (i.e., 30 days after either October 31 or November 2). The court continued: “Even taking December 2, 2020 to be the correct date, the time to file and serve the petition to vacate or correct expired on March 12, 2020 (100 days after denial)—almost a month before the

⁵ Section 1284 provides that “[t]he arbitrators, upon written application of a party to the arbitration, may correct the award . . . not later than 30 days after service of a signed copy of the award on the applicant” and that “[i]f no denial of the application or correction of the award is served within the 30-day period provided in this section, the application for correction shall be deemed denied on the last day thereof.”

actual petition to vacate was filed.” The court concluded that appellants’ petition was untimely, and that the court lacked jurisdiction to consider it.

The court additionally rejected appellants’ request for relief under section 473, holding it inapplicable to “situations in which the Court lacks jurisdiction,” and further noting appellants’ failure to make a showing for relief. Finally, “[i]n an abundance of caution,” the court addressed the merits of the petition, expressing doubt that it was entitled to review the award substantively, and concluding it could not second-guess the arbitrator’s factual findings, which supported the arbitrator’s conclusions. Appellants timely appealed.

DISCUSSION

The trial court found the petition to vacate untimely, reasoning that because appellants had asked the arbitrator to correct the award, the 100-day deadline started on the date such an application was deemed denied under section 1284 (i.e., 30 days after the award was served). Because the parties agree the arbitrator served the award on October 31, 2020, appellants’ application to correct the award was deemed denied on November 30, 2020. One hundred days after November 30, 2020, was March 10, 2021. Because the petition was filed on April 9, 2021, it was untimely. Below, we address and reject each of appellants’ arguments to the contrary.

A. *The 100 Days Began to Run on November 30, 2020*

Citing section 1288.8, appellants argue they had 100 days from December 30, 2020, to file their petition to vacate or correct the award, asserting that “if an application to correct award is made, the date of service of the award for the purposes of the petition to correct or vacate is the date of service of the denial of the application.” Appellants misread section 1288.8. That section provides: “If an application is made to the arbitrators for correction of the award, the date of the service of the award for the purposes of this article shall be deemed to be whichever of the following dates is the earlier: [¶] (a) The date of service upon the petitioner of a signed copy of the correction of the award or of the denial of the application. [¶] (b) The date that such application is deemed to be denied *under Section 1284*.” (§ 1288.8, italics added.) Section 1284 provides that an arbitrator “may correct the award . . . not later than 30 days after service of a signed copy of the award on the applicant” and that “[i]f no denial of the application or correction of the award is served within the 30-day period provided in this section, the application for correction shall be deemed denied on the last day thereof.”

As applied to the facts in this case, the date appellants’ application was “deemed to be denied under Section 1284” was November 30, 2020, 30 days after the award was served on appellants. Under section 1288.8, November 30, 2020, was the “date of the service of the award”; thus, under

section 1288, the 100-day time limit began on November 30. (§ 1288 [“A petition to vacate an award or to correct an award shall be served and filed not later than 100 days after the date of the service of a signed copy of the award on the petitioner”].)

B. *Section 1288.6 Does Not Assist Appellants*

In their reply brief, appellants argue that section 1288.6 is “directly on point” and supports their argument. We disagree. Section 1288.6 provides: “If an application is made to the arbitrators for correction of the award, a petition may not be served and filed under this chapter until the determination of that application.” Assuming, without deciding, that the parties were free to adopt a deadline to correct the award different from that set forth in the Code of Civil Procedure, under Signature Resolution rules appellants’ petition to correct the award was automatically denied on December 30, 2020, 30 days after they submitted it. Under section 1288.6, appellants could not file their petition with the court until after December 30, 2020. In other words, section 1288.6 provided the date *before which* appellants could not file their petition to vacate or correct, not the date on which the 100-day deadline began.

C. *Appellants Are Not Entitled to Relief Under Section 473*

Appellants argue that if their petition was untimely, they are entitled to relief under section 473. Because the statutory deadline is jurisdictional, they are not entitled to such relief.

1. The Deadline Is Jurisdictional

In *Kabran v. Sharp Memorial Hospital* (2017) 2 Cal.5th 330 (*Kabran*), our Supreme Court discussed the characteristics of a jurisdictional deadline, explaining that “Sections 657, 659, and 660, which govern on what ground and in what time period a litigant may seek a new trial, fall into the jurisdictional category [because n]ot only is a party’s attempt to file a notice of intent after the relevant deadline invalid, but the court has no power to issue a ruling on the basis of an untimely filed notice” (*Id.* at 342; see also Black’s Law Dict. (11th ed. 2019) [defining “jurisdiction” as “[a] court’s power to decide a case or issue a decree”].) In other words, a statutory deadline is jurisdictional when failure to meet that deadline strips the court of the power to rule. Appellate courts have held that “[t]he filing and service deadline for a petition to vacate [an arbitration award] is jurisdictional; noncompliance deprives a court of the power to vacate an award unless the party has timely requested vacation in response to a petition to confirm.” (*Santa Monica College Faculty Assn. v. Santa Monica Community College Dist.* (2015) 243 Cal.App.4th 538, 544-

545 (*Santa Monica College*); see also *Abers v. Rohrs* (2013) 217 Cal.App.4th 1199, 1203 (*Abers*) [deadline under section 1288 “operates in the same manner as the deadline for filing an appeal, and the court loses jurisdiction to vacate the award if the petition is not timely served and filed. Once jurisdiction is lost, it cannot be retroactively reinstated”].)

Under section 1286.4, a “court may not vacate an award unless” the petition to vacate or correct “has been duly served and filed.” (§ 1286.4, subds. (a) & (b).) To be “duly” filed, the petition must comply with the time requirements set forth in section 1288. “Legislative intent that a time limit be jurisdictional may be signaled . . . by asserting that “no [relief] shall be allowed or made after the expiration of the period of limitation prescribed . . . unless a claim . . . is filed . . . within such period.”” (*Kabran, supra*, 2 Cal.5th at 343.) Therefore, the 100-day deadline set forth in section 1288 is jurisdictional.

Citing *South Bay Radiology Medical Assocs. v. W. M. Asher, Inc.* (1990) 220 Cal.App.3d 1074 (*South Bay*), appellants contend that *Santa Monica College* and *Abers* were wrongly decided, and that “in the instant context, the lapse of the 100-day deadline set by CCP section 1288 is not jurisdictional because it does not remove a court’s power to determine whether an arbitrator exceeded his powers under CCP section 1286.2.” We disagree.

In *South Bay*, the appellant sought to avoid confirmation of an arbitration award by challenging the legality of the underlying contract, claiming it contained

statutorily prohibited non-compete provisions. While rejecting the claim, the court stated that challenges to the illegality of an underlying agreement based on such statutory provisions could be raised at any time. (*South Bay, supra*, 220 Cal.App.3d at 1079-1080.) Here, in contrast, appellants have raised no challenge to the underlying contract on which the arbitration was based. Moreover, *South Bay* did not expressly consider whether the statute governing a petition to vacate or correct an award was jurisdictional, and the authority it cited for the proposition that an illegality challenge could be raised at any time contained no such holding. (*Id.* at 1080-1081, citing *Loving & Evans v. Blick* (1949) 33 Cal.2d 603, 609 [holding only that courts are not bound by arbitrator’s determination whether underlying transaction was illegal].) In any case, to the extent *South Bay* conflicts with *Kabran* on the characteristics of a jurisdictional deadline, we are bound by *Kabran*. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455 [California Supreme Court decisions “are binding upon and must be followed by all the state courts of California”].)⁶

⁶ In their reply brief, citing *Rockefeller Technology Investments (Asia) VII v. Changzhou SinoType Technology Co., Ltd.* (2020) 9 Cal.5th 125, 144, appellants also contend the trial court “already ha[d] jurisdiction” because “[w]hen parties agree to California arbitration, they consent to submit to the personal jurisdiction of California courts to enforce the agreement and any judgment under section 1293.” This argument conflates personal
(*Fn. is continued on the next page.*)

2. Appellants Are Not Entitled to Relief Under Section 473 for Missing a Jurisdictional Deadline

Our Supreme Court has held that “section 473 cannot be relied upon to excuse a party’s failure to comply with a jurisdictional statute of limitations.” (*Maynard v. Brandon* (2005) 36 Cal.4th 364, 372.) Similarly, in *Abers*, the court held that “[n]otwithstanding the broad construction afforded section 473, subdivision (b), the statute does not offer relief from mandatory deadlines deemed jurisdictional in nature.” (*Abers, supra*, 217 Cal.App.4th at 1211; accord, *Santa Monica College, supra*, 243 Cal.App.4th at 545 [“section 473 cannot be relied upon to excuse a party’s failure to comply with a jurisdictional statute of limitations”].)

Appellants contend that *De Mello v. Souza* (1973) 36 Cal.App.3d 79, *Elden v. Superior Court* (1977) 53 Cal.App.4th 1497, and *Eternity Investments, Inc. v. Brown* (2007) 151 Cal.App.4th 739 compel a different conclusion. We disagree. *De Mello* and *Elden* were decided before our

and subject matter jurisdiction. (See, e.g., *Shisler v. Sanfer Sports Cars, Inc.* (2008) 167 Cal.App.4th 1, 6-7 [“The absence of personal jurisdiction is much different than the absence of subject matter jurisdiction. The lack of subject matter jurisdiction is a jurisdictional defect of the fundamental type. A trial court lacks jurisdiction in the fundamental sense where there is ‘an entire absence of power to hear or determine the case.’ [Citation.] ‘[P]ersonal jurisdiction relates to the power to bind a particular party, and depends on the party’s presence, contacts, or other conduct within the forum state”].)

Supreme Court decided *Maynard*, and *Eternity Investments* failed to address this Supreme Court precedent. We are bound by the pronouncements of our Supreme Court.⁷

⁷ In their reply brief, appellants additionally complain that section 473 relief should be available here because of “the contradictory deadlines set in CCP sections 1288, 1288.4, and 1288.6” and because “[i]t should not require the skills of a Talmudic scholar to decipher the correct deadline.” Appellants cite no authority permitting section 473 relief in such circumstances, and we do not find the deadlines set forth in the Code of Civil Procedure to be contradictory.

DISPOSITION

The court's order is affirmed. Respondent is awarded its costs on appeal.

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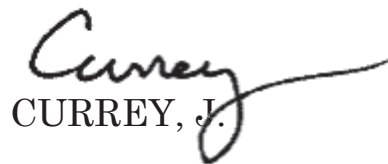


MANELLA, P. J.

We concur:



COLLINS, J.



CURREY, J.