# STATE OF MICHIGAN

# COURT OF APPEALS

BRADLEY WHITE, JAMES G. WHITE and JOANNE WHITE,

Plaintiffs-Appellees,

v

NUBS NOB, INC., and STEVEN SCHMIDT,

Defendants-Appellants.

UNPUBLISHED
September 13, 1996

No. 178753
LC No. 87-93138-NI

Before: Holbrook, P.J., and Saad and W. J. Giovan,* JJ.

PER CURIAM.

Defendant Nubs Nob appeals from a judgment which confirmed an arbitration award against Nubs Nob alone. We affirm.

Plaintiff, age seventeen at the date of injury, went to Nubs Nob for a ski trip with three friends. One evening while the slopes were closed, plaintiff became severely intoxicated and "borrowed" without permission a snowmobile owned by Nubs Nob and used by one of its employees. Plaintiff was rendered a permanent paraplegic as a result of an accident with the snowmobile. Although the procedural history in this case is complicated, it is undisputed that the parties agreed to submit their dispute to binding arbitration and reserved a right of appeal to this Court. The three arbitrators unanimously reached an award of $300,000, and the Genesee Circuit Court judge affirmed this arbitration award.

Defendant argues that the Genesee circuit judge erred in holding as a matter of law that plaintiff was a business invitee when he stole the snowmobile and that this judicial ruling improperly affected the arbitrators' award . (This determination had been reached by the judge at some point before the parties submitted the dispute to arbitration.) However, a review of the arbitration award fails to support defendant's contention that the arbitrators adopted this aspect of the circuit judge's order regarding plaintiff's status. Indeed, the arbitration award makes absolutely no mention of plaintiff's status. More importantly, however, the terms of the agreement which submitted this dispute to arbitration mandate

* Circuit judge, sitting on the Court of Appeals by assignment.

that "all issues" were to be submitted to the arbitrators. Because it is the parties' contract which sets forth the rules for arbitration reviewing courts are to look at the contract to determine whether the arbitrators issued an award consistent with the contract's terms. *Gordon Sel-way v Spence Bros,* 438 Mich 488, 497; 475 NW2d 704 (1991).

This award, as any arbitral award, is presumed to be within the scope of the arbitrator's authority absent express language to the contrary. *Gordon Sel-way,* 438 Mich at 497; 475 NW2d 704. Indeed, any error with respect to an arbitration award "must be evident from the face of the award and 'so material or substantial as to have governed the award, and but for which the award would have been substantially otherwise.'" *Id. See also Dohanyos v Detrex Corp, 217* Mich App 171, 174-176; 550 NW2d 608. Mindful of this standard, we find no evidence that the trial court's ruling impermissibly affected the arbitrators' conclusion. This issue is without merit.

Defendant also asserts that the arbitrators erred in considering a report on damages prepared by plaintiff's expert, and absent that report, there was no basis for a damages award. However, defendant failed to make the report part of the record either below or on appeal. Therefore, it is impossible to discern the criteria upon which the arbitrators based their damage calculations. Whether the arbitrators in any way relied upon the expert's report is a matter of pure speculation. More importantly, no reversible error is apparent on the face of the arbitration award, nor could it be said that but for the alleged error a substantially different result would have been had. *DAIIE v Gavin,* 416 Mich 407, 443; 331 NW2d 418 (1982). No reversal is required with respect to this issue.

Defendant further claims that the Recreational Trespass Act, MCL 317.171; MSA 13.1482(1) et seq. dictates that defendant is immune from liability, and that we should affirm the Emmet County circuit judge's order granting summary disposition in defendant's favor.[1] Once again, it is essential to note that the parties agreed to arbitrate the matter, and to resolve "all issues." No palpable error is apparent on the face of the award. *Gavin,* 416 Mich at 443; 331 NW2d 418.

Defendant's last allegation is that the trial court's resolution of the "duty" issue was erroneous. However, because the question of duty was to be resolved by the arbitrators under the express terms of the arbitration agreement, defendant's focus on the Genesee County circuit judge's findings on the question of duty is entirely misplaced. Again, no reversible error is apparent on the face of the arbitration award, nor can it be said that but for the alleged error a substantially different result would have occurred. *Gavin,* 416 Mich at 443; 331 NW2d 418.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Henry William Saad
/s/ William J. Giovan

[1] This case commenced in Genesee County and was transferred to Emmet County. The Emmet County judge granted summary disposition in defendant's favor. Plaintiff, meanwhile had filed an application for leave with this Court on a venue issue, and we reversed both the Genesee trial court's order changing venue and the Emmet County court's order granting summary disposition in favor of defendant (because the latter order had been issued after this Court had stayed all proceedings).