

STATE OF MICHIGAN
COURT OF APPEALS

SEAN D. GARDELLA & ASSOCIATES, LLC,

Plaintiff-Appellee,

v

JONATHAN SIEBER and DARCY SIEBER,

Defendants-Appellants.

UNPUBLISHED

June 17, 2021

No. 354556

Oakland Circuit Court

LC No. 2017-158805-CB

Before: GLEICHER, P.J., and CAVANAGH and LETICA, JJ.

PER CURIAM.

In this breach-of-contract action, defendants appeal as of right the trial court’s order confirming the arbitration award and entering judgment in favor of plaintiff. We affirm.

I. FACTUAL BACKGROUND

This dispute arises from a residential construction agreement (“the contract”) in which plaintiff agreed to make improvements to real property owned by defendants, a married couple. The agreement began, “This [contract] is by and between [plaintiff] . . . and Mr. & Mrs. Jonathan Sieber, a married couple” The contract identified both defendants as plaintiff’s “client,” but only plaintiff and defendant Jonathan Sieber signed the contract. Plaintiff performed the contracted improvements, but defendants failed to pay for them as agreed, leaving a balance of \$108,000. Consequently, plaintiff filed a complaint asserting theories of breach of contract and unjust enrichment.

The contract underlying this dispute contained an arbitration clause, and the trial court entered a stipulation and order referring the dispute to arbitration pursuant to the Uniform Arbitration Act, MCL 691.1681 *et seq.* An arbitrator ultimately issued an award finding defendants jointly and severally liable for the amount due and owing on the contract, as well as attorney fees, as provided by the terms of the contract. The arbitrator noted that Darcy Sieber had not signed the contract, but entered into an oral contract incorporating the same terms as the written contract because evidence established that she was familiar with its terms and conditions, including the cost of the work, and participated in decisions regarding the work performed.

Thereafter, plaintiff filed a motion to confirm the arbitration award and enter judgment. In response, defendants filed an answer to plaintiff's motion and a countermotion to vacate the arbitration award, arguing that the arbitrator exceeded his powers. Defendants primarily argued that plaintiff could not recover from Darcy because she did not sign the contract. The trial court held a hearing on both motions and ultimately denied defendants' countermotion, granted plaintiff's motion to confirm the arbitration award, and entered judgment in favor of plaintiff. The court held that it was not its place to "agree or disagree with what the arbitrator's decision is" and declined to "look at what the arbitrator did and . . . make different determinations." This appeal followed.

II. ANALYSIS

Defendants argue that the trial court erred by affirming the arbitrator's award because the arbitrator exceeded his authority and clearly erred by assessing joint and several liability against both defendants and awarding attorney fees where Darcy did not sign the underlying contract and therefore was not a party to the agreement. We disagree.

"While we review a trial court's decision to vacate or enforce an arbitration award de novo, judicial review of an arbitration award nonetheless is extremely limited." *Fette v Peters Constr Co*, 310 Mich App 535, 541; 871 NW2d 877 (2015). "A court may not review an arbitrator's factual findings or decision on the merits." *TSP Services, Inc v Nat'l-Std, LLC*, 329 Mich App 615, 619; 944 NW2d 148 (2019) (citation omitted). But a court may review an arbitrator's decision for an error of law apparent on the face of the award. *Id.* (citation omitted). "Whether an arbitrator exceeded his or her authority is also reviewed de novo." *Washington v Washington*, 283 Mich App 667, 672; 770 NW2d 908 (2009). Finally, "[w]hether a contract exists is a question of law to be reviewed de novo." *Bodnar v St John Providence, Inc*, 327 Mich App 203, 212; 933 NW2d 363 (2019).

The contract between the parties contained a provision regarding arbitration which stated, in relevant part:

Any claim or controversy between [the parties] arising from or relating to this Agreement, including, without limitation, the interpretation of this Agreement and the adequacy of any performance under this Agreement, shall be resolved by arbitration before a single arbitrator Any award rendered by an arbitrator or arbitrators shall be entered as a judgment in any circuit court having jurisdiction thereof. A judgment of the circuit court in Oakland County, Michigan may be rendered upon the award. The prevailing party in any claim or controversy arising under or relating to this Agreement shall be entitled to reimbursement of costs and attorney fees incurred as a result of same.

"The scope of an arbitrator's remedial authority is limited to the contractual agreement of the parties." *Nordlund & Assoc, Inc v Hesperia*, 288 Mich App 222, 228; 792 NW2d 59 (2010) (quotation marks and citation omitted). "Arbitrators exceed their powers whenever they act beyond the material terms of the contract from which they draw their authority or in contravention of controlling law." *Radwan v Ameriprise Ins Co*, 327 Mich App 159, 165; 933 NW2d 385 (2018) (quotation marks and citation omitted). "[A]ny error of law must be discernible on the face of the

award itself.” *Id.* (citation omitted; alteration in original). “[I]n order to vacate an arbitration award, any error of law must be so substantial that, but for the error, the award would have been substantially different.” *Id.* (citation omitted).

Defendants argue the arbitrator exceeded his power by imposing liability on Darcy under the written contract because Darcy did not sign the contract and therefore was not bound by its terms. According to defendants, Darcy could not be liable under the contract as a matter of law. This argument is unpersuasive. First, the arbitrator did not exceed his authority by acting beyond the material terms of the contract. The contract specifically provided, “Any claim or controversy between [the parties] arising from or relating to this Agreement . . . shall be resolved by arbitration” Additionally, the contract allowed for an award of attorney fees. The contract thus provided the arbitrator the authority to resolve plaintiff’s breach-of-contract claim arising from the agreement and award attorney fees.

Second, the arbitrator did not exceed his authority by acting contrary to the law, as is clear from the face of the arbitration award. In the award, the arbitrator acknowledged that Darcy had not signed the agreement. However, the arbitrator nonetheless concluded that Darcy entered into an oral contract with plaintiff under the terms of the written agreement. The arbitrator therefore held defendants jointly and severally liable for the balance due and owing on the contract and awarded attorney fees, as provided by the contract.

“A party asserting a breach of contract must establish by a preponderance of the evidence that (1) there was a contract (2) which the other party breached (3) thereby resulting in [injury] to the party claiming breach.” *El-Khalil v Oakwood Healthcare, Inc.*, 504 Mich 152, 164; 934 NW2d 665 (2019) (quotation marks and citation omitted; alteration in original). “In order for a contract to be formed, there must be an offer and acceptance, as well as a mutual assent to all essential terms.” *Bodnar*, 327 Mich App at 213. The presence of a signature demonstrates mutual assent; however, the fact that one or both parties did not sign an agreement is not dispositive when deciding whether a contract was formed. *Ehresman v Bultynck & Co, PC*, 203 Mich App 350, 354; 511 NW2d 724 (1994). “In the absence of a statute or arbitrary rule to the contrary, an agreement need not be signed, provided it is accepted and acted on, or is delivered and acted on.” *Id.*, quoting 17 CJS, Contracts, § 62, pp 731–733. Similarly, it is well established that “[a] meeting of the minds can be found from performance and acquiescence in that performance.” *Sanchez v Eagle Alloy, Inc.*, 254 Mich App 651, 666; 658 NW2d 510 (2003).

Here, it is undisputed that Darcy did not sign the contract. However, she, along with Jonathan, owned the property onto which plaintiff rendered improvements in accordance with the written contract. The agreement itself identified both defendants as contracting parties. The written agreement could be considered an offer. Jonathan’s acceptance of the offer was clear through his signature on the written agreement. Although Darcy did not sign the contract, this fact is not dispositive. See *Ehresman*, 203 Mich App at 354. Moreover, Darcy could be said to have accepted plaintiff’s offer and assented to the terms of the contract by accepting plaintiff’s performance of the contract; specifically, the improvements to her home, which plaintiff completed in accordance with the agreement. The arbitrator specifically noted in the award that Darcy “was familiar with the terms and conditions of the work to be performed, the cost of the work[,] and . . . participated in decisions regarding the work.” Considering this, we cannot conclude the arbitrator legally erred by finding Darcy liable on the contract. Accordingly, it was

not improper for the arbitrator to find her jointly and severally liable for damages resulting from defendants' breach of that contract and award attorney fees, as allowed by the contract to which she was bound. The trial court therefore did not err by confirming the arbitration award.

And defendants claim that the arbitrator clearly erred by finding Darcy liable under the theory of unjust enrichment is unsupported by the record. Plaintiff's amended complaint did allege that defendants were liable under a theory of unjust enrichment. However, the arbitrator did not reach this claim. Rather, the arbitrator found defendants liable under plaintiff's breach-of-contract claim, as indicated by the arbitrator's statements that Jonathan's liability to plaintiff was absolute because he signed the agreement and that Darcy was liable because she orally contracted with plaintiff. Defendants' arguments regarding unjust enrichment are therefore without merit.

Affirmed. Plaintiff is entitled to costs as the prevailing party. See MCR 7.219(A).

/s/ Elizabeth L. Gleicher

/s/ Mark J. Cavanagh

/s/ Anica Letica