STATE OF MICHIGAN

COURT OF APPEALS

LISA J. ROULEAU, Plaintiff/Counter-Defendant-Appellee,	UNPUBLISHED October 25, 2012
v	No. 308151 Houghton Circuit Court
ORCHARD, HILTZ & MCCLIMENT, INC., Defendant/Counter-Plaintiff-Appellant.	LC No. 2010-014683-CK

Before: MURPHY, C.J., and SAWYER and HOEKSTRA, JJ.

PER CURIAM.

In this contract interpretation case, defendant/counter-plaintiff, Orchard, Hiltz & McCliment, Inc. (hereafter "OHM"), appeals as of right the trial court's order granting plaintiff/counter-defendant, Lisa J. Rouleau's motion for summary disposition and denying OHM's motion for summary disposition. Because we conclude that the parties' dispute is subject to arbitration, we reverse and remand.

This case revolves around the interpretation of an agreement between OHM and Hitch, Inc. In 2005, OHM and Hitch, Inc. entered into an agreement regarding the creation of a limited liability company (LLC) to be named "Hitch, LLC." Pursuant to the 2005 agreement, Hitch, Inc., would transfer all of its assets and liabilities to Hitch, LLC. Hitch, LLC would be partially owned by the former Hitch, Inc. shareholders (40 percent) and partially owned by OHM (60 percent). Rouleau was a shareholder of Hitch, Inc. and continued to be a shareholder of Hitch, LLC. The 2005 agreement included provisions for arbitration and indemnity. In 2006, the parties entered into another agreement pursuant to which OHM became the sole owner of Hitch, LLC. Rouleau continued to be employed by OHM until she voluntarily terminated her employment in 2007.

The instant lawsuit was initiated by Rouleau in October 2010 after OHM requested that she indemnify it for costs associated with defending a lawsuit brought by the White Cloud Public Schools in regard to construction work allegedly negligently performed by Hitch, Inc. in 2003. OHM maintained that pursuant to the indemnity provision in the 2005 agreement, Rouleau was obligated to hold it harmless for the costs associated with the lawsuit. Rouleau filed a complaint for declaratory judgment against OHM. In her complaint, Rouleau requested the trial court to

declare that the indemnity provision in the 2005 agreement was unenforceable. OHM responded by filing a motion for summary disposition and to compel arbitration.

After hearing oral argument regarding OHM's motion for summary disposition and to compel arbitration, the trial court held that the arbitration provision did not satisfy the Michigan Arbitration Act's (MAA) requirements for statutory arbitration, and accordingly, constituted a common-law arbitration agreement revocable by either party. The case proceeded, and eventually the parties filed competing motions for summary disposition in regard to the interpretation of the indemnity provision. After two separate hearings on the parties' motions, the trial court concluded that Rouleau was not obligated to indemnify OHM for the costs associated with the lawsuit under the indemnity provision in the 2005 agreement. OHM now appeals as of right the trial court's order denying its motion to compel arbitration, and the trial court's order granting summary disposition in favor of Rouleau on the indemnity issue.

The arbitration and indemnity provisions in the 2005 agreement are the provisions at issue on appeal. Those provision provide:

> Arbitration
>
> 22. Any dispute arising under this contract shall be resolved under the commercial arbitration rules of the American Arbitration Association. However, an injunction may be sought in a court of competent jurisdiction if deemed necessary.
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> * * *
>
> Indemnity
>
> 30. Hitch, Inc., Michael T. Drewyor, Lisa J. Rouleau, Tracie Williams and Francis Rutz hereby acknowledge that the LLC does not hereby assume, or agree to assume, and shall not acquire or take over any liabilities or obligations of any kind or nature of Hitch, Inc. except those set forth on the Schedule of Liabilities attached to this agreement, and Hitch, Inc., Michael T. Drewyor, Lisa J. Rouleau, Tracie Williams and Francis Rutz jointly and severally agree to hold the LLC harmless from any and all unscheduled liabilities.

On appeal, OHM argues that the arbitration clause satisfies the MAA's requirements for statutory arbitration despite the fact that it does not contain language regarding judgment being entered by any court with jurisdiction because it incorporates the American Arbitration Association's (AAA) commercial arbitration rules. Thus, OHM argues that the trial court's order should be reversed and the parties' claims should be subject to arbitration. Rouleau argues that the MAA's requirements must be strictly enforced, and reference to the AAA's arbitration rules is insufficient to satisfy the statute.

The trial court's decision in regard to whether Rouleau's claims were subject to arbitration was made in the context of OHM's motion for summary disposition brought pursuant to MCR 2.116(C)(7) (claim is barred by agreement to arbitrate). We review motions for summary disposition de novo, viewing the evidence in the light most favorable to the nonmoving

party. *Coblentz v City of Novi*, 475 Mich 558, 567-568; 719 NW2d 73 (2006). Pursuant to MCR 2.116(C)(7), summary disposition is appropriate if a claim is barred because of an agreement to arbitrate. A motion pursuant to MCR 2.116(C)(7) may be supported by affidavits, depositions, admissions, or other documentary evidence so long as the evidence would be admissible. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). The allegations set forth in the complaint must be accepted as true unless contradicted by other evidence. *Id.* "[T]he trial court must accept the nonmoving party's well-pleaded allegations as true and construe the allegations in the nonmovant's favor to determine whether any factual development could provide a basis for recovery." *Hoffman v Boonsiri*, 290 Mich App 34, 39; 801 NW2d 385 (2010).

We also review de novo a trial court's determination that an issue is subject to arbitration. *Rooyakker & Sitz, PLLC v Plante & Moran, PLLC*, 276 Mich App 146, 152; 742 NW2d 409 (2007). Similarly, issues of statutory interpretation are questions of law that we review de novo. *Id.*

Michigan law distinguishes between statutory arbitration and common-law arbitration. *Wold Architects and Engineers v Strat*, 474 Mich 223, 229; 713 NW2d 750 (2006). Statutory arbitration is governed by the MAA, specifically MCL 600.5001. Relevant in this case is MCL 600.5001(2),[1] which provides:

> (2) A provision in a written contract to settle by arbitration under this chapter, a controversy thereafter arising between the parties to the contract, with relation thereto, and in which it is agreed that a judgment of any circuit court may be rendered upon the award made pursuant to such agreement, shall be valid, enforceable and irrevocable save upon such grounds as exist at law or in equity for the rescission or revocation of any contract. Such an agreement shall stand as a submission to arbitration of any controversy arising under said contract not expressly exempt from arbitration by the terms of the contract. Any arbitration had in pursuance of such agreement shall proceed and the award reached thereby shall be enforced under this chapter.

Thus, in order to constitute a statutory arbitration agreement, the agreement must be in writing and must provide that "a judgment of any circuit court may be rendered upon the award." *Wold*, 474 Mich at 231. Further, MCL 600.5011 provides that statutory arbitration agreements made pursuant to MCL 600.5001 cannot be unilaterally revoked. See MCL 600.5011.[2] MCL

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[1] MCL 600.5001(1) applies to agreements made when there is an existing controversy between the parties and covers agreements to arbitrate that are made after a cause of action has accrued. *Wold*, 474 Mich at 230. That is not the case here. MCL 600.5001(2) covers agreements to arbitrate causes of actions that have yet to accrue. *Id.* Both sections require the agreement to be in writing and to provide for entry of the judgment by a circuit court. MCL 600.5001.

[2] MCL 600.5011 provides:

> Neither party shall have power to revoke any agreement or submission made as provided in this chapter without the consent of the other party; and if either party

600.5025 provides that circuit courts have jurisdiction to enforce statutory arbitration agreements and to render judgment on an award made pursuant to statutory arbitration. If the arbitration provision in an agreement does not comply with the requirements of MCL 600.5001, "the parties are said to have agreed to a common-law arbitration." *Wold*, 474 Mich at 231. Common-law arbitration is different from statutory arbitration because common-law arbitration recognizes the unilateral revocation rule. *Id.* "This rule allows one party to terminate arbitration at any time before the arbitrator renders an award." *Id.*

Rouleau and the trial court cite *Wold* in support of the conclusion that the arbitration agreement in this case did not satisfy the requirements for statutory arbitration. In *Wold*, the Court stated that "[p]arties wishing to conform an agreement to MCL 600.5001(2) must put it in writing and require that a circuit court may render judgment upon the award made pursuant to the agreement. Otherwise, it will be treated as an agreement for common-law arbitration." *Id.* at 235. This Court made a similar statement in *Hetrick v Friedman*, 237 Mich App 264, 268; 602 NW2d 603 (1999), explaining that parties who "want their arbitration agreement to be a statutory arbitration agreement must clearly evidence that intent by a contract provision for entry of judgment upon the award by the circuit court." (Internal citation and quotation omitted).

However, this Court in *Hetrick* further held that an arbitration agreement lacking language providing "that judgment shall be entered in accordance with the arbitrators' decision" satisfied the requirements for statutory arbitration because it included a provision that stated "[a]rbitration to be governed by American Arbitration Association medical malpractice arbitration rules." *Id.* at 268-269. This Court held that because the AAA's medical malpractice arbitration rules include a rule that expressly provides that "[p]arties to these rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof," the incorporation of the AAA's arbitration rules was sufficient to render the agreement a statutory arbitration agreement that is not unilaterally revocable. *Id.* at 269.

OHM cites *Hetrick* on appeal in support of its argument that the arbitration agreement in this case should be considered a statutory arbitration agreement. Like the arbitration agreement in *Hetrick*, the arbitration agreement in this case states: "Any dispute arising under this contract shall be resolved under the commercial arbitration rules of the American Arbitration Association." Rule 48(c) of the AAA Commercial Arbitration Rules provides: "Parties to an arbitration under these rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof." Accordingly, under *Hetrick*, the arbitration clause in this case satisfies the requirements for statutory arbitration because it incorporates the AAA rules.

Rouleau argues that after *Wold*, *Hetrick* is not good law. Rouleau maintains that *Wold* overruled *Hetrick*, and that incorporation of the AAA rules is no longer sufficient to satisfy the

> neglects to appear before the arbitrators after due notice, the arbitrators may nevertheless proceed to hear and determine the matter submitted to them upon the evidence produced by the other party. The court may order the parties to proceed with arbitration.

requirements for statutory arbitration. We reject Rouleau's argument that *Wold* overruled *Hetrick*. In *Wold*, the contract's arbitration provision provided:

> The parties agree to submit any disputes arising from this Agreement to binding arbitration. The arbitrator shall be selected through the mutual cooperation between the representatives or counsel for the respective parties, failing agreement on which may be referred by either party to the Detroit Regional Office of the American Arbitration Association for appointment of an arbitrator and processing under their Voluntary Labor Arbitration Rules. [*Wold*, 474 Mich at 226.]

Thus, *Wold* is distinguishable from *Hetrick* because the arbitration provision in *Wold* did not explicitly incorporate the AAA rules the way the agreement in *Hetrick* did. The *Hetrick* arbitration provision provided: "Arbitration to be governed by American Arbitration Association medical malpractice arbitration rules." *Hetrick*, 237 Mich App at 268-269.

Moreover, the *Wold* Court never explicitly overruled *Hetrick*. *Wold* criticizes *Hetrick*, but not in regard to *Hetrick's* holding that express adoption of the AAA rules satisfies the requirements for statutory arbitration under the MAA. The *Wold* Court merely disagreed with dicta in *Hetrick* that criticized the utility of common-law arbitration and a unilateral right to revoke arbitration agreements under any circumstances. *Wold*, 474 Mich at 236-237. *Wold* did not overrule *Hetrick* in any part because the relevant holding in *Wold* was that common-law arbitration agreements remain unilaterally revocable, *id.* at 237, whereas this Court in *Hetrick* held that the arbitration agreement was a statutory arbitration agreement because the incorporation of the AAA's medical malpractice arbitration rules satisfied the statutory arbitration requirements, *Hetrick*, 237 Mich App at 269-270. *Hetrick* did not actually decide the issue whether common-law arbitration agreements remain unilaterally revocable because it concluded the arbitration agreement in question was not a common-law arbitration agreement.

Therefore, because *Hetrick* has not been overruled, it constitutes binding precedent on this Court. MCR 7.215(C)(2). Therefore, we conclude that the trial court erred by denying OHM's motion to compel arbitration and for summary disposition pursuant to MCR 2.116(C)(7) because the arbitration provision contained in the 2005 agreement had the necessary language to satisfy the statutory arbitration requirements. Accordingly, we reverse the trial court's order denying defendant's motion to compel arbitration and reverse the trial court's subsequent order deciding the merits of the parties' dispute. We remand for dismissal of the parties' case, and submission of the parties' dispute to arbitration.[3]

[3] In light of our conclusion that the parties' claims are subject to arbitration, we need not consider whether the trial court properly granted summary disposition in Rouleau's favor in regard to the contract interpretation issue because "a court should not interpret a contract's language beyond determining whether arbitration applies." *Fromm v Meemic Ins Co*, 264 Mich App 302, 306; 690 NW2d 528 (2004), citing *Brucker v McKinlay Transport, Inc*, 454 Mich 8, 15; 557 NW2d 536 (1997) (stating that "only the arbitrator can interpret the contract").

Reversed and remanded. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ David H. Sawyer
/s/ Joel P. Hoekstra