

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL T. ASSARIAN ASSOCIATES, INC.,
and MICHAEL T. ASSARIAN,

UNPUBLISHED
June 30, 2000

Plaintiffs/Counterdefendants-
Appellees,

v

No. 209367
Wayne Circuit Court
LC No. 93-312591 CZ

ARCHIE A. VAN ELSLANDER and MARY ANN
VAN ELSLANDER,

Defendants/Counterplaintiffs-
Appellants,

and

ART VAN FURNITURE, INC.,

Defendant-Appellant,

and

KEYWELL & ROSENFELD, FREDERICK I.
KEYWELL and LUCY A. BENHAM,

Defendants.

Before: Cavanagh, P.J., and White and Talbot, JJ.

PER CURIAM.

Defendants Archie A. Van Elslander, Mary Ann Van Elslander, and Art Van Furniture, Inc., appeal as of right the circuit court's order denying their motion to vacate or modify an arbitration award

in favor of plaintiffs Michael T. Assarian Associates, Inc. (MTA), and Michael T. Assarian.¹ We affirm in part and reverse in part.

On October 15, 1990, defendants entered into a contract with plaintiffs whereby plaintiffs agreed to act as the general contractor for the construction of a home. In exchange, defendants agreed to pay plaintiffs construction costs and a \$150,000 contractor's fee. On April 23, 1992, when construction was approximately seventy percent complete, defendants terminated the contract. On July 21, 1992, plaintiffs filed a claim of lien for \$621,112.34, the amount allegedly due for labor and supplies and the contractor's fee. Plaintiffs then sued defendants, alleging breach of contract, wrongful termination, quantum meruit, construction lien, conversion, trespass to personalty, defamation, intentional infliction of emotional distress, fraud, conspiracy, and tortious interference with contractual relations. Defendants countersued, alleging breach of contract, breach of warranty, malpractice, fraudulent misrepresentation, and violation of the Michigan Consumer Protection Act.

On December 20, 1994, the circuit court entered a stipulated order to submit the case to binding arbitration. After an evidentiary hearing, the arbitration panel awarded plaintiffs \$150,000 and held that plaintiffs had a valid construction lien in that amount. The award provided in pertinent part:

1. Claimants Michael T. Assarian Associates, Inc. and Michael T. Assarian are awarded the sum of \$150,000.00 against Respondents Archie A. Van Elslander, Mary Ann Van Elslander, and Art Van Furniture, Inc., jointly and severally.
2. Claimant Michael T. Assarian Associates, Inc.'s Claim of Lien dated July 20, 1992 and recorded at the Wayne County Register of Deeds on July 21, 1992 at Liber 25902, Page 580 is a valid construction lien pursuant to the Michigan Construction Lien Act, however, the amount of said lien is reduced to the amount of \$150,000.00.
3. Respondents and Counter-claimants Archie A. Van Elslander, Mary Ann Van Elslander, and Art Van Furniture, Inc. shall be awarded \$0.00 against Michael T. Assarian Associates, Inc. and Michael T. Assarian.

Defendants then filed a motion requesting that the circuit court vacate or modify the arbitration award pursuant to MCR 3.602(J) or (K). The circuit court denied defendants' motion and entered an order confirming the arbitration award.

On appeal, defendants argue that the circuit court erred in refusing to vacate paragraphs 1

¹ Defendants Keywell & Rosenfeld, Frederick I. Keywell, and Lucy A. Benham were dismissed from the lawsuit and are not parties to this appeal.

and 2 of the arbitration award under MCR 3.602(J)(1)(c),² claiming that the arbitrators exceeded their powers by making an error of law. Statutory arbitration is conducted in accordance with the rules of the Michigan Supreme Court.³ MCL 600.5021; MSA 27A.5021; *Dohanyos v Detrex Corp (After Remand)*, 217 Mich App 171, 174; 550 NW2d 608 (1996). MCR 3.602, which governs statutory arbitration under MCL 600.5001-600.5035; MSA 27A.5001-27A.5035, provides a circuit court with only three options when an arbitration award is challenged: It may (1) confirm the award, (2) vacate the award if obtained through fraud, duress, or other undue means, or (3) modify the award or correct errors that are apparent on the face of the award. *Konal v Forlini*, 235 Mich App 69, 74; 596 NW2d 630 (1999).

MCR 3.602(J)(I)(c), at issue here, provides that a court may not vacate an arbitration award unless the “arbitrator exceeded his or her powers.” Arbitrators exceed their powers if they act beyond the material terms of the contract from which they primarily draw their authority, or (as alleged here) in contravention of controlling principles of law. *Dohanyos, supra* at 176, citing *DAIIE v Gavin*, 416 Mich 407, 434; 331 NW2d 418 (1982) and *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 495; 475 NW2d 704 (1991). 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.” MCR 3.602(J); See also MCL 600.5025; MSA 27A.5025 (“[t]he [circuit court] may render judgment on the award although the relief given is such that it could not or would not be granted by a court of law or equity in an ordinary civil action.”)

Where a party alleges that arbitrators have exceeded the scope of their authority, “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.” *Dohanyos, supra* at 175-176, citing *Gavin, supra* at 428-429. (Emphasis added). “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.” *Gavin, supra* at 443, citing *Howe v Patrons’ Mutual Fire Ins*

² Defendants alternatively argue that modification of the award would be appropriate because only paragraphs 1 and 2 are alleged to be premised on an error of law. However, defendants have cited no ground under MCR 3.602(K) for modification (e.g., an evident miscalculation; 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 the award is imperfect in a matter of form, not affecting the merits of the controversy) and, in light of defendants’ contention that the arbitrators exceeded their powers, we find that none of the grounds listed in the court rule are applicable.

³ Because the stipulated arbitration order in this case provides for the entry by the circuit court of “a judgment upon the arbitration award,” it falls within the definition of a “statutory arbitration” and is governed by the Michigan arbitration act, MCL 600.5001 *et seq.*; MSA 27A.5001 *et seq.* *DAIIE v Gavin*, 416 Mich 407, 417; 331 NW2d 418 (1982); *Dohanyos v Detrex Corp (After Remand)*, 217 Mich App 171, 174; 550 NW2d 608 (1996).

Co of Michigan, 216 Mich 560, 570; 185 NW2d 864 (1921); *Dohanyos, supra* at 176. “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, citing *Gavin, supra* at 443.

Further, courts may not upset awards for reasons that concern the merits of the claim, *Gordon Sel-Way, supra* at 500; *Dohanyos, supra* at 177; engage in contract interpretation, which is a question for the arbitrator, *Konal, supra* at 74; or review claims that the arbitrator made a factual error. *Id.* at 75. Rather, “[i]t is only the kind of legal error that is evident without scrutiny of intermediate mental indicia which remains reviewable.” *Gavin, supra* at 429.

Defendants argue that the award must be vacated on the basis that paragraph 2, holding that plaintiff MTA had a valid construction lien upon the residence to secure the monetary award in paragraph 1 constituted an error of law apparent on the face of the award. We agree.

§ 114 of the Michigan Construction Lien Act, MCL 570.1101 *et seq.*; MSA 26.316(101) *et seq.*, provides:

A contractor shall not have a right to a construction lien upon the interest of any owner or lessee in a residential structure unless the contractor has provided an improvement to the residential structure pursuant to a written contract between the owner or lessee and the contractor and any amendments or additions to the contract also shall be in writing. *The contract required by this section shall contain a statement, in type no smaller than that of the body of the contract, setting forth all of the following:*

- (a) That a residential builder . . . is required to be licensed under . . . sections 339.2401 to 339.2412 of the Michigan Compiled Laws [i.e., the residential builders act]
- (b) If the contractor is required to be licensed to provide the contracted improvement, that the contractor is so licensed.
- (c) If a license is required, the contractor’s license number. [MCL 570.1114; MSA 26.316(114) (emphasis added).]

The plain language of § 114 provides that the written contract required by this section “shall contain a statement . . . setting forth all of the following.” Plaintiffs do not dispute that neither the contract nor the written addendum to it contained the “statement” required by the statute. Because plaintiffs’ contract did not fall within the requirements of § 114, they were not entitled to a construction lien. While plaintiffs cite MCL 600.5025; MSA 27A.5025 as well as the Construction Industry Arbitration Rule, providing that “The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable within the scope of the agreement of the parties,” it is well established that arbitrators exceed their authority within the meaning of MCR 3.602(J)(1)(c) when they act “in contravention of controlling principles of law.” *Gordon Sel-Way, supra* at 495; *Gavin, supra* at 434; *Dohanyos,*

supra at 176. Accordingly, the portion of the award, holding that plaintiffs had a “valid construction lien pursuant to the Michigan Construction Lien Act” constituted a clear error of law apparent on the face of the award.

Defendants also argue that in awarding \$150,000, and in holding that plaintiffs had a valid construction lien in that amount, the arbitrators ignored § 2412 of the Michigan residential builders act, MCL 339.2401 *et seq.*; MSA 18.425(2401) *et seq.*, which bars an unlicensed builder from bringing or maintaining an action for compensation on a residential construction contract unless specifically exempted from the act.⁴ We disagree.

Although plaintiffs did not have a valid construction lien, it does not follow that the entire award must be vacated. While it is possible that the arbitrators erred in using plaintiffs’ contract theory as a basis for the \$150,000 award, that conclusion is not compelled by the face of the arbitrators’ award. To the contrary, in submitting the entire case to arbitration, the arbitrators were given authority to address the numerous tort and common law theories plaintiffs brought. MCL 600.5001(2); MSA 27A.5001(2) (“[an arbitration agreement] shall stand as a submission to arbitration of any controversy arising under said contract not expressly exempt from arbitration by the terms of the contract”); *Gordon Sel-Way, supra* at 497-499. After a careful review of the arbitration award and, without the benefit of a record, we cannot conclude that the monetary award was not based on one of plaintiffs’ numerous tort claims. Accordingly, the circuit court did not err in denying defendants’ motion to vacate the \$150,000 award. We therefore reverse the part of the arbitration award holding that plaintiffs had a valid construction lien as a means of enforcing the monetary award, but affirm the part of the award granting plaintiffs \$150,000.

Affirmed in part and reversed in part.

/s/ Mark J. Cavanagh

/s/ Helene N. White

/s/ Michael J. Talbot

⁴ § 2412 provides in relevant part:

A person or qualifying officer for a corporation or member of a residential builder . . . shall not bring or maintain an action in a court of this state for the collection of compensation for the performance of an act or contract for which a license is required by this article without alleging and proving that the person was licensed under this article during the performance of the act or contract. [MCL 339.2412; MSA 18.425(2412).]