

STATE OF MICHIGAN  
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

DAVID BROWN, executor of the estate of  
John S. Hearn, deceased; and STEPHANIE  
HEARN, successor by law and assignee of  
the rights in the promissory note which is the  
subject of this complaint of JSH Christian  
Learning Centers, Inc., and JSH Christian  
Learning Centers, LLC,

Plaintiffs,

vs.

KDAB, INC., a Michigan corporation; and  
ROBERT BERNARD and KIMBERLY  
BERNARD, husband and wife, jointly and  
severally,

Defendants.

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Case No. 13-01581-CKB

HON. CHRISTOPHER P. YATES

OPINION AND ORDER DENYING PLAINTIFFS’  
MOTION TO VACATE ARBITRATOR’S AWARD

Our Court of Appeals has reminded us that “[a] court’s review of an arbitration award “is one of the narrowest standards of judicial review in all of American jurisprudence.”” Washington v Washington, 283 Mich App 667, 671 n 4 (2009). But how much deference should a court give to an arbitrator’s award that contains no supporting analysis? To be sure, the inclusion of analysis just for the sake of filling out the record may prove Barmecidal, but ordinarily an arbitrator’s statement of the rationale for an award immeasurably assists reviewing courts in their consideration of such an award. Nevertheless, as this case illustrates, the Court must afford substantial deference even if the arbitrator’s award simply takes the form of a pronouncement of a result. Accordingly, the Court must deny the plaintiffs’ motion to vacate the arbitrator’s award pursuant to MCR 3.602(J).

## I. Factual Background

John Hearn was the sole member of JSH Christian Learning Centers, LLC (“JSH”). In 2008, JSH sold a franchise business called Appletree Christian Learning Center to Defendant KDAB, Inc. (“KDAB”). In exchange, JSH received a \$200,000 promissory note from KDAB, Robert Bernard, and Kimberly Bernard that provided for monthly installments until September 1, 2012, followed by satisfaction of the balance in a single balloon payment. In 2010, John Hearn and his wife, Plaintiff Stephanie Hearn, divorced in Ohio. As part of that divorce, John and Stephanie Hearn entered into a separation agreement providing each of them with the right to one-half of the net payments on the promissory note. Then, in December 2011, John Hearn died and the executor of his estate took over his claims. In an effort to collect upon the promissory note, an attorney for John Hearn’s estate sent a letter to the defendants’ attorney demanding monthly payments as well as the balloon payment in the amount of \$96,519.85. The defendants refused to make those payments, so the executor of John Hearn’s estate and John Hearn’s widow filed suit against the defendants.

In response to that suit, the defendants moved for summary disposition. The Court allowed the plaintiffs to pursue recovery, but ruled on July 11, 2013, that all of the claims had to be resolved by arbitration. See Opinion and Order Denying Defendants’ Motion for Summary Disposition, But Granting Their Motion to Compel Arbitration. The arbitrator subsequently rendered two important rulings. On December 13, 2013, the arbitrator denied the plaintiffs’ motion to dismiss in a thorough 15-page decision. See Brief in Support of Plaintiffs’ Motion to Vacate Arbitrator’s Award, Exhibit 10. Then, on January 7, 2014, the arbitrator issued a two-page award that pronounced the outcome of the arbitration proceeding. Id., Exhibit 11. In a nutshell, the arbitrator ruled “that the claims and counterclaims of the parties offset,” so neither side recovered a dime. See id.

On January 15, 2014, Plaintiffs David Brown (as the executor of John Hearn’s estate) and Stephanie Hearn filed a motion to vacate the arbitrator’s award.<sup>1</sup> In their 20-page brief, the plaintiffs launched a broad-based attack upon the arbitrator’s award. The defendants responded in a lengthy brief that did not request confirmation of the arbitrator’s award. The plaintiffs thereafter filed a reply brief. Based upon the Court’s careful review of the parties’ competing briefs and the positions they presented at oral argument, the Court finds no basis to vacate the arbitrator’s award.

## II. Legal Analysis

When reviewing an arbitration award in Michigan, “a trial court may not hunt for errors in an arbitrator’s explanation of how it determined who is liable under the arbitrated contract, and who owes what damages to whom.” See Saveski v Tiseo Architects, Inc, 261 Mich App 553, 558 (2004). The limits of the Court’s authority to vacate an arbitration award are spelled out in MCR 3.602(J)(2), and the grounds for modifying an arbitration award are defined in MCR 3.602(K)(2). See Nordlund & Associates, Inc v Village of Hesperia, 288 Mich App 222, 227 (2010). To be sure, the “scope of an arbitrator’s remedial authority is ‘limited to the contractual agreement of the parties[,]’” id. at 228, and arbitrators “exceed their power whenever they act beyond the material terms of the contract from which they primarily draw their authority, or in contravention of controlling principles of law.” See Detroit Auto Inter-Ins Ex v Gavin, 416 Mich 407, 434 (1982). But an arbitration award is “presumed to be within the scope of the arbitrators’ authority absent express language to the contrary.” Gordon

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<sup>1</sup> In ordering the parties’ claims and counterclaims to arbitration on July 11, 2013, the Court described its ruling as “a final order that resolves the last pending claim and closes the case.” Thus, there was no pending action between the parties when the plaintiffs challenged the arbitrator’s award, so the plaintiffs should have “file[d] a complaint as in other civil actions” to attack the arbitrator’s award. See MCR 3.602(J). The Court shall overlook this procedural misstep as inconsequential and take up the challenge under the case number assigned to the plaintiffs’ original civil action.

Sel-Way, Inc v Spence Bros, Inc, 438 Mich 488, 497 (1991). “Thus, as long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, a court may not overturn the decision even if convinced that the arbitrator committed a serious error.”<sup>2</sup> City of Ann Arbor v AFSCME Local 369, 284 Mich App 126, 144 (2009).

The plaintiffs’ motion to vacate the arbitration award barely pays lip service to the governing standards in MCR 3.602(J)(2). Instead, the plaintiffs seem to proceed from the flawed premise that the Court has plenary authority to rectify errors of law made by the arbitrator. To be sure, arbitrators exceed their powers when they act “in contravention of controlling principles of law[.]” Dohanyos v Detrex Corp, 217 Mich App 171, 176 (1996), but “[t]he character or seriousness of an error of law that will require a court of law to vacate an arbitration award must be so material or so substantial as to have governed the award, and the error must be one but for which the award would have been substantially otherwise.” Id. Here, the arbitrator rejected the plaintiffs’ theories of *res judicata* and collateral estoppel predicated upon the Butler County (Ohio) Probate Court’s treatment of potential claims that later became the defendants’ counterclaims and demands for offset in this Court. See Brief in Support of Plaintiffs’ Motion to Vacate Arbitrator’s Award, Exhibit 10 (Arbitrator’s Order

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<sup>2</sup> The arbitration clause that prompted the Court to order resolution of the plaintiffs’ claims by an arbitrator states as follows:

All disputes involving this Agreement (excluding any action or part thereof to enforce Seller or Seller Owner’s obligations under the non-competition agreement) shall be submitted to arbitration to be administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. The parties agree that the arbitration award shall be final and binding and that a judgment by any circuit court of competent jurisdiction may be rendered on the award. The place of arbitration shall be Grand Rapids, Michigan.

See Opinion and Order Denying Defendants’ Motion for Summary Disposition, but Granting Their Motion to Compel Arbitration at 7 (July 11, 2013).

on Claimants' Motion to Dismiss at 1-7). The Court concludes that the arbitrator acted well within his authority, as a matter of contract and law, in rejecting the plaintiffs' motion to dismiss grounded upon theories of *res judicata* and collateral estoppel. The arbitrator offered several compelling legal justifications for his decision.<sup>3</sup> See id. Therefore, insofar as *res judicata* and collateral estoppel are concerned, the plaintiffs cannot establish that "it clearly appears on the face of the award or in the reasons for decision, being substantially a part of the award, that the arbitrator[] through an error of law ha[s] been led to a wrong conclusion and that, but for such error, a substantially different award must have been made[.]" See Dohanyos, 217 Mich App at 176.

The balance of the plaintiffs' challenges all focus upon the bare-bones award rendered by the arbitrator. See Brief in Support of Plaintiffs' Motion to Vacate Arbitrator's Award, Exhibit 11. That is, the plaintiffs expressly insist that the arbitrator "exceeded his powers by failing to grant an award of attorney fees to Plaintiffs in contravention of the clear language of the promissory note" and erred in basing "his award on the doctrine of collateral estoppel." See Plaintiffs' Motion to Vacate at 2. The salient terms of the arbitrator's award simply state: "There is no Award of attorney fees or costs to any party" and, "based upon the Doctrine of Equitable Estoppel, it is the finding of the Arbitrator that the claims and counterclaims of the parties offset[.]" See Brief in Support of Plaintiffs' Motion to Vacate Arbitrator's Award, Exhibit 11. The \$200,000 promissory note signed by the defendants in 2008 provides, *inter alia*, that "Borrowers [*i.e.*, the defendants] shall reimburse the Creditor [*i.e.*,

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<sup>3</sup> The records of the Butler County Probate Court that the plaintiffs characterize as decisions supporting the assertion of *res judicata* and collateral estoppel include a "Rejection of Claim Against Estate" signed only by the executor of John Hearn's estate and the attorney for the estate, see Brief in Support of Plaintiffs' Motion to Vacate Arbitrator's Award, Exhibit 8, and a subsequent "Entry Barring Rejected Claim" signed by an Ohio probate judge simply because "no action was taken on the Rejection of Claim filed in the Probate Court of Butler, County, Ohio[.]" Id., Exhibit 9. In the arbitrator's view, these documents did not support application of *res judicata* or collateral estoppel.

JSH] for all expenses, including reasonable attorney fees and legal expenses that the holder pays or incurs in attempting to collect this note.” See id., Exhibit 3 (promissory note at 2). The language of the promissory note seems to lend some support to the plaintiffs’ request for attorney fees, but the arbitrator could have concluded that those fees were not reasonable, and thus not recoverable, in the context of this dispute. Similarly, the arbitrator’s invocation of the doctrine of equitable estoppel seems peculiar as the basis for concluding that “the claims and counterclaims of the parties offset,”<sup>4</sup> see id., Exhibit 11 (Award of Arbitrator, ¶ 2), but the fact remains that the defendants had asserted counterclaims for damages roughly commensurate with the plaintiffs’ claim on the promissory note. Thus, the arbitrator could justifiably determine that the claims and counterclaims offset. “Because the arbitration award in this case lacks the kind of facial error that would allow the court to modify or vacate it,” the Court must leave the arbitration award intact “without demanding the production of more factual or legal support.” See Saveski, 261 Mich App at 558.

IT IS SO ORDERED.

Dated: May 27, 2014



HON. CHRISTOPHER P. YATES (P41017)  
Kent County Circuit Court Judge

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<sup>4</sup> Under Michigan law, “equitable estoppel is not a cause of action unto itself; it is available only as a defense.” Casey v Auto-Owners Ins Co, 273 Mich App 388, 399 (2006). The defense of equitable estoppel “prevents one party to a contract from enforcing a specific provision contained in the contract.” Morales v Auto-Owners Ins Co, 458 Mich 288, 295 (1998). “Equitable estoppel may arise where (1) a party, by representations, admissions or silence intentionally or negligently induces another party to believe facts, (2) the other party justifiably relies and acts on that belief, and (3) the other party is prejudiced if the first party is allowed to deny the existence of those facts.” See West American Ins Co v Meridian Mut Ins Co, 230 Mich App 305, 310 (1998).