MICHIGAN SUPREME COURT DECISIONS IN

2016 ABOUT ARBITRATION

by

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The Michigan Supreme Court issued three decisions in 2016 about arbitration. ***Altobelli v Hartmann***[1] and ***Beck v Park West Galleries, Inc***[2] concerned the scope of the agreement to arbitrate. ***Ronnisch Construction Group, Inc v Lofts on the Nine, LLC***, [3] concerned attorney fees in a construction lien arbitration case.

In *Altobelli* the Supreme Court ruled that plaintiff's tort claims against the individual principals of a law firm fell within the scope of an agreement to arbitrate that required arbitration for any dispute between the law firm and a former principal. The plaintiff, a former principal of the firm, challenged actions that the individual defendants had performed in their capacities as agents carrying out the business of the firm. The plaintiff was attempting to bypass the agreement to arbitrate by suing the individual principals in a court proceeding rather than the law firm in an arbitration proceeding. The Supreme Court ruled that this was a dispute between the firm and a former principal that fell within the scope of the agreement to arbitrate and was subject to arbitration. The Supreme Court reversed those portions of the Court of Appeals opinion[4] which had held the matter was not subject to arbitration. *Altobelli* instructs us that the wording of the agreement to arbitrate is vitally important and, regardless of how much work goes into the drafting of the agreement to arbitrate, there are risks of unintended consequences.

Beck partially reversed the Court of Appeals[5] and discussed whether an arbitration clause contained in invoices for artwork purchases applied to disputes arising from prior artwork purchases when the invoices for the prior purchases did not refer to arbitration. The Supreme Court held that the arbitration clause contained in the later invoices cannot be applied to disputes arising from prior sales with invoices that did not contain the arbitration clause. The Supreme Court reversed that part of the Court of Appeals judgment that extended the arbitration clause to the parties' prior transactions that did not refer to arbitration.

In *Beck*, the Supreme Court specifically recognized the policy favoring arbitration of disputes arising under collective bargaining agreements but said this does not mean arbitration arising under an agreement to arbitrate between parties outside of the collective bargaining context applies to any dispute arising out of any aspect of their relationship.[6]

Beck is a teaching point that the wording of the agreement to arbitrate is crucial and has to be given very important consideration.

Altobelli and *Beck* are consistent with prior Supreme Court decisions about the importance of the language of the agreement to arbitrate. [7]

The Supreme Court ruled in *Ronnisch Construction Group, Inc* (Justices Viviano, Markman, McCormack, and Bernstein), a construction lien and attorney fee case**,** that the plaintiff can seek attorney fees under MCL 570.1118(2), of the Construction Lien Act (CLA), where the plaintiff received a favorable arbitration award on a related breach of contract claim but did not obtain a judgment on its construction lien claim. The arbitrator did not address the attorney fee claim but reserved that issue for the Circuit

Court. According to the Supreme Court, the Circuit Court may award attorney fees to the plaintiff because the plaintiff was a lien claimant who prevailed in an action to enforce a construction lien through foreclosure. This opinion affirmed the Court of Appeals.[8]

Justices Young, Zahra, and Larsen dissented. They said the Legislature communicated that recovery of CLA attorney fees is authorized only to parties who prevail on a construction lien. The CLA attorney fees provision only allows a court to award fees to a lien claimant who is a prevailing party. Because the plaintiff did not meet the definition of a CLA lien claimant, and because it voluntarily extinguished its lien claim before the Circuit Court could have so determined, the plaintiff was not entitled to attorney fees.

Ronnisch Construction Group, Inc teaches us that (1) a lienee can be subject to CLA attorney fees in an arbitration proceeding, and, (2) according to three dissenting Justices, there might be a risk in accepting payment after the award but before confirmation.

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About the Author

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[1] 499 Mich 284 (2016).
[2] 499 Mich 40 (2016).
[3] 499 Mich 544 (2016).
[4] *Altobelli v Hartmann*, 307 Mich App 612 (2014).
[5] *Beck v Park West Galleries, Inc*, unpublished opinion per curiam of the Court of Appeals, issued March 3, 2015, Docket No 319463.
[6] See generally *Kaleva-Norman-Dickson Sch Dist No 6 v Kaleva-Norman-Dickson Sch Teachers' Ass'n*, 393 Mich 583 (1975).
[7] The following pre-2016 Supreme Court decisions highlight the importance of the wording of the agreement to arbitrate.

Wireless Toyz Franchise, LLC v Clear Choice Commc'n, Inc, 493 Mich 933 (2013), in lieu of granting leave to appeal, reversed the Court of Appeals, for the reasons stated in the Court of Appeals dissent, Docket No 303619 (May 31, 2012), and reinstated the Circuit Court order confirming the arbitration award. The Court of Appeals dissent, approved by the Supreme Court, said the stipulated order to arbitrate intended that the arbitration would include claims beyond those already pending in the case because the stipulated order allowed further discovery, gave the arbitrator powers of the Circuit Court, and the award would represent a full and final resolution of the matter. This meant, according to the Supreme Court, that claims not pending at the time the order to arbitrate was entered were not outside the scope of the arbitrator's powers.

In ***Hall v Stark Reagan, PC***, 493 Mich 903 (2012), a four to three majority decision of the Supreme Court reversed that part of the Court of Appeals decision, 294 Mich App 88 (2012), which had held the matter was not subject to arbitration. The Supreme Court reinstated the Circuit Court order ordering arbitration concerning the motives of the defendant shareholders in invoking the separation provisions of the Shareholders' Agreement. According to the Supreme Court majority, this, including allegations of violations of Civil Rights Act, MCL 37.2101 *et seq*, was a "dispute regarding interpretation or enforcement of . . . parties' rights or obligations" under the Shareholders' Agreement, and was subject to arbitration pursuant to Agreement. The dissents said the Shareholders Agreement provided only for arbitration of violations of the Agreement, not for allegations of discrimination under the Civil Rights Act.

Gates v USA Jet Airlines, Inc, 482 Mich 1005 (2008), vacated an arbitration award and remanded the case to the Circuit Court because one of the parties submitted to the arbitration panel an *ex parte* submission in violation of the arbitration rules. *Gates* is an example of how the agreement to arbitrate can control what, if any, *ex parte* communications with the arbitrator are permitted.

[8] *Ronnisch Construction Group, Inc v Lofts on the Nine, LLC,* 306 Mich App 203 (2014).