

STATE OF MICHIGAN
COURT OF APPEALS

STRUCTURAL LANDSCAPES,

Plaintiff- Appellee,

v

ROUMEL & CONSTANTINE CONSTRUCTION,
INC., LASCELLES PINNOCK, HELEN BYRD,
and STANDARD FEDERAL BANK,

Defendants- Appellants.

UNPUBLISHED

November 12, 1999

No. 209934

Oakland Circuit Court

LC No. 93-466218 CK

Before: White, P.J., and Hood and Jansen, JJ.

PER CURIAM.

Defendants appeal as of right from an order confirming an arbitration award in favor of plaintiff. We affirm.

The parties agreed to submit their claims to arbitration. The order referring the matter to binding arbitration provided that the decision of the arbitrator “shall” be irrevocable and the award would be enforceable as a judgment.¹ The arbitrator ruled in favor of the plaintiff in the amount of \$14,600 and determined that defendants were not entitled to any setoff on their counterclaim. The arbitrator also held that each party was to bear their own costs and expenses for arbitration, “which sums shall also be deducted from those funds held in escrow.” Plaintiff filed a motion to confirm the arbitration award. Counsel for defendants filed an answer in response to the motion and represented that he could not attend the hearing on the motion. Substitute counsel for defendants attempted to attend the hearing, but the motion had been heard and granted in plaintiff’s favor. Defendants filed a motion to set aside the order confirming arbitration award which was denied.

Defendants first argue that plaintiff’s motion, while entitled a motion to confirm arbitration award, was an untimely motion to modify the arbitration award. We disagree. Plaintiff’s motion to confirm arbitration requested relief consistent with the arbitrator’s opinion as well as interest. However, the request for interest was withdrawn by plaintiff’s counsel. Therefore, plaintiff’s caption of the motion as requesting confirmation of the award was proper. A motion to confirm an arbitrator’s award must be filed within a year of the award, MCR 3.602(I), and plaintiff’s motion was timely filed. Even assuming

that plaintiff's motion should have been construed as a motion to vacate or modify the award, the failure to seek modification of the award within twenty-one days does not deprive the trial court of jurisdiction or discretion to entertain the motion. *Detroit Automobile Inter-Insurance Exchange v Gavin*, 416 Mich 407, 422-424; 331 NW2d 418 (1982). Accordingly, defendants' objection to the timeliness of plaintiff's motion is without merit.

Defendants next argue that the arbitrator had no authority to order any disbursements from the escrow agreement. We disagree. An arbitrator has exceeded his power when he acts beyond the material terms of the contract from which he draws his authority or acts in contravention of controlling principles of law. *Dohanyos v Detrex Corp (After Remand)*, 217 Mich App 171, 176; 550 NW2d 608 (1996). The parties cannot seek to expand the record on appeal, and facts not appearing from the record cannot be considered on appeal. *Coburn v Coburn*, 230 Mich App 118, 122; 583 NW2d 490 (1998). The agreement to submit the matter to binding arbitration contained within the lower court record did not set forth any limitation on the arbitrator's authority to render his decision. Defendants reliance on the escrow agreement is misplaced as this issue was neither presented to nor decided by the trial court, and the escrow agreement was not included in the lower court record.² *Id.*

Affirmed.

/s/ Harold Hood

/s/ Kathleen Jansen

¹ Accordingly, the arbitration was statutory and governed by the provisions of MCR 3.602(A). *Gaines Twp v Carlson, Hohloch, Mitchell & Piotrowski, Inc.*, 79 Mich App 523, 528-529; 261 NW2d 71 (1977).

² Although a copy of the escrow agreement between Dr. Lascelles Pinnock and First Metropolitan Title Company was attached as exhibit 7 to *appellee's* brief on appeal, it was never placed before the trial court.