

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.

FILED  
2017 FEB 24 P 12:44  
CARMELLA SAGAUBER  
MACOMB COUNTY CLERK  
HT. CLEMENS, MICHIGAN

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OPINION AND ORDER

Defendants have filed a motion to modify or correct award of arbitrator. 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" ("Arbitration Agreement") and "Order to Arbitrate" ("Arbitration

Order") 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 their instant motion to strike the above-referenced provision of the Award. Respondents have filed a response and request 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.

## II. Arguments and Analysis

In their motion, Defendants seek to have this Court strike paragraph 3 of the Award, which provides:

The Awards set forth above in Paragraphs 1 and 2 are inclusive of all costs, interest and attorney fees.

(See Defendants' Exhibit 3.)

In support of their request, Defendants aver that the arbitrator went outside of the scope of the Arbitration Order and Agreement to the extent that he decided the issue of whether Defendants are entitled to case evaluation sanctions. The Arbitration Agreement provides, in pertinent part:

Case Evaluation sanctions in this litigation shall be awarded by the Court based on the Judgment to be entered by the court in litigation, pursuant to MCR 2.403, if applicable, as the time or after entry of Judgment on the arbitration award. The arbitration award shall be treated as a verdict for purposes of MCR 2.403(O). Any claim for interest, attorney fees and costs shall, if applicable, be decided by the Court of competent jurisdiction in accordance with the laws of the State of Michigan.

(See Defendants' Exhibit 1.)

Further, the Arbitration Order provides, in pertinent part:

2. This Court reserves jurisdiction to enter Judgment upon the award and to impose sanctions pursuant to MCR 2.403(O), if any;

(See Defendants' Exhibit 2.)

While Respondents do not dispute that this Court reserved jurisdiction to decide the issue of case evaluation sanctions. Rather, Respondents argue that this Court does not have the authority to edit the arbitrator's award. In support of their position, Respondents rely on *Krist v Krist*, 246 Mich App 59, 67; 631 NW2d 53 (2001), where the Court held that 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. Respondents contend that Defendants' requested relief would go outside of the scope of this Court's authority, and that as a result the motion must be denied. However, MCR 2.403(K)(2)(b) provides:

(2) On motion made within 91 days after the date of the award, the court shall modify or correct the award if:

(b) The arbitrator has awarded on a matter not submitted to the arbitrator, and the award may be corrected without affecting the merits of the decision on the issues submitted.

In this case, it is unclear whether the arbitrator intended to rule on the issue of case evaluation sanctions. However, the Arbitration Agreement and Order both provide that issue was not to be submitted to arbitration. Accordingly, the Court is convinced that MCR 2.403(K)(2)(b) requires this Court to strike paragraph 3 of the Award, to the extent that it purports to rule on the issue of case evaluation sanctions.

### III. Conclusion

For the reasons set forth above, Defendants' motion to modify or correct award of arbitrator is GRANTED. Paragraph 3 of the Arbitration Award is hereby stricken to the extent that it purports to rule on the issue of case evaluation sanctions. Pursuant to MCR 2.602(A)(3), the Court states this matter remains CLOSED.

IT IS SO ORDERED.

Date: FEB 24 2017

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