STATE OF MICHIGAN

COURT OF APPEALS

FUEGO GRILL, L.L.C., and SAMUEL ALVARADO, Plaintiffs-Appellees, v DOMESTIC UNIFORM RENTAL, Defendant-Appellant.	UNPUBLISHED January 22, 2013 Nos. 302230; 303763 Oakland Circuit Court LC No. 2010-113931-CK

Before: MARKEY, P.J., and MURRAY and SHAPIRO, JJ.

PER CURIAM.

In this consolidated case, defendant Domestic Uniform Rental appeals by leave granted the trial court's orders denying its motion to confirm an arbitration award and denying its motion for summary disposition. We affirm the trial court's orders in both appeals because the trial court correctly held that it was for the court to determine whether an agreement to arbitrate existed.

I. FACTUAL PROCEEDINGS

Plaintiff Fuego Grill, L.L.C., is a restaurant owned by plaintiff Samuel Alvarado. According to plaintiffs, on March 30, 2010, while Alvarado was working at Fuego Grill in preparation for its May 2010 grand opening, defendant's district sales manager, Jim Carlisle, visited the restaurant and attempted to discuss defendant's products and services with Alvarado. However, Alvarado told Carlisle that he had not come at a good time and Alvarado continued to work. Nevertheless, Carlisle proceeded to ask Alvarado several questions before he filled out a form. Once Carlisle finished the form, he presented it to Alvarado as a bid for defendant's services. According to plaintiffs, Carlisle specifically told Alvarado that the prepared form was not a contract and that any future contract that defendant and plaintiffs may enter into would be on a month-to-month basis. Carlisle then presented Alvarado with two documents – the first entitled "rental agreement domestic uniform rent" and the second "guaranty of payment." Carlisle asked Alvarado to sign both documents, stating that the documents were an acknowledgement that Carlisle had discussed doing business with plaintiffs. After Alvarado signed the documents, Carlisle left the restaurant without providing a copy of the documents to Alvarado. At this point, Alvarado believed that defendant would prepare and send him a written

proposal for business. Thereafter, on April 30, 2010, defendant attempted to deliver an order to plaintiffs but Alvarado refused delivery.

Because the purported agreement contained an arbitration provision, defendant filed a demand for arbitration following Alvarado's refusal of delivery. At the arbitration, plaintiffs asserted that an enforceable contract had not been formed, defendant's actions amounted to fraud, and the contract was void or voidable. Conversely, defendant asserted that a valid contract existed. After the arbitration hearing closed, but before the arbitrator issued a decision, plaintiffs filed a complaint in circuit court. Among other things, plaintiff requested that the trial court declare the rental agreement and guaranty unenforceable as procured by fraud and in violation of Michigan law and that the dispute was not subject to arbitration because the agreement was induced by fraud.

Shortly thereafter, the arbitrator issued an award against plaintiffs. Following the arbitrator's decision, defendant filed a motion for confirmation of the arbitration award, arguing that it was entitled to an order confirming the arbitration award because the issues addressed by the arbitrator arose out of or were related to the parties' rental agreement and plaintiffs had voluntarily submitted all claims and defenses to the arbitrator. Plaintiffs opposed defendant's motion for confirmation of the arbitration award, asserting that the arbitration clause was unenforceable and that the rental agreement and guaranty could not be enforced because defendant engaged in fraud and there was no meeting of the minds.

The trial court agreed with plaintiffs that the determination regarding the existence of an agreement to arbitrate was for the court. Additionally, it found that plaintiffs' participation in arbitration did not waive plaintiffs' challenge to the validity of the agreement. Consequently, the trial court concluded that it would consider plaintiffs' claims and it denied defendant's motion for confirmation of the arbitration award.

In the meantime, as a precautionary measure, defendant also filed a motion for summary disposition pursuant to MCR 2.116(C)(7), (8), and (10). Defendant argued that because the arbitrator's rulings had embodied plaintiffs' fraud issues, they were not actionable as a matter of law. Plaintiffs opposed defendant's motion for summary disposition and asserted that the arbitration provision was unenforceable because the rental agreement and guaranty were unenforceable through application of promissory estoppel. Plaintiffs also asserted fraud in the execution and fraud in the inducement and argued that no contract was entered into because there was no meeting of the minds.

After oral argument, the trial court denied defendant's motion for summary disposition and found, in the pertinent part:

> [P]ursuant to Michigan law a party can claim fraud, even if it was careless in failing to read a contract. Carelessness of a party defrauded is not a defense to intentional fraud . . . . One accused of a fraud may not raise as a defense the carelessness of the party defrauded.

> A party who induces someone to sign a contract by some stratagem, trick, or artifice cannot argue that the defrauded party is bound by its terms for negligently railing to read it . . . .
>
> * * *
>
> The Defendant's argument that the arbitration clause contained in the agreement is controlling completely ignores the basis for this lawsuit, and that is that the arbitration clause . . . is contained in a void or . . . voidable contract, and therefore cannot control the relationship between the parties.

After the trial court entered an order denying defendant's motion for summary disposition, defendant filed applications for leave to appeal both the order denying its motion for confirmation of the arbitrator's award and the order denying its motion for summary disposition. Subsequently, this Court granted the applications for leave to appeal and consolidated the cases. *Fuego Grill LLC v Domestic Uniform Rental*, unpublished order of the Court of Appeals, entered June 8, 2011 (Docket Nos. 302230 & 303763).

II. ANALYSIS

The principal issue in this case is whether the trial court erred in concluding that there was not an agreement to arbitrate between the parties. The existence of an arbitration agreement is a judicial question that is subject to de novo review. *Watts v Polaczyk*, 242 Mich App 600, 603; 619 NW2d 714 (2000); see also *In re Nestorovski Estate*, 283 Mich App 177, 184; 769 NW2d 720 (2009).

To begin, we reject defendant's waiver argument. It is well-settled that

> [i]f a party to an arbitration agreement wants to object to the arbitrability of a specific issue, he should do so at the earliest opportunity. He should raise the objection before the issue is submitted for a hearing on its merits, because he may not voluntarily submit an issue to arbitration and then, if he suffers an adverse decision, move to set aside the adverse award on the ground that it was not an arbitrable issue. [*American Motorists Ins Co v Llanes*, 396 Mich 113, 114-115; 240 NW2d 203 (1976) (quotation marks and citation omitted).]

Thus, plaintiffs did not waive the issue of arbitrability through participation in the arbitration proceedings, as it argued during the arbitration that no contract existed because of fraudulent inducement and before the arbitration award was issued it filed a complaint in circuit court seeking to preclude arbitration because no contract to arbitrate existed.[1]

[1] Additionally, the purported contract between the parties did not include an agreement to have the arbitrator determine arbitrability.

Turning now to the merits, which is governed by Michigan law, it is well-settled that the absence of a valid agreement to arbitrate constitutes a defense to plaintiffs' action to confirm the arbitration award. *Arrow Overall Supply Co v Peloquin Enterprises*, 414 Mich 95, 97; 323 NW2d 1 (1982). Indeed, the *Arrow Overall Supply Co* Court emphasized that "[t]he defense of 'no valid agreement to arbitrate' is a direct attack on the exercise of jurisdiction of both the arbitrator and the circuit court." *Id*. at 98. The reason a party can raise the existence of an arbitration agreement before the circuit court is that "[a]bsent a binding contract, the parties cannot be required to arbitrate issues that arise between them." *36th Dist Court v AFSCME Council 25, Local 917*, 295 Mich App 502, 510; 815 NW2d 494 (2012) rev'd in part on other grounds ___ Mich ___; 821 NW2d 76 (2012), citing *City of Ferndale v Florence Cement Co*, 269 Mich App 452, 460; 712 NW2d 522 (2006) and *AFSCME Council 25 v Wayne Co*, 290 Mich App 348, 350; 810 NW2d 53 (2010). And, as our Supreme Court in *Arrow Overall Supply Co* recognized, "[t]he existence of a contract to arbitrate and the enforceability of its terms is a judicial question which cannot be decided by an arbitrator." *Arrow Overall Supply Co*, 414 Mich at 99; see also *36th Dist Court*, 295 Mich App at 510.

Here, as previously noted, plaintiffs did not waive the issue of arbitrability because they specifically challenged whether a valid agreement existed and the parties did not agree to submit the issue of arbitrability to the arbitrator. Hence, because plaintiffs challenge the *existence* of the contract to arbitrate – and not merely the arbitration terms within the contract – it was for the court to determine whether an agreement to arbitrate existed. See *Pub Serv Credit Union v Ernest*, 988 F2d 627, 629 (CA 6, 1993), citing *Horn v Cooke*, 118 Mich App 740, 744; 325 NW2d 558 (1982). Moreover, once the trial court determined that there was not an agreement to arbitrate, the arbitrator did not have jurisdiction to hear the case. Consequently, the trial court correctly denied defendant's motion to confirm the award and defendant's motion for summary disposition.

As just detailed, Michigan law clearly and comprehensibly declares that it is for the court – and not the arbitrator – to determine whether a valid agreement to arbitrate exists. We disagree with the dissent's mention, let alone application of collateral estoppel (even by analogy) to this case, as the dissent correctly acknowledges that the doctrine is inapplicable. Moreover, although it is true that the purpose of arbitration is to avoid protracted litigation, it is equally true that parties cannot be forced to arbitrate a matter that they did not contractually agree to arbitrate. No matter the existence of a general public policy[2] favoring expeditious resolution by arbitration, the rule of law contained in Michigan case law is clear and consistent, and requires judicial resolution of this fundamental issue. *Arrow Overall Supply Co*, 414 Mich at 95.

[2] That the federal courts applying the Federal Arbitration Act may have ruled consistently with the dissent's result is of no moment, as no one has suggested that federal law governs this case. See *Pub Serv Credit Union*, 988 F2d at 629 (recognizing cases applying federal law have no application to this issue which is governed by Michigan law).

Affirmed.

/s/ Christopher M. Murray
/s/ Douglas B. Shapiro

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MARKEY, P.J. (*dissenting*).

I respectfully dissent. It is undisputed that plaintiff Samuel Alvarado, on behalf of plaintiff Fuego Grill, L.L.C., signed a rental agreement that plainly contained a broad arbitration clause. It is further undisputed that plaintiffs had a full and fair hearing before an arbitrator on plaintiffs' factual claims that the rental agreement was void or voidable for various reasons. I would hold that the trial court erred by not enforcing a "provision in a written contract to settle by arbitration"[1] both defendant's claims of breach of contract and plaintiffs' affirmative defenses to enforcement of the contract as a whole. I would therefore hold that the trial court erred by denying defendant's motion to confirm the arbitrator's award in Docket No. 302230 and that the trial court erred by denying defendant's motion for summary disposition as to plaintiffs' amended complaint for declaratory and other relief in Docket No. 303763.

I. FACTS AND PROCEEDINGS

On March 30, 2010, defendant's salesman, Jim Carlisle, visited plaintiff[2] as he was working at his soon to open restaurant, the Fuego Grill. Defendant provides items such as aprons, floor mats, and bathroom supplies, on a weekly rental basis. Carlisle prepared a one-page "RENTAL AGREEMENT" the first paragraph of which reads, "THIS AGREEMENT made at . . .," states in bold capital letters: "THE PARTIES HEREBY AGREE UPON THE

[1] MCL 600.5001.

[2] The singular plaintiff refers to plaintiff Samuel Alvarado, who signed the written rental agreement at issue as the "owner" of plaintiff Fuego Grill, L.L.C.

TERMS SET FORTH BELOW AND UPON THE REVERSE SIDE HEREOF." Below this were listed various items for a total weekly minimum charge of $78.20. At the bottom of the front page of the document and immediately above lines for defendant's salesman and the customer to sign is ¶ 4, which provides:

> The Customer warrants that he is not under contract with any other party for the furnishing of the items which are the subject matter hereof. The Customer also warrants that he has read the entire contract, front and back, and has received a copy of the Agreement. The signatory for the customer warrants that he is authorized on behalf of the customer to execute this Agreement.

Plaintiffs do not dispute that Samuel Alvarado signed the rental agreement below this statement as the "owner" of Fuego Grill. Further, plaintiffs do not dispute that Alvarado also signed a separate one-page "GUARANTY OF PAYMENT." That document stated above Alvarado's signature: "The undersigned agrees to personally guarantee payment of any amount due for services rendered or for contractual obligations incurred pursuant to any rental agreement between Domestic and the above named customer, or any extension or renewal thereof."

On the reverse side of the rental agreement, ¶ 14 contains a formula for the calculation of liquidated damages in the event of a breach of the agreement. Paragraph 15 contains the arbitration clause at issue, which provides in pertinent part:

> In the event of any controversy or claim in excess of $10,000.00 arising out of or relating to this agreement, including but not limited to questions regarding the authority of the persons who have executed this agreement, the question, controversy or dispute shall be submitted to and settled by arbitration to be held in the city closest to the city in which the branch office of the Company which serves the Customer is located. Said arbitration shall be held in accordance with the then prevailing commercial arbitration rules of the American Arbitration Association . . .. Judgment upon and [sic] award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The filing party may use either court or arbitration where the claim is less than $10,000.00. . . . The judge or arbitrator shall include as part of the award all costs including reasonable attorney fees and arbitration fees of the non-breaching party where it is determined that one of the parties breached the agreement.

According to plaintiffs, Alvarado refused delivery of the items listed in the rental agreement in April 2010. In response, defendant filed a demand for arbitration with the American Arbitration Association (AAA), on July, 8, 2010. The AAA case manager assigned the matter to attorney Gene J. Esshaki to act as arbitrator. Esshaki conducted a prehearing conference on September 1, 2010, which defendant's attorney and plaintiff attended. The ground rules for hearing dates, filing witness lists, documents, and position papers were outlined at this conference. A hearing was held on September 30, 2010. Defendant's counsel again appeared

and plaintiffs were represented by Samuel Alvarado, Jr. and Samuel Alvarado, Sr.[3] After this hearing, the AAA case manager mailed written notice to the parties that the arbitration hearing was closed, and that the arbitrator would render a decision within 14 days.

After the arbitration hearing, plaintiffs retained counsel, who on September 30, 2010, faxed and mailed to the AAA case manager an appearance on behalf of plaintiffs. Counsel requested that the arbitration hearing be reopened, if closed, so that plaintiffs could present their case through counsel. In his letter, counsel did not dispute that an agreement existed between plaintiffs and defendant. But counsel noted that the "contract" contained "numerous questionable provisions," and a record should be made regarding the "enforceability of the 'contract.'" Counsel indicated it anticipated making a record regarding the following:

> (a) That there was an actual agreement between the parties that preexisted the alleged "contract" containing terms substantially at variance to those the Claimant seeks to enforce;
>
> (b) Fraudulent representations were made and relied upon regarding the nature of the relationship;
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> (c) That both the actual agreement and the alleged "contract" were procured through fraudulent inducement;
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> (d) That the liquidated damage provisions are unenforceable penalties;
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> (e) That Claimant's method of business and a substantial amount of its business income is based upon victimizing hapless small businesses in the manner in which these Respondents have been victimized; and
>
> (f) That at least one court and perhaps others have refused to enforce Claimant's questionable contract provisions.

On October 6, 2010, the arbitrator issued an order granting plaintiffs' motion to reopen the arbitration hearing. On the same day, plaintiffs filed their complaint in circuit court. They pleaded claims alleging that the rental agreement and the guarantee were unenforceable because the contract contained questionable terms and because Alvarado was fraudulently induced to sign them. Plaintiffs' alleged that Carlisle told Alvarado the documents were not a contract; that if plaintiffs entered into a contract it would be on a month-to-month basis; and that Carlisle stated he wanted Alvarado to sign the documents to show his office that he had made the sales' call.

A new arbitration hearing was conducted on November 8, 2010. Plaintiffs submitted both a prehearing brief and a posthearing brief. Plaintiffs' arbitration briefs included not only the arguments and theories noted in counsel's September 30 letter and their circuit court complaint but also additional legal theories attacking the validity of the rental agreement and the guarantee.

[3] The record is unclear which Samuel Alvarado is the owner of the Fuego Grill, L.L.C.

These additional theories included fraud in the execution; no contract was formed for lack of a meeting of the minds; and promissory estoppel, that is, the rental agreement should be reformed based on Carlisle's alleged statements so that it was terminable on one month's notice. Defendant in its posthearing arbitration brief argued that Michigan law requires that unambiguous contracts be enforced as written, and although disputed, plaintiffs' claims that Carlisle made oral misrepresentations were insufficient to grant relief where plaintiffs could have ascertained the truth by the simple act of reading the documents. Although defendant sought over $15,000 in damages, costs, and attorney fees, arbitrator Esshaki issued his decision awarding defendant $4,637.50 against plaintiffs jointly and severally.

On November 16, 2010, defendant filed a motion to confirm the arbitration award in plaintiffs' circuit court action. Defendant asserted it was entitled to an order confirming the arbitration award as the issues the arbitrator addressed arose out of or related to the parties' rental agreement, and plaintiffs had voluntarily submitted all their claims and defenses to the arbitrator. Two days later, on November 18, 2010, plaintiffs filed in circuit court their first amended complaint, adding the additional legal theories they had presented in the arbitration proceedings. Plaintiffs also submitted a brief in opposition to confirming the arbitration award. They argued that the arbitration clause in the rental agreement was unenforceable because the rental agreement itself was void or voidable based on the legal theories and facts alleged in their amended complaint.

The trial court agreed with plaintiffs that the issue was controlled by *Arrow Overall Supply Co v Peloquin Enterprises*, 414 Mich 95, 99; 323 NW2d 1 (1982), and that the determination regarding the existence of an agreement to arbitrate is one for the court. My colleagues also agree. I respectfully disagree.

II. ANALYSIS

The rental agreement at issue provides in ¶ 18 that it "shall be construed according to the law of the State of Michigan." Thus, Michigan law controls this case. *Madison Dist Pub Sch v Myers*, 247 Mich App 583, 588 n 1; 637 NW2d 526 (2001). Michigan has adopted the uniform arbitration act, MCL 600.5001 *et seq*., which permits all persons, except infants and persons of unsound mind, to agree in writing to submit controversies between them to arbitration and to "agree that a judgment of any circuit court shall be rendered upon the award." MCL 600.5001(1); *Wold Architects & Engrs v Strat*, 474 Mich 223, 229; 713 NW2d 750 (2006). Thus, a written agreement providing for the judicial enforcement of controversies settled by arbitration is known as statutory arbitration. *Nordlund & Assoc, Inc v Hesperia*, 288 Mich App 222, 226; 792 NW2d 59 (2010). Such an agreement to arbitrate is "valid, enforceable and irrevocable save upon such grounds as exist at law or in equity for the rescission or revocation of any contract." MCL 600.5001(2); *Rooyakker & Sitz, PLLC v Plante & Moran, PLLC*, 276 Mich App 146, 153; 742 NW2d 409 (2007). Michigan's public policy strongly favors arbitration to resolve disputes. *Rembert v Ryan's Family Steak Houses, Inc*, 235 Mich App 118, 127-128; 596 NW2d 208 (1999).

I agree that absent a binding contract, the parties cannot be required to arbitrate disagreements that arise out of the unenforceable contract. *Ferndale v Florence Cement Co*, 269 Mich App 452, 460; 712 NW2d 522 (2006). "[A]rbitrators derive their authority from the

parties' contract and arbitration agreement," so "the parties' contract is the law of the case in this context." *Gordon Sel-Way, Inc v Spence Bros*, 438 Mich 488, 497-498; 475 NW2d 704 (1991). Furthermore, "[t]he existence of an arbitration agreement and the enforceability of its terms are judicial questions for the court, not the arbitrators." *Ferndale*, 269 Mich App at 458. And, our Supreme Court has held that "the defense 'no valid agreement to arbitrate' may be raised in an action to confirm or enforce an arbitration award." *Arrow Overall Supply*, 414 Mich at 97. But the issue remains whether plaintiffs, having submitted to an arbitrator their fact-based affirmative defenses to the written contract, which plaintiff undisputedly signed, and which plainly contains a broad arbitration clause, may relitigate their defenses to the contract as a whole in circuit court after an adverse decision by the arbitrator. I conclude on the basis of Michigan's strong policy favoring arbitration and because plaintiffs' fact-based claims are within the ambit of the unchallenged arbitration clause of the rental agreement that plaintiff signed, that plaintiffs may not relitigate their affirmative fact-based defenses in circuit court. My conclusion is reinforced by both federal precedent and by principles underlying the judicial doctrine of collateral estoppel.[4]

Whether an arbitration agreement exists and is enforceable are judicial questions. *Arrow Overall Supply*, 414 Mich at 99; *Ferndale*, 269 Mich App at 458. Appellate review of a trial court's determination whether a controversy is subject to arbitration is de novo. *Rooyakker* 276 Mich App at 152; *Madison Dist Pub Sch*, 247 Mich App at 594. To determine whether an issue is subject to arbitration, a court must consider (1) whether there is an arbitration provision in the parties' contract, (2) whether the disputed issue is arguably within the arbitration clause, and (3) whether the dispute is expressly exempt from arbitration under the terms of the contract. *City of Huntington Woods v Ajax Paving Industries, Inc (After Remand)*, 196 Mich App 71, 74-75; 492 NW2d 463 (1992). Further, "a court should not interpret a contract's language beyond determining whether arbitration applies and should not allow the parties to divide their disputes between the court and an arbitrator." *Fromm v MEEMIC Ins Co*, 264 Mich App 302, 304; 690 NW2d 528 (2004). Also, courts should resolve any doubts in favor of arbitration. *Rembert*, 235 Mich App at 129; *Huntington Woods*, 196 Mich App at 75.

Here, it is undisputed that plaintiff signed a written agreement that contained an unambiguous provision for arbitration of disputes that may arise between parties to the agreement and for judicial enforcement of any arbitration award. On its face, the arbitration

[4] The doctrine of collateral estoppel serves "an important function in resolving disputes by imposing a state of finality to litigation where the same parties have previously had a full and fair opportunity to adjudicate their claims." *Minicuci v Scientific Data Mgt, Inc*, 243 Mich App 28, 33; 620 NW2d 657 (2000). "By putting an end to litigation, the preclusion doctrines eliminate costly repetition, conserve judicial resources, and ease fears of prolonged litigation. Whether the determination is made by an agency or court is inapposite; the interest in avoiding costly and repetitive litigation, as well as preserving judicial resources, still remains." *Id*. Similarly, arbitration is intended to avoid protracted litigation over disputes, *NuVision v Dunscombe*, 163 Mich App 674, 684; 415 NW2d 234 (1987), and an arbitrator's findings of fact are unreviewable, *Detroit Auto Inter-Insurance Exchange v Gavin*, 416 Mich 407, 429; 331 NW2d 418 (1982).

clause in the rental agreement complied with MCL 600.5001. *Wold Architects*, 474 Mich 223, 229-230; *Rooyakker*, 276 Mich App at 153-155. Plaintiff's signature on the rental agreement manifested plaintiffs' assent to the terms of the contract. *Ehresman v Bultynck & Co, PC*, 203 Mich App 350, 353-354; 511 NW2d 724 (1994). "Michigan law presumes that one who signs a written agreement knows the nature of the instrument so executed and understands its contents." *Watts v Polaczyk*, 242 Mich App 600, 604; 619 NW2d 714 (2000). The purpose of this well-recognized rule is to preserve the integrity and stability of written instruments. *McKinstry v Valley Obstetrics-Gynecology Clinic, PC*, 428 Mich 167, 184; 405 NW2d 88 (1987).

Plaintiff seeks to avoid the plain terms of the contract he signed by alleging fraud. See *Christy v Kelly*, 198 Mich App 215; 497 NW2d 194 (1992). But "a person cannot avoid a written contract on the ground that he did not attend to its terms, did not read it, supposed it was different in its terms, or that he believed it to be a matter of mere form." *Rowady v K Mart Corp*, 170 Mich App 54, 60; 428 NW2d 22 (1988). Furthermore, "t]here can be no fraud where a person has the means to determine that a representation is not true." *Nieves v Bell Industries, Inc*, 204 Mich App 459, 464; 517 NW2d 235 (1994).

Plaintiffs also argue that no contract was formed because there was no meeting of the minds. Although it is a fundamental tenet of all contracts that there be mutual assent or a meeting of the minds on the essential terms of the contract, plaintiff's *subjective* belief does not control the terms of the parties' written agreement. *Burkhardt v Bailey*, 260 Mich App 636, 655-656; 680 NW2d 453 (2004). Rather, "'[a] meeting of the minds is judged by an objective standard, looking to the express words of the parties and their visible acts . . . .'" *Kamalnath v Mercy Memorial Hosp Corp*, 194 Mich App 543, 548; 487 NW2d 499 (1992), quoting *Stanton v Dachille*, 186 Mich App 247, 256; 463 NW2d 479 (1990). The law presumes that the parties understand the content of a written contract and have thereby manifested their intent by its terms. *Burkhardt*, 260 Mich App at 656. Thus, "'an unambiguous contractual provision is reflective of the parties' intent as a matter of law.'" *AFSCME Council 25 v Wayne Co*, 290 Mich App 348, 350 n 3; 810 NW2d 53 (2010), quoting *Quality Products & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 375; 666 NW2d 251 (2003). Given these principles of contract law, the requirement that plaintiffs have the burden of proving the parties' dispute was not subject to arbitration, *McKinstry*, 428 Mich at 184, and the strong public policy requiring that courts resolve any doubts in favor of arbitration, *Rembert*, 235 Mich App at 127-129, I conclude that the trial court erred by failing to find from the plain terms of the arbitration clause in the rental agreement that plaintiffs' claims regarding the enforceability of the rental agreement as a whole were subject to arbitration.

The arbitration clause in the rental agreement provides that "*any* controversy or claim in excess of $10,000.00 arising out of or relating to this agreement, including but not limited to questions regarding the authority of the persons who have executed this agreement, the question, controversy or dispute *shall* be submitted to and settled by arbitration . . . . The filing party may use either court or arbitration where the claim is less than $10,000.00." The language of the "provision in [the] written contract to settle by arbitration . . . controvers[ies] . . . arising between the parties," MCL 600.5001(2), is clear and unambiguous: *any claims* arising out of or relating to

the rental agreement, including the affirmative defense of fraud in the inducement and other affirmative defenses to the enforceability of the rental agreement as a whole are subject to arbitration.[5] Consequently, plaintiffs' claims were more than arguably within the ambit of the arbitration clause, and the parties' disputes were not expressly exempted from arbitration by the terms of the contract. *Huntington Woods*, 196 Mich App at 74-75. Moreover, when controversies arose between the parties to the rental agreement, plaintiffs voluntarily submitted their fact-based defenses to the enforceability of the contract to the arbitrator. After a full and fair hearing, the arbitrator resolved controversies between the parties in defendant's favor. The trial court erred in finding that it possessed the authority to resolve the parties' disputes anew when defendant brought its motion for enforcement of the arbitration award.

This Court reviews de novo a trial court's decision whether to enforce, vacate or modify an arbitration award. *Nordlund*, 288 Mich App at 226. Judicial review of a statutory arbitration award is limited and governed by MCR 3.602. MCL 600.5021; MCR 3.602(A); *Brucker v McKinlay Transport, Inc*, 454 Mich 8, 17-18; 557 NW2d 536 (1997). Here, plaintiffs' basis for opposing defendant's motion for confirmation of the arbitration award was that the rental agreement was void or voidable. Thus, plaintiffs relied on MCR 3.602(J)(2)(c), which provides "the court shall vacate an award if . . . the arbitrator exceeded his or her powers . . . ." But an arbitrator only exceeds his power when he acts beyond the material terms of the contract from which his authority to arbitrate flows, or acts contrary to controlling principles of law. *Saveski v Tiseo Architects, Inc,* 261 Mich App 553, 554, 557; 682 NW2d 542 (2004). An arbitrator's alleged error of law must appear on the face of the award, and the error must be such that the award would have been substantially different. *Id*. at 555. Here, no error of law appears on the face of the award and the controversies between the parties that the arbitrator resolved were within the ambit of the arbitration clause. Finally, the arbitrator's findings of fact necessary to the award are simply not subject to judicial review. *Donegan v Michigan Mutual Ins Co*, 151 Mich App 540, 549; 391 NW2d 403 (1986). Because plaintiffs presented no cognizable basis to vacate, modify, or correct the arbitration award, the trial court erred when it failed to render judgment in defendant's favor on the arbitration award. MCR 3.602(J)(5), (K)(3) & (L).

I would also hold that the trial court erred by not granting defendant summary disposition on plaintiffs' attempt to assert a class action against defendant. Plaintiffs cite no authority, other than MCR 3.501, by which it may assert purported rights of others to rescind or revoke contracts

[5] This conclusion is consistent with federal precedent under the federal arbitration act. 9 USC 1-16; See *Scanlon v P & J Enterprises, Inc*, 182 Mich App 347, 350; 451 NW2d 616 (1990), citing *Prima Paint Corp v Flood & Conklin Mfg Co*, 388 US 395; 87 S Ct 1801; 18 L Ed 2d 1270 (1967) ("The arbitration clause in this case makes arbitrable any issue arising with respect to the contract, including a claim of fraud in the inducement of the entire contract."). Thus, as a matter of substantive federal arbitration law "attacks on the validity of the contract, as distinct from attacks on the validity of the arbitration clause itself, are to be resolved 'by the arbitrator in the first instance, not by a federal or state court.'" *Nitro-Lift Technologies, LLC v Howard*, 568 US ___; 133 S Ct 500, 503; 184 L Ed 2d 328 (2012), quoting *Preston v Ferrer*, 552 US 346, 349; 128 S Ct 978; 169 L Ed 2d 917 (2008).

the other persons might have entered with defendant. Even assuming other contracts exist with substantially similar or identical terms to those of the rental agreement at issue, plaintiffs offer no authority that the alleged questionable contract provisions might serve as a basis for commonality or are in any way actionable. Further, plaintiffs' claims for rescission or revocation arose not out of common contract terms but out of a salesman's alleged misrepresentations. Finally, because plaintiffs' contract claims against defendant have been resolved by arbitration, plaintiffs may not serve as representatives of the purported class. MCR 3.501(A)(1); *A & M Supply Co v Microsoft Corp*, 252 Mich App 580, 598; 654 NW2d 572 (2002).

For the foregoing reasons, I would reverse and remand for entry of an order enforcing the arbitration award and granting defendant summary disposition on all plaintiffs' claims. We do not retain jurisdiction.

/s/ Jane E. Markey