STATE OF MICHIGAN

COURT OF APPEALS

MACHINING ENTERPRISES, INC., a/k/a ENTERPRISE AUTO SYSTEMS,

Plaintiff-Appellant,

v

WAUSAU BUSINESS INSURANCE CO., and AMERICAN ALTERNATIVE INSURANCE CO.,

Defendants-Appellees,

and

STEVEN RODTS,

Defendant.

UNPUBLISHED
December 16, 2008

No. 277950
Oakland Circuit Court
LC No. 2004-056494-CK

Before: Servitto, P.J. and Donofrio and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order affirming an arbitration award in favor of defendants. We affirm.

General Motors Corporation (GM) and Oxford Automotive, Inc. (Oxford) were involved in a legal dispute regarding the manufacture of a part placed in GM vehicles. Subsequently, plaintiff and Oxford became involved in litigation regarding outstanding balances and plaintiff's role in the manufacture of the bracket on the part placed in GM vehicles. Plaintiff filed suit against defendants to recover attorney fees expended in defending the Oxford lawsuit. Specifically, plaintiff alleged that defendant Wausau Business Insurance Company (Wausau) breached its duty to defend and investigate while defendant American Alternative Insurance Company (AAIC) breached its duty to indemnify. The parties agreed to submit their dispute to an arbitration panel, and a majority ruled in favor of defendants. The trial court enforced the arbitration award, and plaintiff appeals as of right.

Plaintiff first alleges that the trial court erred in confirming the arbitration award where the majority's ruling contained clear errors of law regarding the interpretation and application of the insurance policy. We disagree. The trial court's decision to enforce, vacate, or modify an

arbitration award is reviewed de novo. *Tokar v Albery*, 258 Mich App 350, 352; 671 NW2d 139 (2003). Arbitration awards are given great deference, and courts have stated unequivocally that they should not be lightly set aside. *Bell v Seabury*, 243 Mich App 413, 422; 622 NW2d 347 (2000). Courts play only a limited role in reviewing arbitrators' decisions and may vacate an award only under narrowly defined circumstances. *Id*. at 422 n 4. A court may not review an arbitrator's findings of fact or decision on the merits. *Port Huron Area School Dist v Port Huron Ed Ass'n*, 426 Mich 143, 150; 393 NW2d 811 (1986). "[A]n allegation that the arbitrators have exceeded their powers must be carefully evaluated in order to assure that this claim is not used as a ruse to induce the court to review the merits of the arbitrators' decision." *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 497; 475 NW2d 704 (1991). Where it is readily apparent from the face of the award that the arbitrators were led to the wrong conclusion through an error at law and that, but for such error, a substantially different award would have been rendered, the award and decision will be set aside. *Saveski v Tiseo Architects, Inc*, 261 Mich App 553, 555; 682 NW2d 542 (2004). However, in many cases, the alleged error will be equally attributable to improper or unwarranted factual finding as to alleged errors of law. *DAIIE v Gavin*, 416 Mich 407, 429; 331 NW2d 418 (1982). "In such cases the award should be upheld since the alleged error of law cannot be shown with the requisite certainty to have been the essential basis for the challenged award and the arbitrator's findings of fact are unreviewable." *Id*.

Plaintiff contends that an error at law is apparent because of the disagreement between the arbitration panel and the trial court regarding the interpretation of the decision in *American Bumper & Mfg Co v Hartford Fire Ins Co*, 452 Mich 440; 550 NW2d 475 (1996). However, the dispute regarding the application of *American Bumper* is irrelevant. After concluding as a matter of law that insurance coverage was not available, the majority of the arbitration panel factually found that plaintiff's bracket was defective, and plaintiff could not obtain coverage for its own defective product. Perhaps more importantly, plaintiff does not attack the remainder of the arbitration panel's holding. Specifically, the panel concluded that plaintiff also could not recover because it committed the first material breach of the contract by failing to provide the appropriate notice and the information requested on a timely basis. Because the arbitration panel ruled in favor on defendants on alternate grounds that were premised on underlying factual findings, plaintiff's challenge is without merit. *DAIIE*, *supra*. The trial court did not err in confirming the arbitration award.

Plaintiff next asserts that the trial court erred in failing to vacate the arbitration award where the arbitrators refused to hear evidence material to the controversy by quashing a subpoena issued to the law firm representing GM in the underlying litigation. We disagree. The confirmation of the arbitration is reviewed de novo, *Tokar, supra*, and a decision regarding a motion to quash a subpoena is reviewed for an abuse of discretion. *Detroit Bar Ass'n v American Life Ins Co*, 264 Mich 495, 499; 250 NW 288 (1933).

> The power of a court to compel the production of private papers can only be exercised where a person has books containing evidence material to the issue before the court, and where the necessity for their production, and the reasonableness of such action, is shown; and, until this foundation is laid, until their relevancy or character is specified, an order for their production in a case is a violation of the constitutional protection of the one compelled to produce them.

> An order limiting the examination of a party's books to pertinent matters does not infringe the guaranty. [*Id*. at 498-499 (citation omitted).]

GM was the source of the information sought by plaintiff, but plaintiff and GM continued to have a business relationship. In an effort to preserve the parties' relationship, plaintiff asserted that it requested the information from the law firm representing GM, the "Honigman firm."

On this record, plaintiff's argument is unavailing. It is difficult to fathom that plaintiff would have maintained its goodwill with GM when the company would have been apprised of the request, not from plaintiff, but from its attorneys. More importantly, GM was not involved with litigation involving plaintiff. Rather, GM sued Oxford, and Oxford raised the issue of the defective bracket in litigation with plaintiff. Plaintiff fails to explain why it could not have obtained the information from Oxford.[1] Accordingly, the contention that the arbitration panel excluded material evidence is not substantiated particularly where the material was available through other sources.

Lastly, plaintiff contends that it was erroneous for the trial judge and the defense arbitrator to participate in these proceedings in light of their relationship to the Honigman firm. We disagree. The trial court's factual findings on a motion for disqualification are reviewed for an abuse of discretion, but the application of the facts to the law is reviewed de novo. *Van Buren Twp v Garter Belt, Inc*, 258 Mich App 594, 598; 673 NW2d 111 (2003).

> A judge is disqualified when he cannot hear a case impartially. But a party challenging the impartiality of a judge "must overcome a heavy presumption of judicial impartiality." In general, the challenger must prove a judge harbors actual bias or prejudice for or against a party or attorney that is both personal and extrajudicial. [*Id*. (citations omitted).]

To demonstrate partiality or bias that would allow this Court to overturn an arbitration award, it must be "certain and direct, not remote, uncertain or speculative." *Bayati v Bayati*, 264 Mich App 595, 601; 691 NW2d 812 (2004).

MCR 2.003(B) provides, in relevant part:

> (B) Grounds. A judge is disqualified when the judge cannot impartially hear a case, including but not limited to instances in which:

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[1] Furthermore, the duty of the insurer to defend the insured is contingent upon the allegations in the complaint raised against the insured. *Protective National Ins Co v Woodhaven*, 438 Mich 154, 159; 476 NW2d 374 (1991). In the present case, the key issue to determine if coverage was applicable involved the claims raised by Oxford against plaintiff. The allegations in the complaint between GM and Oxford would not have any bearing on the issue of defendants' policy language as applied to the language of the complaint between plaintiff and Oxford. Therefore, this issue is without merit.

(4) The judge was a partner of a party, attorney for a party, or a member of a law firm representing a party within the preceding two years.

The trial judge was appointed to the circuit bench in March 2004, and plaintiff moved to disqualify the judge in April 2004. However, GM was never a party to the litigation at issue. Accordingly, it was not an abuse of discretion for the trial judge and chief judge to deny the motion for disqualification.

Plaintiff asserts that it was erroneous to deny the motion to recuse defendants' arbitrator, Peter Alter, a member of the Honigman firm. However, in light of the fact that this matter was submitted to a three-member arbitration panel, and Alter was selected as the non-neutral arbitrator for the defense, disqualification was not required. *Whitaker v Citizens Ins Co*, 190 Mich App 436, 440; 476 NW2d 161 (1991).

Affirmed.

/s/ Deborah A. Servitto
/s/ Pat M. Donofrio
/s/ Karen M. Fort Hood