

STATE OF MICHIGAN
COURT OF APPEALS

ROBBIE D. LANG,

Plaintiff/Counterdefendant-Appellee,

v

WILLIAM J. LANG,

Defendant-Appellant,

and

WILLIAM P. LANG,

Defendant/Counterplaintiff-Appellant,

and

R & B INVESTMENT CO., and RANDOGS, INC.,

Defendants.¹

Before: Gribbs, P.J., and O'Connell and R.B. Burns,* JJ.

PER CURIAM.

Defendants appeal as of right the trial court's judgment confirming an arbitration award that decided all issues pertinent to William P. Lang's counterclaim in this action for dissolution of two businesses. We affirm.

In 1995, plaintiff and his uncle, defendant William J. Lang, formed two businesses. Randogs, Inc., was a restaurant and bar and R& B Investment Co., leased the building and property where Randogs, Inc., was located. According to plaintiff, he and defendant William J. Lang each owned fifty percent of the businesses and equally shared responsibility for the day-to-day operations of

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

Randogs, Inc. After several disagreements over the management of the businesses, plaintiff filed the present action, seeking dissolution and an accounting and restraint upon alienation of business assets and profits. Thereafter, defendant William J. Lang's son, William P. Lang, was added as a defendant to the action. Defendant William P. Lang filed a counterclaim, asserting that he had purchased ten percent of the businesses and had been given an additional ten-percent interest in exchange for the numerous hours that he had worked at Randogs, Inc., without compensation. The counterclaim specifically alleged fraud, a right to declaratory judgment, breach of express contract, promissory estoppel, breach of fiduciary duty, a right to mandamus, quantum meruit, unjust enrichment and legal malpractice.

The trial court entered an order for sale of the businesses and for arbitration of defendant William P. Lang's counterclaim. Arbitration took place, during which the arbitrator decided: (1) the parties' rights to the businesses' capital accounts and shareholder loan balances as of July 29, 1995; (2) the parties' shares in R & B Investment Co., and Randogs, Inc.; (3) the parties' rights to returns from the capital accounts and shareholder loan balances upon sale of the business, after payment of expenses; (4) the allocation of the profits from the sale of the businesses; and, (5) the allocation of the parties' attorney fees and costs. Defendants' motion to modify, correct or vacate the arbitration award was denied and the trial court entered its judgment confirming the arbitration award.

On appeal, defendants first argue that the arbitration award should have been modified because the arbitrator rendered an award on matters not submitted to arbitration. Defendants claim that it was improper for the arbitrator to determine the parties' capital accounts and shareholder loan balances, determine the distribution of proceeds upon the sale of the businesses, and to alter the trial court's distribution of profits contrary to the Michigan Business Corporations Act, MCL 450.1855a; MSA 21.200(855a). We disagree.

Michigan public policy favors the resolution of disputes through arbitration, *Rembert v Ryan's Family Steak Houses, Inc.*, 235 Mich App 118, 128; 596 NW2d 208 (1999), in order to avoid protracted litigation, *NuVision v Dunscombe*, 163 Mich App 674, 684; 415 NW2d 234 (1987). If parties to a suit invoke binding arbitration, they are required to proceed according to the Uniform Arbitration Act. MCL 600.5001 *et seq.*; MSA 27A.5001 *et seq.*; MCR 3.602; *Dick v Dick*, 210 Mich App 576, 588; 534 NW2d 185 (1995). Once an issue is submitted to arbitration, a court may: (1) confirm the award, (2) vacate the award if obtained through fraud, duress or other undue means, or (3) modify or correct errors that are apparent on the face of the award. *Konal v Folini (On Remand)*, 235 Mich App 69, 74; 596 NW2d 630 (1999); *Dohanyos v Detrex Corp (After Remand)*, 217 Mich App 171, 175; 550 NW2d 608 (1996); see *DAIIE v Sanford*, 141 Mich App 820, 825; 369 NW2d 239 (1985). An award may be modified or corrected under the following circumstances:

(1) On application made within 21 days after delivery of a copy of the award to the applicant, the court shall modify or correct the award if:

(a) there is an evident miscalculation of figures or an evident mistake in the description of a person, a thing, or property referred to in the award;

(b) the arbitrator has awarded on a matter not submitted to the arbitrator, and the award may be corrected without affecting the merits of the decision on the issues submitted; or

(c) the award is imperfect in a matter of form, not affecting the merits of the controversy. [MCR 3.602(K)(1).]

Here, the trial court's order for the sale of the businesses and for arbitration provided, in part:

William P. Lang's First Amended Counterclaim shall be submitted to binding arbitration, pursuant to a separate arbitration agreement which shall be executed by the parties simultaneous hereto. The Honorable George Steeh, Sr., shall be the single arbitrator in the case and will conduct this arbitration in accordance with the rules of the American Arbitration Association and the attached Arbitration Agreement.

All profits derived from the operation of the business shall be retained in the corporate account pending the sale of the business and the distribution of the proceeds. Upon the sale of the business, the proceeds and retained profits shall be distributed with forty (40%) percent being distributed to William Lang, Sr., and forty (40%) percent being distributed to Robbie Lang. The remaining twenty (20%) percent of the sale proceeds and retained profits shall be held in escrow in the corporate account, pending resolution by arbitration as set forth below of the parties remaining disputes.

The trial court's arbitration order specifically defined the issues to be submitted to arbitration, providing, in part:

ROBBIE D. LANG and WILLIAM J. LANG and WILLIAM P. LANG, Individually, R & B INVESTMENT COMPANY, a Michigan corporation and RANDOGS, INC., a Michigan corporation, hereby agree to arbitrate a dispute between them relating to the issues set forth in William P. Lang's First Amended Counterclaim filed in Macomb County Circuit Court action No. 97-141 CZ. The issues to be determined by the arbitration are set forth in William P. Lang's First Amended Counterclaim filed in the above-captioned matter.

Defendant William P. Lang's counterclaim generally challenged plaintiff's assertion that plaintiff and defendant William J. Lang each owned fifty percent of the businesses. Defendant William P. Lang asserted that he had acquired a twenty-percent interest in the businesses and specifically requested declaratory judgment, stating: "This is a claim for declaratory relief pursuant to MCR 2.605, to declare the rights and legal relations of William P. Lang, William J. Lang and Robbie D. Lang." Accordingly, the issues that the parties agreed to submit to arbitration required determination of the parties' respective rights and interests in the businesses. Moreover, the trial court's order that twenty percent of the businesses' sale proceeds and retained profits be placed in escrow pending arbitration of the

counterclaim indicated the need for the arbitrator to render specific determinations as to the proper distribution of business assets. Therefore, we conclude that it was not error for the arbitrator to determine the parties' capital accounts and the distribution of sale proceeds. Furthermore, the arbitration award was not contrary to the Michigan Business Corporations Act, MCL 450.1855a; MSA 21.200(855a). The Act does not preclude a determination that shareholders to a corporation have unequal rights and interests in corporate assets.

Defendants also argue that the arbitration award should have been vacated because the arbitrator exceeded his powers in rendering the award. This Court may vacate an arbitration award if it clearly appears on the face of the award that the arbitrator exceeded his powers through an error of law and, but for that error, the award would have been substantially different. *Rembert, supra* at slip op p 19; *Collins v Blue Cross Blue Shield of Michigan*, 228 Mich App 560, 567; 579 NW2d 435 (1998); see *DAIIE v Gavin*, 416 Mich 407, 443; 331 NW2d 418 (1982). Arbitration of the issues contained in Billy Lang's counterclaim necessitated a more specific determination of the parties' ownership rights in the businesses. Accordingly, the arbitrator did not exceed his powers when he decided issues pertinent to the parties' respective rights.

Affirmed.

/s/ Roman S. Gribbs
/s/ Peter D. O'Connell
/s/ Robert B. Burns

¹ R & B Investment Co., and Randogs, Inc., are not parties to this appeal.