

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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CLINGAN-IRVINE ASSOCIATES, INC.,

Plaintiff-Appellee,

v

THOMPSON CABINET COMPANY,

Defendant-Appellant.

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UNPUBLISHED

April 19, 2002

No. 229259

Mason Circuit Court

LC No. 99-000494-CH

Before: Gage, P.J., and Griffin and G. S. Buth\*, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's order denying its motion to vacate an arbitration award and granting plaintiff's motion to confirm the award. We affirm.

Plaintiff, a roofing company, and defendant entered into a contract for repairs to defendant's roof. Defendant refused to pay for the work. Plaintiff placed a lien on defendant's property and filed suit to foreclose on the lien in circuit court. The trial court stayed proceedings pending completion of arbitration.

The parties' contract required mediation as a prerequisite to arbitration. Plaintiff filed a request for mediation with the American Arbitration Association (AAA) and submitted the required fee of \$150 per party. Defendant failed to pay its portion of the fee, and the AAA transferred the matter to arbitration. Ed Thompson, Jr., defendant's vice president, left the country on an extended vacation and neither retained an attorney nor gave anyone associated with defendant the authority to pursue the matter. Plaintiff and the AAA sent notices to defendant, but the correspondence was returned as undeliverable. The AAA also gave defendant notice by telephone. Defendant did not send a representative to the arbitration. The arbitrator ruled that adequate notice had been provided to defendant and the hearing would proceed. The arbitrator awarded plaintiff \$26,455.50 plus costs and prejudgment interest.

Defendant retained counsel and moved to vacate the arbitration award on the grounds that plaintiff did not pursue mediation as required by the contract, that the arbitration proceeded without its representative being present, and that plaintiff failed to transcribe the proceedings. Plaintiff moved to confirm the award. The trial court denied defendant's motion and granted plaintiff's motion, finding that defendant received notice of the arbitration proceedings, but that

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\* Circuit judge, sitting on the Court of Appeals by assignment.

Ed Thompson simply chose to absent himself and did not make arrangements for anyone else to pursue the case on defendant's behalf. The trial court concluded defendant failed to establish vacation of the award was warranted under MCR 3.602(J)(1).

Judicial review of a statutory arbitration award is limited. The court may confirm the award, vacate the award if it was obtained through fraud, duress, or other undue means, or modify or correct errors apparent on the face of the award. *Krist v Krist*, 246 Mich App 59, 67; 631 NW2d 53 (2001). The court may vacate an award if: (a) it was procured by fraud, corruption, or other undue means; (b) there was evident partiality, corruption, or misconduct on the part of the arbitrator; (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 material evidence, or otherwise conducted the proceedings in a manner that substantially prejudiced a party. MCR 3.602(J)(1).

Defendant argues the trial court erred by denying its motion to vacate the arbitration award and granting plaintiff's motion to confirm the award. Defendant alleges the proceedings lacked elementary fairness in that they went forward in the absence of Ed Thompson. We disagree and affirm the trial court's decision. The trial court found defendant did not establish that vacation of the award was warranted under MCR 3.602(J)(1), and denied defendant's motion on that basis.

Defendant does not discuss the grounds for vacation of an arbitration award set out in MCR 3.602(J)(1). Defendant emphasizes that Ed Thompson was out of the country when the arbitration took place; however, it is not disputed that defendant, the actual party to the arbitration proceedings, received notice by both mail and telephone of the date of the arbitration. Arbitration may proceed in a party's absence if the party, after receiving notice, fails to appear or seek an adjournment. MCL 600.5011; *E.E. Tripp Excavating Contractor, Inc v Jackson County*, 60 Mich App 221, 250-251; 230 NW2d 556 (1975). Defendant did not send a representative to the arbitration or seek an adjournment of the proceedings. Plaintiff had no obligation to seek an adjournment. No error occurred.

Affirmed.

/s/ Hilda R. Gage  
/s/ Richard Allen Griffin  
/s/ George S. Buth