

STATE OF MICHIGAN  
SIXTEENTH JUDICIAL CIRCUIT COURT

LEN & JERRY'S MODULAR  
COMPONENTS 1, LLC,

Plaintiff/Counter-Defendant,

vs.

Case No. 2015-1746-CB

TACS AUTOMATION, LLC and  
MIKE SCOTT,

Defendants.

and

TACS AUTOMATION, LLC and  
MIKE SCOTT,

Defendants/Counter and Third Party Plaintiffs

vs

GERALD VANNESTE, LEN &  
JERRY'S MODULAR COMPONENTS,  
LLC and CREATIVE ERGONOMIC  
SYSTEMS, INC.,

Third Party Defendants.

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OPINION AND ORDER

Defendants have filed a motion to confirm arbitration award and for case evaluation sanctions. Plaintiff and Cross-Defendants (collectively, "Respondents") have filed a joint response opposing the motion.

I. Factual and Procedural History

On October 5, 2016, the parties agreed to arbitrate this matter. However, the "Agreement to Arbitrate" and "Order to Arbitrate" provide that this Court retains

jurisdiction to determine case evaluation sanctions and award attorney's fees and costs.

On January 10, 2017, Eric G. Flinn, acting as arbitrator, issued his arbitration award ("Award"). The Award provides, in part, that the awards contained therein are inclusive of all costs, interest and attorney fees. (See Defendants' Exhibit 3.) On January 23, 2017, Defendants filed a motion to strike the above-referenced provision of the Award. Respondents filed a response and requested that the motion be denied. On January 30, 2017, the Court held a hearing in connection with the motion and took the matter under advisement. On February 24, 2017, this Court entered its Opinion and Order striking the portion of paragraph 3 of the Award to the extent that it ruled on the issue of case evaluation sanctions.

On March 21, 2017, Defendants filed their instant motion to confirm the remainder of the Award. On April 6, 2017, Respondents filed their response. On April 10, 2017, the Court held a hearing in connection with the matter and took the motion under advisement.

## II. Arguments and Analysis

In their motion, Defendants request that this Court confirm the Award, less the portion of paragraph 3 that was previously stricken by this Court. In addition, Defendant seek case evaluation sanctions based on the Award. A reviewing court's authority regarding arbitration awards is limited to (1) confirming the award, (2) vacating the award if obtained through fraud, duress, or other undue means, or (3) modifying the award to correct errors that are apparent on the face of the award. *Krist v Krist*, 246 Mich App 59, 67; 631 NW2d 53 (2001). In this matter, it is unclear what portion of the Award, if any, corresponded to case evaluations, which for the reasons discussed in the

February 24, 2017 Opinion and Order, would have been inappropriate. Consequently, it is impossible for this Court to determine whether the Award should be confirmed. Moreover, without being able to determine the amount of the Award that remains once the amount related to case evaluation sanctions, if any, is removed, this Court is unable to decide whether Defendants are entitled to case evaluation sanctions under 2.403(O). As a result, Defendants' motion must be denied until such time as they are able to obtain clarification for the arbitrator with respect to the Award.

### III. Conclusion

For the reasons set forth above, Defendants' motion to confirm arbitration award and for case evaluation sanction is DENIED, WITHOUT PREJUDICE. Pursuant to MCR 2.602(A)(3), the Court states this matter remains CLOSED.

IT IS SO ORDERED.

DATED: **APR 12 2017**

Kathryn A. Viviano  
Hon. Kathryn A. Viviano, Circuit Court Judge