

IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT JACKSON

FILED

May 21, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

**MOTORCARRIER PETROLEUM
GROUP, INC., d/b/a MPG,**

Plaintiff-Appellee,

Vs.

Shelby Law No. 62464-T.D.
C.A. No. 02A01-9509-CV-00207

**T. R. AUTO TRUCK PLAZA, T.R.
ENTERPRISES, INC.,**

Defendants, and

RICK LEWIS, Individually,

Defendant-Appellant.

FROM THE CIRCUIT COURT OF SHELBY COUNTY

THE HONORABLE WYETH CHANDLER, JUDGE

W. Ray Jamieson and Benjamin T. Wages, Jr., of Memphis
For Appellee

James T. Allison of Memphis
For Appellant

AFFIRMED

Opinion filed:

**W. FRANK CRAWFORD,
PRESIDING JUDGE, W.S.**

CONCUR:

ALAN E. HIGHERS, JUDGE

DAVID R. FARMER, JUDGE

This case is before the Court on stipulation of the parties for accelerated appeal pursuant to Rule 13, Rules of the Court of Appeals. Defendant, Rick Lewis, appeals from the order of the trial court granting summary judgment against him and T. R. Auto Truck Plaza (T.R. Auto) to

plaintiff, Motorcarrier Petroleum Group (Motorcarrier), on its complaint to confirm an arbitration award.

On March 20, 1991, Motorcarrier and T.R. Auto Truck Plaza entered into a contract whereby Motorcarrier agreed to provide diesel fuel and other services to T.R. Auto, who in turn agreed to sell the fuel at a posted price. In October of 1991, a dispute arose between the parties as to billing and the amount of fuel to be supplied. T.R. Auto thereafter terminated the parties' contract and, as per their agreement, the parties submitted to binding arbitration.

On April 8, 1994, the arbitrator awarded Motorcarrier the sum of \$4,566.96, plus attorney fees of \$1,313.00, reimbursement of administrative expenses in the amount of \$513.00, and 10% interest from April 28, 1994. The award included, in addition, a \$605.00 fee to the American Arbitration Association, for a total award of \$7,085.53. The award was against T. R. Auto and Rick Lewis.

On June 17, 1994, Motorcarrier filed suit to confirm the arbitrator's award pursuant to T.C.A. § 29-5-212 (Michie 1980 & Supp. 1995), which states:

Upon application of a party, the court shall confirm an award, unless, within the time limits hereinafter imposed, grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in §§ 29-5-313 and 29-5-314.

On June 20, 1994, Motorcarrier filed a motion for summary judgment, and on September 19, 1994, the defendants responded, contending that the defendants were not justly indebted to the plaintiff and that the motion for summary judgment was premature because defendants were appealing the arbitrator's award to this Court of Appeals.¹ On November 18, 1994, the trial court granted Motorcarrier's motion for summary judgment and confirmed the arbitration award. Lewis, acting individually, perfected the present appeal.

Appellant Lewis presents three issues for this Court's review; however, the appellant's primary argument is that the arbitrator exceeded his powers by finding the appellant individually liable. The dispositive issue is whether the trial court properly granted Motorcarrier's motion for summary judgment, confirming the arbitrator's award.

Trial courts play a limited role in reviewing the decision of an arbitrator. *Arnold v. Morgan Keegan & Co., Inc.*, 914 S.W.2d 445, 448 (Tenn. 1996). The *Arnold* court stated:

[W]here the party has agreed to arbitrate, he or she, in effect has relinquished much of [the right to a court's decision on the

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On July 11, 1994, Rick Lewis and T.R. Auto filed a motion for reconsideration with the arbitrator, which was denied by letter dated August 2, 1994.

merits]. The party still can ask a court to review the arbitrator's decision, *but the court will set that decision aside only in very unusual circumstances* (emphasis in original).

Id. (citing *United Paperworks Int'l Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29, 36 (1987)).

Under *Arnold*, this Court is required to utilize a “deferential” standard of review. We are not “permitted to consider the merits of an arbitration award even if the parties allege that the award rests on errors of fact or misrepresentation of the contract.” *Arnold*, 914 S.W.2d at 450. Furthermore, we are required to accept the facts presented unless we find that those facts are clearly erroneous, and should review legal matters “in a manner designed to minimize interference with an efficient and economical system of alternative dispute resolution.” *Id.*

Under the Uniform Arbitration Act, an arbitrator's award may be vacated if the arbitrator exceeds his or her authority and an application to vacate is made within ninety days after delivery of a copy of the award to the applicant. T.C.A. § 29-5-313. The scope of an arbitrator's authority “is determined by the terms of the agreement between the parties which includes the agreement of the parties to arbitrate the dispute.” *International Talent Group, Inc. v. Copyright Mgmt. Co.*, 769 S.W.2d 217, 218 (Tenn. App. 1988). The fact that the relief granted by the arbitrator may not have been granted by a court is not a ground for vacating or refusing to confirm an award. T.C.A. § 29-5-314 (a)(5). Significantly, under *Arnold*, an “arbitration award is not subject to vacation for a mere mistake of fact or law.” *Id.*, 914 S.W.2d at 451 (citing *McLeroy v. Waller*, 731 S.W.2d 789, 791 (Ark. Ct. App. 1987); *Seither & Cherry Co. v. Illinois Bank Bldg. Corp.*, 419 N.E.2d 940, 945 (Ill. App. Ct. 1981); *Western Waterproofing Co. v. Lindenwood Colleges*, 662 S.W.2d 288, 291 (Mo. Ct. App. 1983); *Turner v. Nicholson Properties, Inc.*, 341 S.E.2d 42, 45 (N.C. Ct. App. 1986)). Regarding appellate review of an arbitrator's decision, the Tennessee Supreme Court found the rationale employed in *Turner* instructive:

In essence respondent argues that an arbitrator who errs as a matter of law exceeds his powers and as a result the award can be vacated. Allowing such relief is inconsistent with the general rule that “errors of law or fact, or an erroneous decision of matters submitted to [arbitration], are insufficient to invalidate an award fairly and honestly made.”

Arnold, 914 S.W.2d at 451. The *Arnold* court also stressed the need for finality in arbitration proceedings, despite the harsh results that may at times follow:

If an arbitrator makes a mistake, either as to law or fact, it is a misfortune of the party, and there is no help for it. There is no right of appeal and the Court has no power to revise the decision of “judges who are of the parties' own choosing.” An [arbitration] award is intended to settle the matter in controversy,

and thus save the expense of litigation. If a mistake be a sufficient ground for setting aside an award, it opens a door for coming into court in almost every case; for in nine cases out of ten some mistake either of law or fact, may be suggested by the dissatisfied party. Thus . . . arbitration, instead of ending would tend to increase litigation.

Id. (citing *Carolina Virginia Fashion Exhibitors, Inc. v. Gunther*, 255 S.E.2d 414, 420 (N.C. Ct. App. 1979)).

In the present case, the arbitrator made the award against T.R. Auto as well as Rick Lewis, individually. Lewis signed the parties' agreement as follows:

Member: T.R. Truck Plaza
By: /s/ Rick Lewis VP & Treas

Despite the fact that Lewis signed the parties' agreement in what is traditionally considered a corporate capacity, *Anderson v. Davis*, 234 S.W.2d 368, 269 (Tenn. App. 1950), there is evidence in the record that Lewis knew that T.R. Truck Plaza was not in fact a corporation at the time Lewis signed the parties' agreement. Pursuant to the provisions of T.C.A. § 48-12-104 (Michie 1995), a person may be liable for obligations created while purporting to act on behalf of a corporation, knowing that no corporation exists. Thus, on the record before us and under the standard of review prescribed by *Arnold*, the arbitrator's apparent finding that Lewis signed the parties' contract in March of 1991 in an individual, rather than in a corporate capacity, is not "clearly erroneous." *Arnold*, 914 S.W.2d at 449.

For the reasons stated herein, we hold that the arbitrator did not exceed his authority as contemplated by T.C.A. § 29-5-313(a)(3) when he determined that Lewis was personally liable for damages caused by T.R. Auto's breach of the parties' contract.

The order of the trial court confirming the arbitrator's award is affirmed. Costs of the appeal are assessed against appellant.

**W. FRANK CRAWFORD,
PRESIDING JUDGE, W.S.**

CONCUR:

ALAN E. HIGHERS, JUDGE

DAVID R. FARMER, JUDGE