

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

L. LOYER CONSTRUCTION CO.,

Plaintiff/Counter Defendant-  
Appellant,

v

HARTLAND MEADOWS,

Defendant/Counter Plaintiff-  
Appellee.

UNPUBLISHED  
February 26, 2002

No. 227233  
Wayne Circuit Court  
LC No. 99-935163-CK

---

HARTLAND MEADOWS,

Plaintiff-Appellee,

v

L. LOYER CONSTRUCTION CO.,

Defendant-Appellant.

No. 227818  
Wayne Circuit Court  
LC No. 97-733295-CK

---

Before: Smolenski, P.J., and Doctoroff and Owens, JJ.

PER CURIAM.

L. Loyer Construction Company appeals as of right in these consolidated cases from the order dismissing its cause of action against Hartland Meadows and from the order affirming an arbitration award in favor of Hartland Meadows. We affirm. These appeals are being decided without oral argument pursuant to MCR 7.214(E).

Hartland owned land on which it planned to develop a manufactured home community. Loyer is an earth-moving contractor. After Hartland accepted Loyer's bid for the rough grading work, the parties entered into a standard form AIA contract in October 1994 in which Hartland agreed to pay Loyer \$600,000 for the work. The AIA standard form contract contains preprinted references to a separate document, AIA Document A201, General Conditions of the Contract for Construction ("General Conditions"). However, it is undisputed that neither party had a copy of the General Conditions document and that neither party abided by the conditions during the course of the contract.

Over the next year, Loyer performed the rough grading work for Phases I and II of the development. Loyer's last day on the job was September 23, 1995, and it received final payment from Hartland on January 17, 1996. However, it became apparent in May and June of 1996 that Loyer had not properly graded Phase I, because some of the corners of the lots were low. In 1997, Hartland was informed that the grade in Phase II was so uneven that underground utilities could not be installed. At a meeting in late June 1997, Loyer said it would return to correct the deficiencies; however, on July 3, 1997, Loyer changed its mind and refused to return to the site. Hartland made a written demand for performance on July 9, 1997, in which it informed Loyer that it would seek legal remedies. Hartland was later forced to hire others to correct the grading work.

Hartland brought suit for damages for breach of contract. Pursuant to the parties' contract, they stipulated to arbitration of the claim, and Hartland's suit was dismissed without prejudice to its reinstatement following arbitration. Among other things, Loyer contended that Hartland's claim was barred by the time limits for asserting such claims set forth in § 4.3.3 of the General Conditions, which required that any claims be filed in writing with the architect on the project within a twenty-one day time limit. The time limit ran either from the date of the event giving rise to the breach or from the date the claimant first recognized the conditions giving rise to the claim. The arbitrators found for Hartland and awarded it \$190,000 in damages.

Hartland moved in circuit court to reinstate its suit and to enforce the arbitration award. The parties filed cross-motions for summary disposition. At the same time, Loyer initiated a separate suit to vacate the award, again arguing that Hartland could not recover because its claim was untimely under the terms of the General Conditions. The circuit court granted summary disposition to Hartland and dismissed Loyer's claim, concluding that it was impossible to find error on the face of the award because there were questions of fact with regard to the parties' intent. Loyer then filed these claims of appeal, which were consolidated by an administrative order of this Court on August 8, 2000.

Loyer contends that the arbitrators exceeded their authority by ignoring the time limits for asserting a claim set forth in the General Conditions. Arbitrators exceed the scope of their authority "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." *Collins v Blue Cross Blue Shield of Michigan*, 228 Mich App 560, 567; 579 NW2d 435 (1998), quoting *DAIIE v Gavin*, 416 Mich 407, 434; 331 NW2d 418 (1982).

Judicial review of a binding arbitration award is strictly limited by statute and court rule. *Konal v Forlini*, 235 Mich App 69, 74-75; 596 NW2d 630 (1999). Pursuant to MCR 3.602, parties are conclusively bound by a binding arbitrator's decision absent a showing

that the award was procured by duress or fraud, that the arbitrator or another is guilty of corruption or misconduct that prejudiced the party's rights, that the arbitrator exceeded his powers, or that the arbitrator refused to hear material evidence, refused to postpone the hearing on sufficient cause, or conducted the hearing in a manner that substantially prejudiced a party's rights. [*Konal, supra* at 75.]

“A reviewing court may vacate an arbitration award where it finds an error of law that is apparent on its face and so substantial that, but for the error, the award would have been substantially different.” *Collins, supra* at 567. However, claims that challenge an arbitrator’s factual findings are not subject to appellate review. *Konal, supra* at 74. “Courts may not engage in contract interpretation, which is a question for the arbitrator.” *Id.*

In this case, the parties stipulated to an award that contained no findings of fact, but merely provided for a result. Nevertheless, the record indicates that Hartland disputed whether the General Conditions, including the 21-day time limitation, were part of the contractual terms between the parties. In fact, Hartland contended in its arbitration brief that either (i) the General Conditions were not part of the original contract or (ii) even if the General Conditions were part of the original contract, to the extent that the parties’ performances “ignored” the General Conditions, strict compliance with the General Conditions was waived.

In light of Hartland’s arguments, the arbitrators may have found from the parties’ course of performance that they did not intend to incorporate the General Conditions into the contract. Indeed, neither party had a copy of the General Conditions until after litigation had been initiated. A finding that the General Conditions were never incorporated into the contract would either be a factual finding or contractual interpretation by the arbitrators beyond the scope of judicial review. *Konal, supra* at 74-75. Alternatively, the arbitrators may have found that the parties’ performances waived strict compliance with the General Conditions. If the arbitrators made either of these findings, the 21-day notice requirement would not have operated to prevent Hartland’s recovery as a matter of law. Consequently, we are not persuaded that the trial court erred by dismissing Loyer’s cause of action against Hartland or by affirming the arbitration award in favor of Hartland.

Affirmed.

/s/ Michael R. Smolenski  
/s/ Martin D. Doctoroff  
/s/ Donald S. Owens