

STATE OF MICHIGAN
COURT OF APPEALS

CADILLAC PRODUCTS, INC.,

Plaintiff- Appellant,

v

CONTRACT WELDING & FABRICATING, INC., a
Michigan corporation, and HARRY TINSLEY, jointly
and severally,

Defendants- Appellees.

UNPUBLISHED

July 10, 1998

No. 203038

Oakland Circuit Court

LC No. 95-491726 CK

Before: Griffin, P.J. and Gribbs and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment entered in favor of defendants following an order confirming an arbitration award. We affirm.

The parties entered into a requirements contract where plaintiff was to manufacture lids for dumpsters manufactured by defendants. The contract provided that any dispute under the contract would be resolved through arbitration. Defendants alleged that plaintiff breached the contract, and demanded arbitration pursuant to the agreement. Arbitration was held pursuant to the rules of the American Arbitration Association. The arbitrator awarded defendants \$82,268, and required plaintiff to pay defendants for a five-year period, two percent of plaintiff's gross receipts of lids sold outside Michigan, Indiana and Ohio, and seven percent on lids sold within the tri-state area. Following arbitration, plaintiff filed suit seeking to vacate or modify the award. The parties filed cross motions for summary disposition and the trial court remanded the case to the arbitrator based on the arbitrator's apparent miscalculation of damages. The defendant then moved for rehearing or reconsideration. The trial court granted defendant's motion and vacated its order remanding the case to the arbitrator. In so doing, the trial court concluded that plaintiff had failed to prove that the arbitrator exceeded his authority or that he was limited in his ability to assess damages. Accordingly, the trial court confirmed the arbitration award and entered judgment in favor of defendant.

On appeal, plaintiff argues that the trial court erred in refusing to vacate or modify the arbitration award and in ruling that the arbitrator did not exceed the scope of his authority in rendering the award. We disagree. Pursuant to the terms of the arbitration agreement, this case falls within the provisions for statutory arbitration. MCL 500.5001 *et seq.*; MSA 27A.5001 *et seq.*; *Gordon Sel-Way v Spence Bros*, 438 Mich 488, 495; 475 NW2d 704 (1991). A court's authority to modify an arbitration award is governed by MCR 3.602(K), which provides in pertinent part:

(1) On application made within 21 days after delivery of a copy of the award to the applicant, the court shall modify or correct the award if:

(a) there is an evident miscalculation of figures or an evident mistake in the description of a person, a thing, or property referred to in the award;

(b) the arbitrator has awarded on a matter not submitted to the arbitrator, and the award may be corrected without affecting the merits of the decision on the issues submitted; or

(c) the award is imperfect in a matter of form, not affecting the merits of the controversy.

A court's authority to vacate an arbitration award is governed by MCR 3.602(J), which provides in pertinent part:

(1) On application of a party, the court shall vacate an award if:

(a) the award was procured by corruption, fraud, or other undue means;

(b) there was evident partiality by an arbitrator appointed as a 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.

The fact that the relief could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

In this case, plaintiff contends that the arbitrator exceeded his powers by rendering an award contrary to the law.

An arbitrator's remedial authority is limited to the contractual agreement of the parties. *Ehreshman v Bultynck & Co*, 203 Mich App 350, 355; 511 NW2d 724 (1994). If the arbitration

clause in the contract is written in broad and comprehensive language (i.e., language including all claims and disputes), the computation of damages for breach of contract is presumed to be included. *Gordon Sel-Way, supra* at 497. An award will be presumed to be within the scope of the arbitrator's authority absent express language to the contrary. *Id.* Here, because the arbitration clause was written in broad terms, we conclude that the arbitrator had board authority to award damages.

According to plaintiff, the arbitrator's award of damages was legally incorrect for several reasons. Specifically, plaintiff alleges that the arbitrator's award (1) was inconsistent with the damage provisions of the Uniform Commercial Code and with the royalty account provision included in the parties' agreement, (2) erroneously satisfied *both* the reliance and expectation interests of defendant, and (3) improperly ordered specific performance on the part of plaintiff. As an initial matter, we note that an arbitrator is free to grant relief in an arbitration that may not be granted in an ordinary civil proceeding. See MCL 600.5025; MSA 27A.5025; MCR 3.602(J)(1). Consequently, even if plaintiff's allegation that the arbitrator fashioned a remedy that could not have been ordered by a court of law was proved to be true, we would not be required to vacate the award. Of greater importance is the fact that the arbitrator did not identify the basis for the various types and amounts of relief awarded. A reviewing court's ability to review an arbitration award is restricted to cases in which an error of law appears on the face of the award, or the terms of the contract of submission, or such documentation as the parties agree will constitute the record. *Dohanyos v Detrex Corp (After Remand)*, 217 Mich App 171, 175-176; 550 NW2d 608 (1996). Because the contract between the parties contained no express limitation on the amount of damages or type of remedy available in the event of a breach, we cannot ascertain the legal propriety of the arbitrator's decision without engaging in inappropriate speculation as to the basis of his decision. See *DAIIE v Gavin*, 416 Mich 407, 429; 331 NW2d 418 (1982). Furthermore, the trial court was not entitled to substitute its judgment for that of the arbitrator. *Gordon Sel-Way, supra* at 497. Accordingly, we hold that it did not err in confirming the award.

Affirmed.

/s/ Richard A. Griffin

/s/ Roman S. Gibbs

/s/ Michael J. Talbot