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MICHIGAN APPELLATE COURT DETERMINES THAT AN EEOC “RIGHT TO SUE”  
LETTER IS NOT NECESSARY TO INITIATE ARBITRATION ON TITLE VII CLAIMS

By  
Nick Fox\*

I. INTRODUCTION

In *Joseph Chevrolet, Inc. v. Hunt*<sup>1</sup>, the Court of Appeals of Michigan considered an appeal from a defendant-petitioner for reversal of the trial court’s decision to vacate an arbitral award.<sup>2</sup> After prevailing in arbitration, defendant’s arbitration award was vacated on grounds that she did not properly exhaust all administrative remedies before she initiated arbitration.<sup>3</sup> The Court of Appeals reviewed the facts and ruled that it was unnecessary to obtain an Equal Employment Opportunity Commission (“EEOC”) determination prior to initiating arbitration because it was widely acknowledged that the law was unsettled on this topic.<sup>4</sup>

II. BACKGROUND

Petitioner, Lori Hunt had been employed by Respondent, Joseph Chevrolet.<sup>5</sup> Hunt alleged that she suffered adverse consequences at work after refusing to continue a sexual relationship with respondent Joseph Hood.<sup>6</sup> Hunt subsequently filed a four-count demand for arbitration with the American Arbitration Association.<sup>7</sup> She specifically claimed retaliation and sexual

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<sup>1</sup> *Joseph Chevrolet, Inc. v. Hunt*, No. 290882, 2010 WL 2292010 at \*1 (Mich. Ct. App. June 8, 2010), *cert. denied*, 790 N.W.2d 404 (Mich. 2010).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at \*4.

<sup>4</sup> *Id.* at \*5.

<sup>5</sup> *Id.* at \*4.

<sup>6</sup> *Joseph Chevrolet*, 2010 WL 2292010 at \*4.

<sup>7</sup> *Id.* at \*1 n.1.

harassment under Title VII of the Civil Rights Act of 1964 and Michigan's Civil Rights Act ("CRA").<sup>8</sup>

Arbitration subsequently commenced, and on August 3, 2007, the arbitrators issued an award favoring Hunt.<sup>9</sup> She was awarded \$168,000 in damages for both back pay and mental anguish.<sup>10</sup> Additionally, Hunt received \$270,000 in attorney's fees and \$26,730 in costs.<sup>11</sup> Her total award amounted to \$464,730.<sup>12</sup>

Shortly thereafter, Joseph Chevrolet moved to vacate the award of attorney's fees and costs.<sup>13</sup> The damages award of \$168,000 was not contested.<sup>14</sup> After several motions from the parties, a hearing was held, and the trial court took the matter under advisement.<sup>15</sup> The trial court subsequently issued its opinion, which vacated the arbitrator's award for attorney's fees and costs.<sup>16</sup> Hunt moved for reconsideration but the court denied her motion.<sup>17</sup>

Seeking a reversal of the trial court's decision, Hunt then appealed the matter to the Court of Appeals of Michigan.<sup>18</sup> She sought reinstatement of the arbitral award for fees and costs. Hunt argued that the trial court erred by both vacating the arbitration award, and by overturning the arbitrator's determination that an award of attorney's fees to Joseph Chevrolet was improper.<sup>19</sup>

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<sup>8</sup> *Id.*; See generally Civil Rights Act of 1964, 42 U.S.C. § 2000e-2000h-c (2006), and MICH. COMP. LAWS § 37.101-37.2901 (2001).

<sup>9</sup> *Joseph Chevrolet*, 2010 WL 2292010 at \*1.

<sup>10</sup> *Id.* at \*3.

<sup>11</sup> *Id.* at \*1.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Joseph Chevrolet*, 2010 WL 2292010 at \*1 n.1.

<sup>15</sup> *Id.* at \*1.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Joseph Chevrolet*, 2010 WL 2292010 at \*1, \*4.

## III. ANALYSIS

The Appellate Court reviewed the trial court's ruling *de novo*.<sup>20</sup> The court determined that since the parties' agreement to arbitrate allowed for a court judgment to be entered on the arbitration award, the State considered it "statutory arbitration."<sup>21</sup> Pursuant to a Michigan Court Rule governing statutory arbitration, the court noted that

a trial court may only vacate an arbitration award if one of the following occurs: (a) the award was procured by corruption, fraud, or other undue means; (b) there was evident partiality by an arbitrator, appointed as a neutral, corruption of an arbitrator, or misconduct prejudicing a party's rights; (c) the arbitrator exceeded his or her powers; or (d) the arbitrator refused to postpone the hearing on a showing of sufficient cause, refused to hear evidence material to the controversy, or otherwise conducted the hearing to prejudice substantially a party's rights.<sup>22</sup>

The appellate court stated that the issue upon review was whether or not the arbitrator exceeded his powers by acting in contravention of controlling principles of law.<sup>23</sup> The court noted that a trial court can only vacate an arbitrator's award if an obvious, facial error exists. "A trial court may not hunt for errors in an arbitrator's explanation of how it determined [liability] and [damages]."<sup>24</sup>

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<sup>20</sup> *Id.* at \*1.

<sup>21</sup> *Id.* (citing *Gordon Sel-Way v. Spence Bros. Inc.*, 438 Mich. 488, 495 (Mich. 1991)).

<sup>22</sup> *Id.* (quoting MI. RULES MCR § 3.602(J)(2)).

<sup>23</sup> *Id.* at \*2.

<sup>24</sup> *Joseph Chevrolet*, 2010 WL 2292010 at \*2 (quoting *Saveski v. Tiseo Architects, Inc.*, 261 Mich. App. 553, 558 (Mich. Ct. App. 2004)); *see also Gordon Sel-Way*, 438 Mich. at 495.

The trial court vacated the arbitration award of attorney's fees and costs based on their determination that the arbitrator exceeded his power when he awarded \$270,000 to Hunt and \$0 to Joseph Chevrolet.<sup>25</sup> According to the trial court, the award was not reasonable given the circumstances of the case.<sup>26</sup> Specifically, the arbitrator reasoned that the contingent fee arrangement between Hunt and her attorneys would be insufficient to compensate the attorneys since the bulk of the relief sought was injunctive.<sup>27</sup> The trial court rejected this reasoning, however, and suggested that the lawyer's contingent fee based on the damages award of \$168,000 alone would be sufficient compensation.<sup>28</sup> The appellate court determined that the trial court had improperly set aside the arbitration award because it simply disagreed with the arbitrator's determination of an appropriate amount for attorney's fees.<sup>29</sup> "Whether the trial court would have decided the issue differently is irrelevant because reviewing courts may not substitute their judgment for that of the arbitrator."<sup>30</sup> The court concluded that no facial error in the arbitral award existed, and accordingly, that the award was conveyed within the arbitrator's expressly granted powers.<sup>31</sup>

The arbitrator's denial of attorney's fees for Joseph Chevrolet was based on the premise that respondent was meritorious in three of the four claims presented.<sup>32</sup> The arbitrator determined that the preparation efforts and costs would not have been significantly different had Hunt omitted the claims that she ultimately lost.<sup>33</sup> Additionally, the arbitrator determined that Hunt took a proper

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<sup>25</sup> *Joseph Chevrolet*, 2010 WL 2292010 at \*3.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at \*4.

<sup>30</sup> *Joseph Chevrolet*, 2010 WL 2292010 at \*3 (citing *Gordon Sel-Way v. Spence Bros. Inc.*, 438 Mich. 488, 497 (Mich. 1991)).

<sup>31</sup> *Id.* at \*4.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

approach in pursuing her Title VII claims via arbitration.<sup>34</sup> Both parties conceded that it was unclear whether or not the filing of an EEOC complaint was mandatory prior to initiating arbitration.<sup>35</sup> The trial court, however, asserted that it was entirely improper for Hunt to pursue judicial relief, without first filing a complaint with the EEOC or acquiring a “right to sue” letter.<sup>36</sup> The trial court summarized Hunt’s omission as amounting to a frivolous, unreasonable, and groundless pursuit of litigation.<sup>37</sup>

A principal issue in this case was whether a party needs to obtain a right to sue letter from the EEOC before initiating arbitration. It is well settled that such a letter is required before commencing *litigation* on Title VII claims.<sup>38</sup> Both parties, however, conceded that it was unclear whether or not obtaining such a letter was mandatory prior to initiating *arbitration*.<sup>39</sup> Since the area of law is quite unsettled, the appellate court sided with the arbitrator in finding that Hunt’s conduct was not frivolous when she failed to obtain the letter.<sup>40</sup> Accordingly, the Court of Appeals determined that the arbitrator’s decision was not an error of law, and reversed the decision of the trial court.<sup>41</sup> The Court of Appeals deemed the trial court in error, and ultimately reinstated the decision of the arbitrator.<sup>42</sup>

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<sup>34</sup> *Id.*

<sup>35</sup> *Joseph Chevrolet*, 2010 WL 2292010 at \*4.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at \*5.

<sup>39</sup> *Id.* at \*4.

<sup>40</sup> *Joseph Chevrolet*, 2010 WL 2292010 at\*4; see *Christiansburg Garment Co. v. Equal Employment Opportunity Comm’n*, 434 U.S. 412, 423-24 (1978) (affirming district court’s denial of attorney fees when the district court concluded that a suit brought by EEOC under Title VII could not be characterized as unreasonable or meritless because “the basis upon which petitioner prevailed was an issue of first impression requiring judicial resolution”); see also *Ross v. Auto Club Group*, 748 N.W.2d 552 (Mich. 2008) (holding that insured was not entitled to attorney fees when insurer’s refusal to pay was a reasonable position considering the insured claim was an issue of first impression); *Harbour v. Corr. Med. Serv., Inc.*, 266 Mich. App. 452, 466 (Mich. Ct. App. 2005) (noting that a case involving a legal issue of first impression provides an exemption for awarding attorney fees under the case evaluation attorney fee provision).

<sup>41</sup> *Joseph Chevrolet*, 2010 WL 2292010 at \*5.

<sup>42</sup> *Id.*

#### IV. SIGNIFICANCE

*Joseph Chevrolet* is significant because it establishes a precedent for all would-be Title VII litigants to follow – at least for the time being. Until a case is decided that demands exhaustion of administrative remedies prior to enacting arbitration, future Michigan plaintiffs may proceed to arbitration on the coattails of *Joseph Chevrolet* with a certain degree of confidence. However, if arbitration is intended to be a comparable, yet streamlined alternative to litigation, it would not be surprising to see a mandatory EEOC authorization as a gateway to Title VII arbitration in the future.