

STATE OF MICHIGAN
COURT OF APPEALS

METEOR PHOTO & IMAGING COMPANY,

Plaintiff-Appellant,

v

TRAVIS L. PARR,

Defendant-Appellee.

UNPUBLISHED

February 2, 1999

No. 206366

Oakland Circuit Court

LC No. 97-547755 CZ

Before: Sawyer, P.J., and Wahls and Hoekstra, JJ.

MEMORANDUM.

Plaintiff appeals as of right from the circuit court order denying its motion to vacate an arbitration award and granting defendant's motion to confirm and enter judgment on the award. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff and defendant entered into an agreement pursuant to which defendant accepted employment as an "executive officer," "[s]ubject to this Agreement's terms and conditions." He was given the title of President and Chief Operating Officer, but agreed to accept any other title designated by plaintiff's Board of Directors, of which he was a member. Defendant was to remain "subject to the direction and control" of the Board.

The Board abolished the position of President and Chief Operating Officer, and distributed its duties among four vice-presidents. Defendant was assigned to the position of Sales Manager at the Atlanta facility. After one month in this position defendant resigned. He asserted that plaintiff had breached the agreement.

The matter was submitted to arbitration. The arbitrator found that defendant contracted for employment as an executive officer, and that while that category was generic, a change in duties that expelled defendant from that rank constituted a breach of contract. The arbitrator found that the position of Sales Manager was not an executive officer position. The arbitrator concluded that plaintiff breached the agreement, and entered a monetary award in defendant's favor.

Plaintiff appealed to circuit court, and filed a motion to vacate the award. Defendant filed a motion to confirm and enter judgment on the award. The circuit court confirmed the award, noting that it was required to give deference to the findings of the arbitrator, and that it could not disturb the decision absent a substantial error of law.

Arbitrators exceed their powers whenever they act beyond the material terms of the contract from which they primarily draw their authority, or in contravention of controlling principles of law. *DAIE v Gavin*, 416 Mich 407, 434; 331 NW2d 418 (1982). This standard precludes review on the grounds that the award was against the great weight of the evidence or was not supported by substantial evidence. *Donegan v Michigan Mutual Ins Co*, 151 Mich App 540, 549; 391 NW2d 403 (1986). This Court reviews a circuit court's grant of a motion to confirm or vacate an award de novo. *Dohanyos v Detrex Corp (After Remand)*, 217 Mich App 171, 177-178; 550 NW2d 608 (1996).

On appeal, plaintiff argues that the arbitrator exceeded his powers by acting beyond the material terms of the agreement. According to plaintiff, the arbitrator erred in concluding that plaintiff could only assign defendant those titles and duties appropriate for an executive officer. We disagree, and affirm the decision of the circuit court. No Michigan employment law case has defined the term "executive officer." The term is ambiguous, in that it reasonably may be understood in different ways. An ambiguity must be resolved by the finder of fact by determining the intentions of the parties. The finder of fact must construe the contract terms in light of the circumstances in which the contract was made. The intention of the parties prevails over the literal terms of the contract. *Klever v Klever*, 333 Mich 179, 186; 52 NW2d 653 (1952). Here, the arbitrator concluded that the parties contracted for defendant's employment as an executive officer, and that the position of Sales Manager was not an executive officer position. The arbitrator did not exceed his authority by interpreting the contract in this fashion. The circuit court correctly deferred to the findings of the arbitrator. *Gordon Sel-Way v Spence Bros, Inc*, 438 Mich 488, 497; 475 NW2d 704 (1991).

Affirmed.

/s/ David H. Sawyer
/s/ Myron H. Wahls
/s/ Joel P. Hoekstra