

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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CHRISTOPHER STAEHELI and  
ANITA STAEHELI,

UNPUBLISHED  
November 8, 1996

Petitioners-Appellants,

v

No. 187358  
LC No. 94-002103-CZ

JEAN-PAUL PILOT,

Respondent-Appellee.

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Before: Michael J. Kelly, P.J. and O'Connell and K.W. Schmidt,\* JJ.

PER CURIAM.

Petitioners appeal as of right from the circuit court's order vacating the arbitration award in this breach of home inspection contract action. We reverse.

Petitioners entered into a contract with respondent for the purpose of having a home inspected by respondent which petitioners intended to purchase. The contract contained a liquidated damages clause which limited the damages petitioners could recover to the \$219 they paid for the inspection. The contract also contained a clause requiring that any dispute go to arbitration. Respondent inspected the home and found no major defects. Petitioners purchased the home and after being in the home for a few months, they discovered that there was severe dry rot in the beams contained in the basement. Petitioners filed a claim against respondent which was submitted to arbitration. The arbitrator awarded petitioners \$3,633 for repair costs and \$500 for the cost of the arbitration. Respondent filed a petition to vacate the arbitration award in the circuit court. The circuit court found that the liquidated damages clause was enforceable and that the arbitrator exceeded his powers, making an error of law, by disregarding the liquidated damages clause. The circuit court vacated the arbitration award.

On appeal, petitioners argue that the trial court improperly vacated the arbitration award on the basis that the arbitrator exceeded his powers. Pursuant to MCR 3.602(J)(1)(C), an arbitration award shall be vacated when the arbitrator exceeds his powers. An award will be vacated because an arbitrator exceeded his powers through an error of law when it clearly appears on the face of the award or the reasons for the decision as stated that the arbitrator through the error of law was lead to a wrong

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

conclusion, and but for that error a substantially different award must have been made. *Gordon Sel-Way, inc v Spence Brothers, Inc*, 177 Mich App 116, 120-121; 440 NW2d 907 (1990). Under MCL 600.5025; MSA 27A.5025, an award is enforceable even if it grants relief which could not be obtained in an ordinary civil action.

Under Michigan law, the liquidated damages clause may be disregarded when it is contrary to the law of just compensation or when it is deemed a penalty. *Watson v Harrison*, 324 Mich 16; 36 NW2d 295 (1949). Respondent-appellee claims that the arbitrator exceeded his powers while at the same time conceding that it was within his power to find the liquidated damages clause a penalty or contrary to the law of just compensation. The scope of review of an arbitration award is very narrow. Public policy strongly favors arbitration of disputes. *Detroit Automobile Inter-insurance Exchange v Kurak*, 81 Mich App 217 (1978). Here the circuit judge vacated the award: “because the arbitrator erroneously applied the law as it relates to liquidated damages; had the law been applied correctly, a clearly different result would have been reached.” But we have no way of knowing if that is what the arbitrator did. There is no record of the proceedings before the arbitrator, there was no written decision and there were no findings by the arbitrator, only the bare award of repair damages and \$500 for the cost of arbitration.

We believe the circuit court violated its own observation that, “a court may not resort to speculation to find fault with an award and then attempt to vacate it.” There is no basis whatsoever for assuming that the arbitrator did not find the clause a penalty and disregard it as against public policy. *The Hayman Co v Brady Mechanical Inc*, 139 Mich App 185 (1994).

The trial court also erred in refusing to presume the award valid; in effect the court shifted the burden of proof to the party seeking to validate the award not letting it repose properly on the party seeking to overturn the award.

Respondent-appellee also argues alternatively that the circuit court should have vacated the award because the arbitrator improperly failed to postpone the arbitration hearing and as a result respondent was prevented from presenting his expert witnesses. However procedural issues are not judicially reviewable. *Bay County Building Authority v Spence Brothers*, 140 Mich App 182 (1984). There was no just cause presented to the circuit court under MCR 3.602(J)(1)(D) and although the circuit court did not address any prejudicial effect of the arbitrator’s failure to postpone the arbitration we find no reason for remand. In his brief respondent-appellee admits that when he received notice of the arbitration hearing he challenged the appointment of the arbitrator and that it was not until after he lost on this challenge that he discovered that his experts were not available. Respondent has provided no evidentiary proofs regarding these claims. There would be no basis for the court to vacate the arbitration award on the procedural issue.

We reverse the order of the circuit court vacating the arbitration award and reinstate the arbitration award.

Reversed. Remanded to the circuit court for an entry of an order affirming the arbitrator’s award. We do not retain jurisdiction.

/s/ Michael J. Kelly

/s/ Kenneth W. Schmidt