STATE OF MICHIGAN

COURT OF APPEALS

KOHLER OIL COMPANY,

Plaintiff-Appellee,

v

B & D PARTY STORE, INC.,

Defendant-Appellant.

UNPUBLISHED
December 27, 2007

No. 273243
Sanilac Circuit Court
LC No. 03-029257-CK

Before: Murray, P.J.,and Hoekstra and Wilder, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment entered in plaintiff's favor. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff sold gasoline to defendant on open account pursuant to a written agreement. Plaintiff sought specified damages on the open account (count I), and unspecified damages for early termination of the agreement (count II). The parties entered into a written settlement agreement that provided that count I was to be resolved by having an independent certified public accountant review their records and issue a report "detailing determination of what, if any, monies are owed on said account." The prevailing party could then "enter a Judgment as though the report constitutes an arbitration award in accordance with MCR 3.602[.]" Eventually the CPA determined that plaintiff was owed $89,885. The trial court then entered a judgment for plaintiff in that amount. The court held that defendant could not seek to vacate or otherwise object to the CPA's determination in the manner that a party could challenge an arbitration award because count I had not been resolved by arbitration.

The existence of a contract to arbitrate and its enforceability are judicial questions. *Ehresman v Bultynck & Co, PC*, 203 Mich App 350, 354; 511 NW2d 724 (1994). Questions of law are reviewed de novo on appeal. *Minority Earth Movers, Inc v Walter Toebe Constr Co*, 251 Mich App 87, 91; 649 NW2d 397 (2002). The existence and interpretation of a contract are also questions of law and are reviewed de novo. *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 452; 733 NW2d 766 (2006).

"Arbitration is a mode of settling differences through the investigation and determination, by one or more unofficial persons selected for the purpose, of some disputed matter submitted to them by the contending parties for decision and award, in lieu of a judicial proceeding." 4 Am Jur 2d, Alternative Dispute Resolution, § 2, p 68. There are two forms of arbitration: statutory

and common law. *Wold Architects & Engineers v Strat*, 474 Mich 223, 229; 713 NW2d 750 (2006). Statutory arbitration is governed by MCL 600.5001 *et seq*. Common-law arbitration is any agreement to arbitrate that does not comply with the requirements of § 5001, i.e., that the agreement is in writing and provides that a judgment of any circuit court may be rendered upon the award. *Wold, supra* at 231, 235. Common-law arbitration agreements, unlike statutory arbitration agreements, may be unilaterally revoked at any time before an award is rendered. *Id.* at 238.

No particular language is needed to create an agreement to arbitrate. It is not even necessary to use the word "arbitrate" or "arbitration." *Mencher v B & S Abeles & Kahn,* 274 AD 585, 588; 84 NYS2d 718 (1948); *In re Hub Industries*, 183 Misc 767, 769; 54 NYS2d 106 (1944), mod 269 App Div 177; 54 NYS2d 741 (1945), aff'd 294 NY 897; 63 NE2d 28 (1945). All that is required is a clear indication that the parties intended to submit the dispute to arbitration and to be bound by the decision. 6 CJS, Arbitration, § 26, pp 89-90.

The parties had a written agreement providing that count I was not to be resolved by the court. Rather, it was to be resolved by an independent third party appointed for the purpose of determining whether either party was indebted to the other and, if so, the amount of the debt. Further, the parties agreed that a judgment could be entered in accordance with the third party's determination. Such an agreement thus constituted an agreement to arbitrate count I. Both statutory arbitration awards and common-law arbitration awards are subject to limited judicial review. MCR 3.602(J) and (K); *Detroit Automobile Inter-Ins Exch v Gavin,* 416 Mich 407, 441; 331 NW2d 418 (1982). Therefore, the trial court erred to the extent that it ruled that defendant could not object to the award because count I was not resolved by arbitration.[1]

Reversed and remanded for further proceedings not inconsistent with this opinion. We do not retain jurisdiction.

/s/ Christopher M. Murray
/s/ Joel P. Hoekstra
/s/ Kurtis T. Wilder

[1] We express no opinion on the method by which the objections were raised or the merits of those objections.