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STATE OF MICHIGAN

COURT OF APPEALS

TRUCKS RX, INC., and MAZEN ABUELEAWAH,

Plaintiffs-Appellants,

and

JANA TRUCKING LINE, INC., and ALA ABU QATTAM,

Plaintiffs,

v

PADILLA INVESTMENTS, LLC,

Defendant-Appellee.

UNPUBLISHED
October 21, 2026
1:51 PM

No. 375909
Wayne Circuit Court
LC No. 24-016734-CB

Before: PATEL, P.J., and M. J. KELLY and GARRETT, JJ.

PER CURIAM.

In this landlord-tenant dispute, plaintiffs Trucks Rx, Inc., and Mazen Abueleawah (appellants), appeal by right the judgment in favor of defendant, Padilla Investments, LLC, in the amount of $411,131.50 against plaintiff Jana Trucking Line, Inc. (Jana Trucking), plaintiff Ala Abu Qattam, and appellants.[1] On appeal, appellants challenge the arbitration award in favor of defendant and the trial court's order confirming the award and denying appellants' motion to vacate the award. Because the arbitrator did not exceed his authority or make an error of law in rendering his decision, we affirm.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

[1] Our reference to "plaintiffs" refers to all four plaintiffs, but not all four plaintiffs are appellants. Only Trucks Rx and Abueleawah are appellants. Our reference to "tenants" refers to Trucks Rx and Jana Trucking only.

Abueleawah owns Trucks Rx, and Qattam owns Jana Trucking. Alvaro Padilla is the managing member and an owner of defendant, which owns the real property at issue in this dispute. The property is located in Detroit and was previously used as a hardware store. In February 2022, the tenants entered into a three-year commercial lease agreement for the property, which they intended to use to sell tires. Abueleawah and Qattam personally guaranteed the lease. The lease required the tenants to pay the insurance, utilities, and property taxes on the property and to maintain the premises. It specified that the property was to be used for the purpose of selling new vehicle tires and for no other purpose without defendant's written consent. The tenants agreed to comply with all laws and ordinances and to assume any financial responsibility required to do so. They accepted the property "as is."

In February 2022, the tenants paid the security deposit, took possession of the premises, and operated their business. In April 2022, the city of Detroit inspected the property and issued a correction order to defendant, which recited several violations of the Detroit Property Maintenance Code and/or the city's zoning ordinance. In June 2022, the city conducted another inspection and issued an emergency correction order that again listed several violations, including the illegal use of the premises. The city ordered that the present use of the premises be discontinued because no permit had been issued for the use. The city also required defendant to correct the deficiencies listed and to obtain a certificate of compliance. In July 2022, the tenants stopped paying rent to defendant. In August 2022, the city inspected the property and issued another correction order to defendant for additional violations, including that the building was "operating illegally as a Major Auto Repair/Semi Truck Storage Semi Truck Terminal/Dispatch Office," when its only legal use was retail. In September 2022, the tenants abandoned the premises, and, two months later, defendant obtained a certificate of compliance to use the property for a retail or wholesale store. The chief problem with the property was that it lacked an automatic sprinkler system, which was required to store tires on the property. Padilla offered to accompany Abueleawah to a meeting with city officials to help resolve the issue, but Abueleawah did not attend the meeting. Appellants estimated the cost of the fire suppression system to be more than $60,000 and to take four to six months to install.

In October 2022, defendant filed a breach-of-contract action against plaintiffs, and plaintiffs counterclaimed against defendant. The parties agreed to resolve the dispute by arbitration and dismiss the case. During arbitration, the parties stipulated that the lease contained the full agreement between the parties and that they did not discuss the installation of a fire suppression system before signing the lease. The arbitrator determined the tenants breached the lease agreement when they stopped paying rent and vacated the premises. He determined that the lease was unambiguous, the tenants took the premises "as is," and they were required to take the steps necessary to comply with the laws and regulations to operate their business. The arbitrator reasoned "the lease made clear that [defendant] was not required to perform any work with respect to" the tenants' operation of their business on the premises, and the lease instead required the tenants to perform the work and to provide defendant with plans and specifications for approval. The arbitrator found that Padilla offered to assist the tenants by meeting with city officials, but the tenants did not attend the meeting that the city scheduled and never submitted plans and specifications to defendant. The arbitrator rejected the plaintiffs' defense that the lease was void or unenforceable and found the caselaw on which they relied distinguishable or inapposite. He awarded defendant a total of $411,131.50 plus interest and determined that Qattam and Abueleawah were personally liable because they personally guaranteed the tenants' obligations.

Appellants filed this action, seeking to vacate, modify, or correct the arbitration award.[2] They alleged the arbitrator exceeded his authority and clearly erred by failing to determine that the city's ordinance required defendant, as the property owner, to obtain a permit to install the sprinkler system. They asserted that defendant's failure to obtain the permit prevented the tenants from using the property as contemplated in the lease, which warranted rescission or cancellation of the lease. They characterized the sprinkler system requirement as a mutual mistake that would have cost the tenants approximately $60,000 and prevented them from operating their business for at least four to six months because of the time required to obtain the permit and install the system.

Defendant moved to confirm the arbitration award, asserting the arbitrator correctly applied the law when he interpreted the lease. Defendant asserted that the arbitrator properly rejected the argument that defendant was required to obtain the permit and install the sprinkler system because the argument was unsupported by the law and undisputed facts of the case. Defendant maintained that the lease required the tenants to assume the obligation of complying with all ordinances, and the lease was not illegal or unenforceable. Defendant requested the trial court to confirm the arbitration award and enter a judgment in its favor.

The trial court agreed with defendant. The court noted the high standard for overturning an arbitrator's decision and opined that the arbitrator did not legally err by determining that the lease imposed on the tenants the obligation to install the sprinkler system. The court stated that the arbitrator's decision was logical and relied on "solid reasoning based upon the plain language of the lease which I don't think is ambiguous." The court remarked that the decision was perhaps "not fair to either side" but noted that the tenants were "in a much better position" than the property owner to know whether their business required a sprinkler system to operate. The court denied appellants' motion to vacate the arbitrator's award, granted defendant's motion to confirm the award, and entered a judgment for defendant in the amount of $411,131.50 plus interest. Appellants moved for reconsideration, which the court denied. This appeal followed.

II. ANALYSIS

A. STANDARDS OF REVIEW AND BASIC LEGAL PRINCIPLES

"In civil cases, Michigan follows the raise or waive rule of appellate review." *Tolas Oil & Gas Exploration Co v Bach Servs & Mfg, LLC*, 347 Mich App 280, 289; 14 NW3d 472 (2023) (quotation marks and citation omitted). A party must raise an argument in the trial court and assert the same grounds on appeal to preserve the issue for appellate review. *Id*. This Court is not obligated to consider unpreserved issues but "may overlook preservation requirements if the failure to consider the issue would result in manifest injustice, if consideration is necessary for a proper determination of the case, or if the issue involves a question of law and the facts necessary for its resolution have been presented." *Id*. at 289-290 (quotation marks and citations omitted). Although appellants failed to preserve the bulk of their arguments for our review, we nevertheless

[2] Although all four plaintiffs were included in the caption of the complaint, the attorney who filed the complaint represented appellants only.

address the arguments because they involve questions of law and the facts necessary to resolve the arguments have been presented.

"This Court reviews de novo a circuit court's decision whether to vacate an arbitration award." *TSP Servs, Inc v Nat'l-Std, LLC*, 329 Mich App 615, 619-620; 944 NW2d 148 (2019). De novo review "means that we review the legal issues presented without extending any deference to the trial court." *Washington v Washington*, 283 Mich App 667, 671; 770 NW2d 908 (2009). We also review de novo "[w]hether an arbitrator exceeded his or her authority." *Id*. at 672. A court's role in reviewing an arbitration award is limited. *TSP Servs*, 329 Mich App at 619. Courts may not review the arbitrator's factual findings and instead review the arbitrator's decision only for errors of law. *Id*. at 620. "Not every error of law by an arbitrator, however, merits subsequent court intervention." *Id*. The error of law "must be so substantial that, but for the error, the award would have been substantially different." *Washington*, 283 Mich App at 672 (quotation marks and citation omitted). Such an error must also "be discernible on the face of the award itself," meaning "only a legal error that is evident without scrutiny of intermediate mental indicia will suffice to overturn an arbitration award." *Id*. (quotation marks and citation omitted). In other words, courts will not "engage in a review of an arbitrator's mental process[.]" *TSP Servs*, 329 Mich App at 620.

A trial court "shall enforce an arbitrator's award . . . in the same manner as an order issued by the circuit court." MCL 600.5079(1). Under MCL 600.5081(2), a court shall vacate an arbitration award when:

> (a) The award was procured by corruption, fraud, or other undue means.
>
> (b) There was evident partiality by an arbitrator appointed as a neutral, corruption of an arbitrator, or misconduct prejudicing a party's rights.
>
> (c) The arbitrator exceeded his or her powers.
>
> (d) The arbitrator refused to postpone the hearing on a showing of sufficient cause, refused to hear evidence material to the controversy, or otherwise conducted the hearing to prejudice substantially a party's rights.

Arbitrators exceed their powers "whenever they act beyond the material terms of the contract from which they primarily draw their authority, or in contravention of controlling principles of law." *Washington*, 283 Mich App at 672 (quotation marks and citations omitted).

B. IMPRACTICABILITY AND IMPOSSIBILITY

Appellants first argue that the arbitration award must be vacated because the sprinkler system requirement rendered the tenants' performance of their obligations under the lease impracticable, if not impossible. The doctrine of impossibility/impracticability is a defense that excuses the nonperformance of a contractual obligation. *Liggett Restaurant Group, Inc v Pontiac*, 260 Mich App 127, 133; 676 NW2d 633 (2003). Impossibility encompasses "not only strict impossibility but impracticability because of extreme and unreasonable difficulty, expense, injury or loss involved." *Bissell v LW Edison Co*, 9 Mich App 276, 285; 156 NW2d 623 (1967) (quotation marks and citation omitted). Impossibility of performance includes both original impossibility and

supervening impossibility. *Id*. at 284. Original impossibility exists "when the contract was entered into, so that the contract was to do something which from the outset was impossible[.]" *Id*. (quotation marks and citation omitted). "[S]upervening impossibility develops after the contract in question is formed." *Roberts v Farmers Ins Exch*, 275 Mich App 58, 74; 737 NW2d 332 (2007). "The important question is whether an unanticipated circumstance has made performance of the promise vitally different from what should reasonably have been within the contemplation of both parties when they entered into the contract. If so, the risk should not fairly be thrown upon the promisor." *Bissell*, 9 Mich App at 285 (quotation marks and citation omitted).

Appellants argue that the parties to the lease were unaware of the sprinkler system requirement when they entered into the lease agreement and that the cost of the system was estimated to be approximately $60,000 plus four to six months of "downtime" before the business could reopen after installation of the system. Appellants assert that the tenants would have gone out of business if they continued to perform under the lease, the "downtime losses" disproportionately affected the tenants rather than defendant, and defendant was the party that would have benefited most from the installation of the system. Appellants have failed to establish that the arbitrator exceeded his authority or made an error of law. The arbitrator determined that the lease unambiguously required the tenants "at [their] own expense" to comply with all laws and regulations necessary to operate their new tire sales business. He recognized that the lease did not require defendant to perform any work on the premises and instead placed the burden of compliance on the tenants. In addition, the arbitrator recognized that the tenants accepted the property "as is," without a sprinkler system in place. As the trial court recognized, the tenants, rather than defendant, were in the better position to know what was legally required to operate their business. Moreover, although Padilla was willing to assist the tenants by meeting with city officials, the tenants did not show up to the meeting. In reaching his decision, the arbitrator did not exceed his authority and did not make an error of law "discernible on the face of the award itself." See *Washington*, 283 Mich App at 672. Although appellants maintain that the arbitrator erred by failing to construe the lease in their favor because defendant's attorney drafted it, we will not "engage in a review of an arbitrator's mental process[.]" *TSP Servs*, 329 Mich App at 620. Accordingly, appellants' argument that the lease is unenforceable because of impossibility or impracticability is unavailing.

C. MUTUAL MISTAKE OF FACT

Appellants next argue that the arbitration award must be vacated because of the contracting parties' mutual mistake in believing that the premises could be used for the sale of new truck tires. A mutual mistake of fact constitutes "an erroneous belief, which is shared and relied on by both parties, about a material fact that affects the substance of the transaction." *Ford Motor Co v Woodhaven*, 475 Mich 425, 442; 716 NW2d 247 (2006). Our Supreme Court has explained:

> [T]he term "mutual mistake of fact" is not limited to one particular area of the law; however, it is most commonly applicable to the law of contracts. . . .
>
> Many law students are introduced to the law of mistake in their first-year contracts course by reading our decision in *Sherwood v Walker*, 66 Mich 568, 33 NW 919 (1887)—the famous barren cow case. In *Sherwood*, the parties contracted for the sale of a cow, and both parties believed and understood that the cow was

> barren and, thus, useless for breeding. After the contract was entered into, but before delivery, it was discovered that the cow was pregnant. Because the fertile cow was worth considerably more than the agreed-upon price, the defendants refused to deliver the cow. The plaintiff sued for replevin and secured a favorable judgment.
>
> On appeal, this Court reversed that judgment, opining that the trial court should have instructed the jury that if it found that both parties understood that the cow was barren at the time of contracting and it was later discovered that the cow was not barren, then the defendants had a right to rescind under a theory of mutual mistake of fact. *Id*. at 578. . . .
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> * * *
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> In light of these principles, this Court held that a mutual mistake of fact occurred. Specifically, the *Sherwood* Court reasoned that the mistake was mutual, and that the mistake went to the whole substance of the parties' agreement. In this regard, this Court observed that the parties would not have made the contract of sale except upon the understanding that the cow was barren; therefore, the mistake "went to the very nature of the thing." *Id*. at 577. [*Ford Motor Co*, 475 Mich at 440-442.]

"[A] a contract for the sale of commercial real property may be rescinded because of a mutual mistake of the parties." *Dep't of Agriculture & Rural Dev v Engle*, 344 Mich App 213, 224-225; 999 NW2d 73 (2022).

Appellants contend the arbitrator erred by failing to determine that there existed a mutual mistake of fact based on the contracting parties' incorrect belief that the premises, in its current condition, could be used for the sale of new vehicle tires. Notably, the arbitrator made no determination regarding whether the parties believed the premises was suitable in its current condition for the operation of the tenants' business. Rather, the arbitrator determined that the lease required the tenants to perform any work necessary to operate the business. The arbitrator did not look beyond the terms of the arbitration agreement or act contrary to controlling law. Unlike *Sherwood*, where "[a] barren cow is substantially a different creature than a breeding one," the fact that the tenants were unable to use the premises as desired until a fire suppression system was installed did not affect "the whole substance of the agreement." *Sherwood*, 66 Mich at 577. Instead, the tenants were required to make the premises suitable for their business, if necessary, as stated in the lease. The arbitrator did not legally err by determining that the defense of mutual mistake of fact was inapplicable.

D. ASSUMPTION OF RISK

Appellants next contend that the arbitrator erroneously allocated to the tenants the risk of impracticability and mutual mistake when the risk lied with defendant. Appellants maintain that defendant's attorney drafted the lease, limited the use of the property to the sale of new vehicle tires only, included the "as is" clause in the lease, and misrepresented the use to which the premises could be put. To the extent that the arbitrator allocated any risk, such allocation involved the

arbitrator's mental processes and factual determinations, which this Court may not review. *TSP Servs*, 329 Mich App at 620.

Moreover, appellants' reliance on *Lenawee Co Bd of Health v Messerly*, 417 Mich 17; 331 NW2d 203 (1982), is misplaced. In that case, the Pickles purchased land on which an apartment building was located. After the purchase, it was discovered that a previous owner had installed an inadequate sewage system, which resulted in raw sewage seeping out of the ground. The property was condemned and human habitation on it prohibited until it was brought into conformance with the county sanitation code. *Id*. at 20-21. Our Supreme Court determined that the Pickles assumed the risk involved regarding the condition of the property because the "as is" clause in the contract stated they had examined the property and agreed to accept it in its present condition. *Id*. at 31-32. The Court therefore determined that they were not entitled to rescind the contract. *Id*. at 33.

Similarly, in the instant case, the lease stated as follows:

> The Tenant further acknowledges that he has examined the Premises prior to the making of this Lease and knows the condition thereof, and that no representations as to the condition or state of repairs thereof have been made by the Landlord, or this lease, and his agent, which are not herein expressed, and the Tenant hereby accepts the leased Premises in "as is" condition.

The arbitrator relied on the above paragraph and on other provisions in the lease when he determined that the lease required the tenants to perform the work necessary to operate the business stated in the lease. Because the tenants agreed to the terms of the lease, appellants are not entitled to rescind the lease agreement.

III. CONCLUSION

The arbitrator did not exceed his authority or make an error of law discernible on the face of the arbitration award. Accordingly, the trial court did not err by denying appellants' motion to vacate the award and granting defendant's motion to confirm the award.

Affirmed.

/s/ Sima G. Patel
/s/ Michael J. Kelly
/s/ Kristina Robinson Garrett