

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

REED KNEALE,)	CASE NO. CV 07 631390
)	
Plaintiff)	JUDGE JOHN P. O'DONNELL
)	
-vs-)	<u>JOURNAL ENTRY</u>
)	
BABIN BUILDING)	
SOLUTIONS, LLC,)	
)	
Defendant)	

The plaintiff has filed an application pursuant to O.R.C. §2711.10 to vacate a summary judgment arbitration award made in favor of the respondent. By statute, this court can vacate an arbitration award only if: it was procured by corruption, fraud or undue means; there was evident partiality or corruption on the part of the arbitrator; the arbitrator was guilty of misconduct or misbehavior; or the arbitrator exceeded her powers, or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made.

Having reviewed all submissions of both parties, the court finds that the only potential ground to vacate the award is that the arbitrator exceeded her power by deciding the case on summary judgment. As to that possible basis to vacate the award, the court notes first that the parties impliedly consented to the arbitrator deciding a motion for summary judgment by fully briefing the arbitrator, and second that the parties have not provided this court with any evidence that the arbitrator was not within her powers to consider a motion for summary judgment. Hence, the court cannot find that the arbitrator exceeded her powers by deciding a motion for summary judgment.

This court may not, as the applicant argues, consider the motion for summary judgment *de novo*. The court's review of the summary judgment decision is only for the possible deficiencies outlined above. Finding none of those deficiencies, the court hereby denies the applicant's motion to vacate the arbitration award.

IT IS SO ORDERED:

Judge John P. O'Donnell