

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

WILLIAM BEAUMONT HOSPITAL,

Plaintiff,

Case No: 2014-140857-CK

v.

Hon. Wendy Potts

WEST BLOOMFIELD MOB, LLC, et al,

Defendants.

OPINION AND ORDER RE:
BEAUMONT'S MOTION TO CONFIRM AND ENTER JUDGMENT ON
ARBITRATION AWARD
AND
DEFENDANTS' MOTION TO VACATE OR MODIFY ARBITRATION AWARD
PURSUANT TO MCR 3.602(J)(2)

At a session of Court
Held in Pontiac, Michigan

On
SEP 26 2014

Defendant West Bloomfield MOB, LLC (WBMOB) owned and operated a medical office building on Orchard Lake Road. WBMOB was formed through an August 2006 operating agreement. Plaintiff William Beaumont Hospital held a 20% membership interest in WBMOB, and Defendant Winfireco, LLC held the remaining interest. The operating agreement granted Beaumont an option to sell its membership interest according to a "Put Option Agreement" that was incorporated by reference in the operating agreement. Both the operating agreement and the Put Option Agreement had arbitration clauses, but the language of those clauses differed. Section 13.2 of the operating agreement required any dispute under the agreement to be submitted to

expedited arbitration under the commercial arbitration rules of the American Arbitration Association. The Put Option Agreement's arbitration clause required any claim under the Put Option Agreement to be arbitrated by a Michigan-licensed attorney chosen by WBMOB's accountant.

In March 2012, Beaumont demanded arbitration with the AAA under the operating agreement, and Defendant also demanded arbitration of counterclaims. In June 2012, Beaumont filed an action, assigned to Judge Anderson, which it claims was necessary to protect its rights and alleviate statute of limitation concerns. Beaumont then filed a motion to stay the claims pending arbitration. Defendants opposed the stay asserting that claims under the Put Option Agreement were not subject to the arbitration clause of the operating agreement. Defendants also moved for summary disposition asking Judge Anderson to compel arbitration. On July 30, 2012, Judge Anderson entered an order staying the case pending arbitration, however, the order does not rule on Defendants' claim regarding the Put Option arbitration clause. Defendants did not seek reconsideration or appeal Judge Anderson's decision to stay the case or the lack of a ruling on their Put Option arguments.

After AAA appointed Patrick Facca to act as arbitrator, Defendants again raised the issue of the conflict between the agreements' arbitration clauses in a motion filed with the arbitrator. On November 12, 2012, the arbitrator rejected Defendants' arguments in a written order concluding that the arbitration clause in the Put Option Agreement does not supersede the arbitration clause in the operating agreement.

The case proceeded to arbitration in late 2013 and on January 14, 2014, the arbitrator issued an award without legal analysis of the parties' claims. The award granted Beaumont \$3 million on its Put Option and \$1,616,964 on its preferred return claim. The award also granted

WBMOB \$2,713,238 on its tenant improvement claim and \$32,077.12 on its property taxes and utilities claim. The net award to Beaumont was \$1,871,648.88, and the arbitrator awarded Beaumont the same amount on its guaranty claim against Winfireco.

On January 22, 2014, Beaumont filed a motion in Judge Anderson's case asking the Court to lift the stay and confirm the arbitration award. Defendants filed a motion asking Judge Anderson to assign this case to the Business Court and also filed a counterclaim seeking to vacate or modify the arbitration award. Judge Anderson granted the request to lift the stay and denied the request to reassign the case to Business Court. The parties then filed cross motions for summary disposition, which Judge Anderson heard and granted on May 14, 2014, dismissing all claims and directing Beaumont to file a new action to confirm the arbitration award. Although both sides moved Judge Anderson to reconsider the summary disposition decision, Beaumont filed this action on May 16, 2014 and moved to confirm the arbitration award. Defendants filed a motion in this case to vacate or modify the arbitration award, and also filed a motion for summary disposition under MCR 2.116(C)(6) on the ground that there was a pending case before Judge Anderson. In July 2014, the parties stipulated to withdraw their motions for reconsideration and the (C)(6) motion and proceed on the arbitration motions in this case.

The matter is now before the Court on the parties competing motions to confirm, vacate, or modify the arbitration award. MCR 3.602(I) gives the Court three options in reviewing an arbitration award: (1) confirm, (2) vacate, or (3) correct or modify the award. *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 495; 475 NW2d 704 (1991). MCR 3.602(J)(2) limits the grounds for vacating an award. Pertinent to this case, an award can be vacated if the arbitrator exceeded his powers. MCR 3.602(J)(2)(c). If there are no grounds for vacating or modifying an award, the Court must confirm it. MCR 3.602(J)(4).

Defendants first assert that the arbitration award must be vacated or modified because Beaumont's claims arise from the Put Option agreement and the AAA arbitrator did not have authority to decide those claims. Defendants raised this argument in the case before Judge Anderson, and although Judge Anderson did not issue an express ruling, the decision to stay the case pending arbitration rejected Defendants' argument by implication. To the extent that Defendants disagreed with Judge Anderson's decision, they should have moved for reconsideration or sought an appeal. This Court has no authority to second-guess Judge Anderson's decision that the case should proceed to arbitration. In addition, by not taking an immediate appeal and raising the issue with the arbitrator, Defendants effectively waived any argument that the Put Option arbitration clause issue is a decision for this Court.

Defendants also assert that the arbitrator exceeded his authority by concluding that the operating agreement arbitration clause controls and exercising jurisdiction over Beaumont's Put Option claims. An arbitrator exceeds his authority when he acts beyond the material terms of the contract from which he draws his authority or in contravention of controlling principles of law. *DAIIE v Gavin*, 416 Mich 407, 434; 331 NW2d 418 (1982). The Court's review is limited to errors that are apparent on the record or the face of the arbitrator's ruling. *DAIIE v Gavin*, 416 Mich 407, 428-429; 331 NW2d 418 (1982). Defendant fails to identify an error of law on the face of the arbitrator's decision that the operating agreement arbitration provision controls. As noted above, the Put Option Agreement was incorporated by reference into the operating agreement; thus, the arbitration clause in the operating agreement applies to the Put Option agreement. Further, Beaumont's claims arguably arise under the operating agreement because that agreement establishes Beaumont's right to the Put Option and preferred return. Defendants have not identified any issue before the arbitrator that arose solely under the Put Option

Agreement and did not involve interpretation or application of the operating agreement. Thus, the arbitrator did not exceed his authority by deciding all of claims including those related to the Put Option agreement.

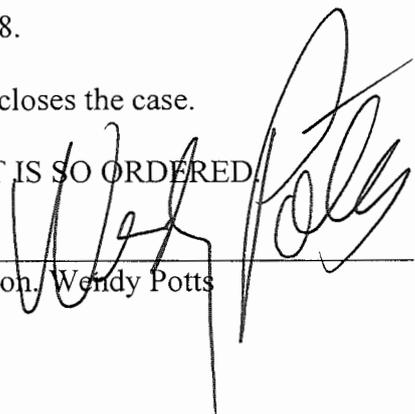
Defendants also assert that the arbitrator erred by awarding Beaumont the Put Option before determining WBMOB's claims. This argument is premised on Defendants' assertion that the award to Beaumont was a member distribution under MCL 450.4307 and the arbitrator dissolved WBMOB under MCL 450.4808. However, the arbitrator expressly stated that he was not ruling on the parties' claims for dissolution, and he did not award Beaumont any sum as a member distribution. Further, there is nothing in the operating agreement or Put Option Agreement that identifies the Put Option as a member distribution. Defendants cite no authority holding that any sum paid to an LLC member under the terms of the operating agreement constitutes a member distribution. Because Defendants fail to demonstrate that the Put Option was a member distribution, there was no error in the arbitrator's decision to award Beaumont \$3 million on the Put Option before determining the amount owed on WBMOB's.

For all of these reasons, the Court concludes that the arbitrator did not exceed his authority. The Court denies Defendants' motion to vacate or modify the arbitration award and grants Beaumont's motion to confirm the award. The Court enters judgment in Beaumont's favor and against Defendants in the amount of \$1,871,648.88.

This order resolves the last pending claim and closes the case.

Dated: **SEP 26 2014**

IT IS SO ORDERED



Hon. Wendy Potts