

St. Onge v. Herrington, et al., Docket No. 195-6-05 Bncv (Wesley, J., Sept. 10, 2007)

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**STATE OF VERMONT  
BENNINGTON COUNTY, SS.**

**BENNINGTON SUPERIOR COURT  
DOCKET NO. 195-6-05 Bncv**

**Edward ST. ONGE and )  
Nancy St. Onge, )  
Plaintiffs )**

**v. )**

**Larry HERRINGTON, )  
Sunrise Home Custom Modular )  
Designs and Toadcha, Inc., )  
Defendants )**

**ORDER DENYING PLAINTIFF'S  
MOTION TO MODIFY ARBITRATOR'S AWARD  
AND GRANTING DEFENDANTS' MOTION TO CONFIRM  
THE AWARD**

Plaintiffs Edward and Nancy St. Onge brought suit in this Court for various claims related to their purchase of a modular home from defendant Toadcha, Inc., d/b/a Sunrise Home Custom Modular Designs. Defendant Larry Herrington is the president and a director of Toadcha. This Court subsequently granted Defendants' Petition to Compel Arbitration. On February 7, 2007, Arbitrator Anthony Cipriani released his decision on Plaintiffs' claims, awarding Plaintiffs \$19,086.00. Believing there to be errors in the decision, Plaintiffs have brought the currently pending Motion to Modify Arbitrator's Award. Defendants seek to have it confirmed.

Plaintiffs advance two grounds for modifying the arbitration award. First, they contend that "[t]he Arbitrator exceeded his powers when he, without request or argument from any party, excluded [Herrington] from personal responsibility for the award . . ." Second, they argue that one monetary component of the award in their favor was improperly low and subject to revision because the Arbitrator did not explain or justify the figure. In opposition, Defendants contend that Herrington is not personally liable for Toadcha's obligations and that the Arbitrator did not miscalculate any component of the award. They also seek confirmation of the award and an entry of judgment. Based on the following analysis, plaintiffs' motion is **DENIED**, and the award is **CONFIRMED** and judgment **ENTERED** in favor of Defendants.

"Upon application of a party to confirm, modify or vacate an award, the court shall confirm the award unless it finds grounds for vacating or modifying the award." 12 V.S.A. § 5676. A court may modify an award if, for instance, "there was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award," or if the arbitrator ruled upon a severable issue that the parties did not submit for consideration. *Id.* at § 5678(b)(1-2). Vermont has a strong judicial policy of upholding arbitration awards. See *R.E. Bean Constr. Co. v. Middlebury Assocs.*, 139 Vt. 200, 204 (1980). The court's scope of review is limited to ensuring that arbitration proceedings were conducted in accordance with due process rights and statutory directives. See *Shahi v. Ascend Fin. Servs.*, 2006 VT 29, ¶ 10, 17 Vt.L.W. 91.

The Court first addresses Plaintiffs' argument that the Arbitrator exceeded the scope of his authority by exempting Herrington from liability for payment of the award.

The scope of an arbitrator's authority is delineated by the scope of the issues submitted by the parties. *In re Robinson/Keir Partnership*, 154 Vt. 50, 55 (1990). Nonetheless, courts generally construe this authority "as broadly as possible," with a presumption in favor of upholding the arbitration award. *Id.* A viable objection to the exercise of an arbitrator's authority "must be based on evidence clearly demonstrating that the arbitrator exceeded his authority." *Id.* In making this determination, a court should compare parties' submissions with the terms of the arbitrator's award. *Id.*

Noting the liberality of the holdings cited, the issue of the apportionment of liability between Toadcha and Herrington was properly before the arbitrator. Plaintiffs' submissions to the Arbitrator referred to the distinction between the two parties. In their submission entitled Claimants' Statement of the Nature of the Dispute, Plaintiffs refer to "their claim against Larry Herrington and his businesses." In their subsequent submission entitled Claimants' Argument and Request for Relief, Plaintiffs state that "Respondent Larry Herrington was at all times the owner of Toadcha, Inc. and also did business as Sunrise Homes Custom Modular Designs." These statements present the question for the Arbitrator's consideration as to whether liability ought to be imposed on either or both Herrington and/or the corporation he substantially or completely controlled. Indeed, this determination was necessary as a matter of law. Absent a specialized showing, shareholders, officers and directors of a corporation are not generally held individually liable for the corporation's debts. *Heath v. Palmer*, 2006 VT 125; *Agway v. Brooks*, 173 Vt. 259 (2001).<sup>1</sup> It would have been improper for the

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<sup>1</sup> 1. Plaintiffs alleges that Herrington has deliberately drained Toadcha of resources so that it is incapable of paying the debt. This claim, if supported factually, might have justified imposing

Arbitrator not to consider the applicability of this well-settled principle.

The Court next addresses Plaintiffs' argument that the Arbitrator did not properly justify one element in his calculation of the award, and thereby created an "evident miscalculation." The Arbitrator awarded Plaintiffs only half of the cost to complete the kitchen floor grout on their mobile home, and did not explain why. In contrast, the Arbitrator did explain his basis for awarding Plaintiffs only half the cost of completing the garage extension. Plaintiffs' argument is without merit. Unless explicitly provided for by an arbitration agreement, an arbitrator does not have to explain or justify any component of his award. *Shahi*, 2006 VT at ¶ 13. The Arbitrator in this case had no obligation to explain his rationale for any part of the award, and there is no evident miscalculation which arises from the absence of such a rationale.

A court must confirm an arbitration award unless the parties were denied due process or it is statutorily proper to vacate or modify the award. See *Brinckerhoff v. Brinckerhoff*, 2005 VT 75, ¶ 5, 179 Vt. 532. See also 12 V.S.A. § 5676. "Upon the granting of an order confirming or modifying an award, judgment shall be entered in conformity therewith and be enforced as any other judgment." 12 V.S.A. § 5679. In this case, plaintiffs have not established grounds to vacate or modify the arbitrator's award. The award is therefore confirmed and judgment entered in favor of defendants.

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individual liability on a theory of piercing the corporate veil. *Id.* Whether or not such a claim was concluded by the Arbitrator's decision and award, or can survive as the subject of a separate cause of action, presents factual and legal issues beyond the scope of the present motions to modify or confirm .

Based on the foregoing, it is hereby **ORDERED**:

Plaintiff's Motion to Modify Arbitrator's Award is **DENIED**. The award is **CONFIRMED** and judgment is **ENTERED** in favor of Defendants.

DATED \_\_\_\_\_, at Bennington, Vermont.

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John P. Wesley  
Presiding Judge