

STATE OF MICHIGAN
COURT OF APPEALS

BILL HADDAD, d/b/a KBKS MAINTENANCE
LANDSCAPING COMPANY,

UNPUBLISHED
February 21, 2013

Plaintiff-Appellee,

v

No. 306548
Wayne Circuit Court
LC No. 08-016894-CK

KC PROPERTY SERVICE, L.L.C.,

Defendant,

and

WOODLORE CONDOMINIUM OWNERS
ASSOCIATION, INC.,

Defendant-Appellant.

Before: RIORDAN, P.J., and HOEKSTRA and O'CONNELL, JJ.

PER CURIAM.

Defendant Woodlore Condominium Association (“Woodlore”) appeals by right the circuit court judgment in favor of plaintiff and against Woodlore for \$19,270, pursuant to an arbitration award. We affirm.

After plaintiff filed this action against defendants, the parties entered into an arbitration agreement. They agreed that the “the arbitrator shall fully and finally decide the issue of damages sustained by the Plaintiff, if any, resulting from the incident[.]” The agreement further stated:

The decision in writing shall be binding. The decision of the arbitrator will represent a full and final award as to any liability between Plaintiff and Defendant and judgment upon the award rendered by the arbitrator may be entered at any court having jurisdiction thereof.

When Woodlore refused to complete the arbitration, plaintiff filed a motion to compel continued arbitration. The trial court granted the motion. The court later denied Woodlore’s motion for reconsideration for failure to establish a palpable error in the entry of the order compelling continued arbitration.

Woodlore argues on appeal that because the parties' arbitration agreement did not state that judgment on the arbitration award *shall* be rendered in circuit court, the agreement did not satisfy the requirements of MCL 600.5001(1) and, therefore, the parties only agreed to common-law arbitration, which is unilaterally revocable. Woodlore acknowledges that it first raised this argument in its motion for reconsideration and contends that the trial court abused its discretion by denying that motion.

This Court reviews a trial court's decision on a motion for reconsideration for an abuse of discretion, i.e., a decision which falls outside the range of principled outcomes. *Luckow Estate v Luckow*, 291 Mich App 417, 423; 805 NW2d 453 (2011). This Court reviews de novo questions of law that bear on the trial court's decision. *Id.*

A party's right to revoke an agreement to arbitrate under the Michigan Arbitration Act (MAA), MCL 600.5001 *et seq.*, is limited by MCL 600.5011, which states:

Neither party shall have power to revoke any agreement or submission made as provided in this chapter without the consent of the other party; and if either party neglects to appear before the arbitrators after due notice, the arbitrators may nevertheless proceed to hear and determine the matter submitted to them upon the evidence produced by the other party. The court may order the parties to proceed with arbitration.

However, if an agreement to arbitrate does not meet the requirements of the MAA in MCL 600.5001, "the parties are said to have agreed to common-law arbitration." *Wold Architects & Engineers v Strat*, 474 Mich 223, 231; 713 NW2d 750 (2006). Common-law agreements to arbitrate are unilaterally revocable at any time before the arbitrator makes the award. *Id.*; *Rooyakker & Sitz, PLLC v Plante & Moran, PLLC*, 276 Mich App 146, 153; 742 NW2d 409 (2007). Therefore, a party's ability to unilaterally revoke an arbitration agreement depends in part on whether the agreement complies with MCL 600.5001.

MCL 600.5001 states, in pertinent part:

(1) All persons, except infants and persons of unsound mind, may, by an instrument in writing, submit to the decision of 1 or more arbitrators, any *controversy existing* between them, which might be the subject of a civil action, except as herein otherwise provided, and may, in such submission, agree that a judgment of any circuit court *shall be* rendered upon the award made pursuant to such submission.

(2) A provision in a written contract to settle by arbitration under this chapter, a *controversy thereafter arising* between the parties to the contract, with relation thereto, and in which it is agreed that a judgment of any circuit court *may be* rendered upon the award made pursuant to such agreement, shall be valid, enforceable and irrevocable save upon such grounds as exist at law or in equity for the rescission or revocation of any contract. Such an 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. Any arbitration

had in pursuance of such agreement shall proceed and the award reached thereby shall be enforced under this chapter. [Emphasis added.]

The first paragraph applies to agreements to arbitrate existing controversies, and the second applies to agreements to arbitrate causes of action that have not yet accrued. *Wold*, 474 Mich at 230. In both instances, the agreements must be in writing. Both provisions also require reference to judgment being rendered in circuit court upon the award.

Woodlore emphasizes that § 5001(1) states, “shall be rendered,” as opposed to § 5001(2), which refers to “may be rendered.” Because the parties entered into the arbitration agreement to settle an existing controversy, their agreement is governed by § 5001(1). Woodlore argues that because their agreement did not specify that a “shall” be rendered on the award, it did not meet the requirements of § 5001(1). We disagree.

When Woodlore responded to plaintiff’s motion to compel arbitration, Woodlore relied on *Hetrick v Friedman*, 237 Mich App 264; 602 NW2d 603 (1999), disapproved of on other grounds in *Wold*, 474 Mich at 192, n. 3. *Hetrick* actually contradicts Woodlore’s position that an agreement to arbitrate an existing controversy must state that judgment “shall” be entered. In *Hetrick*, the parties entered into an arbitration agreement to resolve a medical malpractice lawsuit. Although their agreement did not refer to judgment being entered in circuit court, it stated, “Arbitration to be governed by American Arbitration Association medical malpractice arbitration rules.” *Id.* at 269. Those rules stated that the parties “to these rules shall be deemed to have consented that judgment upon the arbitration award *may be* entered in any federal or state court having jurisdiction thereof.” *Id.* (emphasis added). This Court stated:

Because these rules were incorporated by reference into the arbitration agreement, the agreement included a provision for a judgment upon the arbitration award to be entered in a court having jurisdiction. Accordingly, the arbitration agreement is a statutory arbitration agreement and is not unilaterally revocable [Id.]

In the present case, the arbitration agreement used the “may be entered” phrase that was incorporated by reference in *Hetrick* and which was deemed adequate to invoke statutory arbitration.

The trial court did not abuse its discretion in denying Woodlore’s motion for reconsideration. “A party bringing a motion for reconsideration must establish that (1) the trial court made a palpable error and (2) a different disposition would result from correction of the error.” *Luckow Estate*, 291 Mich App at 426. “Palpable” means “easily perceptible, plain, obvious, readily visible, noticeable, patent, distinct, manifest.” *Id.* (citations and internal quotation marks omitted.) The arbitration agreement included a provision for entry of judgment in circuit court on the award. *Hetrick* indicates that the agreement was not deficient merely because it used the term “may.” Under the circumstances, the trial court’s determination that there was no “palpable error” was not an abuse of discretion.

Woodlore includes a cursory argument questioning whether its due process rights to notice and an opportunity to be heard were adequately safeguarded. Woodlore asks, “Query

whether a trial court meets [the due process] standards when it completely ignores the obvious, declines to entertain oral argument on a motion the day before the scheduled hearing, and does not issue a written order beyond that which it purportedly faxed to counsel.” The trial court did not “ignore the obvious.” The means by which the court informs the parties of a decision does not implicate a party’s right to notice and an opportunity to be heard before the decision. The trial court’s decision not to entertain oral argument on the motion is consistent with MCR 2.119(E)(3). Woodlore had notice of plaintiff’s motion and exercised the opportunity to be heard when it filed a response. Woodlore has not shown a due process violation.

Affirmed.

/s/ Michael J. Riordan

/s/ Joel P. Hoekstra

/s/ Peter D. O’Connell