

STATE OF MICHIGAN
COURT OF APPEALS

ERNEST I. YOUNG and SPP, INC.,

Plaintiffs-Appellees/Cross-
Appellants,

v

SAULT STE. MARIE TRIBE OF CHIPPEWA
INDIANS, d/b/a SAULT STE. MARIE TRIBE
ECONOMIC DEVELOPMENT COMMISSION,
and SPECIAL PLASTIC PRODUCTS, L.L.C.,

Defendants-Appellants/Cross-
Appellees,

and

SPECIAL PRODUCTS ENGINEERING, L.L.C.,
and NAB GROUP, L.L.C.,

Defendants.

Before: Collins, P.J., and Jansen and Whitbeck, JJ.

PER CURIAM.

Defendants Sault Ste. Marie Tribe of Chippewa Indians and Special Plastic Products, L.L.C. appeal as of right the circuit court's confirmation of an arbitration award in favor of plaintiffs. On cross-appeal, plaintiffs challenge the circuit court's denial of statutory interest on the arbitration award. We affirm in part, reverse in part, and remand.

Plaintiffs and defendant Sault Ste. Marie Tribe of Chippewa Indians, d/b/a Sault Ste. Marie Economic Development Commission ("the Tribe EDC") entered into a joint venture to manufacture and supply plastic parts to the automotive industry pursuant to a Joint Venture Master Agreement (the "JVMA"). As a result of the joint venture, defendant Special Plastic Products, L.L.C. ("the LLC") was formed. Pursuant to an employment agreement ("the EA"), plaintiff Ernest I. Young became the chief executive officer of the LLC. After a period of time the LLC began experiencing financial difficulties and the managing board of the LLC terminated

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Young's employment. Young filed an arbitration claim seeking arbitration of, among other things, an alleged breach of the EA. The arbitrators awarded Young \$546,351.33 against defendants the Tribe EDC and the LLC. The circuit court subsequently entered a judgment confirming the arbitration award.

Defendants argue on appeal that the circuit court erred when it confirmed the arbitration award because the arbitrators exceeded their authority when they entered the award against the Tribe EDC on Young's employment claim. Judicial review of an arbitration award is limited. *Dick v Dick*, 210 Mich App 576, 589; 534 NW2d 185 (1995). In determining whether the arbitrators exceeded their authority in issuing an award, "a reviewing court's ability to review an award is restricted to cases in which an error of law appears from the face of the award, or the terms of the contract of submission, or such documentation as the parties agree will constitute the record." *Dohanyos v Detrex Corp (After Remand)*, 217 Mich App 171, 175-176; 550 NW2d 608 (1996), citing *Detroit Automobile Inter-Ins Exchange (DAIIE) v Gavin*, 416 Mich 407, 428-429; 331 NW2d 418 (1982). Because the arbitrators' power arises from the parties' arbitration agreement, the arbitrators exceed their authority when "they act beyond the material terms of the contract from which they primarily draw their authority or in contravention of controlling principles of law." *Dohanyos, supra* at 176. Interpretation of the written contract is left to the arbitrators. *Konal v Forlini*, 235 Mich App 69, 75; 596 NW2d 630 (1999). Claims that the arbitrator made a factual error are beyond the scope of appellate review. *Id.*

Defendants acknowledge that the JVMA, which was signed by the Tribe EDC, contains an arbitration provision and a waiver of sovereign immunity,¹ but contend that the arbitrators did

¹ Those provisions, in pertinent part, are as follows:

14.2 Arbitration.

(a) Any controversy or claim arising out of or relating to this Agreement, or the breach of this Agreement, shall be resolved by arbitration administered by the office of the American Arbitration Association located in Oakland County, Michigan, in accordance with its then current commercial arbitration rules. Except as provided in sub. (b), arbitration shall be the exclusive remedy of the parties. Judgment upon the award rendered by the arbitration may be entered in any court having jurisdiction.

* * *

14.3 Waiver of Sovereign Immunity and Consent to Suit.

The EDC hereby waives its immunity from suit to enforce the provisions of this Agreement, *and all Agreements executed and delivered at the Closing and/or pursuant to this Agreement*, and consents to the exercise of jurisdiction over such suit by any court which may have jurisdiction over the subject matter, subject to the following conditions and limitations:

(continued...)

not have the authority to decide whether the Tribe EDC breached the EA because the Tribe EDC did not sign the EA and thus was not a party to that agreement. We conclude that this argument is not supported by the express terms of the JVMA and the EA. Where one writing refers to another, the two shall be construed together. *Culver v Castro*, 126 Mich App 824, 826; 338 NW2d 232 (1983), citing *Whittlesey v Herbrand Co*, 217 Mich 625, 628; 187 NW 279 (1922);² see also *Jenkins v USA Goods, Inc*, 912 F Supp 969, 971-972 (ED Mich, 1996) (where a promissory note was subject to the terms and conditions of a stock purchase agreement, and the stock purchase agreement included references to the promissory note and ancillary agreements, the stock purchase agreement, note, and ancillary documents “must be considered one agreement”).

Under the plain language of the JVMA, that agreement is subject to the terms of the EA. Section 9 of the JVMA states in pertinent part as follows:

Implementation. The promises and agreements of the parties are further conditioned upon and *subject to the terms and provisions* of the following documents to be executed and delivered at Closing:

* * *

(...continued)

- (a) the waiver is granted solely to the parties and the Companies, their representatives, agents, trustees, successors, and assigns, and does not extend to third parties;
- (b) the governing law shall be the law of the State of Michigan;
- (c) the waiver shall extend only to the enforcement of the obligations of the EDC under this Agreement (including the agreement to arbitration), or to damages for breach of this Agreement by the EDC;
- (d) this waiver shall expire six years after the termination of the Companies or successor entities; and
- (e) the waiver shall be enforceable solely against the assets of the EDC, as provided in Sault Ste. Marie Tribal Code § 40.108.1. [Emphasis added.]

² The Supreme Court noted in *Forge v Smith*, 458 Mich 198, 207 n 21; 580 NW2d 876 (1998):

In *Whittlesey v Herbrand Co*, 217 Mich 625, 628; 187 NW 279 (1922), quoting *Short v Van Dyke*, 50 Minn 286; 52 NW 643 (1892), the Court stated that “[i]n a written contract a reference to another writing, if the reference be such as to show that it is made for the purpose of making such writing a part of the contract, is to be taken as a part of it just as though its content had been repeated in the contract.”

B. Young Employment Agreement. Young shall be employed as Chief Executive Officer of each of the Companies for at least a five year term, under the direction and supervision of their respective Management Boards, at compensation of \$145,000 per year plus benefits, bonus of 2% for gross sales exceeding \$12,500.00 in 1995, and for 1996 and thereafter 2% of the amount by which the year's gross sales exceeded the previous year's gross sales, plus expenses, *and upon the other conditions stated in an Employment Agreement.* [Emphasis added.]

Further, § 13.5 of the EA states that “[t]his Agreement is one of the documents executed at the Closing as part of the transaction governed by the Joint Venture Master Agreement.” Finally, as noted above, the immunity waiver in the JVMA specifically states that the Tribe EDC “waives its immunity from suit to enforce the provisions of [the JVMA], and all Agreements executed and delivered at Closing and/or pursuant to [the JVMA]” The plain language of the JVMA thus demonstrates that the parties intended that the JVMA and other documents “executed and delivered at Closing,” including the EA, be construed as one agreement.³ Accordingly, a breach of the EA constitutes a breach of the JVMA, the claim of breach was subject to arbitration under the terms of the JVMA, and the Tribe EDC could be held liable for the breach.⁴

Defendants further argue that even if the Tribe EDC was subject to arbitration of Young's employment claim, the arbitrators exceeded their authority and erred as a matter of law in finding that defendants breached the EA. Defendants contend specifically that under the terms of the EA, the LLC was entitled to terminate Young because he was disabled and because he failed to perform his obligations as chief executive officer in good faith. Because this argument challenges the factual findings of the arbitrators, however, it is beyond the scope of our review. *Konal, supra* at 75.

We conclude that the arbitrators did not exceed their authority when they issued the arbitration award against the Tribe EDC for breach of the EA. Thus, the circuit court did not err in confirming the arbitration award.

Plaintiffs argue on cross-appeal that the circuit court erred in refusing to include in the judgment entered an award of statutory interest from the date the arbitration award was issued through the date the judgment entered on the award is satisfied, pursuant to MCL 600.6013; MSA 27A.6013. We review a trial court's ruling concerning the award of statutory interest under MCL 600.6013; MSA 27A.6013 de novo. *Everett v Nickola*, 234 Mich App 632, 638; 599 NW2d 732 (1999).

³ We find unpersuasive defendants' analogy to the insurance requirement in § 12.6 of the JVMA. The JVMA was not made subject to the terms and provisions of any insurance contracts required by that agreement, and insurance documents are not identified as documents to be executed and delivered at closing under § 9 of the JVMA.

⁴ Because we conclude that under the terms of the JVMA and EA, the Tribe EDC agreed to submit employment disputes to arbitration, we need not address whether the arbitrators could find the Tribe EDC liable under a veil-piercing theory.

In refusing to award postaward and postjudgment interest, the circuit court noted that the arbitrators had included interest in the arbitration award. It is well-settled that the issue of *preaward* interest is a matter solely within the arbitrators' discretion. *Holloway Construction Co v Oakland Co Bd of Co Rd Comm'rs*, 450 Mich 608, 618; 543 NW2d 923 (1996); see also *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 501; 475 NW2d 704 (1991). However, "postaward, prejudgment interest and postjudgment interest under § 6013(1) are statutorily required." *Holloway Construction, supra*. Therefore, the circuit court should have granted plaintiffs' request for statutory interest pursuant to MCL 600.6013; MSA 27A.6013.⁵

We reject defendants' argument that its waiver of sovereign immunity, even if it applies to claims of breach of the EA, does not apply to awards of postaward and postjudgment statutory interest. As noted above, the JVMA states that the law of Michigan governs the Tribe EDC's waiver of sovereign immunity and that the waiver extends to *the enforcement* of the Tribe EDC's obligations under the JVMA. Again, under the laws of Michigan, statutory interest is mandatory in civil actions seeking confirmation of an arbitration award. *Holloway Construction, supra*. Accordingly, the Tribe EDC's waiver of sovereign immunity extends to an award of statutory interest.

We likewise reject defendants' argument that plaintiffs are not entitled to any postaward interest because they filed their complaint seeking confirmation of the arbitration award before the award was made. While the filing was premature, the circuit court entered the judgment nonetheless, as allowed by MCR 3.602(I).⁶ Further, there is not, as defendants contend, a danger that application of MCL 600.6013; MSA 27A.6013 will result in double recovery, as preaward interest is determined solely by the arbitrators and § 6013 applies only to postaward interest. *Holloway Construction, supra*. Plaintiffs are, therefore, entitled to an award of statutory interest from the date the award was issued until the judgment is satisfied.

Plaintiffs' last argument on cross-appeal is that they are entitled to the twelve percent interest provided for in MCL 600.6013(5); MSA 27A.6013(5) because the arbitration award was rendered on a written instrument, i.e., the EA. Defendants contend that if plaintiffs are entitled to interest, they are entitled only to the variable rate provided for in MCL 600.6013(6); MSA

⁵ We thus reject defendants' argument that under the Supreme Court's peremptory order in *Wiselogle v Michigan Mutual Ins Co*, 453 Mich 978; 557 NW2d 316 (1996), plaintiffs are not entitled to interest because interest is an element of damages properly determined by the arbitrators, not the courts. We conclude that this order is not controlling with regard to the issue before this Court because the scope of the order is uncertain given the authority cited. See *Brooks v Engine Power Components, Inc*, 241 Mich App 56, 61-62; 613 NW2d 733 (2000) ("Supreme Court peremptory orders are binding precedent when they can be understood."). Neither *Gordon Sel-Way, supra* nor *Holloway Construction, supra* state that postcomplaint interest is to be determined by the arbitrators. Rather, as discussed above, those cases make clear that the determination of any preaward interest is for the arbitrators, but postaward statutory interest is determined by the court.

⁶ Defendants do not raise in their appeal the issue whether, given the premature filing, the lower court had jurisdiction to enter judgment on the award.

27A.6013(6) because the judgment at issue was not rendered on a written instrument but was entered on a complaint to confirm an arbitration award.

MCL 600.6013;MSA 27A.6013 provides in pertinent part:

(5) For complaints filed on or after January 1, 1987, if a judgment is rendered on a written instrument, interest shall be calculated from the date of filing the complaint to the date of satisfaction of the judgment at the rate of 12% per year, compounded annually, unless the instrument has a higher rate of interest. In that case, interest shall be calculated at the rate specified in the instrument if the rate was legal at the time the instrument was executed. The rate shall not exceed 13% per year compounded annually after the date judgment is entered.

(6) Except as otherwise provided in subsection (5) . . . , for complaints filed on or after January 1, 1987, interest on a money judgment recovered in a civil action shall be calculated at 6-month intervals from the date of filing the complaint at a rate of interest that is equal to 1% plus the average interest rate paid at auctions of 5-year United States treasury note during the 6 months immediately preceding July 1 and January 1, as certified by the state treasurer, and compounded annually, pursuant to this section.

In *Yaldo v North Pointe Ins Co*, 457 Mich 341, 350; 578 NW2d 274 (1998), the Supreme Court held that an insurance contract is a “written instrument” for purposes of determining postcomplaint interest pursuant to MCL 600.6013; MSA 27A.6013; thus, interest on the judgment rendered on that contract was properly determined under § 6013(5). The Court concluded that at least one reason for awarding a fixed rate of interest to judgments on written instruments, as opposed to a fluctuating interest rate on judgments in other civil actions, is a preexisting relationship between the parties before a controversy arises. *Id.*; see also *Everett, supra* at 639 (where a written instrument existed and governed the parties’ relationship, plaintiff entitled to interest under § 6013[5]).

Here, the parties’ relationship clearly was governed by a written contract, and the arbitrators found defendants liable for breach of that contract. Although technically the judgment was *entered* pursuant to a complaint seeking confirmation of an arbitration award, the arbitration award that served as the basis for the judgment was rendered on a written instrument. Indeed, § 14.2 of the JVMA provides that “[j]udgment upon the award rendered by the arbitration may be entered in any court having jurisdiction.” We conclude therefore that the judgment entered pursuant to the complaint to enforce the arbitration award was a judgment rendered on a written instrument. See *Jones v Jackson National Life Ins Co*, 819 F Supp 1382, 1384 (WD Mich, 1993) (judgment “rendered on a written instrument” is one that enforces a written instrument). Accordingly, Young is entitled to interest calculated under § 6013(5).

Affirmed in part, reversed in part, and remanded for modification of the judgment consistent with this opinion. We do not retain jurisdiction.

/s/ Jeffrey G. Collins

/s/ Kathleen Jansen

/s/ William C. Whitbeck