STATE OF MICHIGAN

COURT OF APPEALS

SAMIR OLABI,

Plaintiff/Counter-Defendant-Appellant,

v

DAW ALWERFALLI and MANUFACTURING ENGINEERING SOLUTIONS, INC.,

Defendants/Counter-Plaintiffs/Third-Party Plaintiffs-Appellees,

and

QUALITY CONTAINMENT SOLUTIONS,

Third-Party Defendant.

UNPUBLISHED
March 13, 2012

No. 300541
Wayne Circuit Court
LC No. 07-798561-CZ

Before: SAAD, P.J., and K.F. KELLY and M.J. KELLY, JJ.

PER CURIAM.

Samir Olabi appeals the trial court's order that denied his motion to vacate an arbitration award in favor of Daw Alwerfalli and Manufacturing Engineering Solutions, Inc. For the reasons set forth below, we affirm.

I. ALLEGED FAILURE TO CONSIDER EVIDENCE

Olabi argues that the trial court erred when it failed to vacate the arbitration award pursuant to MCR 3.602(J)(2)(d). "Generally, issues regarding an order to enforce, vacate, or modify an arbitration award are reviewed de novo. *Saveski v Tiseo Architects, Inc*, 261 Mich App 553, 554; 682 NW2d 542 (2004). As this Court also explained in *Ann Arbor v AFSCME Local 369*, 284 Mich App 126, 144; 771 NW2d 843 (2009):

> Judicial review of an arbitrator's decision is narrowly circumscribed. *Police Officers Ass'n of Michigan v Manistee Co*, 250 Mich App 339, 343; 645 NW2d 713 (2002). A court may not review an arbitrator's factual findings or decision on the merits. *Id.*

According to Olabi, the arbitrator refused to hear certain evidence that he tried to introduce during the arbitration hearing. MCR 3.602(J)(2) provides, in relevant part:

> On motion of a party, the court shall vacate an award if:
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> ***
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> (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.

Olabi asserts that he tried to introduce evidence of tape recorded conversations between Alwerfalli and himself that would have proven his claim for damages and would have refuted Alwerfalli's claim that Olabi is liable for conversion, usurpation of corporate opportunity and interference with Manufacturing Engineering Solutions's contracts with Johnson Controls.

There is no record of the arbitration proceedings. As this Court explained in *Detroit Auto Inter-Insurance Exchange v Gavin*, 416 Mich 407, 428-429; 331 NW2d 418 (1982):

> The scope of judicial review of an arbitration award is necessarily dictated in large measure by the procedural form the arbitration proceedings take. Reviewing courts can only act upon a written record. There is no requirement that a verbatim record be made of private arbitration proceedings, there are no formal requirements of procedure and practice beyond those assuring impartiality, and no findings of fact or conclusions of law are required. Thus, from the perspective of the record alone, a reviewing court's ability to review an award is restricted to cases in which an error of law appears from the face of the award, or the terms of the contract of submission, or such documentation as the parties agree will constitute the record.

Though Olabi claims he tried to introduce the tape recorded conversations during arbitration, Alwerfalli denies that Olabi ever introduced the tapes or produced the recordings during discovery. In the arbitration award, the arbitrator stated that he "heard the proofs and allegations of the [p]arties" and reviewed "all the testimony and documentary evidence . . . ." Further, at the hearing to confirm the award, the attorney who represented Olabi at the arbitration did not raise a failure to consider evidence as an objection to the award. Thus, there is no indication from the record before us that the arbitrator declined to consider any evidence offered by Olabi.

We further note that, to this date, Olabi has never produced the alleged recordings. The only document related to his claim is a single page transcription that he submitted with his motion for reconsideration and to vacate the arbitration award. The document was signed by a translator nearly six months after the arbitration hearing, so it is apparent on its face that the document did not exist at the time of the hearing and was, thus, not available for the arbitrator's consideration. Further, the document does not appear to be "material to the controversy" as contemplated in MCR 3.602(J)(2)(d). Not only are the speakers unidentified in the transcript, it contains no context or indication of when the conversation occurred. Moreover, the transcript merely indicates that one male speaker did not want to perform some work for Johnson Controls for $16 per hour and that the other male speaker said he would receive $300,000 if he agreed to

an undisclosed condition. Thus, contrary to Olabi's arguments, the evidence does not rebut Alwerfalli's claim that Olabi interfered with the Johnson Controls contracts and it does not establish that Alwerfalli only claimed entitlement to $75,000, that Alwerfalli owed Olabi $250,000, or that Alwerfalli acknowledged receiving $9,000.[1] Thus, because the record before us does not in any way support Olabi's claim that the arbitrator failed to consider his proffered evidence, Olabi is not entitled to relief on this issue.

II. SCOPE OF ARBITRATOR'S POWERS

Olabi claims that the arbitrator exceeded the scope of his authority by finding Olabi and his business, Quality Containment Solutions, jointly and severally liable for the award because Alwerfalli and Manufacturing Engineering Solutions did not seek joint and several liability in their prayer for relief. Pursuant to MCR 3.602(J)(2)(c), a trial court must vacate an arbitral award if "the arbitrator exceeded his or her powers."

"[W]here 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 v Tiseo Architects, Inc*, 261 Mich App 553, 555; 682 NW2d 542 (2004) (internal quotation marks and citations omitted). No such error occurred in this case.

As this Court opined in *Nordlund & Assoc, Inc v Village Of Hesperia*, 288 Mich App 222, 228; 792 NW2d 59 (2010):

> The scope of an arbitrator's remedial authority is "limited to the contractual agreement of the parties." *Ehresman v Bultynck & Co, PC*, 203 Mich App 350, 355; 511 NW2d 724 (1994). Thus, "[a]rbitrators exceed their power when they 'act beyond the material terms of the contract from which they primarily draw their authority, or in contravention of controlling principles of law.' " *Saveski*, 261 Mich App at 554, quoting [*Gavin*, 416 Mich at 434].

This Court has further held that, if the provisions of an arbitration agreement "do not limit the [arbitrator] to only certain kinds of damage awards," nothing would prevent an arbitrator from imposing joint and several liability on the parties. *Ehresman v Bultynck & Co, PC*, 203 Mich App 350, 355; 511 NW2d 724 (1994). In other words, as long as the arbitration agreement did not limit the arbitrator's ability to impose joint and several liability on multiple defendants, and did not otherwise state how damages must be apportioned, the arbitrator did not act beyond the scope of his powers. Further, it is well-settled that a court "may not hunt for errors in an arbitrator's explanation of how it determined who is liable under the arbitrated contract, and who owes what damages to whom." *Saveski*, 261 Mich App at 558. Moreover, to the extent Olabi

[1] We note that Olabi's appeal brief contains citations to portions of the tape but, again, Olabi never submitted the tape itself or a transcript of the relevant sections to the trial court or on appeal.

makes factual arguments to support his claim that he should not be held jointly liable with Quality Containment Solutions, again, there is no record of the arbitration proceedings and, as such, the arbitrator's factual reasons for imposing the damage award are unreviewable. *Gavin*, 416 Mich at 429. Accordingly, the trial court correctly denied Olabi's motion to vacate the arbitration award on this ground.

III. DIVISION OF AWARD

We also reject Olabi's claim that the arbitrator erred by failing to apportion the award between Alwerfalli and Manufacturing Engineering Solutions. While Olabi asserts that the award "is intrinsically confused and incoherent," he cites no basis under the court rule for vacating the award as required by MCR 3.602(J)(2). Moreover, contrary to Olabi's argument, no error appears on the face of the award and, again, nothing in the arbitration agreement dictates how damages must be apportioned. For these reasons, Olabi's claim is entirely without merit.

Affirmed.

/s/ Henry William Saad
/s/ Kirsten Frank Kelly
/s/ Michael J. Kelly