

STATE OF MICHIGAN

IN THE 20<sup>th</sup> CIRCUIT COURT FOR THE COUNTY OF OTTAWA  
SPECIALIZED BUSINESS DOCKET

414 Washington Street  
Grand Haven, MI 49417  
616-846-8315  
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**FASTENAL COMPANY, dba MANSCO,**  
Plaintiff,

**OPINION AND ORDER ON**  
**CROSS MOTIONS RE:**  
**ARBITRATION AWARD**

v

File No. 22-007065-CB  
Hon. Jon A. Van Allsburg

**KURT PATRICK GROSS and HI-TECH**  
**FASTENERS, LLC,**  
Defendants.

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Plaintiff Fastenal brought this action seeking injunctive relief against defendants Gross and Hi-Tech Fasteners for alleged violations of the Confidentiality and Noncompetition Agreement between Gross and Fastenal. This Agreement included a binding arbitration clause, so on July 3, 2023, this court entered a stay of proceedings pending arbitration. On March 11, 2024, the arbitrator entered a Final Award in favor of Fastenal, finding Gross and Hi-Tech to be jointly and severally liable to Fastenal for \$129,224.00 and finding Gross individually liable for \$93,787.79. Fastenal moves the court to lift the stay of proceedings, confirm the arbitration award, and enter a judgment for those amounts plus statutory interest.

Defendants move the court instead to vacate (or in the alternative, to modify) the arbitration award on the grounds that the arbitrator awarded damages for a claim that was not brought in this litigation or submitted to arbitration. Plaintiff's complaint in this court and demand for arbitration alleged that defendant Hi-Tech tortiously interfered with the business relationship or expectancy between Gross and Fastenal.<sup>1</sup> In the arbitration award however, the arbitrator ruled that Gross and Hi-Tech together tortiously interfered with Fastenal's business relationships with Marvel

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<sup>1</sup> The complaint and the demand for arbitration also alleged breach of contract and violation of the Michigan Uniform Trade Secrets Act against defendant Gross only. The arbitrator ruled that Fastenal failed to prove damages attributable to either of these counts.



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Refrigeration, Premier Components, Powers Fasteners, Charter House International, and Haworth. These are different business relationships from the one initially alleged. Defendants argue that the arbitrator exceeded his powers by deciding this claim and that the award must therefore be vacated in its entirety.

The parties agree that the Michigan Uniform Arbitration Act allows a court to vacate an arbitration award if the arbitrator exceeds the arbitrator's powers.<sup>2</sup> "The scope of an arbitrator's remedial authority is limited to the contractual agreement of the parties."<sup>3</sup> "Thus, arbitrators exceed their power when they act beyond the material terms of the contract from which they primarily draw their authority, or in contravention of controlling principles of law."<sup>4</sup>

The contracts empowering the arbitrator here are the Confidentiality and Noncompetition Agreement and the Stipulation for Arbitration. The Confidentiality and Noncompetition Agreement between Fastenal and Gross included the following mandatory arbitration clause.

With the exception of the right to seek to injunctive relief (against a party or third parties) or without limiting any remedies provided herein, the parties agree to arbitrate any claims, controversies and disputes arising out of this Agreement, including but not limited the enforceability, validity and damages. The parties agree to utilize the Labor Arbitration Rules of the American Arbitration Association and a judgment upon any award may be entered in any court having jurisdiction.

Hi-Tech, Gross, and Fastenal also all agreed to be bound by the arbitration process in the Stipulation for Arbitration, which included the following terms.

It is stipulated and agreed by the Parties to submit all disputes, claims or controversies to neutral, binding arbitration at JAMS, pursuant to the JAMS Arbitration Administrative Policies and AAA Labor Rules per the parties' agreement.

The claims that Gross and Hi-Tech together tortiously interfered with Fastenal's business relationships with its customers are clearly disputes between the parties that arose out of the Confidentiality and Noncompetition Agreement. The claims that the arbitrator ruled on were

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<sup>2</sup> MCL 691.1703(1)(d); MCR 3.602(J)(2)(c).

<sup>3</sup> *Nordlund & Assoc, Inc v Vill of Hesperia*, 288 Mich App 222, 228; 792 NW2d 59 (2010) (cleaned up).

<sup>4</sup> *Id.*

arbitrable and within his contractual authority to decide. The arbitrator's authority is not limited by the plaintiff's complaint in this action.

Defendants cited case law where arbitration agreements were set aside, but those cases do not apply here. In *N Michigan Ed Ass'n v Bd of Ed of Cheboygan Area Sch*, the Court of Appeals found that an arbitration agreement does not prevent parties from settling a portion of their dispute and submitting only the portions that remain to the arbitrator.<sup>5</sup> Where there is no longer a dispute on an issue, the arbitration agreement no longer authorizes an arbitrator to resolve the issue, even if the issue would have been subject to arbitration before the settlement.<sup>6</sup> In *Stowe v Mut Home Builders' Corp*, the arbitration agreement between the parties explicitly required the arbitrators to use a particular method for calculating the amount due under a contract. The arbitrators did not use the contractually required method.

The tortious interference claim at issue here was not settled or otherwise resolved prior to arbitration. Plaintiffs did not remove it from the arbitrator's jurisdiction. The arbitration agreements between the parties required the arbitrator to apply JAMS Arbitration Administrative Policies and AAA Labor Rules. There has been no showing that the arbitrator failed to follow these rules. Defendants argue that the arbitrator violated Rule 10 of the JAMS Comprehensive Arbitration Rules & Procedures, but that was not the set of rules binding the arbitrator. No evidence has been presented that the JAMS Comprehensive Arbitration Rules & Procedures were made a part of the arbitration agreement between the parties or that the JAMS Arbitration Administrative Policies or the AAA Labor Rules incorporated Rule 10 of the JAMS Comprehensive Arbitration Rules & Procedures.

The Michigan Supreme Court has held that "an 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."<sup>7</sup> Where the defendants have not shown that the arbitrator exceeded his powers, this court has no choice but to confirm the arbitration award. Defendants' motion to vacate or modify the arbitration award is DENIED.

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<sup>5</sup> *N Michigan Ed Ass'n v Bd of Ed of Cheboygan Area Sch*, 126 Mich App 781, 787; 337 NW2d 923 (1983).

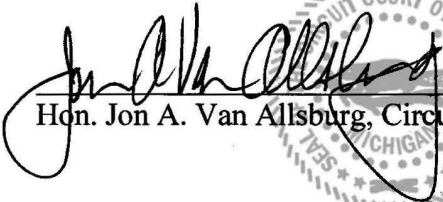
<sup>6</sup> *Id.* at 788.

<sup>7</sup> *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488; 475 NW2d 704 (1991)

Plaintiff's motion to confirm the award is GRANTED. Plaintiff shall submit a Judgment confirming the arbitration award, which shall resolve all claims and close this case.

*IT IS SO ORDERED.*

Dated: June 26, 2024

  
Hon. Jon A. Van Allsburg, Circuit Judge

