

To Arbitrate or Not To Arbitrate...That is the Question!

Contracting parties should discuss with their attorneys the advantages and disadvantages of including clauses requiring arbitration of disputes before deciding whether to include such provisions in their contracts. Arbitration is essentially a private judicial process in



which a legal dispute is submitted to either a single arbitrator or perhaps a panel of arbitrators for resolution. Contracting parties may opt for arbitration hoping to obtain a speedier or perhaps less-costly determination of the dispute. However, the filing fee for an arbitration of a \$500,000 dispute conducted by the American Arbitration Association is \$5,500 - versus \$175 for circuit court - plus the arbitrator's daily fee. The rules of evidence typically don't apply to arbitrations, so providing the facts to the arbitrator may be easier than to a judge. A recent Michigan Court of Appeals opinion

reminds us of one of the major pitfalls in having a dispute arbitrated: there is extremely limited judicial review of the decision of the arbitrator.

In Walton & Adams, LLC v Service Station Installation Building & Car Wash Equipment, Inc., unpublished per curiam opinion of the Michigan Court of Appeals (Dkt No. 340758, December 18, 2018), the defendant was to perform demolition and construction services related to a gas station owned and operated by the plaintiffs. The project was not completed on time, and the plaintiffs filed a lawsuit challenging the claim of lien recorded by defendant. The parties agreed to arbitration and the arbitrator determined that plaintiffs were jointly and severally liable to defendant in the amount of \$80,733.68. The plaintiffs subsequently challenged the arbitrator's award, but the trial court rejected their challenges. The Court of Appeals affirmed the trial court's decision. The Court noted that its ability to review any arbitration award is "extremely limited." This is because there is typically no verbatim record of private arbitration proceedings, no formal requirements of procedure and practice beyond those assuring impartiality and no findings of fact or conclusions of law. Thus, the reviewing court is limited to what is written in the arbitrator's ultimate award. There must be an error of law that is plain on its face and it "must be so egregious that it materially affects the outcome of the arbitration and plainly demonstrates a disregard of principles fundamental to a fair resolution of the dispute." Id., slip opinion at 2 (internal quotes omitted).



As is evident from the language of the Court's opinion, there is a very high bar to overturning the ruling of an arbitrator. A trial court or the Court of Appeals rarely reverses an arbitrator's decision. Arbitrators (and Judges) are human like everyone else, and sometimes they misunderstand or misinterpret the evidence, or simply don't comprehend the nuances of a party's position. If a trial court judge makes a mistake, there will be a clear record of the proceedings that can be used to correct the error in the appellate court. If an arbitrator makes a mistake, however, the victim of that mistake will generally have no recourse whatsoever.

There may be valid reasons to agree to arbitration. If you are asked to sign a contract that contains an arbitration provision, we strongly encourage you to consult one of our attorneys before agreeing to that provision. Of course other material provisions should also be discussed with legal counsel. Please contact [Phillip J. Neuman](#) for any questions regarding a contract arbitration provision, or any other litigation or real estate matter.