

STATE OF MICHIGAN
COURT OF APPEALS

RONNIE MONTROSSE and PAULA
MONTROSSE,

UNPUBLISHED
November 26, 2002

Plaintiffs/Counter-Defendants-
Appellants,

v

DON FOX MOBILE HOME SALES,

No. 227694
Genesee Circuit Court
LC No. 97-061106-CK

Defendant-Appellee,

and

GREEN TREE FINANCIAL SERVICING
CORPORATION,

Defendant/Counter-Plaintiff-
Appellee.

Before: Markey, P.J., and Saad and Smolenski, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order confirming an arbitration award and entering judgment on the award in favor of defendant Green Tree Financial Servicing Corporation ["Green Tree"]. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs signed an agreement for the purchase of a modular home from defendant Don Fox Mobile Home Sales ["Fox"]. The parties entered into a separate agreement that provided that any dispute related to the sale of the home was to be resolved by binding arbitration. Fox assigned the sales contract to Green Tree. Plaintiffs and Green Tree entered into a retail installment contract and security agreement. That agreement contained an arbitration clause which provided that any and all disputes were to be resolved by binding arbitration.

Plaintiffs filed suit alleging the home was damaged during delivery and that defendants failed and refused to repair the damage. Fox moved to dismiss the case on the ground that the parties had agreed to submit all disputes to arbitration. Green Tree filed a motion to compel arbitration. Plaintiffs argued the arbitration clause was unenforceable because it did not pertain

to the purchase agreement, and because it was unconscionable. The trial court granted the motion to dismiss without prejudice and ordered arbitration. The arbitration panel entered an award in favor of Green Tree and against plaintiffs in the amount of \$22,077.47.

Green Tree moved to confirm the arbitration award and for entry of judgment on the award. Plaintiffs argued the award should not be confirmed because the arbitration clause was unenforceable. The trial court granted Green Tree's motion, reasoning that because it ordered the case to arbitration, it concluded at that time arbitration was appropriate. The court concluded that plaintiffs' arguments were untimely.

The existence of a contract to arbitrate and the enforceability of its terms is an issue of law which we review de novo. *Madison Dist Public Schools v Myers*, 247 Mich App 583, 594; 637 NW2d 526 (2001). When determining the arbitrability of an issue, the court considers whether the parties' contract contains an arbitration provision, whether the disputed issue is arguably within the arbitration clause, and whether the dispute is expressly exempt from the arbitration by the terms of the contract. *Id.* at 595. 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. *Konal v Forlini*, 235 Mich App 69, 75; 596 NW2d 630 (1999). 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. *Id.* at 74.

Plaintiffs argue the trial court erred in finding the parties agreed to arbitrate disputes arising out of the sale of the home. They also argue the arbitration clause in the installment contract cannot compel arbitration of issues related to the sale of the home, and that the arbitration clause was unconscionable. We disagree. Plaintiffs' arguments regarding the enforceability of the arbitration agreement were raised in response to the motions to dismiss the case and compel arbitration, and were rejected at that time. Plaintiffs did not seek reconsideration or appellate review. Once an issue is submitted to arbitration, judicial review is limited by the Uniform Arbitration Act, MCL 600.5001 *et seq.*, and MCR 3.602. An arbitration award can be vacated only on limited grounds. Plaintiffs do not rely on any ground listed in MCR 3.602(J) in support of their appeal, nor do they contend that the arbitrator exceeded his subject matter jurisdiction.¹ Plaintiffs do not address the basis on which the trial court rejected their position in opposition to the motion to confirm the award, and, therefore, we deem the issue abandoned. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999).

Further, plaintiffs do not dispute that their contract with Green Tree contained an arbitration clause, or that they signed an agreement with Fox to arbitrate any dispute arising out of the sale of the home. They simply argue, without citation to supporting authority, that the agreement with Fox should be disregarded. A party may not simply state a position and then

¹ This argument can be raised at any time, including for the first time on appeal. *McFerren v B & B Investment Group*, 233 Mich App 505, 512; 592 NW2d 782 (1999).

leave it to this Court to search for authority to sustain or reject that position. *Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998). Similarly, plaintiffs cite no authority to support their argument that the insertion of an arbitration clause into a contract prepared by a seller renders the contract an unenforceable adhesion contract. Plaintiffs have not demonstrated that the trial court erred as a matter of law by ordering that the case be submitted to arbitration. *Madison Dist Public Schools, supra*.

Affirmed.

/s/ Jane E. Markey

/s/ Henry William Saad

/s/ Michael R. Smolenski