

APPELLATE**MICHIGAN COURT OF APPEALS CLARIFIES THAT THE OFFER OF JUDGMENT RULE APPLIES TO A JUDGMENT ENTERED ON AN ARBITRATION AWARD**

by Phillip J. DeRosier

Under Michigan's "offer of judgment" rule, MCR 2.405, costs and attorney fees may be imposed on a party that rejects an offer to stipulate to entry of a judgment and fails to obtain a more favorable "verdict." In *Simcor Construction, Inc v Trupp* (Docket No. 33383; issued Jan 9, 2018), the Michigan Court of Appeals clarified that the rule is not limited to judgments entered as a result of litigation in court, and that the definition of "verdict" also includes judgments entered on arbitration awards.

The Facts

The plaintiff in *Simcor Construction* filed a breach of contract claim against the defendants in district court. Pursuant to an arbitration clause in the parties' contract, the court ordered the parties to arbitration. In the meantime, the defendants made an offer of judgment in favor of the plaintiff for \$2,200. The plaintiff rejected that offer and made a counter-offer of judgment for \$9,383.39, which the defendants rejected. The case proceeded to arbitration, resulting in the arbitrator dismissing the plaintiff's case "with prejudice and without costs."

The plaintiff filed a motion in the district court to vacate the arbitration award. The court, however, confirmed the award and entered "a Judgment of No Cause of Action" in the defendants' favor. The defendants moved for offer of judgment sanctions under MCR 2.405(D), but the district court denied the motion, concluding that confirmation of the award was not a "verdict" under MCR 2.405(A)(4). The circuit court affirmed, reasoning that "a court that confirms the arbitration award is essentially acting in an appellate capacity and not rendering a 'verdict.'"

The Court of Appeals' Decision

After granting the plaintiff's application for leave to appeal, the Court of Appeals reversed the denial of offer of judgment sanctions. The Court noted that under the offer of judgment rule, a "verdict" includes "a judgment entered as a result of a ruling on a motion after rejection of the offer of judgment." MCR 2.405(A)(4)(c). The Court explained that applying this rule involves a two-step inquiry. First, determining whether a "judgment" has been entered. And second, determining whether the judgment was entered as a result of a motion.

The Court reasoned that a judgment confirming an arbitration award is a "judgment" for purposes of MCR 2.405 because MCR 3.602(L) provides that "judgments confirming arbitration awards carry 'the same force and effect . . . as other judgments' and 'may be enforced in the same manner.'" Moreover, the Court explained, "the district court

entered a judgment in favor of defendants 'as a result of' its ruling on plaintiff's motion to vacate the arbitration award, thereby satisfying the second requirement under MCR 2.405(A)(4)(c), i.e., that the judgment be entered as a result of a ruling on a motion after rejection of the offer of judgment." The Court acknowledged that the arbitrator made the initial decision to dismiss the plaintiff's case, but it was "the district court, not the arbitrator, that made the final determination of whether to confirm, correct, modify, or vacate the arbitration award. . . . Because the court had the final determination as to the arbitration award, the judgment constitutes a verdict."

In light of the Court of Appeals' decision in *Simcor Construction*, parties should keep in mind that rejecting an offer of judgment in a case headed to arbitration carries with it the same risk of rejecting an offer of judgment in any other case.

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