

STATE OF MICHIGAN
COURT OF APPEALS

JAMES ANKENBRANDT,

Plaintiff-Appellant,

v

BAY CITY COUNTRY CLUB, ED
LANGENBURG and WADE MILLER,

Defendants-Appellees.

UNPUBLISHED
March 14, 1997

No. 190902

Bay Circuit Court
LC No. 94-003330

Before: Taylor, P.J., and McDonald and C. J. Sindt,* JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment entering an arbitration award. The trial court held that the arbitrator did not exceed his contractual authority when he: (1) arbitrated all the claims between plaintiff and defendants; and (2) determined that plaintiff had accepted the Bay City Country Club's (the club) payment of \$16,000 as final settlement for all plaintiff's claims. We affirm.

Plaintiff served as the golf professional for the club from 1984 to 1993. On October 8, 1991, plaintiff and the club entered into an employment contract for a term of three years, ending on October 31, 1994. The interpretation of Article X and Article XI of this contract are at issue in this case. Article X provides:

ARBITRATION

Any controversy or claim arising out of or relating to this agreement shall be settled by arbitration in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered in such arbitration may be entered in any court having jurisdiction thereof; however, arbitrators shall not determine damages where liquidated damages under paragraph XI are applicable.

Article XI (which is incorrectly labeled Article IX in the contract) provides:

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

LIQUIDATED DAMAGES

A. In the event Professional is discharged prior to the normal expiration of this Agreement for reasons other than death or disability, Professional shall receive the salary for twelve months or remaining months in term which is less.

B. The amount arrived at shall be construed as liquidated damages and shall be paid by the Club to the Professional within sixty (60) days of the termination of employment.

C. Payment and acceptance of this amount shall be in lieu of any claim the parties may have against the other.

The club terminated plaintiff from his position as a golf professional on December 3, 1993, approximately eleven months before his employment was to expire. The club then issued plaintiff a check in the amount of \$16,000, which included the language “[p]ayment in full for employment contract.” Plaintiff reviewed the check with his attorney and cashed it on January 24, 1994. Plaintiff claimed that the check was cashed only on the agreement that it was partial payment for the amount due under the contract. Plaintiff subsequently filed for arbitration and at the same time brought an action in the trial court claiming that: (1) two members of the club’s board of directors, Ed Langenburg and Wade Miller, tortiously interfered with his contractual relations with the club; (2) Wade Miller wrote a defamatory article in the club’s monthly newsletter; and (3) the club discriminated against him on the basis of his age.

Plaintiff first argues that the trial court applied an incorrect standard of review when it reviewed plaintiff’s motion to modify the arbitration award. This Court reviews de novo whether the trial court applied the appropriate standard of review. *Cardinal Mooney High School v Michigan High School Athletics Ass’n*, 437 Mich 75, 80; 467 NW2d 21 (1995). Under either a motion to modify an arbitration award or a motion to vacate an arbitration award, the initial standard is the same, namely, the party moving to have the award modified or vacated must initially prove that the arbitrator exceeded his or her authority. See *Gordon Sel-Way v Spence Bros*, 438 Mich 488, 496; 475 NW2d 704 (1991) (analyzing a motion to modify an arbitration award brought under MCR 3.602[K][1][b]; *DAIIE v Gavin*, 416 Mich 407, 443; 331 NW2d 418 (1982) (analyzing a motion to vacate an arbitration award). Here, the trial court treated plaintiff’s motion to modify the arbitration award as a motion to vacate the arbitration award because the court believed plaintiff was actually seeking to vacate portions of the award that were “fundamental to the resolution of the disputes” submitted to the arbitrator. However, the trial court still applied the correct standard of review when it provided in its opinion and order “that an arbitration award can not be vacated unless the moving party can prove, from the face of the award, that that arbitrator exceeded his contractually defined authority.”

Next, plaintiff argues that the trial court incorrectly determined that the arbitrator had the authority to adjudicate the defamation, discrimination, and intentional interference with contractual

relations claims filed in the trial court because the arbitrator only had the authority to arbitrate claims arising out of the employment agreement. “[I]t is the parties’ contract which defines and limits their rights and duties and the arbitration clause or agreement which confers upon the arbitrators their authority to act.” *Id.* at 496. It is appropriate to find that arbitrators have exceeded their power “whenever they act beyond the material terms of the contract from which they primarily draw their authority.” *Id.* Therefore, this Court’s role is to “examine whether the arbitrators have rendered an award which comports with the terms or the parties’ contract.” *Id.* “[C]ourts may not substitute their judgment for that of the arbitrators and hence are reluctant to vacate or modify an award when the arbitration agreement does not expressly limit the arbitrators’ power in some way.” *Id.* at 497.

This Court uses a three-part test to determine the arbitrability of a particular issue or claim. *Federal Kemper Ins Co v American Bankers Ins Co*, 137 Mich App 134, 139-140; 357 NW2d 834 (1984). First, this Court must consider whether there is an arbitration provision in the parties’ contract. *Id.* Next, this Court must determine whether the disputed issue is arguably within the arbitration clause. *Id.* Finally, this Court must determine whether the dispute is expressly exempt from the arbitration by the terms of the contract. *Id.* Moreover, arbitration clauses are to be construed liberally with any doubts to be resolved in favor of arbitration. *Grazia v Sanchez*, 199 Mich App 582, 586; 502 NW2d 751 (1993). If an arbitration clause is written in comprehensive language to include all claims and disputes, an award is presumed to be within the scope of the arbitrator’s powers absent express language to the contrary. *Gordon, supra* at 497-498.

We conclude on the basis of the principle of liberal construction that the arbitrator did not exceed his authority when he determined that he had the power to adjudicate the claims filed in the trial court. Although Article X of the parties’ agreement provides that the arbitrator only has the power to hear controversies arising out of the employment agreement, Article XI states that “[p]ayment and acceptance of [liquidated damages] shall be in lieu of *any claims the parties may have against the other.*” Construed liberally, Article X enables the arbitrator to review the effect of a liquidated damages payment. Moreover, the fact that Article X limits the arbitrator’s powers to hearing “[a]ny controversy or claim arising out of or relating to this agreement” does not *expressly* exempt from arbitration the various tort claims asserted by plaintiff in the trial court because it does not specifically state that tort claims do not relate to the agreement.

Plaintiff’s next argument is that, even if the “employment agreement” language in Article X does not clearly limit the arbitrator’s powers, any ambiguities in a contract should be resolved against the drafter of the contract. Although ambiguities in a contract should be resolved against the drafter, *Dudley v Raponos*, 353 Mich 237; 91 NW2d 274 (1958), the function of this Court, when reviewing an arbitration award, is to determine whether the disputed issue is arguably within the arbitration clause and whether the dispute is *expressly exempt* from arbitration by the terms of the contract. *Federal Kemper, supra* at 139-140. Without a showing that the arbitration agreement expressly limits the arbitrator’s power, we cannot substitute our judgment for that of the arbitrator. *Gordon, supra* at 497.

Plaintiff also argues that the arbitrator should not have dismissed his defamation and intentional interference claims taken against Miller and Langenburg because the claims sought redress for actions

taken outside the scope of their positions with the club. “‘Agency’ in its broadest sense includes every relation in which one person acts for or represents another by his authority.” *Stratton-Cheeseman Management Co v Dep’t of Treasury*, 159 Mich App 719, 726; 407 NW2d 398 (1987). Moreover, federal courts have held that nonsignatories of arbitration agreements may be bound by the agreement under ordinary contract and agency principles. *Letizia v Prudential Bache Securities*, 802 F2d 1185, 1187 (CA 9, 1986). The *Letizia* court noted that this rule “is an outgrowth of the strong federal policy favoring arbitration.” *Id.* at 1188. Similarly, this Court has noted a strong policy favoring arbitration. *Grazia, supra* at 584.

Here, although Miller and Langenburg were not signatories to the employment contract, the claims against them were anticipated and contemplated under the employment agreement because plaintiff’s claims against them relate to their representation of the club. Langenburg acted for and represented the club as its president and Miller acted for and represented the club as its general manager. Moreover, plaintiff’s tortious interference with contractual relations claim against Langenburg and Miller is predicated on their participation in the decision of the board of directors to terminate his employment, and his defamation claim against Miller relates to and arises from an article written by Miller in the club’s newsletter regarding his employment. In fact, plaintiff even rests his theory of the club’s liability upon the assertion that Langenburg and Miller were agents of the club during all times relevant to the litigation.

Next, plaintiff argues that the trial court erred because the arbitrator exceeded his authority under the employment agreement when he determined the appropriate amount of liquidated damages. As noted previously, this Court will not substitute its judgment for that of the arbitrator’s absent a showing that the arbitration agreement expressly limited the arbitrator’s power in some way. *Gordon, supra* at 497. In this case, there is no indication that the arbitrator determined the “amount” of liquidated damages. Although the parties’ employment agreement expressly provided that an arbitrator may not determine the amount of liquidated damages, it does not expressly prohibit an arbitrator from determining the *effect* that payment and acceptance of liquidated damages may have on the claims between the parties. Here, the arbitrator merely determined that the club’s \$16,000 payment to plaintiff was in full settlement of all the claims between the parties.

Finally, plaintiff argues that the trial court erred because the arbitrator incorrectly determined that plaintiff accepted the club’s tender of \$16,000 as full payment of the club’s obligations under the contract. “An arbitrator’s determination on the merits will not be reviewed by the court since his decision on issues of fact and law has been agreed by the parties as final and binding against them.” *DAIIE, supra* at 97. Here, the trial court did not err in entering the arbitration award. The arbitrator found that plaintiff accepted the club’s tender of \$16,000 as full settlement of his claims. Plaintiff admitted at arbitration that he reviewed the club’s tender of \$16,000 with his attorney and cashed the check on January 24, 1994. Although plaintiff maintains that opposing counsel agreed that the check was for “partial payment only” and supports this contention with documentation from his counsel, plaintiff does not produce any documentation showing that the club or its counsel admitted that the check was for partial payment. In essence, plaintiff’s argument that the arbitrator erred is based on his

subjective interpretation of the transactions between the parties. However, the arbitrator's contrary interpretation was plausible based on the evidence and, thus, cannot be reviewed.

In light of our determination that the trial court correctly held that the arbitrator was acting within the scope of his authority under the parties' agreement, we need not determine whether the trial court could have modified the arbitrator's award to indicate that the liquidated damages provision applied, without finding that the \$16,000 payment was in full satisfaction of all liquidated damages.

Affirmed.

/s/ Clifford W. Taylor

/s/ Gary R. McDonald

/s/ Conrad J. Sindt