

STATE OF MICHIGAN
COURT OF APPEALS

HARRY YATOOMA,

Plaintiff-Appellant,

v

SAMI YATOOMA and SOHAILA YATOOMA,

Defendants-Appellees.

UNPUBLISHED

June 22, 2001

No. 220713

Oakland Circuit Court

LC No. 97-001753-CH

Before: Bandstra, C.J., and White and Collins, JJ.

MEMORANDUM.

Plaintiff appeals as of right from the circuit court's order dismissing this action to quiet title based on an arbitration award. We reverse and remand for further proceedings.

Generally, civil matters may be submitted to arbitration. MCL 600.5001. However, "[a] submission to arbitration shall not be made respecting the claim of any person to any estate, in fee, or for life, in real estate . . ." MCL 600.5005. This Court addressed the application of MCL 600.5005 in *McFerren v B & B Investment Group*, 233 Mich App 505, 512; 592 NW2d 782 (1999). In *McFerren*, the parties submitted a dispute over ownership of real property to arbitration. After the arbitrator issued his opinion, the losing party appealed on the ground that arbitration was prohibited under MCL 600.5005, among other arguments. This Court agreed, finding that the arbitrator did not have subject-matter jurisdiction to decide the property dispute. This Court found that a challenge to subject-matter jurisdiction could be brought at any time, including after arbitration, and that subject-matter jurisdiction could not be conferred on the arbitrator by the consent of the parties. The *McFerren* Court vacated the judgment of the circuit court giving effect to the arbitration award and remanded for further proceedings. *Id.*, 506-513.

McFerren is indistinguishable from the present case. Plaintiff's claim to the property at issue is a claim to an estate in real estate, and thus, arbitration was precluded. Although defendants assert that plaintiff agreed to the terms of the arbitration award, the proceeding below was to enforce an arbitration award, not a settlement agreement.

Accordingly, we vacate the circuit court's order of dismissal entered pursuant to the arbitrator's decision, and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Richard A. Bandstra

/s/ Helene N. White

/s/ Jeffrey G. Collins