

STATE OF MICHIGAN
SIXTEENTH JUDICIAL CIRCUIT COURT

MICHIGAN SITE DEVELOPMENT, LLC, a
Michigan limited liability company, and T&J
EQUIPMENT HOLDINGS, LLC, a Michigan
limited liability company,

Plaintiffs/Counter-Defendants,

vs.

Case No. 2023-004217-CB

STRATA UNDERGROUND L.L.C., a Michigan
limited liability company,

Defendant/Counter-Plaintiff,

and

STRATA CONSTRUCTION, INC., a Michigan
corporation, JOHN IAFRATE, an individual,
and DAVID IAFRATE, an individual,

Counter-Plaintiffs,

vs.

THOMAS A CARAMAGNO II, an individual,
JONATHAN BARNHART, an individual,
BESTES LANDSCAPING SUPPLIES, LLC, a
Michigan limited liability company, and
MICHIGAN OUTDOOR SERVICES &
CONSTRUCTION, INC., a Michigan
corporation,

Counter-Defendants.

_____ /

OPINION AND ORDER

This matter is before the Court on Defendant/Counter-Plaintiffs' motion to vacate
in part and modify in part arbitration award and orders and Plaintiffs/Counter-Defendants'
motion to reinstate case, confirm arbitration award, and enter judgment, and.

I. Background

In late 2021 and early 2022, John lafrate and David lafrate (collectively, the “lafrates”), the principals of Defendant Strata Underground, L.L.C. (Strata), began negotiating an asset sale with Tom Caramagno (“Caramagno”) and Jonathan Barnhart (“Barnhart”). During those negotiations, in early 2022, Caramagno and Barnhart formed Plaintiff Michigan Site Development, LLC, (MSD) with the intention that it would purchase Strata’s assets. However, the Strata asset sale fell apart. Instead, the lafrates, Caramagno, and Barnhart purportedly entered into a verbal agreement with Strata in which Strata would bid on private and public contracts, and if Strata were awarded the contract, MSD would finance and perform the contract on Strata’s behalf. And after Strata was paid for a contract, it would give the payment to MSD.

The arrangement ultimately fell apart when Strata failed to pay MSD for work it performed on Strata’s behalf. So, on December 8, 2023, MSD¹ filed suit against Strata for unjust enrichment, and fraud in the inducement, and accounting. In June 2024, the parties stipulated to a dismissal of the case with an agreement to resolve their dispute through binding arbitration. The Court, thereafter, dismissed the case with prejudice but retained jurisdiction for the purposes of enforcing the final decision of the arbitrator. The parties subsequently executed an arbitration agreement.

In the arbitration proceedings, MSD filed a first amended complaint against Strata

¹ T&J Equipment was also named as a plaintiff in the lawsuit and the subsequent arbitration proceedings, but the arbitrator’s award did not make any findings regarding T&J Equipment. The arbitrator entered an order on January 30, 2025 granting T&J Equipment’s motion for partial summary disposition. (See Pltfs.’ Mot., Ex. H, p. 4.) That order has not been provided by the parties, but neither party challenges it.

again alleging unjust enrichment, fraud in the inducement, and accounting.² Strata, along with the lafrates and Strata Construction, Inc., (collectively, Defendants/Counter-Plaintiffs) filed a counter-complaint against Caramagno, Barnhart, and MSD (Plaintiffs/Counter-Defendants) asserting claims of breach of contract, promissory estoppel, breach of fiduciary duty, accounting, unjust enrichment, claim and delivery, shareholder oppression, and a request for a declaratory judgment “that John lafrate is 44% owner of MSD and that David lafrate is 5% owner of MSD.” (Defs.’ Mot., Ex. 3, ¶39.)³ George Drosis withdrew as counsel for Strata and the lafrates on June 27, 2025. The case proceeded to arbitration for three days in July 2025, where the lafrates represented themselves.

On August 26, 2025, the arbitrator issued his decision and award.⁴ The Arbitrator made five separate awards, three of which are relevant here. In Award Two, he found that though the parties did not have an express, written contract, they formed a joint venture that existed from March 2022 to September 2023 when it was breached by Strata; he awarded MSD \$570,358.03 in damages against Strata. (Defs’ Mot., Ex. 4, pp. 2-3.) In Award Four, the arbitrator determined that under their joint venture, Caramagno and Barnhart owned 51% of the joint venture, John lafrate owned 44%, and David lafrate

² The first amended complaint added additional plaintiffs and claims, none of which are relevant for present purposes.

³ The counter-complaint added additional counter-defendants, none of them are relevant for present purposes.

⁴ On September 8, 2025, the arbitrator issued a series of other orders. He issued an order denying MSD’s oral motion to dismiss all of the counterclaims. He also entered a default against Strata on all of MSD’s claims except for Count I in the amended complaint. Lastly, he issued an order on Caramagno, Barnhart, and MSD’s motion for directed verdict, where he dismissed all of their counterclaims except for accounting and declaratory judgment. Defendants do not challenge those orders.

owned 5%. (Id., p. 4.) So he rendered the following declaratory judgment:

John lafrate is entitled to receive 44% of the net profits made by [MSD] and David lafrate is entitle to 4%⁵ of the net profits of [MSD]; PROVIDED THAT ALL OF THE FOLLOWING APPLY:

- (A) John and David lafrate shall receive nothing unless and until the amount awarded to [MSD], in AWARD TWO above, is fully satisfied.
- (B) This equitable share is limited to jobs and income received during the joint venture; it does not extend to any job or income in which Strata Underground L.L.C. or John lafrate or David lafrate played no part.
- (C) This equitable share does not extend to any future jobs or income.
- (D) In determining the amount of net profit, if any, generally accepted accounting principles shall apply. Any and all costs, expenses, overhead, legal fees and debt incurred by [MSD], shall be applied to reduce gross profit to arrive at true net profit.
- (E) If, after applying the proper adjustment for debt, there is a net loss, John lafrate and David lafrate are not liable for any part of the loss for costs, expenses, legal fees, and debt since the plaintiff in this arbitration has not sought any relief against John lafrate and David lafrate individually. [Id., pp. 4-5.]

Finally, in Award Five, the arbitrator ordered Caramagno, Barnhart, and MSD to make a full accounting of MSD's assets, income, distributions, profits, losses, debts, and financial condition . . . from its inception to the date of this award." (Id., p. 5.) He then ordered,

subject to the conditions set forth in AWARD FOUR, above, and after the full amount of the award in AWARD TWO has been fully satisfied, Thomas Caramagno, Jonathon Barnhart, and Michigan Site Development, LLC shall forthwith make a further accounting and shall then pay the amounts found to be due, if any, to John lafrate and David lafrate within 45 days of that second accounting. [Id.]

⁵ The statement that David lafrate is entitled to 4% of the net profits of MSD appears to be a scrivener's error as it is inconsistent with the arbitrator's preceding finding that David lafrate owns 5% of the joint venture.

On September 29, 2025, Strata and the lafrates filed a motion to vacate in part and modify in part the arbitration award. Two weeks later, MSD filed a motion to reinstate the case, confirm the arbitration award, and enter judgment. The parties filed their respective responses to the cross-motions. The Court held oral arguments on the cross-motions on October 29, 2025, where it confirmed the arbitration decision and award in all respects except Award Four, subsection (A), which it took under advisement. The Court gave MSD seven days to file a supplemental brief, and it gave Strata and the lafrates seven days to file a supplemental response. The parties have filed their respective supplemental briefs, and I have reviewed them.

II. Standard of Review

An arbitrator derives his authority from the parties' arbitration agreement and remains bound to act within the terms of the agreement. *Dohanyos v Detrex Corp* (After Remand), 217 Mich App 171, 176; 550 NW2d 608 (1996). "Judicial review of arbitration awards is limited." *Konal v Forlini*, 235 Mich App 69, 74; 596 NW2d 630 (1999). It is "restricted to cases in which an error of law appears from the face of the award, or the terms of the contract of submission, or such documentation as the parties agree will constitute the record." *Dohanyos*, 217 Mich App at 175–76 citing *Detroit Auto Inter-Ins Exch v Gavin*, 416 Mich 407, 428; 331 NW2d 418 (1982). Arbitrators "exceed their power 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." *Gavin*, 416 Mich at 434. Not all errors of law require judicial action to vacate an arbitrator's award; the error must "so material or so substantial as to have governed the award, and but for which the award would have been substantially otherwise." *Id.* at 443.

MCR 3.602(J) allows a party to move to vacate an arbitration award. Under that court rule, a court must vacate an arbitration award if, “the arbitrator exceeds his or her powers[.]” MCR 3.602(J)(2)(c). However, “[t]he fact that the relief could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.” MCR 3.602(J). The party seeking to vacate an arbitration award “bears a heavy burden of proof by clear and convincing evidence.” *Ministrelli Const v Sullivan Bros Excavating*, 89 Mich App 111, 116; 279 NW2d 593 (1979), citing *Brush v Fisher*, 70 Mich 469; 38 NW 446 (1888).

MCR 3.602(I) provides that “[a] party may move for confirmation of an arbitration award within one year after the award was entered. The court may confirm the award, unless it is vacated, corrected, or modified, or a decision is postponed, as provided in this rule.” And MCR 3.602(L) requires a court to “render judgment giving effect to the award as corrected, confirmed, or modified.”

III. Law and Analysis

In their motion to vacate the arbitration award, Strata and the lafrates argue the condition provided in paragraph (A) of Award Four was an error of law because the arbitrator improperly “conditioned the successful claims of the lafrates individually on the payment of the independent entity Stata Underground LLC.” (Defs.’ Mot., pp. 6-7.) They maintain that “[m]odification of this provision of the award is merited since the arbitrator made an award on a claim not submitted to the arbitrator – i.e. the assessment of Strata Underground LLC debt obligations to the lafrates individually when there were no claims plead against them.” (Id., p. 7.) In its response, MSD contends that Strata and the lafrates are misconstruing condition (A) in Award Four as that condition does not assess Strata’s

debt obligations (in Award Two) against the lafrates. Instead, it asserts that condition (A) simply states the natural consequence of the arbitrators finding in Award Four that the lafrates are entitled to the net profits of MSD based on their ownership interests in the MSD joint venture—namely, because MSD has yet to recognize any profits, there are no profits to share with the lafrates. But if Strata pays the amount it owes to MSD and that payment results in a net profit to MSD, then the lafrates would be entitled to their share of those profits.

The parties' arbitration agreement governed the issues subject to arbitration, the available remedies, and the basis of the arbitrator's award:

SCOPE OF SUBMISSION TO ARBITRATORS

2.1 Issues Presented. The issues to be presented to and decided by the Arbitrator are those that currently exist among the parties to this Agreement as set forth in, but not limited to the civil case of MICHIGAN SITE DEVELOPMENT LLC et al vs. STRATA UNDERGROUND LLC, Macomb County Circuit Court Case No. 2023-004217-CB. Plaintiffs may restate their Complaint in Arbitration and Defendant may state a Counter-Complaint. At the discretion of the Arbitrator, the parties may seek to amend pleadings.

2.2 Available Remedies. The Arbitrator will have full power and authority to award any remedy to which either party would have been entitled had this dispute been resolved in court. The Arbitrator may award equitable relief, including but not limited to injunctive relief if appropriate and/or an order requiring the return of documents. [* * * *]

THE ARBITRATORS' AWARD

5.1 Basis of Award. The Arbitrator will base the decision and award on the facts presented during the hearing and controlling principles of applicable law. The Arbitrator shall make credibility determinations as necessary. The award shall be in writing, shall be signed by the Arbitrator, and shall include factual findings and conclusions of law concerning each of the parties' respective claims for relief. [Defs.' Mot., Ex. 1.]

These provisions granted the arbitrator broad authority to consider any issues raised in the parties' pleadings, including counterclaims and amended pleadings. And it

granted him broad authority to award any remedy, including equitable relief, that either party would have been entitled to had the dispute been resolved in court. Lastly, the agreement required the arbitrator to base his award on, among other things, “controlling principles of applicable law.”

In their counter-complaint, Strata and the lafrates sought a declaratory judgment “that John lafrate is 44% owner of MSD and that David lafrate is 5% owner of MSD.” (Defs.’ Mot., Ex. 3, ¶39.) MCR 2.605(A)(1), gives courts authority to “declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted.” The Court of Appeals has explained that “[t]he purpose of a declaratory judgment is to enable the parties to obtain adjudication of rights before an actual injury occurs, to settle a matter before it ripens into a violation of the law or a breach of contract, or to avoid multiplicity of actions by affording a remedy for declaring in expedient action the rights and obligations of all litigants.” *Rose v State Farm Mut Auto Ins Co*, 274 Mich App 291, 294; 732 NW2d 160 (2006). It is “to be liberally construed to provide a broad, flexible remedy with a view to making the courts more accessible to the people.” *Allstate Ins Co v Hayes*, 442 Mich 56, 65; 499 NW2d 743 (1993) (internal quotations omitted).

In their supplemental response, Strata and the lafrates cite authority related to the abolition of joint and several liability, MCL 600.2956, and MCL 600.6304(4), and setoff, MCL 600.6008, to argue that condition (A) impermissibly conditions the lafrates’ recovery on Strata’s liability. This argument misconstrues the nature of condition (A) as being a damages award against the lafrates. Nothing in Award Four, including condition (A), imposes joint and several liability against the lafrates, nor or does it setoff the lafrates’

liability with that of Strata. In fact, nothing in the Award Four imposes any liability on the lafrates. Award Four is the award on the counterclaim for a declaratory judgment “that John lafrate is 44% owner of MSD and that David lafrate is 5% owner of MSD.” (Defs.’ Mot., Ex. 3, ¶39.) Although Strata and the lafrates did not specifically request the type of additional finding made by the arbitrator related to their declaratory judgment counterclaim, they have not cited any authority that precludes the arbitrator from making those types of additional findings; nor has the Court located any.

MSD’s argument in support of the arbitration award in condition (A) is consistent with the arbitrator’s findings and with the purpose of declaratory judgments.⁶ The arbitrators’ discussion in his findings of fact clarifies his rationale behind condition (A). He found that “[b]ecause of the significant amount of money withheld [by Strata], it is unlikely that [MSD] made any net profit at all.” (Defs.’ Mot. Ex. 4, p. 8.) But he noted there was uncertainty regarding how much of a net loss MSD had incurred, so he ordered the accounting in Award Five. Then he explained,

Despite the breach of the joint venture agreement by [Strata], John and David lafrate can still become eligible to get their combined 49% share by applying the theory of unjust enrichment. If [Strata] pays all damages awarded above in AWARD TWO, the parties will find themselves in the position that they would have been in if no breach had occurred. At that point, [MSD] will have reaped the benefit of all the work that [Strata] delivered in the joint venture. It is only fair, therefore, that once it has received the full benefit, it should be required to honor the deal that brought it all the work.

⁶ In its supplemental response, MSD relied on a no-fault case, *Rose v State Farm Mut Auto Ins Co*, 274 Mich App 291, 294; 732 NW2d 160 (2006). That case is inapposite as it was limited to the specific issue of whether a trial court had authority to issue a declaratory judgment for future expenses in a no-fault action. It does not provide any useful analogue to this case.

These findings reveal arbitrator's determination that while the lafrates were entitled to their portion of the MSD's profits, there are currently no profits to share. But, if Strata pays the amount it owes to MSD, and that payment results in a net profit to MSD, then the lafrates would be entitled to their share of those profits. Condition (A) merely states the natural consequence of the arbitrators finding in Award Four that the lafrates are entitled to the net profits of MSD based on their ownership interests in the MSD joint venture. Even if the arbitrator did not include condition (A), the lafrates would still not be entitled to the net profits of MSD because, as the arbitrator explained, MSD has yet to recognize any profits due to Strata's non-payment. Only if Strata pays the amount it owes to MSD, and that amount results in a net profit to MSD, would the lafrates be entitled to their share of the net profits of MSD. While it may not have been necessary for the arbitrator to include condition (A), his doing so is consistent with the broad and flexible nature of declaratory judgment by specifying the lafrates' rights under the joint venture before the issue ripens to an additional dispute requiring further litigation.

Defendants have not provided any authority showing that condition (A) of Award Four was an error of law, so they have failed to carry their burden to vacate that portion of the award. *Ministrelli Const*, 89 Mich App at 116. Accordingly, Strata and the lafrates' motion to vacate the arbitration award as to condition (A) of Award Four must be denied and the award confirmed.

IV. Conclusion

For the reasons set forth above, Defendants/Counter-Plaintiffs' motion to vacate the arbitration award is DENIED. Plaintiffs/Counter-Defendants' motion to reinstate case and enter judgment is GRANTED. The case is reinstated and Plaintiffs/Counter-Defendants' proposed judgment attached as Exhibit L to Plaintiffs' Motion to Reinstate Case, Confirm Arbitration Award,

and Enter Judgment is entered concurrently. In accordance with MCR 2.602(A)(3), this OPINION AND ORDER resolves the last pending claims and closes the case.

Date: 12/02/2025



Kathryn A. Viviano

Signed by KATHRYN VIVIANO

04:32:52 UIPHB0Bs

Hon. Kathryn A. Viviano, Circuit Court Judge