

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

HYMAN LIPPITT, PC,

Plaintiff,

v

Case No. 2013-137799-CB  
Hon. Wendy Potts

THE ADDELL BROTHER'S  
CHILDREN'S TRUST, et al,

Defendants.

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OPINION AND ORDER RE: DEFENDANTS' MOTION FOR RECONSIDERATION  
OF ORDER DENYING MOTION TO VACATE, MODIFY OR CORRECT  
ARBITRATION AWARD

At a session of Court  
Held in Pontiac, Michigan

On

JUN 5 2015

Defendants move the Court to reconsider its decisions denying their motion to vacate, modify, or correct the arbitrator's award and granting Plaintiff's motion to confirm the arbitration award. The Court has discretion to grant or deny reconsideration. MCR 2.119(F)(3); *Charbeneau v Wayne County General Hosp*, 158 Mich App 730, 733; 405 NW2d 151 (1987). Reconsideration is warranted if a party identifies a palpable error by which the Court and the parties have been misled and shows that a different disposition must result from correction of that error. MCR 2.119(F)(3).

Defendants first assert that the Court erred by concluding that their motion to vacate, modify, or correct the arbitration award was not timely filed. However, Defendants base this assertion on the same arguments raised before the Court made its ruling, which cannot suffice to

show palpable error. *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000). Moreover, because the Court addressed the merits of Defendants' motion, Defendants cannot show that a different disposition would result if the Court reversed its decision on the motion's timeliness, and they are not entitled to reconsideration on this ground. MCR 2.119(F)(3).

Likewise, Defendants' arguments on the merits of the Courts' decision mirror the arguments Defendants raised in their motion to vacate, modify, or correct the arbitration award. Specifically, Defendants assert that the arbitrator erred by (1) awarding Plaintiff interest despite Plaintiff's alleged admissions or waiver of interest charges in its Affidavit of Account Stated, invoices, or account statements, (2) barring Defendants from presenting evidence of their recoupment defense based on Plaintiff's alleged malpractice, (3) refusing to postpone the arbitration proceeding although new Defense counsel substituted in only two and a half months before the hearing date, and (4) harboring bias toward Plaintiff or against Defendants based on comments or adverse rulings the arbitrator allegedly made during the proceeding. Because all of these arguments were raised in Defendants' motion to vacate, modify, or correct the arbitration award, and the Court addressed them in its ruling on the motion, Defendants fail to demonstrate palpable error. *Churchman, supra*. The fact that Defendants disagree with this Court's legal analysis and conclusions does not give rise to an error warranting reconsideration. *Herald Co v Tax Tribunal*, 258 Mich App 78, 83; 669 NW2d 862 (2003).

The Court's authority to vacate an arbitration award is strictly limited to cases where the record of the arbitration proceeding shows: (a) the award was procured by corruption, fraud, or other undue means; (b) there was evident partiality by an arbitrator appointed as a neutral, corruption of an arbitrator, or misconduct prejudicing a party's rights; (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 evidence material to the controversy, or otherwise conducted the hearing to prejudice substantially a party's rights. MCR 3.602(J)(2). The Court cannot second-guess the arbitrator's procedural or evidentiary decisions, delve into his motives or intent, or quibble with his factual findings. There is a reason for this limited review: "[b]y narrowing the grounds upon which an arbitration decision may be invaded, the court rules preserve the efficiency and reliability of arbitration as an expedited, efficient, and informal means of private dispute resolution." *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 495; 475 NW2d 704 (1991).

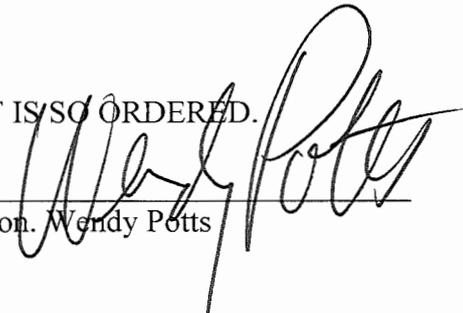
Moreover, the Court cannot determine that any of the circumstances listed in MCR 3.602(J)(2) exist unless it is apparent in the record of the arbitration proceeding or on the face of the award. *DAIE v Gavin*, 416 Mich 407, 428-429; 331 NW2d 418 (1982). Because the parties did not transcribe the arbitration proceeding and agreed that the arbitrator could award a lump sum without analysis or findings of fact, there is virtually no record to support any of Defendants' claims regarding the arbitrator's alleged errors. In the absence of a written record or detailed award, the Court cannot draw conclusions or make assumptions about the basis for the arbitrator's decisions.

In sum, Defendants fail to demonstrate palpable error in the Court's decision, and the motion for reconsideration is denied.

Dated:

**JUN 5 2015**

IT IS SO ORDERED.

  
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Hon. Wendy Potts