

STATE OF MICHIGAN  
COURT OF APPEALS

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TI GROUP AUTOMOTIVE SYSTEMS (NORTH AMERICA), INC. and WALBRO CORPORATION,

UNPUBLISHED  
January 11, 2005

Plaintiffs-Appellees,

v

MILLENNIUM INDUSTRIES CORPORATION,

No. 250538  
Tuscola Circuit Court  
LC No. 00-019247-CK

Defendant-Appellant.

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Before: Talbot, P.J., and Griffin and Wilder, JJ.

PER CURIAM.

Defendant appeals as of right from an order of the circuit court granting plaintiffs' motion to confirm an arbitration award, denying defendant's motion to modify, correct, or vacate the award, and entering judgment. We affirm.

Defendant first argues that the circuit court committed legal error when it limited its review to the face of the arbitration award. Specifically, defendant argues that the trial court should have reviewed the transcript of the arbitration hearing, in addition to the award and the contract of submission, to determine if the arbitrator exceeded his powers. We disagree. We review a trial court's decision de novo. *Tokar v Albery*, 258 Mich App 350, 352; 671 NW2d 139 (2003).

If an agreement to arbitrate states that a judgment of any circuit court may be rendered on the arbitrator's award, then it is considered a statutory arbitration. MCL 600.5001 *et seq.*; *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 495; 475 NW2d 704 (1991). Here, the parties' arbitration agreement stated that the trial court would retain jurisdiction for purposes of entering judgment or enforcement of the award. Therefore, this is a statutory arbitration. *Id.*

Defendant argues that, under *DAIIE v Gavin*, 416 Mich 407; 331 NW2d 418 (1982), the circuit court erred by not reviewing the transcript of the arbitration hearing to determine if the arbitrator exceeded his powers when entering the arbitration award. We disagree.

First, defendant's argument must fail because defendant never presented the transcript to the trial court for consideration. Although the transcript was mentioned in defendant's motion

brief, it was never supplied to the trial court. Accordingly, defendant cannot now argue on appeal that the trial court erred in not considering something that was never properly before it. *Amorello v Monsanto Corp*, 186 Mich App 324, 330; 463 NW2d 487 (1990); *Burrill v Michigan*, 90 Mich App 408, 412; 282 NW2d 337 (1979).

Second, the lower court's ruling is consistent with the Supreme Court's holding in *Gavin*:

[W]here it clearly appears on the face of the award or the reasons for the decisions as stated, being substantially a part of the award, that the arbitrators through an error of law have been led to a wrong conclusion, and that, but for such error, a substantially different award must have been made, the award and decision will be set aside. [*Gavin, supra* at 443.]

Therefore, given the entirety of the *Gavin* opinion, and this Court's subsequent cases limiting a trial court's review of an arbitration award to errors that appear on the face of the award, we conclude that the trial court did not err in this case when it reviewed only the face of the arbitration award to determine if the arbitrator exceeded his powers.

Next, defendant argues that the circuit court erred in confirming the arbitration award because the arbitrator exceeded the scope of his authority in rendering an award that contravenes substantive contract law. To prevail, defendant must show that it clearly appears from the face of the award that, through an error of law, the arbitrator was led to a wrong conclusion. *Gavin, supra* at 443. Further, the error must be such that it is "so material or so substantial as to have governed the award, and the error must be one for which the award would have been substantially otherwise." *Id.* Because defendant failed to raise this specific argument below, we review for plain error affecting substantial rights. *Kern v Blethen-Coluni*, 240 Mich App 333, 335-336; 612 NW2d 838 (2000).

An arbitrator exceeds his powers if he acts in contravention of controlling principles of law. See *Dohanyos v Detrex Corp (After Remand)*, 217 Mich App 171, 176; 550 NW2d 608 (1996). We review an allegation that an arbitrator has exceeded his powers carefully so as to not overstep the judicial role in reviewing an arbitration award. Specifically, we are mindful that we must not review the merits of the arbitrator's decision under the guise of determining whether the arbitrator has exceeded his authority. *Gordon Sel-Way, Inc, supra* at 497.

Defendant asserts that, by ignoring the plaintiffs' breach of the Sale of Assets Agreement and applying the wrong measure of damages, the arbitrator committed errors of law. With respect to the first alleged error, it is clear that the arbitrator did not ignore plaintiff Walbro Corporation's failure to assign the Fleet leases. Rather, the arbitrator did not find the failure to assign controlling as far as the non-payment of rent was concerned because both parties knew that no assignment could be made of the Fleet leases prior to the closing, and defendant had still agreed to proceed with the sale. Instead, the arbitrator found it to be more significant that the parties conducted themselves as if there was an existing lease, and that defendant stopped rental payments without tendering the purchase option price.

The arbitrator found that, at a minimum, there was an implied-in-fact lease between the parties, which is a factual finding not reviewable by the trial court. See *In re McKim Estate*, 238

Mich App 453, 458; 606 NW2d 30 (1999) (finding that whether an implied contract exists is a question of fact that must be resolved by the consideration of all of the circumstances). He based his finding on the fact that the parties conducted themselves as if there was a formal lease between them and because “no one . . . seriously argued that a lease in fact, if not in law, existed between the parties.” The arbitrator also found that defendant was in breach for non-payment stating that the reasons given by defendant for not paying did not “constitute sufficient justification” for using the equipment from the end of the lease term to the present without paying. See *State-William Partnership v Gale*, 169 Mich App 170, 176; 425 NW2d 756 (1988) (stating that the existence of a default under a contract is a question of fact). The arbitrator noted that defendant could not “escape the legal consequences of its choice to both retain and use the equipment after the end date of the lease without payment of rent and without tender of the purchase money acquisition price.” These well-reasoned conclusions are all factual findings made by the arbitrator that are not reviewable by this Court. *Saveski v Tiseo Architects, Inc*, 261 Mich App 553, 556; 682 NW2d 542 (2004).

Turning to defendant’s second alleged substantive legal error, defendant argues that the only measure of damages applicable in this case was restitution, and that the arbitrator exceeded his powers by awarding plaintiffs their expectation damages. The scope of an arbitrator’s remedial authority is limited only by the contractual agreement of the parties, and this Court is reluctant to vacate an award when the agreement does not expressly limit the arbitrator’s power. *Ehresman v Bultynck & Co*, 203 Mich App 350, 355; 511 NW2d 724 (1994). Here, the parties’ arbitration agreement contained broad language conferring on the arbitrator the authority to resolve the relevant counts of plaintiffs’ complaint. We conclude that the arbitrator did not exceed his powers in awarding expectation damages to plaintiffs when there was no limit on his remedial authority in the arbitration agreement. *Id.*

Finally, we reject defendant’s assertion that the arbitrator exceeded his authority because plaintiffs failed to prove their prima facie breach of contract claim. Again, we review for plain error. *Kern, supra* at 335-336. While the parties may not have had an express lease agreement, the arbitrator found that, at a minimum, based on the conduct of the parties, an implied-in-fact lease agreement existed. He further found that defendant failed to make payments under the lease agreement and was, therefore, responsible to plaintiffs for the rents due and owing. This is sufficient to establish plaintiffs’ breach of contract claim.

Further, an arbitrator’s award should not be disturbed as long as it may be upheld under any of the theories advanced by the plaintiffs. See *Hayman Co v Brady Mechanical, Inc*, 139 Mich App 185, 191-192; 362 NW2d 243 (1984) (affirming arbitration award because the arbitrator may have based his decision on an alternative theory of *quantum meruit*). In addition to a claim predicated on breach of a lease agreement, plaintiffs sought recovery for possession of the equipment, conversion, unjust enrichment, *quantum valebant*,<sup>1</sup> and promissory estoppel. At

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<sup>1</sup> An action based in common law assumpsit, “founded on an implied . . . promise[] on the part of the defendant[] to pay the plaintiff *as much as* the goods *were* reasonably worth.” Black’s Law Dictionary (6th ed).

the very least, a cognizable claim for unjust enrichment, see *B & M Die Co v Ford Motor Co*, 167 Mich App 176, 181; 421 NW2d 620 (1988) (stating that the essential elements for unjust enrichment are the receipt of benefit by defendant from plaintiff, which benefit is inequitable for defendant to retain), and *quantum valebant* are established.<sup>2</sup>

Affirmed.

/s/ Michael J. Talbot  
/s/ Richard Allen Griffin  
/s/ Kurtis T. Wilder

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<sup>2</sup> *Id.*