STATE OF MICHIGAN

COURT OF APPEALS

JOHN GLASNAK,

Plaintiff-Appellee,

v

JAMAL GARMO, DAYTON LODGE, L.L.C., MUSKEGON HOSPITALITY, L.L.C., and MUSKEGON LODGE, L.L.C.,

Defendants-Appellants.

UNPUBLISHED
February 21, 2008

No. 275555
Oakland Circuit Court
LC No. 2006-072533-CB

Before: White, P.J., and Hoekstra and Schuette, JJ.

PER CURIAM.

Defendants appeal as of right from a circuit court order confirming an arbitration award and entering judgment in favor of plaintiff. We affirm.

Judicial review of an arbitration award is limited. *Saveski v Tiseo Architects, Inc*, 261 Mich App 553, 555; 682 NW2d 542 (2004). An arbitration award may be vacated on application of a party if it was procured by corruption, fraud, or other undue means; there was evident partiality by an arbitrator appointed as a neutral, corruption of an arbitrator, or misconduct prejudicing a party's rights; if the arbitrator exceeded his or her powers; or if 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. MCR 3.602(J)(1). This Court reviews de novo a trial court's order involving an arbitration award. *Saveski*, *supra* at 554.

Defendants first argue that the arbitrator exceeded his authority by awarding relief that was not requested by the parties; specifically, defendants challenge the arbitrators' authority to determine that plaintiff was not a member of the Dayton Lodge, L.L.C., and the Muskegon Lodge, L.L.C., despite the fact that plaintiff represented himself to be a member of these LLCs in his complaint, and the arbitrator's ruling that any interests held by plaintiff should be transferred back upon defendants' payment of the sums awarded. We find no merit in these assertions.

Arbitrators exceed their powers whenever they act beyond the material terms of the contract from which they primarily draw their authority. *Dohanyos v Detrex Corp (After Remand)*, 217 Mich App 171, 176; 550 NW2d 608 (1996). "[C]ourts may not substitute their judgment for that of the arbitrators and hence are reluctant to vacate or modify an award when

the arbitration agreement does not expressly limit the arbitrators' power in some way." *Gordon Sel-Way, Inc v Spence Bros, Inc,* 438 Mich 488, 497; 475 NW2d 704 (1991).

The stipulated orders referring these consolidated matters to arbitration specifically provided that the arbitrator was to be granted "extraordinary powers" and empowered to "consider equitable resolutions . . . and . . . make such determinations as shall be deemed by him/her to be fair and equitable." As part of the relief awarded with respect to both the Muskegon Lodge and the Dayton Lodge, the arbitrator awarded a return of plaintiff's investments.[1] Notwithstanding that plaintiff's complaint was derivative under the Michigan Limited Liability Company Act, the relief awarded by the arbitrator is authorized by the statute. MCL 450.4515(1).[2] Further, the relief was within the broad scope of the "extraordinary" authority granted to the arbitrator to "consider equitable resolutions" and "make such determinations as shall be deemed . . . to be fair and equitable." We therefore reject defendants' argument that the arbitrator improperly exceeded his authority in deciding this matter.

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[1] We need not engage in an extensive discussion regarding defendants' assertion that the arbitrator impermissibly determined that plaintiff was not a member of the Dayton Lodge or the Muskegon Lodge LLCs. The gist of the arbitrator's decision was that while payments were made, or interests accepted by plaintiff in lieu of money owed to him, plaintiff never agreed to the operating agreements and was thus not bound by any provision in the operating agreements requiring additional capital contributions by the members. The arbitrator further concluded that the provision of the operating agreement regarding the request for additional capital contributions was not followed in any event. Defendants' characterization of the arbitrator's decision focuses unduly on several words of the decision, taken in isolation, and ignores the totality of the decision.

[2] This statute provides in pertinent part:

> (1) A member of a limited liability company may bring an action . . . to establish that acts of the managers or members in control of the limited liability company are illegal or fraudulent or constitute willfully unfair and oppressive conduct toward the limited liability company or the member. If the member establishes grounds for relief, the circuit court may issue an order or grant relief as it considers appropriate, including, but not limited to, an order providing for any of the following:
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> * * *
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> (d) The purchase at fair value of the member's interest in the limited liability company, either by the company or by the managers or other members responsible for the wrongful acts.
>
> (e) An award of damages to the limited liability company or to the member. . . .

Defendants also seek relief on the basis that an error of law is apparent from the face of the arbitration award. Arbitrators exceed their powers when they act in contravention of controlling principles of law. *Dohanyos*, *supra* at 176. "Where it clearly appears on the face of the award or the reasons for the decision as stated, being substantially a part of the award, that the arbitrators through an error in law have been led to a wrong conclusion, and that, but for such error, a substantially different award must have been made, the award and decision will be set aside." *Saveski, supra* at 555 (citation and internal quotations omitted). "The character or seriousness of an error of law that will require a court of law to vacate an arbitration award must be so material or so substantial as to have governed the award, and the error must be one but for which the award would have been substantially otherwise." *Dohanyos, supra* at 176. An arbitrator's findings of fact are not reviewable. *DAIIE v Gavin*, 416 Mich 407, 429; 331 NW2d 418 (1982).

Defendants argue that the arbitrator committed an error of law by determining that plaintiff was not required to make additional capital contributions to the Dayton Lodge and the Muskegon Lodge because he did not sign the operating agreements for those companies. Defendants argue that because plaintiff was admitted as a member of those companies after they were formed, he was not required to sign the operating agreements in order to be bound by the agreements. In support of their argument, defendants rely on MCL 450.4501(1)(b)(i), which governs the admission of members of a limited liability company after the company is initially formed. The statute provides, in pertinent part:

> (1) A person may be admitted as a member of a limited liability company in 1 or more of the following ways:
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> * * *
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> (b) After the formation of the limited liability company, in 1 or more of the following ways:
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> (*i*) In the case of a person acquiring a membership interest directly from the limited liability company, by complying with the provisions of an operating agreement prescribing the requirements for admission or, in the absence of provisions prescribing the requirements for admission in an operating agreement, upon the unanimous vote of the members entitled to vote.

However, a person's status as a member of a limited liability company does not in all circumstances mean that the person is obligated to make capital contributions. MCL 450.4501(2) provides that "[a] limited liability company may admit a person as a member who does not make a contribution or incur an obligation to make a contribution to the limited liability company." Thus, plaintiff's status as a member of the Dayton Lodge and the Muskegon Lodge, by itself, did not establish his liability for additional capital contributions to these companies. The arbitrator recognized this by addressing these questions separately. He determined that plaintiff made initial capital contributions to both companies and obtained ownership interests in the companies, but then separately addressed the question of plaintiff's liability for additional capital contributions as specified in the respective operating agreements. p The arbitrator found that there was no credible evidence that plaintiff agreed to be bound by the provisions requiring additional capital contributions in those agreements.

Because MCL 450.4501(2) recognizes that a person may be admitted as a member of a limited liability company without incurring an obligation to make capital contributions, the arbitrator's determination that plaintiff could acquire an ownership interest in the Dayton Lodge and the Muskegon Lodge without being liable for additional capital contributions is not erroneous as a matter of law.

Defendants argue, however, that under the terms of the specific operating agreements, plaintiff, upon being admitted as a member, became bound by the terms of the agreements and, therefore, was required to make additional capital contributions in accordance with the agreements. Defendants' sole support for this argument is the preamble of the respective operating agreements, which contain the following identical language:

> THIS OPERATING AGREEMENT is made and entered into . . . by and among the [Muskegon Lodge / Dayton Lodge] and the persons executing this Operating Agreement as members of the Company and all of those who shall hereafter be admitted as members . . . *who agree as follows*: [Emphasis added.]

Although this language reflects an intent to apply the operating agreements to persons who are later admitted as members of the companies, it also expresses an intent that those persons agree to be bound by the agreements. The basis for the arbitrator's decision was that there was no credible evidence that plaintiff ever agreed to be bound by the operating agreements. Further, the arbitrator observed that the required notice under the operating agreement was never given.

For these reasons, defendants have not shown that an error of law is apparent from the face of the arbitration award insofar that the arbitrator determined that plaintiff was not liable for the additional capital contributions specified in the operating agreements. To the extent that defendants additionally argue that it was an error of law to award plaintiff the amount of his capital contributions that he made to the entities, as previously discussed, such relief was not inconsistent with MCL 450.4515(1)(d), which provides that in the case of illegal or fraudulent conduct by the manager or member in control of a limited liability company, which the arbitrator found here, the company or responsible member may be compelled to purchase the other member's interest. Therefore, no error of law is apparent.

Accordingly, the circuit court did not err in granting plaintiff's motion to confirm the arbitration award and denying defendants' motion to vacate or modify the award.

Affirmed.

/s/ Helene N. White
/s/ Joel P. Hoekstra
/s/ Bill Schuette