

STATE OF MICHIGAN
COURT OF APPEALS

FARM BUREAU INSURANCE COMPANY,

Plaintiff/Counter-Defendant-
Appellant,

v

MARK KENNELL,

Defendant/Counter-Plaintiff-
Appellee.

UNPUBLISHED

August 16, 2002

No. 232071

Ingham Circuit Court

LC No. 00-092059-CK

Before: White, P.J., and Neff and Jansen, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's judgment awarding defendant interest on an arbitration award. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant sustained serious injuries when he was struck by a vehicle. Defendant's family carried an automobile insurance policy issued by plaintiff that provided underinsured motorist ("UIM") benefits. Defendant's suit against the driver was settled for the driver's policy limit of \$100,000. Plaintiff and defendant agreed to arbitrate defendant's claim for UIM benefits. The agreement provided that it was subject to the terms and conditions of plaintiff's policy. Plaintiff's policy provided that it would pay all sums the insured was legally entitled to recover as compensatory damages. On June 1, 2000, the arbitration panel issued an award in favor of defendant in the amount of \$189,350, including interest. The panel clarified that the interest awarded totaled \$55,600, and included interest paid from the date of the accident to the date of the arbitration award.

Plaintiff paid defendant the principal amount of the award but refused to pay the amount designated as interest, and filed suit seeking to vacate the arbitration award on the ground the panel exceeded its authority by awarding interest as an element of damages. Defendant filed a counter-complaint seeking to enforce the arbitration award. Both parties moved for summary disposition pursuant to MCR 2.116(C)(10). The trial court denied plaintiff's motion and granted defendant's motion,¹ concluding the arbitration panel acted within the scope of its authority in

¹ An opinion and order entered on December 26, 2000 erroneously stated that plaintiff's motion
(continued...)

awarding interest. Subsequently, the trial court entered judgment awarding defendant interest in the amount of \$57,848.24.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

An arbitrator derives his authority from the parties' contract and is bound to act within the terms of that contract. An arbitrator exceeds the scope of his authority when he acts beyond the material terms of the contract or in contravention of controlling principles of law. *Krist v Krist*, 246 Mich App 59, 62; 631 NW2d 53 (2001). Pursuant to MCR 3.602(J), the parties to an arbitration are conclusively bound by a binding arbitrator's decision absent a showing that: the award was procured by duress or fraud, the arbitrator was guilty of corruption or misconduct that prejudiced a party's rights, the arbitrator exceeded his powers, or the arbitrator refused to postpone the hearing on a showing of sufficient cause or refused to hear material evidence.

The factual findings of an arbitrator are not subject to judicial review. A reviewing court may confirm the award, vacate the award if obtained through fraud, duress, or other undue means, or modify the award or correct errors that are apparent on the face of the award. *Konal v Forlini*, 235 Mich App 69, 74-75; 596 NW2d 630 (1999).

Plaintiff argues the arbitration panel exceeded its authority and erred as a matter of law by awarding pre-award interest in this case.² We disagree. Absent a provision precluding the award of interest, an arbitrator does not exceed his authority by including interest as an element of damages. *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 498; 475 NW2d 704 (1991). An arbitrator's authority encompasses the authority to grant pre-award interest. *Holloway Construction Co v Oakland County Bd of County Rd Comm'rs*, 450 Mich 608, 612; 543 NW2d 923 (1996). The issue of interest is for the arbitrator, and should not be decided by the court acting in the role of an arbitrator. *Wiselogle v Michigan Mutual Ins Co*, 453 Mich 978; 557 NW2d 316 (1996).

Here, neither the insurance contract nor the arbitration agreement precluded the arbitration panel from deciding the issue of interest. Plaintiff's reliance on authority such as *Moultrie v DAIIE*, 123 Mich App 403, 408; 333 NW2d 298 (1983), and *Osinski v DAIIE*, 69 Mich App 426, 428; 245 NW2d 76 (1976), for the proposition that pre-award interest is not payable in arbitration cases is misplaced in light of holdings to the contrary in *Holloway, supra*, and *Wiselogle, supra*. The arbitration panel did not exceed its authority by awarding pre-award interest. No further review is warranted. *Konal, supra*.

(...continued)

was granted and that defendant's motion was denied. On December 29, 2000 the trial court entered an order vacating the December 26, 2000 order and correcting the error. The trial court's reasoning is contained in the opinion and order dated December 26, 2000.

² Plaintiff acknowledges that post-award interest was mandated by statute, MCL 438.7; MCL 600.6013(5), and does not challenge that portion of the interest award.

Affirmed.

/s/ Helene N. White

/s/ Janet T. Neff

/s/ Kathleen Jansen