STATE OF MICHIGAN

COURT OF APPEALS

DEMARIA BUILDING COMPANY, INC.,

Plaintiff- Counterdefendant-Appellee/Cross-Appellant,

v

TAWEEL ASSOCIATES, P.C.,

Defendant- Counterplaintiff-Appellant/Cross-Appellee,

and

HES-TAWEEL ASSOCIATES, INC.,

Defendant.

UNPUBLISHED
March 9, 2004

No. 243130
Oakland Circuit Court
LC No. 1997-550652-CK

Before: Cavanagh, P.J., and Gage and Zahra, JJ.

PER CURIAM.

Defendant Taweel Associates, P.C. (hereinafter defendant), appeals by right from an order entering judgment on an arbitration award in favor of plaintiff DeMaria Building Co., Inc. and against both defendant and defendant HES-Taweel Associates Inc., and partially vacating the award with respect to the interest rate applicable on the award. Plaintiff cross-appeals the trial court's partial vacation of the arbitration award with respect to the interest rate applicable on the award. We affirm in part and reverse in part.

Plaintiff, a general contractor, filed a complaint against defendant, its subcontractor, and HES-Taweel Associates, Inc., also a general contractor and a separate corporation, for breaching various construction contracts entered into by the parties in 1995 and 1996. The complaint stemmed from defendants' alleged failure to fulfill contractual duties, and their alleged professional negligence and malpractice arising out of the construction projects. The parties eventually entered into a stipulated agreement to arbitrate this matter and an order compelling binding arbitration was entered. Subsequently, the arbitrator issued an award in favor of plaintiff and against defendant for damages in the principal amount of $34,279 plus interest, based on plaintiff's claims against defendant on one of the projects, the Dearborn Police Station and Courthouse Addition project; and it issued an award in favor of plaintiff and against HES-Taweel, for $35,443 plus interest, based on plaintiff's claims against HES-Taweel on another

project, the American Axle Manufacturing Plant project. The trial court entered judgment on the award, vacating only the interest rate applicable on the award against defendant.

Defendant argues on appeal that the trial court erred in entering judgment on the arbitration award because plaintiff's failure to introduce expert testimony during arbitration was fatal to its professional malpractice claims against defendant, and the arbitrator clearly erred by finding that expert testimony was not needed. Further, defendant argues that the arbitrator clearly erred in finding that HES-Taweel was liable for a debt to plaintiff, and then holding defendant liable to pay that debt to plaintiff. We disagree.

We review de novo a trial court's decision to enforce, vacate, or modify an arbitration award. *Tokar v Albery*, 258 Mich App 350, 352; 671 NW2d 139 (2003). MCR 3.602(J) provides that a court may only vacate an arbitration award upon a showing that:

> a. the award was procured by corruption, fraud or other undue means;
>
> b. there was evident partiality by an arbitrator appointed as neutral, corruption of an arbitrator, or misconduct prejudicing a party's rights;
>
> c. the arbitrator exceeded his or her powers; or
>
> d. the arbitrator refused to postpone the hearing on a showing of sufficient cause, refused to hear evidence material to the controversy, or otherwise conducted the hearing to prejudice substantially a party's rights.

Arbitrators exceed the scope of their authority whenever they act beyond the material terms of their contract from which they primarily draw their authority, or when they act in contravention of controlling principles of laws. *Collins v Blue Cross Blue Shield of Michigan*, 228 Mich App 560, 567; 579 NW2d 435 (1998). Courts may vacate an award in which an erroneous legal ruling is direct and definite, or flies in the face of established legal precedent. *Bell v Seabury*, 243 Mich App 413, 422 n 4; 622 NW2d 347 (2000). Judicial review of alleged errors of law in arbitration decisions are limited to those that appear on the face of the award. *DAIIE v Gavin*, 416 Mich 407, 432; 331 NW2d 418 (1982); *Howe v Patron's Mutual Fire Insurance Co of Michigan*, 216 Mich 560, 570; 185 NW 864 (1921). In *Gavin*, *supra* at 443, our Supreme Court stated:

> The character or seriousness of an error of law which will invite judicial action to vacate an arbitration award under the formula we announce today must be so material or so substantial to have governed the award, and but for which the award would have been substantially otherwise.

An arbitrator's findings of fact are not reviewable. *Belen v Allstate Insurance Co*, 173 Mich App 641, 645; 434 NW2d 203 (1988). Under an arbitration agreement, a court of review must treat all findings of fact as final unless found in a manifest disregard of evidence. *Jaffa v Shacket*, 114 Mich App 626, 635; 319 NW2d 604 (1982).

We find the trial court correctly affirmed the arbitrator's award in favor of plaintiff on the Dearborn project, which was the only project resulting in an award for plaintiff against

defendant, and it correctly affirmed the arbitrator's decision not to award defendant any damages on the Monroe Community College project. With regard to the issue of the necessity of expert testimony, the arbitrator made a specific finding of fact that defendant's errors in performing its contractual duties on the Dearborn project were simple enough for a layman to understand without the assistance of expert testimony, and this decision was not reviewable by the trial court.

Furthermore, regardless whether the arbitrator rendered the award based on breach of contract or malpractice, the arbitrator's legal determination that expert testimony was not needed because defendant's errors were simple enough for a layman to understand, was correct under Michigan law. In any professional malpractice action, an expert witness is usually required to establish the standard of conduct, breach of that standard, and causation. *Dean v Tucker*, 205 Mich App 547, 550; 517 NW2d 835 (1994); *Law Offices of Lawrence J Stockler v Rose*, 174 Mich App 14, 48; 436 NW2d 70 (1989). Expert testimony is not necessary, however, to establish malpractice where a professional's failure to meet the applicable standard of care is clear and obvious. *Joos v Auto-Owners Insurance*, 94 Mich App 419, 422-424; 288 NW2d 443 (1979).

Therefore, the arbitrator did not exceed his powers by acting in "contravention of controlling principles of law," or by making an erroneous legal ruling on the face of the award, when he determined that defendant's mistake was simple enough for a layman to understand and therefore expert testimony was not required to explain the error.

Specifically with respect to the Monroe project, the arbitrator made the following findings of fact: "all reviews [of defendant's work] were conducted by the project architect who was an objective third party" and plaintiff was "not liable to compensate [defendant] whose work product was found to be defective" by the architect. Presumptively, the arbitrator did not require any expert testimony to find defendant's work was "defective" because he found that the project architect already determined that defendant's work was "defective" and this finding of fact is final and cannot be reviewed by the trial court. Thus, the arbitrator did not exceed his powers.

In regard to defendant's claim that the arbitrator's award was "ludicrous and clearly erroneous" on its face where it indicated that HES-Taweel was liable for a debt to plaintiff, and then required defendant to pay that debt to plaintiff, the paragraph in which defendant claims the arbitrator clearly erred states the following:

> HES-Taweel owes a net principal balance of $34,279.00 to [plaintiff]. Allowing for Interest, for the time period from August 29, 1997 at a rate of 12%, [defendant] shall pay [plaintiff] the net sum of SIXTY THREE THOUSAND, THREE HUNDRED AND NINETY ONE DOLLARS ($63,391.00).

The trial court correctly determined that upon a reading of the arbitration award as a whole, the arbitrator certainly found that defendant and HES-Taweel were liable to plaintiff for two different amounts. Upon a reading of the entire arbitration award, it is clear that defendant was liable to plaintiff for $34,279 plus interest, which is the amount of the damages plaintiff sought from defendant on the Dearborn project, $46,137, minus the stipulated amounts plaintiff owed to defendant on the remaining projects. Also upon a reading of the entire arbitration award, it is clear that HES-Taweel owed plaintiff $35,443 plus interest, for plaintiff's work on

the American Axle project, as stated in the arbitrator's findings of fact. Therefore, the part of the award reading "HES-Taweel owes a net principal balance of $34,279 to plaintiff" is a typographical error, because clearly it was defendant that owed plaintiff the principal balance of $34,279. The typographical error was harmless and did not effect the arbitrator's ultimate decision.

Next, plaintiff argues on cross-appeal that while the arbitrator correctly applied Michigan law by awarding plaintiff interest on the award against defendant under MCL 600.6013(5), pertaining to judgments rendered on "written instruments," the trial court erred by speculating that the arbitrator's award was not based on plaintiff's breach of contract claims, but that it was instead based on plaintiff's professional malpractice claims. Accordingly, plaintiff argues that the trial court erroneously concluded that MCL 600.6013(5) does not apply, and thus, erred in vacating the interest rate applicable on the arbitration award. We agree.

MCL 600.6013(5) applies to judgments "rendered on a written instrument" and states the following in relevant part:

> For complaints filed on or after January 1, 1987, if a judgment is rendered on a written instrument, interest shall be calculated from the date of filing the complaint to the date of satisfaction of the judgment at the rate of 12% per year compounded annually, unless the instrument has a higher rate of interest.

The term "written instruments" as used in MCL 600.6013(5) includes written contracts. *Yaldo v North Pointe Ins, Co*, 457 Mich 341, 346-347; 578 NW2d 274 (1998).

MCL 600.6013(6), which the trial court found governed the interest applicable on defendant's award in the present case, provides the following in pertinent part:

> Except as otherwise provided in subsection (5) and subject to subsection (11), for complaints filed on or after January 1, 1987, interest on a money judgment recovered in a civil action shall be calculated at 6-month intervals from the date of filing the complaint at a rate of interest that is equal to 1% plus the average interest rate paid at auctions of 5-year United States treasury notes . . . compounded annually pursuant to this section.

The purpose of MCL 600.6013 is to compensate the prevailing party for expenses incurred in bringing actions for money damages and the delay between filing its complaint and satisfaction of judgment entered in its favor. *HJ Tucker & Assoc Inc v Allied Chucker and Engineering*, 234 Mich App 550, 561; 595 NW2d 176 (1999). MCL 600.6013 is remedial in nature and is to be construed liberally in favor of the prevailing party. *McKelvie v Auto Club Ins*, 203 Mich App 331, 339; 512 NW2d 74 (1994).

In regard to the Dearborn project, (the project on which plaintiff's award is based), plaintiff specifically requested damages of $46,137 based on defendant's breach of contract and professional malpractice, and the arbitrator found the following: that a sub-contract agreement existed between plaintiff and defendant; that defendant was fully liable for making an engineering "mistake" in performing its contractual duties; the "mistake" was simple enough for a layman to understand; as a result of this "mistake" plaintiff incurred a "major expense"; and

plaintiff was entitled to recover the full amount of damages it sought. The ultimate award to plaintiff against defendant was the amount awarded to plaintiff on the Dearborn project, $46,137, minus the amounts that the parties stipulated that plaintiff owed defendant on the remaining projects. This resulted in a final award against defendant of $34,279.

The arbitrator did not expressly state on which theory the final award against defendant was based – whether it was breach of contract or professional malpractice. Upon a reading of the arbitrator's written explanation and award of arbitrator, it is clear that the arbitrator's findings of fact on the Dearborn project, support a finding that defendant breached the contract, because the arbitrator specifically found that, 1) defendant entered into a contract with plaintiff; 2) defendant failed to perform its contractual obligations by making an engineering mistake; and 3) defendant's failure to perform its contractual obligations caused damages to plaintiff. However, the arbitrator's findings of fact also support a finding of professional malpractice because he specifically found that defendant made a "mistake" in performing its engineering duties, that the mistake was "a misinterpretation regarding the location of the new foundation in relationship to the final appearance of the existing façade," and that "the error [was] simple enough for a layman to understand," without needing an expert witness "to explain the discrepancy that occurred." Therefore, it is possible that the arbitrator's award was based on a breach of contract theory and/or a professional malpractice theory against defendant.

Judicial review of alleged errors of law in arbitration decisions is limited to errors appearing on the face of the award. *Gavin, supra* at 443. Here, the arbitrator's award against defendant includes a statutory interest rate pursuant to MCL 600.6013(5), which as previously stated, applies to judgments rendered on "written instruments." Because the arbitrator's findings of fact support a finding that there was a breach of contract, it is not clear from the face of the award that the interest rate applied by the arbitrator was erroneous. Accordingly, the trial court erred in partially vacating the award for the interest rate applicable on the award.

Affirmed in part and reversed in part.

/s/ Mark J. Cavanagh
/s/ Hilda R. Gage
/s/ Brian K. Zahra