STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
BUSINESS COURT

VERITAS AUTOMOTIVE & MACHINERY, LLC,
a Delaware Limited Liability Company,

Plaintiff, **Case No. 17-161307-CB**

Hon. Victoria A. Valentine

v

FCA INTERNATIONAL OPERATIONS, LLC
f/k/a CHRYSLER GROUP INTERNATIONAL, LLC,
a Delaware Limited Liability Company,

Defendant.

OPINION AND ORDER REGARDING DEFENDANT'S MOTION TO LIFT ADMINISTRATIVE STAY AND CONFIRM ARBITRATION AWARD AND ON PLAINTIFF'S MOTION TO VACATE OR MODIFY ARBITRATION AWARD PURSUANT TO MCR 3.602

OPINION

The instant action is before the Court on Defendant's Motion to Lift Administrative Stay and Confirm Arbitration Award and on Plaintiff's Motion to Vacate or Modify Arbitration Award. The Court has reviewed the pleadings and the Arbitration Award, as well as the Motions, Responses, Replies, and Sur-Replies filed by the parties and heard oral argument on the motions.

I.

OVERVIEW

On September 1, 2008 Plaintiff Veritas Automotive & Machinery, LLC ("Veritas") and Defendant FCA International Operations, LLC f/k/a Chrysler Group International, LLC ("FCA

International") entered into a Distributor Agreement (the "Agreement") whereby Veritas would be the non-exclusive distributor for the sale and service of FCA vehicles and products in Iraq. The Agreement had an initial term of four years. In 2012 the parties entered into the First Amendment to Distributor Agreement (the "Amendment"). The Amendment extended the term of the Agreement "for an additional period of one (1) year, to and through August 13, unless it is terminated as provided herein . . ." subject to three prerequisites.[1] The Amendment further stated that:

> If all prerequisites listed above are not fulfilled by August 31, 2012, the Agreement will automatically terminate on August 31, 2013, without the need for any notice or other action by either party to this Agreement.[2]

In December 2012 FCA International filed a declaratory action seeking a judgment that "the Agreement will expire on August 21, 2013, that [FCA International] need not renew or continue the Agreement or its distribution relationship beyond that date. . . ."[3] In 2014 the declaratory action was "administratively stayed" so that settlement negotiations on the matter could continue.[4] In 2017 Veritas brought a Motion to file a counter-complaint. The administrative stay was lifted, however, the court determined that because so much time had passed, Veritas should begin a new case. Accordingly, the court dismissed the case without prejudice.[5]

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[1] The prerequisites were stated as follows:

> (i) DISTRIBUTOR shall install a Dealer Management System which meets CHRYSLER's approval, no later than on August 30, 2012;
> (ii) DISTRIBUTOR shall hire a new General Manager who meets CHRYSLER's approval no later than on August 1, 2012; and
> (iii) DISTRIBUTOR shall increase the current existing Letter of Credit to an amount of 15 Million USD on terms and conditions agreed upon by CHRYSLER, no later than on July 14, 2012. [Pl's Motion to Vacate, Exh B-1, Amendment, p 1.]

[2] *Id.*
[3] Oakland County Circuit Court Case No. 12-131162-CK, Complaint at ¶ 15.
[4] *Id.,* "Stipulated Order Administratively Staying Proceedings Pending Finalization of Settlement Agreement" entered on March 31, 2014.
[5] *Id.* Judge Anderson, this Court's predecessor, was assigned to the case at this time.

Veritas then filed the instant action alleging the following: Wrongful Termination (Count I); Violation of Regulation of Motor Vehicle Manufacturers, Distributors, Wholesalers, and Dealer's Act (Count II); Violation of the Automobile Dealer's Day in Court Act, 15 USC 1221 (Count III); Breach of Contract (for Deeming the Agreement to be Terminated Effective August 31, 2013) (Also labelled Count III); Breach of Contract (For Conduct Occurring Prior to August 31, 2013) (Count IV); Breach of Contract (Distributor Agreement) (Count V); and Tortious Interference with Present and Future Business (Count VI).[6]

A "Consent Order for Arbitration" ("Consent Order") was entered on March 18, 2022. The Consent Order provides, in pertinent part, as follows:

> The parties, through their counsel, having stipulated to the entry of this Order; and the parties having consented to all of the terms and conditions contained in this Order; and the Court being duly advised in the premises:
>
> **NOW THEREFORE, IT IS HEREBY ORDERED:**
>
> (1) All claims asserted in this case that have not been previously dismissed shall be decided by binding arbitration that shall be conducted by a single arbitrator, in accordance with the terms of this Order and otherwise pursuant to MCR 3.602. For clarity, the remaining claims are those for breach of contract under Counts III through V of plaintiff's complaint. The parties waive any appeal rights they may have as to claims that have been dismissed or evidentiary rulings made prior to the date of this Order.
>
> * * * *
>
> (4) The arbitrator is required to strictly follow the Michigan Rules of Evidence. The parties and the arbitrator are bound by any rulings made prior to the date of this Order.
>
> (5) The arbitrator shall apply the substantive law that the arbitrator determines to be applicable to the issues in dispute.
>
> * * * *
>
> (8) The hearing on the merits shall be completed no later than 120 days of the date of this Order, unless the parties stipulate otherwise in writing. The arbitrator shall issue a final determination within 30 days of the completion of the

[6] Complaint, Case No. 17-161307-CB.

hearing unless otherwise agreed in writing by the parties. The determination shall be issued in the form of an award with a reasoned opinion.

(9) This case shall be administratively stayed pending completion of the arbitration. This Court retains jurisdiction to enforce this Order and to enter a judgment upon the award or order pursuant to MCR 3.602.[7]

THE ARBITRATION HEARING

The parties chose a neutral arbitrator, and the arbitration was administered in accordance with the JAMS Comprehensive Arbitration Rules and Procedures.[8] The arbitration hearing was conducted on June 13, 2022, June 15-18, 2022, July 21, 2022 and July 29, 2022. Each party presented five witnesses, including an expert witness for each party. The parties also "offered voluminous documentary evidence" through exhibits admitted during the hearing. After reviewing the post-hearing briefs of the parties and determining that no further findings were necessary, the Arbitrator entered an Order Closing Arbitration Hearing on November 4, 2022. Accordingly, under the Consent Order, the Final Arbitration Award was to be issued by December 5, 2022. On November 23, 2022, the parties entered a "Stipulation Concerning Consent Order for Arbitration" which states:

> On March 18, 2022, the Court entered a Consent Order for Arbitration, referring the remaining claims asserted in the case to binding arbitration before Hon. Wendy Potts (ret.) ("Consent Order"). The arbitration hearing closed as of November 4, 2022. The Arbitrator has requested that the parties agree to an extension for issuance of the arbitral award, and the parties have agreed. The Consent Order provides that the parties may stipulate to extend certain deadlines in the Consent Order. In light of the foregoing, the parties, through their counsel, stipulate as follows:
>
> Notwithstanding any contrary provision of the Consent Order, the hearing on the merits concluded on November 4, 2022 and the Arbitrator shall issue a final award by December 19, 2022. . . .[9]

[7] March 18, 2022 Consent Order for Arbitration.
[8] Stipulation dated 11/23/22; Def's Response to Motion to Vacate, Exh 4, JAMS Scheduling Order.
[9] *Id.*

THE FINAL ARBITRATION AWARD

The Final Arbitration Award ("Final Award") states, in the preliminary paragraph, "[t]he Final Arbitration Award is hereby issued this 19th day of December, 2022."[10] The seventy-four page award includes a summary of the procedural history of the case (Section I); a lengthy summary of the factual history of the case "based upon the admissible testimony and documentary evidence produced during the arbitration hearing" (Section II)[11]; and Analysis Section (Section III) addressing Veritas' breach of contract claims (Counts III, IV, and V of the Complaint). At the end of the analysis section the Arbitrator concluded:

> Having thoroughly examined and analyzed the admissible testimony and documentary evidence presented at the arbitration hearing, in conjunction with the relevant claims and arguments of the parties, this Arbitrator finds that Claimant has failed to establish by a preponderance of the evidence that Respondent breached the Distributor Agreement or the First Amendment to the Distributor Agreement in any manner. Rather, it was Claimant who breached the parties' Agreement by failing to fulfill or satisfy two of the three prerequisites outlined in the First Amendment. Thus, the parties' Agreement terminated or expired on August 31, 2013, in accordance with its terms.
>
> Based upon the foregoing analysis, the Arbitrator finds that Claimant's Counts III, IV, and V are without merit. Consequently, Claimant has no cause of action against Respondent and so any consideration of the experts' testimony is unnecessary. The Arbitrator recognizes, however, that the experts' respective testimony provided a sophisticated and comprehensive view of Claimant's damages request. Accordingly, this Arbitrator appreciates their testimony as well as the testimony provided by all of the witnesses in this matter.[12]

[10] As will be discussed further in this Opinion, Veritas disputes whether the Final Arbitration Award was "issued" on December 19, 2022. But there is no dispute that the Final Award states that it was issued on that date and that the Award was dated December 19, 2022.

[11] Pl's Motion to Vacate, Exh A, Final Award, p 6 n 9. Note 9 also states "This section does not encompass the entirety of the testimony or documentary evidence provided, but rather includes information relative to this narrative only. Additional portions of admissible testimony and other documentary evidence shall be referenced within the Analysis provided in this Final Arbitration Award."

[12] *Id.* at p 73 (footnote omitted).

FCA International now seeks confirmation of this Final Award while Veritas ask this Court to vacate or modify the award.

III.

JUDICIAL REVIEW OF ARBITRATION AWARDS

"Judicial review of arbitration awards is limited." *Konal v Forlini,* 235 Mich App 69, 74; 596 NW2d 630 (1999). *See also TSP Serv, Inc v Nat'l Standard, LLC*, 329 Mich App 615, 619; 944 NW2d 148 (2019).

"A court may not review an arbitrator's factual findings or decision on the merits." *TSP Serv*, 329 Mich App at 620 (quotation marks and citations omitted). Likewise, the reviewing court cannot engage in contract interpretation, which is an issue for the arbitrator. *Konal*, 235 Mich App at 74. Instead, a court may only review an arbitrator's decision for errors of law. However, not every error of law by an arbitrator requires court intervention. *TSP Serv*, 329 Mich App at 620.

> [W]here it clearly appears on the face of the award or the reasons for the decision as stated, being substantially a part of the award, that the arbitrator through an error in law have been led to a wrong conclusion, and that, but for such error, a substantially different award must have been made, the award and decision will be set aside. [*Id.* quoting *Detroit Auto Inter-Ins Exch v Gavin*, 416 Mich 407, 443; 331 NW2d 418 (1982).]

The court's determination of whether there is legal error depends on a review of "the face of the award itself" and not in a review of the arbitrator's mental process. *TSP Serv*, 329 Mich App at 620. A court may not substitute its judgment for that of the arbitrator or review "an arbitrator's mental path leading to the award." *Washington v Washington*, 283 Mich App 667, 672, 675; 770 NW2d 908 (2009). Once the court has "recognized that the arbitrator utilized controlling law, [the court] cannot review the legal soundness of the arbitrator's application of Michigan law." *Id.* at 674.

Additionally, it is "simply outside the province of the courts to engage in a fact-intensive review of how an arbitrator calculated values, and whether the evidence [she] relied on was the most reliable or credible evidence presented." *Fette v Peters Const Co*, 310 Mich App 535, 545; 871 NW2d 877 (2015) quoting *Washington*, 283 Mich App at 675. "[E]ven if the award was against the great weight of the evidence or was not supported by substantial evidence, [the court] would be precluded from vacating the award." *Fette*, 310 Mich App at 544-545.

IV.

ANALYSIS

A.

The Michigan Uniform Arbitration Act (MUAA), MCL 691.1681 *et seq.*, governs the agreement to arbitrate at issue in this case.

Pursuant to MCL 691.1683(1) "[o]n or after July 1, 2013, [the MUAA] governs an agreement to arbitrate."[13] The Consent Order for Arbitration at issue here was entered in March 2022 and therefore, is an agreement to arbitrate after July 2013.[14] Accordingly, the MUAA governs in this case. *See Radwan v Ameriprise Ins Co*, 327 Mich App 159, 164-165; 933 NW2d 385 (2018) citing MCL 691.1683(1) where the Court of Appeals, discussing a 2016 arbitration agreement, stated "[t]he Uniform Arbitration Act (UAA), MCL 691.1681 *et seq.,* not the court rule [MCR 3.602], applies in this case." *See also Jenkins v Suburban Mobility Auth for Regional Transp*, unpublished per curiam opinion of the Court of Appeals issued Jan 13, 2022 (Docket No. 355452), p 2 ("[T]he Uniform Arbitration Act, MCL 691.1681 *et seq.*, governs arbitrations in this

[13] MCL 691.1683(2) provides an exception for "an arbitration between members of a voluntary membership organization if arbitration is required and administered by the organization." This exception is not applicable in this case.

[14] Veritas does not dispute that the Consent Order is an agreement to arbitrate and in fact specifically refers to the Consent Order as the arbitration agreement in this case. *See* Pl's Motion to Vacate, p 3; Exhibit B-3, Consent Oder for Arbitration dated March 18, 2022.

state agreed to after July 1, 2013. MCL 691.1683(1)."); *Waller v Blue Cross Blue Shield of Michigan*, unpublished per curiam opinion of the Court of Appeals issued March 23, 2023 (Docket No. 360392), p 1 citing *Radwan*, 327 Mich App at 164-165 ("[T]he Uniform Arbitration Act, not the court rule [MCR 3.602], applies in this case because MCL 691.1683(1) states that the UAA governs all agreements to arbitrate made after July 1, 2013, and MCR 3.602(A) confines the court rules "to all other forms of arbitration that are not governed by the UAA.")

Veritas argues that this is a "MCR 3.602 arbitration" and not a "MUAA arbitration." In support of this argument Veritas states that under the clear terms of the arbitration agreement the court rule governs the arbitration.[15] However, while the parties to an arbitration agreement may agree to waive certain provisions of the MUAA, there can be no waiver of the application of the statute itself.

MCL 691.1684(1) states that "[e]xcept as otherwise provided in [MCL 691.1684(2) and (3)], a party to an agreement to arbitrate or to an arbitration proceeding may waive or the parties may vary the effect of the requirements of this act to the extent permitted by law." The exception provided in MCL 691.1684(3) (emphasis added) states that "[a] party to an agreement to arbitrate or arbitration proceeding *may not waive*, or the parties may not vary the effect of, the requirements of this section or section 3(1) . . . ." As was stated above, Section 3(1), MCL 691.1683(1), provides that "[o]n or after July 1, 2013, this act governs an agreement to arbitrate whenever made." Accordingly, parties to an arbitration agreement made on or after July 1, 2013 are not permitted to

[15] Veritas' argument is based upon a provision in the Arbitration Agreement which states, in pertinent part: "[a]ll claims asserted in this case that have not been previously dismissed shall be decided by binding arbitration that shall be conducted by a single arbitrator, in accordance with the terms of this Order and otherwise pursuant to MCR 3.602." Consent Order for Arbitration ¶ 1.

"opt out" of the MUAA. The agreement to arbitrate in this case is governed by the provisions of the MUAA.

B.

Grounds to Vacate Arbitration Award Under the MUAA

The MUAA sets forth the grounds upon which an arbitration award must be vacated. The statute states:

> (1) On motion to the court by a party to an arbitration proceeding, the court shall vacate an award made in the arbitration proceeding if any of the following apply:
>
> (a) The award was procured by corruption, fraud, or other undue means.
>
> (b) There was any of the following:
>
> (i) Evident partiality by an arbitrator appointed as a neutral arbitrator.
> (ii) Corruption by an arbitrator.
> (iii) Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding.
>
> (c) An arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise concluded the hearing contrary to [MCL 691.1695], so as to prejudice substantially the rights of a party to the arbitration proceeding.
>
> (d) An arbitrator exceeded the arbitrator's powers.
>
> (e) There was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection under [MCL 691.1695(3)] not later than the beginning of the arbitration hearing.
>
> (f) The arbitration was conducted without proper notice of the initiation of an arbitration as required in [MCL 691.1689] so as to prejudice substantially the rights of a party to the arbitration proceeding. [MCL 691.1703(1).][16]

[16] MCR 3.602(J)(2) states substantially the same grounds for vacating an arbitration award.

C.

There are no grounds to vacate the Arbitration Award in this case

1.

Veritas has not supported its argument that any failure of the Arbitrator's law clerk to disclose an alleged professional relationship between the law clerk's spouse and FCA is grounds to vacate the arbitration award[17]

Veritas alleges that the Arbitrator's law clerk did not disclose a professional relationship between the clerk's spouse and Stellantis on a disclosure form.[18] Veritas alleges that such a professional relationship exists between the law clerk's spouse and Stellantis because the spouse "is the president of a major supplier to Stellantis."[19] In support of this allegation, Veritas has

[17] This argument was not raised in Plaintiff's Motion to Vacate. It was first raised in Plaintiff's "Second Motion to Supplement the Record and for Other Relief" where Veritas sought to supplement the record with information regarding the alleged professional relationship between the law clerk's spouse and the Defendant. The Court has elected to treat that motion, Defendants response and the reply briefs as supplements to the Motion to Vacate.

[18] Veritas specifically references Question 6 on the JAMS Clerk Disclosure Checklist form which asks: "[C]lerk or member of the Clerk's family has or has had any other professional relationship with a party or lawyer for a party, including as an expert witness or consultant?" An "x" appears in the corresponding "no" column. Pl's Second Motion to Supplement the Record and for Other Relief, Exh 2(B), Clerk Disclosure Checklist dated May 12, 2022. Veritas also references the "no" responses to Question 12 which asks:

> Is there any other matter that:
> (A) Might cause a person aware of the facts to reasonably entertain a doubt that the Clerk would be able to be impartial?
> (B) Leads the proposed Clerk to believe there is a substantial doubt as to the Clerk's capacity to be impartial, including, but not limited to, bias or prejudice toward a party, lawyer, or law firm in the arbitration? [*Id.*]

As is pointed out by FCA International, law clerk answered "no" to Question 10 of the JAMS disclosure which states:

> Has the Clerk sought information about relationships or other matters involving the Clerk's Immediate Family, Extended Family living in the Clerk's household, and a former spouse.?
> **Unless otherwise disclosed below, the Clerk has made a general inquiry of his or her family members about their potential connection to matter that may be handled by the Clerk. Those family members have indicated that they do not intend to provide the Clerk with specific information or answer specific inquiries. The Clerk will advise the parties of any connection of which the Clerk is independently aware by virtue of the Clerk's direct knowledge and will make specific inquires where so warranted or specifically requested by a party.** [*Id.* Emphasis in original.]

[19] It appears that the spouse is the president of a division of the supplier. Additionally, Defendant FCA International asserts that it has never been named Stellantis and that Stellantis was not formed until January 2021.

attached a press release from July 2020, a copy of a undated photograph purporting to show the spouse receiving a "supplier of the year" award from Stellantis executives, and an undated print-out of a social media post "liked" by the spouse which mentions a connection between the supplier and Stellantis.[20] Veritas argues that the Award must be vacated to avoid the "perception" that there is a serious risk of actual bias.[21]

Under MCL 691.1703(1)(a) an arbitration award is to be vacated where "the award was procured by corruption, fraud, or other undue means." Under MCL 691.1703(1)(b) an arbitration award shall be vacated where there was any of the following:

> (iv) Evident partiality by an arbitrator appointed as a neutral arbitrator.
> (v) Corruption by an arbitrator.
> (vi) Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding.

Veritas does not argue that the Award was "procured by corruption, fraud, or other undue means" or that the arbitrator's misconduct prejudices its rights. Therefore, there is no ground to vacate the Award under MCL 691.1703(1)(a) or under MCL 691.1703(1)(b)(v) or (vi).

Likewise, there is no ground to vacate the arbitration award based upon "evident partiality by an arbitrator." MCL 691.1703(1)(b)(iv).[22] Veritas does not argue any actual bias on the part the Arbitrator or the law clerk. Rather, Veritas opines that because of the large amount of damages at

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[20] Pl's Second Motion to Supplement the Record and for Other Relief, Exhibits 2(D), (E), and (F). The press release was dated July 2020. There is no indication that Veritas could not have utilized the same method to discover the press release prior to the Arbitration hearing that it used to discover the press release after the Award was issued.

[21] In Pl's First Motion to Supplement the Record Veritas argued that the law clerk failed to disclose that the law firm representing FCA International has previously performed professional services for a non-profit entity incorporated by the law clerk. Motion to Supplement Filed 2/28/23. An Order was entered allowing the record to be supplemented by the exhibits presented by Veritas. However, the order stated that the "nondisclosure of the past affiliation between [the non-profit entity] and [the law firm representing FCA International] is not a basis to vacate the award." Order filed 2/23/23.

[22] *See also* MCR 3.602(J)(2)(b).

issue in the arbitration proceeding, there is a possibility that Stellantis "would take it out" on the law clerk's spouse if the law clerk were involved in an arbitration award favoring Veritas.[23]

First, although Veritas asserts that any partiality on the part of the law clerk must be imputed to the arbitrator it does not cite to any binding legal authority to support this assertion. As was discussed above, the relevant provisions of the MUAA address only corruption, misconduct or "evident partiality" on the part of the *arbitrator*.[24]

Although Veritas argues that the MUAA is inapplicable and therefore, this Court must look to common law on the disclosure issue, as was previously discussed, the MUAA does apply in this case.[25] Moreover, the MUAA does address the disclosure requirements for an arbitrator not an arbitrator's law clerk. Under MCL 691.1692(1):

> Before accepting appointment, *an individual who is requested to serve as an arbitrator*, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and arbitration proceedings and to any other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the *arbitrator* in the arbitration proceedings . . . [MCL 691.1692(1).]

Even if Veritas was correct that the common law governs the disclosure issue, the cases relied on by Veritas also address the disclosure requirements of arbitrators, not law clerks. *See*

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[23] Pl's Memorandum in Support of Second Motion to Supplement the Record and for Other Relief, p 4.

[24] Likewise, MCR 3.602(J)(2)(b) only references evident partiality, corruption, or misconduct of an *arbitrator.*

[25] Veritas does not reference any disclosure rules under the MUAA which are applicable to an arbitrator's law clerk. Likewise, Veritas does not point to any JAMS rule requiring disclosures by an arbitrator's law clerk. Veritas argues that JAMS' refusal to verify the information that Veritas uncovered and JAMS' assertion that the law clerk disclosure form was provided as a courtesy "is precisely why a reasonable person would entertain doubts about the partiality of the arbitrator's law clerk." Pl's Reply in Support of Second Motion to Supplement, p 1. Veritas attaches as Exhibit D to this reply brief Rule 15 of "JAMS Comprehensive Arbitration Rules & Procedures Effective June 1, 2021" from the JAMS website. Rule 15(h), which is highlighted by Veritas, states "[a]ny disclosures *regarding the selected Arbitrator* shall be made *as required by law* or within ten (10) calendar days from the date of appointment. . . ." (emphasis added) and discusses the Arbitrator's impartiality or bias. *JAMS Comprehensive Arbitration Rules & Procedures*, Rule 15(h) found at https://www.jamsadr.com/rules-comprehensive-arbitration/#Rule-15.

Albion Public Schls v Albion Educ Ass'n/MEA/NEA, 130 Mich App 698, 701; 344 NW2d 55 (1983) (emphasis added) ("[t]he issue is only whether [the arbitrator's] activities might reasonably give someone who is considering his services *as an arbitrator* the impression that he might favor one litigant over the other.") *See also Commonwealth Coatings Corp v Continental Cas Co*, 393 US 145, 146 (1968) (cited by *Albion Public Schools*) (a neutral arbitrator failed to disclose that he had a significant business relationship with the successful party, including services relating to the subject of the arbitration."); *Thomas v City of Flint*, unpublished per curiam of the Court of Appeals issued April 22, 2014 (Docket No. 314212), p 3 (The Court of Appeals addressing the disqualification of an arbitrator found that the neutral arbitrator's conduct "did not give rise to an objective and reasonable perception that a serious risk of actual bias existed."[26])

Although Veritas argues that "any disqualifying considerations applicable to law clerks are imputed to arbitrators" Veritas cites no binding authority for this proposition.[27] It is well-settled that "[t]rial courts are not the research assistants of the litigants" and that "the parties have a duty to fully present their legal arguments to the court for its resolution of their dispute." *Walters v Nadell*, 481 Mich 377, 388; 751 NW2d 431 (2008); *Mitcham v Detroit,* 355 Mich 182, 203; 94 NW2d 388 (1959). It is not enough for a party to "simply announce a position or assert an error and leave it up to this Court to discover and rationalize the basis for [its] claims . . . ." *Wolfe v Wayne-Westland Community Schs*, 267 Mich App 130, 139 (2005). *See also Moses, Inc v*

[26] The court in *Thomas* also held that the "appearance of impropriety standard' applicable to judges does not apply to arbitrators." *Thomas v City of Flint,* Docket No. 314212 at p 2.

[27] In support of its argument Veritas cites to an unpublished order by a judge of the Supreme Court of the Commonwealth of the Northern Mariana Islands in *Bank of Saipan v Superior Court of the Commonwealth of the Northern Mariana Islands*, 6 N.M.I 464; 2002 MP 17 (2002); 2002 WL 32986573. This Court is not bound by this decision and Veritas makes no argument to convince the Court to find the decision persuasive in this case. *See Abela v General Motors Corp*, 469 Mich 603, 606-607 (2004) (Opinions of lower federal courts are not binding but may be considered persuasive. *Abela v General Motors Corp*, 469 Mich 603, 606-607 (2004).) The *Bank of Saipan* case involved the disqualification of a judge as did the cases cited in the portion of the opinion quoted by Veritas. *See Bank of Saipan*, 6 N.M.I. at 471. *See* fnt 26, *supra*.

Southeast Mich Council of Governments, 270 Mich App 401, 417; 716 NW2d 278 (2006) ("If a party fails to adequately brief a position, or support a claim with authority, it is abandoned.")

The Court concludes that Veritas has not supported its position that any failure to disclose by the arbitrator's law clerk is grounds to vacate the arbitration award in this case.

Moreover, even if any failure to disclose by the law clerk could be imputed to the arbitrator, the claims of partiality in this case do not rise to the level required to overturn an award for evident partiality.

Pursuant to MCL 691.1692 (5):

> An arbitrator appointed as a neutral arbitrator who does not disclose *a known, direct, and material interest in the outcome of the arbitration proceeding* or a known, existing, and substantial relationship with a party is presumed to act with evident partiality under sections 23(1)(b). [MCL 691.1692(5) (emphasis added).]

See also Belen v Allstate Ins Co, 173 Mich App 641, 645; 434 NW2d 203 (1988) ("Partiality or bias which will allow a court to overturn an arbitration award must be certain and direct, not remote, uncertain or speculative."); *Thomas v City of Flint*, Docket No. 314212 at p 3 ("The partiality or bias which will overturn an arbitration award must be certain and direct and not remote, uncertain or speculative.")

Here any interest of the law clerk in the outcome of the arbitration is not "a known, direct, and material interest." There is no allegation that the law clerk's spouse's employment situation is in any way related to the issues involved in the arbitration. Rather, Veritas' claim that Stellantis might "take it out" on the law clerk's spouse if the law clerk were involved in an arbitration award favoring Veritas is "remote, uncertain, and speculative" and is not sufficient to establish evident partiality as grounds to vacate the Award.

2.

The Arbitrator did not exceed her powers

Under the MUAA, an arbitration award may be vacated where the arbitrator exceeded her powers. MCL 691.1703(1)(d).[28] "Arbitrators exceed their powers whenever they act beyond the material terms of the contract from which they draw their authority or in contravention of controlling law." *Radwan v Ameriprise Ins Co*, 327 Mich App 159, 165; 933 NW2d 385 (2018) quoting *Miller v Miller*, 474 Mich 27, 30; 707 NW2d 341 (2005). The proper role of the court is to examine whether the arbitrator's award comports with the terms of the agreement to arbitrate. *Gordon Sel-Way, Inc v Spence Bros, Inc,* 438 Mich 488, 496; 475 NW2d 704 (1991). "Furthermore, error, if any, must be evident from the face of the award and so material or so substantial as to have governed the award, and but for which the award would have been substantially otherwise." *Id.* at 497 (quotation marks and citation omitted). A reviewing court may do no more than determine "whether the award was beyond the contractual authority of the arbitrator." *City of Ann Arbor v American Federation of State, Co & Muni Employees (AFSCME) Local 369*; 284 Mich App 126, 144; 771 NW2d 843 (2009). "[A]s long as the arbitrator is even arguably construing or applying the contract and acting within the scope of [her] authority, a court may not overturn the decision even if convinced that the arbitrator committed a serious error." *Id.* (quotation marks and citations omitted).

"[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 arbitrator's decision." *Gordon Sel-Way,* 438 Mich at 497.

[28] Similarly, MCR 3.602(J)(2)(c) directs the court to vacate an award if "the arbitrator exceeded his or her powers."

a. Any issue regarding timeliness is not grounds for vacating the arbitration award

Veritas argues that the Arbitration Award must be vacated because it was not timely. As was discussed previously, under the terms of the Consent Order, the Final Arbitration Award was to be issued by December 5, 2022. However, on November 23, 2022, the parties entered into a "Stipulation Concerning Consent Order for Arbitration" which extended the date for the issuance of a final award to December 19, 2022.

The Final Arbitration Award states, in the preliminary paragraph, "[t]he Final Arbitration Award is hereby issued this 19th day of December 2022." The Veritas argues that the arbitration award was not issued on December 19, 2022 where it was not released by JAMS until December 22, 2022 because JAMS required that the final invoices be paid prior to releasing the award.[29]

First, the Court questions whether the award was untimely under the agreement of the parties. Both the original arbitration agreement and the extension of time refer to the date by which the *Arbitrator* must issue the award.[30] As was stated in the Award itself, the Award was issued on December 19, 2022. This is in accordance with the agreement of the parties. It is not clear to the Court how the decision of JAMS to not release the award to the parties until final payment was made is attributable to the Arbitrator or to her obligations under the Arbitration Agreement. As was stated previously, "[a]rbitrators exceed their powers whenever they act beyond the material terms of the contract from which they draw their authority . . . ." *Radwan*, 327 Mich App at 165.

[29] *See* Pl's Motion to Vacate, Exhibit B-6, JAMS email dated December 19, 2022.

[30] Originally, the parties agreed that "[t]he arbitrator shall issue a final determination within 30 days of the completion of the hearing unless otherwise agreed in writing by the parties. The determination shall be issued in the form of an award with a reasoned opinion." Pl's Motion to Vacate, Exh B-3. The parties later agreed that "[n]otwithstanding any contrary provision of the Consent Order, the hearing on the merits concluded on November 4, 2022 and the Arbitrator shall issue a final award by December 19, 2022." *Id.*

Here the Arbitrator acted within the terms of the Arbitration Agreement and the extension of time by issuing a final award by December 19, 2022.

However, even if the award was not timely issued under the Arbitration Agreement or the extension of time, any untimeliness is not grounds for vacating the award. As was discussed previously, the MUAA governs the arbitration in this case. Therefore, the Court, in addressing the argument that the award must be vacated because it was untimely, must examine the relevant provisions of the statute.[31]

> Section 19(2) of the MUAA, MCL 691.1699(2) (emphasis added), provides:
>
> An award must be made within the time specified by the agreement to arbitrate or, if not specified in the agreement, within the time ordered by the court. The court may extend or the parties to the arbitration proceeding may agree in a record to extend the time. The court or the parties may extend the time within or after the time specified or ordered. *A party waives any objection that an award was not timely made unless the party gives notice of the objection to the arbitrator before receiving notice of the award.*

There is no assertion made by Veritas that it provided the notice required by the last sentence of MCL 691.1699(2).[32] Accordingly, under the plain terms of the statute, Veritas has waived any objection that the award was not timely made.[33]

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[31] Veritas cites the one paragraph opinion in the Florida case of *Klinefelter v American Employers ins Co*, 438 So2d 864 (Fla Ct App, 1983) to support its claim that if an arbitration award is issued outside of the time agreed to by the parties, it is void because the arbitrator lacked jurisdiction. However, under the MUAA and, as will be discussed, Michigan common law, the untimeliness of an award does not mandate that an arbitration award be vacated.

[32] As was explained by an Illinois court addressing essentially the same notice requirement under the Illinois Uniform Arbitration Act, "[t]he rationale underlying this rule is to prevent a party from waiting to see if the arbitrators rule in its favor, and then, if not, claim that the award was invalid as a result of the delay." *Vascular Surgery Assoc, PC v Business Systems, Inc*, 256 Ill App 3d 330 (Ill App, 1993).

[33] MCL 691.1699(2) is not excepted from the waiver provisions of MCL 691.1684(1) and therefore its requirements may be waived by the parties. *See* MCL 691.1684(1) and (3). However, Veritas has not demonstrated that the parties waived the notice requirement of the last sentence of MCL 691.1699(2). A waiver is an "intentional relinquishment of a know right." *Reed Estate v Reed*, 293 Mich App 168, 176; 810 NW2d 284 (2011). A waiver may be shown by proof of express language of agreement or inferably established by such declaration, act, and conduct of the party against whom it is claimed as are inconsistent with a purpose to exact strict performance. *HJ Tucker and Assoc, Inc*

Moreover, even assuming that the Notice provision of MCL 691.1699(2) did not apply, an arbitrator's failure to issue an award within the time specified by the parties is not grounds for vacating the award where the parties did not so stipulate in the arbitration agreement. *Batten v Patrick*, 123 Mich 203, 207; 81 NW 1081 (1900); *Bolhuis Lumber & Mfg Co v Brower*, 252 Mich 562, 565; 233 NW2d 415 (1930); *Ciotii v Harris*, unpublished per curiam opinion of the Court of Appeals issued Dec 12, 2017 (Docket No. 332792) at p 4; *Zelesko v Zelesko*, unpublished per curiam decision of the Court of Appeals issued June 13, 2019 (Docket No. 342854) at p 4.

Veritas does not rely on any language in the Arbitration Agreement or the extension of time agreement which provides that untimeliness is grounds to vacate. Rather, Veritas argues that because the parties originally set a date for the award and then revised the deadline, they were clearly expressing that "time was of the essence." Veritas, citing *Nedelman v Meininger*, 24 Mich App 64, 74; 180 NW2d 37 (1970), argues that "a new agreement extending the time of performance is evidence that the parties considered time as of the essence." While the agreement extending the time to issue to the award may be evidence that "time was of the essence," the context in which the agreement was made does not support this conclusion. Communications surrounding the Arbitrator's request for a two-week extension to December 19, 2022 contradicts the argument now made by Veritas that that time was of the essence, in fact, the communications by counsel for Veritas express the opposite.[34]

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v Allied Chucker and Engineering Co, 234 Mich App 550, 564; 595 NW2d 176 (1999) (quotation marks and citation omitted). "To effectuate a valid waiver, 'no magic language' need be used. 'Rather . . . a waiver must simply be explicit, voluntary, and made in good faith." *Reed*, 293 Mich App at 176 quoting *Sweebe v Sweebe*, 474 Mich 151, 157; 712 NW2d 708 (2006). There is nothing presented to the Court which indicates that a waiver of the notice requirement was made.

[34] Counsel for Veritas agreed to the Arbitrator's request for an extension and in a later email in the chain states:

> From Veritas' perspective, the Court should take as long as it needs to render an opinion (particularly given the intervention of the holidays), so if the Court finds itself in possible need of more time as

Based upon the foregoing, the Court concludes that the Arbitration Award was issued timely, and, in any event, any untimeliness is not grounds to vacate the Award.

b. The Arbitrator did not ignore the requirement under the Arbitration Agreement that "[t]he parties and the arbitrator are bound by any rulings made prior to the date of this Order."

Paragraph 4 of the Arbitration Agreement states, in relevant part that, "[t]he parties and the arbitrator are bound by any rulings made prior to the date of this Order." [35] The ruling that Veritas claims was disregarded by the Arbitrator was made in the context of a 2013 motion for summary disposition by FCA International. Judge Anderson denied the motion, stating in part:

> The court has reviewed the parties' briefs and listened to the arguments presented this morning and finds summary disposition inappropriate at this time. In the first place, there are fact issues concerning whether the agreement was modified and whether Veritas has performed.[36]

The Court finds that Veritas' argument that the Arbitrator ignored Judge Anderson's above-quoted ruling is without merit.[37] The Arbitration Award specifically references the above-quoted statements of Judge Anderson's May 1, 2013.[38] While Veritas asserts that the Arbitrator made a finding contrary to the ruling made by Judge Anderson by concluding "[F]irst and foremost" the [Agreement] required a written modification, it is not clear to this Court how this

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> the 19th approaches, the Court shouldn't hesitate to reach out for a further extension. [Def' Res to Motion to Vacate, Exh 6, 11/22/22 e-mail chain.]

[35] March 18, 2022 Consent Order for Arbitration.

[36] Pl's Motion to Vacate, Exh B-2, May 1, 2013 Transcript, p 20. Just prior to the above-quoted statement, Judge Anderson explained the position of Veritas in response to the motion.

> Veritas contends that summary disposition is [inappropriate] for three reasons: … one, that the parties modified the agreement; secondly the agreement is ambiguous, and third that summary disposition is premature because discovery is still open. [*Id.*]

[37] This is the only ruling referenced in Veritas' Motion to Vacate and its response to FCA International's Motion to Affirm and therefore, will be the only ruling considered in this Opinion.

[38] Pl's Motion to Vacate, Exh A, Arbitration Award, pp 3, 51.

statement evinces the Arbitrator's disregard for the above-quoted ruling of Judge Anderson. [39] In any event, the Arbitrator went on to consider whether there was an oral modification of the Agreement. The Arbitrator, after considering the parties' arguments, relevant legal authority, testimony, and documentary evidence presented at the arbitration hearing, determined that there was "no intention by [FCA International] to orally the parties Agreement in any way."[40]

The Court disagrees with Veritas that the Arbitrator disregarded the prior ruling of Judge Anderson. Rather, the Arbitrator did what was required in light of that ruling, that is she considered the factual issues noted by Judge Anderson to determine that there was no modification to the Agreement. To the extent Veritas is challenging the conclusion reached by the Arbitrator, this Court "may not review an arbitrator's factual findings or decision on the merits." *TSP Serv*, 329 Mich App at 620 (quotation marks and citations omitted).

For the above-stated reasons, the Court rejects the argument the Arbitrator exceeded her authority by disregarding a prior ruling of the court.

c. <u>The Arbitrator did not exceed her power by relying on inadmissible evidence or otherwise not acting in accordance with the Michigan Rules of Evidence.</u>

As was noted above, the Arbitration Agreement required that the Arbitrator strictly follow the Michigan Rules of Evidence.[41] Based upon the arguments made by Veritas, the Court agrees with FCA International that Veritas' argument that the Arbitrator did not follow the Michigan Rules of Evidence is essentially an invitation for this Court to review the Arbitrator's decision on

[39] *Id.* p 58.
[40] Pl's Motion to Vacate, Exh A, Arbitration Award, pp 58-62.

[41] March 18, 2022 Consent Order for Arbitration at ¶ 4.

the merits.[42] However, this Court may not do so. *TSP Serv*, 329 Mich App at 620. *See also Gordon Sel-Way, Inc,* 438 Mich at 497 ("[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 arbitrator's decision.")

Moreover, even considering the Arbitrator's compliance with the Arbitration Agreement in terms of the requirement to strictly apply the rules of evidence, this Court finds no merit to the assertion by Veritas that the Arbitrator exceeded her authority. As was stated above, in order to make the determination "[t]he proper role of the court is to examine whether the arbitrator's award comports with the terms of the agreement to arbitrate." *Gordon Sel-Way,* 438 Mich at 496. "Furthermore, error, if any, must be evident from the face of the award and so material or so substantial as to have governed the award, and but for which the award would have been substantially otherwise." *Id.* at 497 (quotation marks and citation omitted).

The Award in this case clearly states that its findings are based upon *admissible* testimony presented during the arbitration hearing.[43] Moreover, as Veritas acknowledges the Arbitrator ruled on evidentiary objections.[44] These circumstances support the conclusion that the Arbitrator's

[42] Throughout its Motion to Vacate, its Reply Brief, and its Response to FCA International's Motion to Affirm Veritas argues the credibility of witnesses and asks this Court to weigh the testimony of Shakir Alkhafaji, the Chairman of Veritas, against certain witnesses presented by FCA International. However, credibility issues and the weighing of evidence are for the arbitrator, not this Court. *See Belen v Allstate Ins Co*, 173 Mich App 641-645-646; 434 NW2d 203 (1988); *Fette v Peters Const Co*, 310 Mich App 535, 544-545; 871 NW2d 877 (2015). Additionally, Veritas just flat-out states that the Arbitrator erred in not awarding Veritas compensation for warranty work and for incentive payments. While Veritas attempts to frame its arguments in terms of the failure to follow the rules of evidence, its arguments read as an attempt to convince this Court to review the merits of the Arbitrator's decision.

[43] Arbitration Award, p 6 n 9. *See also* p 73 where the Arbitrator concluded: "[h]aving thoroughly examined and analyzed the admissible testimony and documentary evidence presented at the arbitration hearing, in conjunction with the relevant claims and arguments of the parties, this Arbitrator finds that Claimant has failed to establish by a preponderance of the evidence that Respondent breached the Distributor Agreement or the First Amendment to Distributor Agreement in any manner . . . ."

[44] *See e.g.* Pl's Response to Def's Motion, Exh B-18, Excerpt of transcript of witness Frazee testimony at pp 166-167 where the Arbitrator overruled Plaintiff counsel's objection.

Award comports with the terms of the Arbitration agreement regarding adherence to the rules of evidence. *Compare Visser v Visser*, unpublished per curiam opinion of the Court of Appeals issued July 15, 2014 (Docket No. 314185) p 2 where although the parties' agreement required that the arbitrator follow the rules of evidence the arbitrator "admitted that virtually all the evidence he considered did not comport with the rules of evidence." Although Veritas challenges the correctness of the Arbitrator's evidentiary rulings, once the court has "recognized that the arbitrator utilized controlling law, [the court] cannot review the legal soundness of the arbitrator's application of Michigan law." *Washington*, 283 Mich App at 674. The Court agrees with FCA that the requirement that the Arbitrator strictly follow the Michigan Rules of Evidence is not "an open invitation" for Veritas to question the Arbitrator's rulings or for this Court to second-guess the Arbitrator.

Additionally, even if it was within this Court's authority to review the substance of the Arbitrator's evidentiary rulings, Veritas has not supported its argument that the Arbitrator erred in the application of the Michigan Rules of Evidence. The court's determination of whether there is legal error depends on a review of "the face of the award itself" and not in a review of the arbitrator's mental process. *TSP Serv*, 329 Mich App at 620. A court may not substitute its judgment for that of the arbitrator or to review "an arbitrator's mental path leading to the award." *Washington*, 283 Mich App at 672.

i. <u>Veritas has not supported the claim of evidentiary errors with regard to the findings on incentives</u>

First, with regard to the claim for incentives, Veritas argues that the Arbitrator improperly relied on testimony of a witness, Janet Stark, regarding Veritas' claim for incentive payments. The Arbitration Award indicates that Stark testified generally about the 2012 retail incentive program and also indicates that she testified regarding an original "data dump" regarding retail sales which

was prepared by someone else and a revised spreadsheet she prepared showing fewer retail sales.[45] Veritas argues that the Arbitrator's consideration of Stark's testimony was in contravention of MRE 602 which provides, in relevant part:

> A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony . . . .

It does not appear to this Court from the face of the award that any reliance by the Arbitrator on Stark's testimony was in contravention of MRE 602. Aside from simply citing the Court Rule Veritas makes no legal argument and cites no legal authority on the requirements of MRE 602 and it is not this Court's job to do so. *Walters v Nadell*, 481 Mich at 388; *Mitcham v Detroit,* 355 Mich at 203. It is not enough for a party to "simply announce a position or assert an error and leave it up to this Court to discover and rationalize the basis for [its] claims . . . ." *Wolfe,* 267 Mich App at 139. *See also Moses, Inc*, 270 Mich App at 417 ("If a party fails to adequately brief a position, or support a claim with authority, it is abandoned.")

The Court Rule states that "evidence to prove personal knowledge may . . . consist of the witness' own testimony." Here Ms. Stark testified that she had general knowledge about the incentive program and testified about spreadsheet that she created.[46] The Arbitrator found that Stark was qualified to determine "what sales were actual retail sales by a simple review of Iraq Albana's information contained in the owner columns."[47] This court rejects the argument that the Arbitrator's conclusion was contrary to MRE 602.

[45] Pl's Motion, Exh A, Arbitration Award, pp 67-68.
[46] Pl's Reply Brief, Exh 10, 6/18/22 Hearing Transcript, pp 10-13.
[47] Pl's Motion, Exh A, Arbitration Award, p 68.

The Court similarly rejects Veritas' argument that the Arbitrator exceeded her authority by considering the testimony of FCA International's expert Thomas Frazee as a fact witness because he had no personal knowledge of shipping times or entitlement to incentives and that to the extent he was relying on information from FCA International, he was relying on hearsay evidence in violation of MRE 801.[48] Again, however, aside from citing the Court Rules, Veritas does not support its argument with any legal authority. Moreover, although Veritas states that it objected to Mr. Frazee's testimony, the objection was not regarding Frazee's personal knowledge, but was a relevance objection as to Frazee testifying beyond the issue of damages.[49]

Lastly, even if the Arbitrator did not follow the rules of evidence with regard to the testimony of Stark and Frazee or erred in her application thereof, Veritas has failed to demonstrate that any error was "so material or so substantial as to have governed the award, and but for which the award would have been substantially otherwise." *Gordon Sel-Way,* 438 Mich at 497 (quotation marks and citation omitted). Veritas does not dispute that it had the burden of proof on its claims. The Arbitrator found that the documentary evidence presented by Veritas did not support its claims.[50] The Arbitrator also stated that she found FCA International's witnesses' testimony to have been credible and also found that the veracity of Veritas' witness, Alkhafaji, was "called into question."[51] Again, it is the province of the Arbitrator to judge the credibility of witness and to

[48] Veritas also argues a violation of MRE 703 regarding expert testimony, but it is clear from the Arbitration Award that the Arbitrator did not consider Frazee's testimony as an expert as to damages. *Id.* at p 73.

[49] Pl's Motion, Exh B-19, 7/21/22 Transcript, pp 166-167. *See Marietta v Cliff's Ridge, Inc,* 385 Mich 364, 374; 189 NW2d 208 (1971) (A party asserting a claim of error must have specified the same ground for objection before the trial court or the claim cannot be asserted on appeal). *See also Meagher v Wayne State University*, 222 Mich App 700, 724; 565 NW2d 401 (1997). *Klapp v United Ins Group Agency* (On Remand), 259 Mich App 467, 475; 674 NW2d 736 (2003) ("because defendant did not object at trial on the same ground that it presents on appeal, the issue is not preserved.")

[50] Pl's Motion, Exh A, Arbitration Award, pp 69, 71-72, 73.

[51] *Id.* at pp 47-48.

weigh the evidence. *See Belen*, 173 Mich App at 645-646; *Fette*, 310 Mich App at 544-545. "[E]ven if the award was against the great weight of the evidence or was not supported by substantial evidence, [the court] would be precluded from vacating the award." *Fette*, 310 Mich App at 544-545.

Additionally, with regard to the claim for incentives, Veritas argues that the Arbitrator violated the "best evidence rule" when she stated that "the documentary evidence produced during the hearing does not support Claimant's request. Without supporting documentary evidence, Claimant's demand for incentive payments is speculative."[52] MRE 1002 states "[t]o prove the content of a writing, recording, or photograph, the original is required, except as otherwise provided in these rules or by statute." This rule is not implicated in the above-stated ruling which makes not reference to "originals." Rather, the Arbitrator is finding that Veritas did not support its claim with documentary evidence. To the extent that Veritas is arguing that this finding was erroneous or that the testimony presented by Veritas did support its incentive claim, Veritas is asking for this Court to substitute its judgment for that of the Arbitrator, which this Court will not do.[53] *See Washington,* 283 Mich App at 672.

ii. Veritas has not shown an evidentiary error with regard to the warranty claim.

Review of Veritas' argument on this issue indicates that it is merely objecting to the findings of the Arbitrator. Veritas again asks the Court to do something it cannot do, that is weigh

[52] *Id.* at p 69. The Court must assume that this is the finding referenced by Veritas because Veritas does not provide a page citation to the finding upon which it makes its argument.

[53] In its Reply Brief, Veritas also argues the violation of the best evidence rule with regard to the warranty claim. The Court also rejects this argument.

evidence presented to the Arbitrator and second-guess her determinations of credibility and her factual findings.[54]

Veritas argues that the Arbitrator's rejection of Veritas' claim of entitlement to compensation for warranty work was erroneous because the Arbitrator concluded that the claim sounded in unjust enrichment rather than contract. This is a mischaracterization of the Arbitrator's conclusions. The Arbitrator stated that "[i]n its post-hearing brief, Claimant raised the equitable claim of "unjust enrichment" for the first time."[55] The Arbitrator stated that consideration of an "unjust enrichment" claim was not within the Consent Order for Arbitration which was limited to the claims for breach of contract in Counts III through V of plaintiff's complaint.[56] Accordingly, the Arbitrator stated that she would not consider the unjust enrichment argument. The Arbitrator went on to note that even if the unjust enrichment claim was part of the arbitration, such claim would fail because the warranty claims were expressly covered by Article 6.2 of the Distributor Agreement.[57]

The challenges to the Arbitrator's rulings on the warranty claim are rejected.

iii. The arguments made by Veritas regarding evidentiary errors in connection with the determination that the prerequisites to the continuation of the Agreement had not been satisfied are without merit.

[54] Again, although Veritas argues that no witness with personal knowledge contradicted Alkhafaji's testimony regarding entitlement to compensation for warranty work, the Arbitrator found that "Alkhafaji's statements regarding the warranty claims were problematic" and that the documentary evidence did not support a finding that the warranty claims were timely submitted. Pl's Motion, Exh A, Arbitration Award, p 71.

[55] Pl's Motion, Exh A, Arbitration Award, pp 72-73. Again, because Veritas does not cite to the page numbers on which the disputed ruling occurred, this Court must assume that this is the ruling argued by Veritas.

[56] *Id.*

[57] *Id.*

Again, although Veritas couches its arguments in terms of an evidentiary error, it really is challenging the Arbitrator's determination of the weight given to the evidence presented and the credibility of the witnesses. Veritas argues that the Arbitrator improperly determined that the "DMS System" prerequisite and that the prerequisite of hiring an approved general manager were not satisfied. However, this Court cannot review the Arbitrator's findings of fact on this issue. To the extent that Veritas argues that the trial court acted outside of her power and considered inadmissible testimony, this argument fails. Veritas argues that the Arbitrator improperly relied on the testimony of witnesses who had no personal knowledge of the issues.[58] However, Veritas does not specify the contents of the allegedly objectionable testimony, does not specify where in the transcripts objections were made, and does not specify with citation to legal authority how the testimony violates MRE 602.[59] The Court disagrees with Veritas that the credibility of the witnesses was not at issue in the Arbitrator's consideration of whether the prerequisites were satisfied. Veritas makes the argument that Alkhafaji testified, without contradiction by persons who were "on the ground," but again, Veritas had the burden of proof, and the Arbitrator had the ability to determine the credibility of Alkhafaji's testimony. In fact, in her Award the Arbitrator specifically found that Alkhafaji's testimony regarding the prerequisites was contrary to documentary evidence.[60]

In summary, the Court finds the arguments that the Arbitration Award must be vacated because the Arbitrator exceeded her power to be without merit.

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[58] In its reply brief, Veritas also states that the Arbitrator improperly admitted an exhibit regarding the DMS System that was hearsay. However, Veritas does not demonstrate that this Exhibit was relied on by the Arbitrator in making the Arbitration Award.

[59] In discussing allegedly objectionable testimony Veritas refers to Exhibits consisting of pages from the transcript of the Arbitration Hearing but does not cite to page numbers.

[60] *See* Pl's Motion, Exh A, Arbitration Award, pp 55, 57.

V.

CONCLUSION

Based upon the Court's review of the arguments made by the parties and the controlling law, the Court denies Veritas Automotive & Machinery, LLC's Motion to Vacate or Modify. FCA International's Motion to Confirm the Arbitration award is granted.[61] The Final Arbitration Award dated December 19, 2022 is confirmed. *See* MCL 691.1702.

Pursuant to MCL 691.1705:

> (1) On granting an order confirming, vacating without directing a rehearing, modifying, or correcting an award, the court shall enter a judgment that conforms with the order. The judgment may be recorded, docketed, and enforced as any other judgment in a civil action.
>
> (2) A court may allow reasonable costs of the motion and subsequent proceedings.
>
> (3) On request of the prevailing party to a contested judicial proceeding under [MCL 691.1702, 691.1703, or 691.1704], the court may add reasonable attorney fees and other reasonable expenses of litigation incurred in a judicial proceeding after the award is made to a judgment confirming, vacating without directing a rehearing, modifying, or correcting an award.

FCA International is the prevailing party in the contested proceeding before this Court and has requested costs, attorney fees, and expenses under MCL 691.1705.[62] The Court determines that FCA is entitled to reasonable costs, attorney fees and other reasonable expenses under MCL 691.1705(2) and (3).

[61] The portion of FAC International's motion requesting that the administrative stay be lifted is denied as moot.

[62] *See* FCA International's January 30, 2023 response to Veritas' motion, p 18. It does not appear that Veritas has made any argument in reply to the request for fees and costs under MCL 691.1705. *See* Veritas' Reply Memorandum dated February 6, 2023.

ORDER

Based upon the foregoing opinion, Veritas Automotive & Machinery, LLC's Motion to Vacate or Modify the Arbitration Award is DENIED and FCA International Operations LLC's Motion to Confirm the Arbitration award is GRANTED. The Final Arbitration Award dated December 19, 2022 is CONFIRMED.

FCA International Operations LLC's request for costs, attorney fees, and other reasonable expenses under MCL 691.1705(2) and (3) is GRANTED.

FCA International shall have 21 days to submit a bill of costs including support for any attorney fees and expenses requested. Veritas shall have 21 days from the receipt of the bill of costs and supporting documentation to object to the reasonableness of any attorney fees and expenses. If Veritas objects, a motion for the settlement of attorney fees shall be filed by FCA International along with Veritas' objections. If the Court determines that a hearing is necessary, it will provide notice of a hearing to counsel.

IT IS SO ORDERED.

THIS RESOLVES THE LAST PENDING CLAIM AND CLOSES THE CASE EXCEPT AS TO THE AMOUNT OF REASONABLE COSTS AND ATTORNEY FEES.

/s/Victoria A. Valentine

Dated: 6/29/23

Hon. Victoria A. Valentine
Business Court Judge