

STATE OF MICHIGAN
COURT OF APPEALS

SYED LATAFAT HUSAIN HAMZAVI,

Plaintiff-Appellee,

v

SIRAJUDDIN AHMAD d/b/a CRESCENT
BUILDERS and CRESCENT BUILDERS, INC.,

Defendants-Appellants.

UNPUBLISHED

March 30, 1999

No. 205592

Oakland Circuit Court

LC No. 93-463545 CK

Before: Neff, P.J., and Kelly and Hood, JJ.

PER CURIAM.

Defendants appeal as of right from an order entering judgment on an arbitration award rendered in favor of plaintiff. We affirm.

In 1987, the parties in this case entered into a contract for construction of a shopping plaza. When a dispute arose, defendants filed a claim and plaintiff filed a counterclaim, separate from this case, both alleging breach of contract. An arbitration clause contained in the parties' construction contract required that all claims or disputes between the parties arising out of the contract be arbitrated in accordance with the American Arbitration Association ("AAA"), unless the parties agreed otherwise. The parties agreed to dismiss the complaint and counterclaim and submit the matter to arbitration through private Islamic arbitration.

Without mentioning any of the claims of plaintiff herein in its award, the Islamic arbitrators awarded defendants \$157,000, and judgment was entered in that amount by the circuit court. Plaintiff appealed that judgment to this Court, arguing, among other things, that the judgment should be modified to include an offset for his claims. Plaintiff also submitted his claim for damages to arbitration by the AAA, pursuant to the parties' original contract. This Court affirmed the trial court's entry of judgment, finding, among other things, that the trial court's failure to modify the award to include an offset for the damage claims of plaintiff herein was rendered moot by the parties' submission of the issue to AAA arbitration.¹

The AAA panel awarded plaintiff herein \$125,000. Plaintiff filed a motion for summary disposition and obtained entry of a judgment on this award in the circuit court. That award subsequently was set aside by this Court.² On remand, after the parties argued cross-motions for summary disposition, the circuit court again entered judgment in favor of plaintiff on the AAA award.

Defendants argue on appeal that the trial court erred in determining that the Islamic arbitration did not include plaintiff's claims and in entering judgment on the AAA arbitration without first conducting an evidentiary hearing to determine the intended scope of the Islamic arbitration. They maintain that the arbitration was conducted in two phases. In the first phase, the arbitrators determined that defendants had no liability to plaintiff, and in the second, represented by the parties' written agreement, they determined the amount of damages owed by plaintiff to defendants. Therefore, defendants argue, plaintiff's issues were addressed in the Islamic arbitration and arbitration by the AAA arbitration panel was precluded.

The Uniform Arbitration Act, MCL 600.5001 *et seq.*; MSA 27A.5001 *et seq.*, permits persons to agree to submit controversies to arbitration. MCL 600.5001(1); MSA 27A.5001(1); *Ehresman v Bultynck & Co*, 203 Mich App 350; 511 NW2d 724 (1994). Judicial enforcement and review of statutory arbitration agreements are governed by MCR 3.602. MCL 600.5021; MSA 27A.5021; *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 495; 475 NW2d 704 (1991); *Dick v Dick*, 210 Mich App 576, 588; 534 NW2d 185 (1995). Under MCR 3.602(J)(1), a court may vacate an award if the arbitrators exceeded their powers. Review of whether arbitrators have exceeded their scope of authority is "restricted to cases in which an error of law appears from the face of the award, or the terms of the contract of submission, or such documentation as the parties agree will constitute the record." *Dohanyos v Detrex Corp (After Remand)*, 217 Mich App 171, 176; 550 NW2d 608 (1996).

Because both the Islamic and AAA arbitration agreements provided that judgment upon the arbitrators' award may be entered by a circuit court, the arbitrations in this case are governed by the Uniform Arbitration Act. *Beattie v Autostyle Plastics, Inc*, 217 Mich App 572, 578; 552 NW2d 181 (1996). See MCL 600.5001(1); MSA 27A.5001(1). The parties' agreement to Islamic arbitration was not written in comprehensive terms to include all claims and disputes. See *Gordon Sel-Way, supra* at 497-498. Rather, the agreement specifically listed the damages to be addressed by the Islamic panel pursuant to that agreement. None of plaintiff's claims for damages were mentioned, nor were they mentioned in the panel's award. Because the scope of the arbitrators' authority is limited to the contractual agreement of the parties, *Dohanyos, supra* at 175-176, we find that the trial court did not err in finding that plaintiff's claims were not included in the Islamic arbitration agreement.

Defendants also argue, however, that it was the intent of the parties that the Islamic arbitration agreement supersede the AAA agreement and that the court erred in entering judgment on the AAA agreement when that agreement was no longer in effect. Defendants present affidavit evidence in support of their argument that there existed a genuine issue of fact with regard to the parties' intent and argue that the trial court should have conducted an evidentiary hearing to ascertain that intent. We note, however, that defendants did not request an evidentiary hearing before the trial court, nor do they cite

any authority to suggest that the trial court was required to conduct an evidentiary hearing before determining that the agreement to Islamic arbitration did not include plaintiff's claims.

Where the terms of a contract are unambiguous, their construction is for the court to determine as a matter of law. *Zurich Ins Co v CCR and Co (On Rehearing)*, 226 Mich App 599, 604; 576 NW2d 392 (1997). Extrinsic evidence may not be used to impeach the plain meaning of the terms. *Id.* However, "if a contractual term is otherwise ambiguous or subject to more than one possible construction within the four corners of the written instrument and the circumstances or relations of the parties underlying the contract resolve that ambiguity, the Court must inquire into them in performing its interpretive function." *Id.* at 607.

Defendants in this case do not argue that the terms of the Islamic arbitration agreement were ambiguous. Moreover, the trial court found that the arbitration agreement included only defendants' claims. Therefore, we find that the trial court did not err in failing to conduct an evidentiary hearing on the issue of the parties' intent when entering into the Islamic arbitration agreement.

Finally, defendants argue that the doctrine of judicial estoppel precludes plaintiff's argument in this case that the parties did not intend that the Islamic arbitration address plaintiff's claims, because plaintiff argued to the contrary in prior litigation. Under the doctrine of judicial estoppel as applied in Michigan, a party who has successfully and unequivocally asserted a position in a prior proceeding is prohibited from asserting a wholly inconsistent position in a subsequent proceeding. *Driver v Hanley (After Remand)*, 226 Mich App 558, 562; 575 NW2d 31 (1997). In this case, however, plaintiff was not successful in his previous appeal. Therefore, we find that the doctrine of judicial estoppel is not applicable to the facts of this case.

Affirmed.

/s/ Janet T. Neff

/s/ Michael J. Kelly

/s/ Harold Hood

¹ *Ahmad v Hamzavi*, unpublished opinion per curiam of the Court of Appeals, released August 18, 1994 (Docket No. 152011).

² *Hamzavi v Ahmad*, unpublished opinion per curiam of the Court of Appeals, released July 30, 1996 (Docket No. 179155). In that case, plaintiff filed a motion for summary disposition with regard to entry of the judgment, and defendants failed to oppose the motion. The motion was granted and judgment was entered in favor of plaintiff. Defendants moved for relief from judgment, arguing that their failure to respond to the motion was excusable neglect. The motion was denied, but this Court reversed and remanded for further proceedings, finding that the situation justified relief from judgment.

