STATE OF MICHIGAN

COURT OF APPEALS

RADAR SAFETY TECHNOLOGIES LLC, RASHID HOLDINGS LLC, CHARLES E RASHID, GEORGE E RASHID JR, and STEVE A SAFIE, Plaintiffs/Counter-Defendants-Appellants,	UNPUBLISHED January 17, 2012
v PINNACLE HOLDINGS LLC, FAHDI SALHAB, DEAN C TURNER, ALAN BOYD, MIKE RYMUT, and SHARADA VAJJA, Defendants/Counter-Plaintiffs-Appellees.	No. 300591 Oakland Circuit Court LC No. 2008-095365-CK

Before: DONOFRIO, P.J., and STEPHENS and RONAYNE KRAUSE, JJ.

PER CURIAM.

Plaintiffs/counter-defendants Charles E. Rashid and George E. Rashid, Jr. ("plaintiffs") appeal by right the order denying their motion to vacate an arbitration award and instead confirming the award in favor of defendants/counter-plaintiffs Fahdi Salhab, Dean C. Turner, and Alan Boyd ("defendants").[1] We affirm.

This matter arises out of a business venture that was supposedly developing a radar-based automatic collision-warning system for automobiles. The Rashid plaintiffs' father apparently did genuinely invent such a system in the 1950's, but neither he, nor the plaintiffs after they took over the business when the Rashids' father died, has ever made such a system actually viable.[2]

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[1] All of the claims in the complaint were dismissed and are not at issue in this appeal. Salhab, Turner, and Boyd were the only counter-claimants. Radar Safety Technologies LLC has been dissolved and wound up, and the arbitrator found no liability for Safie.

[2] The Rashids were convicted of conspiracy to commit money laundering for their involvement in an investor-defraudment scheme based on their claims that they were having success

Turner and Salhab were investors in Radar Safety Technologies LLC ("RST"), and Boyd was a RST employee. Defendants resorted to what they call "self-help" (and plaintiffs regarded as theft) when they realized they had been defrauded, whereupon plaintiffs sued them. Defendants counterclaimed for, among other things, misrepresentation. The claims in the complaint and some of the counter claims were resolved and are not at issue; the parties agreed to arbitrate the remaining counter claims.

The arbitrator found—and again, plaintiffs do not contest—that plaintiffs represented to defendants that plaintiffs possessed a unique technology that was valuable and very nearly ready for commercialization; furthermore, that representation was material and false, and plaintiffs knew it to be false when it was made. In fact, whether or not the technology had any value, it was not anywhere near ready for the market. The arbitrator found that the Rashids had no reasonable basis for believing that it was, but that Safie had no knowledge or basis for knowledge beyond what the Rashids told him. Consequently, the arbitrator concluded that the Rashids made a material and false representation with knowledge that it was untrue and with the intention of inducing defendants to rely on it, and that defendants relied on that representation and suffered damages as a result; but it found no cause of action against Safie. The arbitrator awarded damages in favor of defendants Turner, Salhab, and Boyd against the Rashids.

Plaintiffs claim that the arbitration award was flawed for two reasons. First, as to defendant Boyd, Boyd's claims were for breach of contract and unjust enrichment, not misrepresentation, but the arbitrator did not discuss his claims yet still awarded him damages. Rather, plaintiffs argue that the arbitrator simply treated all three individual defendants as having brought misrepresentation claims. Second, plaintiffs argue that the arbitrator found the misrepresentation to have occurred prior to the execution of the parties' Operating Agreement, which contained an integration clause. Plaintiffs argue that the arbitrator gave Boyd an impossible award on a nonexistent claim and committed a material breach of law, so the arbitrator exceeded the scope of his authority, and the award must be vacated.

We review a trial court's decision to enforce, vacate, or modify an arbitration award de novo. *City of Ann Arbor v American Federation of State*, *Co*, *& Muni Employees (AFSCME) Local 369*, 284 Mich App 126, 144; 771 NW2d 843 (2009). Judicial review is extremely narrow and limited to determining whether the arbitrator even arguably construed or applied the contract and acted within the scope of his or her authority; "a court may not overturn the decision even if convinced that the arbitrator committed a serious error." *Id*. (quotation omitted). An arbitrator exceeds his or her authority by acting outside the terms of the contract or by contravening controlling principles of law. *Krist v Krist*, 246 Mich App 59, 62; 631 NW2d 53 (2001). However, in evaluating whether an arbitrator exceeded his or her authority, the courts must be careful to refrain from reviewing the merits of a claim. *Gordon Sel-Way*, *Inc v Spence Bros*, *Inc*, 438 Mich 488, 497; 475 NW2d 704 (1991). An arbitration award is presumed to be within the scope of an arbitrator's authority unless express language dictates otherwise. *Id*. The courts may speculate as to why an arbitrator ruled in a particular way; an alleged error of law may also be attributable to improper or unwarranted factual findings, and unless an alleged error of law is

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developing the system. See *United States v Rashid*, 274 F 3d 407 (2001). However, that conviction apparently pre-dates any of the events relevant to the instant action.

apparent from the face of the award, the award must be upheld. *Detroit Auto Inter-Ins Exch v Gavin*, 416 Mich 407, 428-429; 331 NW2d 418 (1982).

The arbitrator's opinion states that *all* of the defendants' claims were "for misrepresentation." It would be technically inaccurate to state that all of the defendants' claims *legally sounded in* misrepresentation, but in a more general sense, it is perfectly correct, because all of their claims were premised on the same underlying facts: that the Rashids lied to all of the defendants, to the defendants' detriment. The counter claim also states that it is "brought by counter-plaintiffs Fadi Salhab, Dean C. Turner, and Alan Boyd against the counter-defendants seeking relief for fraud, breach of contract, unjust enrichment, dissolution of Radar Safety Technologies, LLC ("RST") and a declaration of the rights of the parties concerning these issues." The arbitrator did indicate that Salhab and Turner, *only*, "allege three theories of misrepresentation." The arbitrator did not discuss Boyd's legal theories, but it is apparent that the arbitrator understood that Boyd's legal theories of recovery were distinct from Salhab's and Turner's, despite the apparent conflation of their claims. The arbitrator was not required to provide specific findings of fact or legal conclusions, so it is immaterial that the arbitrator did not otherwise state how he arrived at the conclusion that Boyd was entitled to his award. See *Saveski v Tiseo Architects*, *Inc*, 261 Mich App 553, 557; 682 NW2d 542 (2004).

Plaintiffs argue that the arbitrator's award was also against the wrong party, because it was issued against the Rashids individually, whereas all of Boyd's counts in the counter claim stated that he suffered damages "as a result of RST's actions," not the Rashids. But it is clear from the prayer for relief that Boyd's counts were not necessarily restricted only to RST. As discussed, the first paragraph of the counter claim states that it was brought by all three defendants against all of the plaintiffs; and the prayer for relief simply states that defendants "request that the Court enter judgment in their favor."

Finally, RST had been ordered dissolved, wound up, and liquidated by the time the matter went to arbitration. Although a dissolved corporation is entitled to some time in which to wind up its affairs, RST may not even have existed anymore by the time of arbitration. See *Flint Cold Storage v Dept of Treasury*, 285 Mich App 483, 495-496; 776 NW2d 387 (2009). Certainly, the arbitrator would have the authority to determine that such a reasonable time had passed, and so only the Rashids remained to be collected against. *Id*. at 498. Furthermore, the arbitrator could have concluded that the Rashids' used RST as an instrumentality to perpetrate fraud, and Boyd, among others, was harmed thereby. See *Foodland Distributors v Al-Naimi*, 220 Mich App 453, 456-460; 559 NW2d 379 (1996). Therefore, the arbitrator would not necessarily have committed a legal error, and therefore would not necessarily have exceeded his authority, by piercing the corporate veil. *Id*.

We find that the arbitrator did not exceed the scope of his authority by granting the award in favor of Boyd and against the Rashids.

Plaintiffs argue that the arbitrator should not have granted the award in favor of Salhab and Turner because their claims should have been dismissed pursuant to the parol evidence rule, because the Operating Agreement between the parties (other than Boyd) contained an integration clause. As discussed, the arbitration agreement specified that all of the remaining claims were to be arbitrated, and the claims of which plaintiff now complains were pending at the time. We

doubt the arbitrator could have exceeded his authority by considering them. However, we will consider plaintiffs' parol evidence rule argument.

The parol evidence rule precludes admission of evidence that would change the facial meaning of clear contractual language, generally unless the proposed evidence is intended to show that the contract itself is void or where the contract is ambiguous. *Adair v Adair*, 5 Mich 204, 210 (1858); *Paul v Univ Motor Sales Co*, 283 Mich 587, 599; 278 NW 714 (1938); *Shay v Aldrich*, 487 Mich 648, 667; 790 NW2d 629 (2010). The parol evidence rule only precludes the admission of understandings between the parties that were not included in the contract if those understandings occurred prior or contemporaneously to the contract, *not* anything that occurred thereafter. *Marx v King*, 162 Mich 258, 263-264; 127 NW 341 (1910); *In re Kramek Estate*, 268 Mich App 565, 573-574; 710 NW2d 753 (2005). Parol evidence may be admissible to show that a contract is not fully integrated, meaning it was not intended to be a complete and final embodiment of the parties' understandings, but an explicitly written integration clause is conclusive as to whether the contract was integrated. *UAW-GM Human Resource Ctr v KSL Recreation Corp*, 228 Mich App 486, 493-496; 579 NW2d 411 (1998). Parole evidence may be admissible to prove fraud, but only if it is a fraud that was not nullified by a valid merger clause. *Id*. at 503.

Defendants observe that the Operating Agreement's integration clause is, by its own terms, limited. In particular, the Operating Agreement states in relevant part:

> B. The Members desire to set forth in this Operating Agreement certain terms and conditions that will govern the operation, governance, management and business of the Company, unless and until this Agreement is amended or terminated as provided herein.
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> C. This Operating Agreement supersedes and revokes any prior agreements purporting to provide for the operation, governance, or management of the Company.
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> * * *
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> 9.4 Entire Agreement. This Operating Agreement contains the entire agreement and understanding among the parties and supersedes any previous understanding and agreement between them respecting the subject matter of this Agreement. There are no representations, agreements, arrangements, or understandings, oral or written, between or among the parties to this Agreement, relating to the subject matter of this Agreement, that are not fully expressed in this Agreement.

Defendants argue that the subject matter of the agreement is "the operation, governance, or management of" RST, and it therefore does *not* address the condition of the Rashids' radar technology. The prerequisite to the application of the parol evidence rule is that "there must be a finding that the parties intended the written instrument to be a complete expression of their agreement *as to the matters covered*." *NAG Enterprises*, *Inc v All State Industries*, *Inc*, 407 Mich 407, 410; 285 NW2d 770 (1979) (emphasis added). We agree with defendants that the

arbitrator would not have exceeded the scope of his authority by making a factual finding that the Operating Agreement was only integrated as to the operation of RST, not as to the state of the technology owned by the Rashids.

But even if the integration clause was absolute, defendants additionally argue that their counter claim alleged misrepresentations that continued well after the date of the Operating Agreement. The parol evidence rule could never have any effect on any such *subsequent* misrepresentations. *Marx*, 162 Mich at 263-264. The arbitrator could not have exceeded the scope of his authority by basing the award on misrepresentations that transpired after the date of the operating agreement. Furthermore, prior to arbitration, plaintiffs argued the parol evidence rule to the trial court (albeit based on a different document), and the trial court ruled that, among other things, the parol evidence rule was inapplicable because "defendants have made no [claim that the parties' agreements were invalid] and, in fact, are relying on the validity of the parties' agreements." The arbitrator would have been obligated to follow the trial court's order, but in any event, the arbitrator would not have exceeded the scope of his authority by independently finding the parol evidence rule inapplicable because defendants were not seeking to change the terms of the Operating Agreement itself.[3]

Finally, defendants argue that the kind of fraud at issue in this matter is the kind of fraud that can invalidate a merger clause. Plaintiffs correctly assert that prior misrepresentations not included in a fully integrated contract are nullified because they were not included; consequently, fraudulent inducement by unincluded past statements cannot abrogate or void an integrated contract. *UAW-GM Human Resource Ctr*, 228 Mich App at 502-505. Defendants, however, state that some misrepresentations are so fundamental that they will invalidate the entire contract, including any merger clause. For example, a telecommunications provider that misrepresented whether it was actually capable of fulfilling its agreement and induced the plaintiff to enter into a contract because of that misrepresentation which was of such magnitude that it invalidated the entire contact. *Custom Data Solutions*, *Inc v Preferred Capital*, *Inc*, 274 Mich App 239, 243-245; 733 NW2d 102 (2006). The arbitrator would not have exceeded the scope of his authority by finding that the Rashids' misrepresentations here were of such magnitude. As discussed, it is not necessary for the arbitrator to have explained how he arrived at the award; it is enough that doing so was within the scope of his authority.

Affirmed.

/s/ Pat M. Donofrio
/s/ Cynthia Diane Stephens
/s/ Amy Ronayne Krause

[3] Again, the issue before this Court is *not* whether the arbitrator's findings were correct, but whether they were outside the scope of his authority.