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STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0442

Itron, Inc.,
Respondent,

vs.

WEB Construction, Inc.,
Appellant.

Filed January 20, 2009
Affirmed
Huspeni, Judge[*]
Concurring specially, Minge, Judge

Hennepin County District Court
File No. 27-CV-07-17435

William R. Joyce, Bernard (B.J.) Nodzon, Faegre & Benson, L.L.P., 2200 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402-3901 (for respondent)

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Considered and decided by Kalitowski, Presiding Judge; Minge, Judge; and Huspeni, Judge.

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

HUSPENI, Judge

Appellant, a general contractor on a construction project for respondent, challenges the district court's order granting respondent's motion to confirm an arbitration award and denying appellant's motion to vacate the award based on the arbitrator's alleged failure to disclose a conflict of interest, evident partiality, and manifest disregard of the law. We affirm.

FACTS

Itron, Inc. (Itron) and WEB Construction, Inc. (WEB) entered into a construction contract whereby WEB would construct a new addition to Itron's manufacturing facility in Waseca, Minnesota. Pursuant to the contract, claims not resolved by mediation would be decided by arbitration in accordance with the Construction Industry Arbitration rules of the American Arbitration Association (AAA).

After Itron discovered that shale particles in the concrete flooring of its new addition caused "popouts" (small conical-shaped voids) in the floor, Itron filed an arbitration demand claiming defects. WEB retained attorneys Robert Smith and Mary Schwind of Leonard, Street and Deinard, P.A., to represent WEB in the arbitration. WEB completed and submitted to AAA a "Checklist for Conflicts" form, including as an "interested party" Bob Hartke from Owatonna Concrete Products, Inc. (Owatonna), WEB's subcontractor on the Itron construction project.

On August 29, 2006, AAA appointed Gregory Bistram of Briggs & Morgan, L.L.P. (Briggs & Morgan) to serve as arbitrator in the dispute between Itron and WEB.

Bistram accepted the appointment and acknowledged in writing his ongoing obligation to diligently check for conflicts and to disclose any potential conflicts that could create an appearance of partiality.

Before the arbitration, WEB notified Owatonna that it believed Owatonna was responsible for any damages resulting from Itron's arbitration claims, and requested that an Owatonna representative attend a mediation scheduled for November 2006. On October 31, 2006, attorney Joseph Roach, of Rider Bennett, L.L.P., representing Owatonna in connection with the claims, drafted a letter to WEB denying responsibility for the defective flooring and declining WEB's invitation.

WEB retained two additional attorneys, Steve Zabel and Jeff Ehrich, also from Leonard, Street and Deinard, P.A., to secure insurance coverage for the arbitration. On December 6, 2006, WEB initiated an action against its insurer seeking coverage for Itron's claims. Although this insurance action was related to the arbitration between WEB and Itron, it was an action separate from the arbitration itself. WEB's four attorneys each worked for Leonard, Street and Deinard, P.A., but there were few conversations between the two arbitration attorneys and the two insurance attorneys exchanging the details of either the arbitration or insurance action.

The arbitration took place on May 21–22, 2007, and Bistram viewed the defective flooring on May 23, 2007.

In late May 2007, Ehrich and Zabel decided to depose a representative of Owatonna for purposes of WEB's insurance action. Ehrich attempted to reach Roach, who he believed was representing Owatonna, at Rider Bennett, L.L.P. and was informed

that Roach was working at Briggs & Morgan. Roach had actually been a shareholder at Briggs & Morgan since at least April 16, 2007. Ehrich contacted Roach at Briggs & Morgan on or about May 29, 2007; he asked whether Roach still represented Owatonna. Roach said he did.

On June 7, 2007, Ehrich copied Roach on a subpoena sent to Owatonna. Upon receiving the notice, Roach performed an internal conflicts check to determine whether Briggs & Morgan could represent Owatonna in responding to the subpoena. On June 8, 2007, Roach telephoned Ehrich and left him a voicemail message stating that he could not continue to represent Owatonna because another attorney at Briggs & Morgan (i.e., Bistram) had "been acting as an arbitrator or mediator in that case." Owatonna retained new counsel to represent it in responding to the subpoena. Briggs & Morgan did not bill any time to Owatonna.

On July 12, 2007, Bistram awarded Itron $588,276 in damages, plus 5% annual interest beginning on August 11, 2007. Itron subsequently moved the district court to confirm the arbitration award; WEB moved to vacate the award. The district court confirmed the award on January 11, 2008, concluding, contrary to WEB's argument, that Bistram did not have a conflict of interest which would require the court to vacate the award, and Bistram did not exhibit "evident partiality." The court also concluded that the award could not be vacated based on Bistram's alleged manifest disregard of the law because no Minnesota court had adopted the manifest disregard doctrine.

WEB now appeals.

D E C I S I O N

WEB argues that the district court erred when it failed to vacate the arbitration award because Bistram (1) failed to disclose a conflict of interest regarding Roach's relationship with Owatonna; (2) had a financial interest in the outcome of the arbitration due to Roach's relationship with Owatonna and, therefore, exhibited "evident partiality"; and (3) manifestly disregarded the law of economic waste.

I. Fraudulent Failure to Disclose a Conflict of Interest

WEB argues that Bistram had a conflict of interest by virtue of working at Briggs & Morgan with Roach, who either was representing Owatonna or had represented Owatonna before he joined Briggs & Morgan. WEB contends that because Bistram did not disclose any conflict to Itron or WEB, this court should vacate the arbitration award under Minn. Stat. § 572.19, subd. 1(1) (2006).

A judicial appeal from an arbitration decision is subject to "an extremely narrow" standard of review. *Hunter, Keith Indus., Inc. v. Piper Capital Mgmt. Inc.*, 575 N.W.2d 850, 854 (Minn. App. 1998). This court exercises "every reasonable presumption" in favor of the arbitration award's validity and finality. *Id.* "A court may vacate an arbitration award only upon proof of one or more of the grounds stated in Minn. Stat. § 572.19." *Id.* In order to vacate an arbitration award for fraud, the fraud must be established by "clear allegations and proof." *Beebout v. St. Paul Fire & Marine Ins. Co.*, 365 N.W.2d 271, 273 (Minn. App. 1985), *review denied* (Minn. May 31, 1985).

Two statutes impact our analysis and guide our resolution of the issues in this case. Minn. Stat. § 572.10, subd. 2(c) (2006) provides:

> In all arbitrations:
>
> (1) after a neutral arbitrator has been selected, any relationship, conflict of interest, or potential conflict of interest that arises must be immediately disclosed by the arbitrator in writing to all parties, and a party may move the district court or the arbitration tribunal for removal of the neutral arbitrator;
>
> (2) the disclosure required under this section is in addition to that which may be required by applicable rules of law, ethics, or procedure; and
>
> (3) if the neutral arbitrator fails to disclose a conflict of interest or material relationship, it is grounds for vacating an award for fraud as provided in section 572.19.

Minn. Stat. § 572.19 (2006) provides in relevant part:

> Subdivision 1. Application. Upon application of a party, the court shall vacate an award where:
>
> (1) The award was procured by corruption, fraud or other undue means;
>
> (2) There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party . . . .

Reading these two statutes together indicates that failure to disclose a conflict is not in itself sufficient to justify a court in vacating an arbitration award. Section 572.10, subdivision 2(c)(3) expressly refers to section 572.19, which, in turn, requires this court, upon application of a party to vacate an award only where "[t]he *award was procured by* corruption, *fraud* or other undue means." Minn. Stat. § 572.19, subd. 1(1) (emphasis added). There must be some connection between the failure to disclose and the arbitration award.

In *Ronning v. Citizens Sec. Mut. Ins. Co.*, this court required the party challenging the arbitration award under Minn. Stat. §§ 572.10, subd. 2(c)(3), .19, subd. 1(1), to show that (1) the arbitrator had a conflict of interest or material relationship, and (2) the

arbitrator's lack of disclosure regarding the conflict or relationship prejudiced the party or tainted the outcome of the arbitration. 557 N.W.2d 363, 366–67 (Minn. App. 1996). The court addressed each requirement in turn, stating first that "[t]here is no evidence . . . that th[e arbitrator's attorney-client relationship with the party] was a material relationship or a conflict of interest." *Id*. at 366. And, second, the court stated that "[t]here is also no evidence in the record that shows the failure to disclose tainted the outcome of the arbitration." *Id*. at 367. Thus, this court concluded that "grounds to vacate the award because of the arbitrator's lack of disclosure do not exist." *Id*.

WEB argues that it is not required to show that it was prejudiced or that the arbitrator's lack of disclosure impacted the arbitration award. We disagree and conclude that the cases WEB cites do not support its position. In *L & H Airco, Inc. v. Rapistan Corp.*, the issue was "whether failure to disclose possible conflicts of interest should be grounds for *civil suit against an arbitrator*" and not whether the arbitration award should have been vacated under Minn. Stat. § 572.19, subd. 1. 446 N.W.2d 372, 377 (Minn. 1989) (emphasis added).

WEB also cites *Pirsig v. Pleasant Mound Mut. Fire Ins. Co.*, 512 N.W.2d 342 (Minn. App. 1994), *Egan & Sons Co. v. Mears Park Dev. Co.*, 414 N.W.2d 785 (Minn. App. 1987), and *Nw. Mech., Inc. v. Pub. Util. Comm'n*, 283 N.W.2d 522 (Minn. 1979). In *Pirsig* and *Egan & Sons*, the issue was whether district courts erred in refusing to overturn arbitration awards for *evident partiality*[1] under Minn. Stat. § 572.19, subd. 1(2), not for fraud under subdivision 1(1). *Nw. Mech., Inc.* also fails to support WEB's

[1] Evident partiality is discussed in Section II of this opinion.

argument. In that case, the supreme court held that the arbitrators were required to disclose business connections with a party because, although the contacts may not have resulted in actual prejudice, they were "dealings that might create an impression of possible bias." 283 N.W.2d at 524 (quoting *Commonwealth Coatings Corp. v. Continental Cas. Co.*, 393 U.S. 145, 149, 89 S. Ct. 337, 339 (1968)). Like *Pirsig* and *Egan & Sons*, the holding in *Nw. Mech., Inc.* addresses "evident partiality," and not fraud. *See Pirsig*, 512 N.W.2d at 344 ("In defining 'evident partiality,' the Minnesota Supreme Court has held that contacts between an arbitrator and a party . . . that might create an impression of possible bias, require that the arbitration award be vacated." (citing *Nw. Mech., Inc.*, 283 N.W.2d at 524)).

Fraud by an arbitrator involves an "*award [that] was influenced* by dishonest motives." *Kaufman Jewelry Co. v. Firemen's Ins. Co.*, 168 Minn. 431, 433, 210 N.W. 289, 290 (1926) (emphasis added). Minn. Stat. § 572.19, subd. 1(1), explicitly states that a court must vacate an arbitration "*award* [which] was *procured by* corruption, fraud, or other undue means . . . ." (Emphasis added.) Therefore, a party challenging an award under section 572.19, subdivision 1(1), must show not only that the arbitrator had a conflict of interest, but that the arbitrator's lack of disclosure regarding the conflict affected the arbitration award by prejudicing the party or tainting the arbitration. *See Ronning*, 557 N.W.2d at 366–67 (noting that there were no facts suggesting that because of an arbitrator's failure to make disclosures (1) a conflict impacted the arbitration decision, or (2) the arbitration was tainted; thus, grounds to vacate the award because of the arbitrator's lack of disclosure did not exist).

A. Failure to Disclose a Conflict of Interest

WEB argues that Bistram had a conflict of interest under Minn. R. Prof. Conduct 1.10(a), (b). Rule 1.10(a) generally prohibits a lawyer from representing a prospective client when any lawyer in the same firm or association would be prohibited from representing that client due to a significant risk of materially limiting the lawyer's representation of other clients. Rule 1.10(b) provides that a lawyer is generally prohibited from representing a prospective client, where any other lawyer in his/her firm would be prevented from representing the client because his/her former firm represented a client with interests materially adverse to the prospective client.

Even assuming for the sake of further analysis that Minn. R. Prof. Conduct 1.10(a) and (b) establish that Bistram had an actual or potential conflict of interest due to Roach's relationship with Owatonna, this court has never applied Minn. R. Prof. Conduct 1.10 to neutral arbitrators' disclosure obligations. Instead, we are guided by *Safeco Ins. Co. v. Stariha*, 346 N.W.2d 663 (Minn. App. 1984). In that case, we set forth specific disclosure standards for arbitrators in commercial disputes. *Id.* at 667. Those standards state that arbitrators should disclose any of their own or their partners' or business associates' existing or past financial or business relationships which might reasonably create an appearance of partiality or bias. *Id.* But this rule of disclosure is subject to a reasonableness standard. Arbitrators need only make a "reasonable effort to inform themselves of any interests or relationships [which might reasonably create the appearance of partiality or bias]." *Id.* In sum, arbitrators do not have a duty to disclose

any imputed, or even direct, conflict of interest or relationship which could not be discovered with reasonable effort.

Nothing in the record before us suggests that Bistram failed to make reasonable efforts to inform himself of any interests or relationships he had that might create an appearance of partiality or bias, the discovery of which would have triggered a disclosure duty. According to the record, Bistram, a partner at Briggs & Morgan, was appointed as arbitrator in the dispute between WEB and Itron on August 29, 2006. WEB had listed Bob Hartke of Owatonna as an "interested party" on an AAA conflicts checklist form before AAA appointed Bistram. On October 31, 2006, Roach, still an attorney at Rider Bennett, L.L.P., represented Owatonna in connection with claims underlying the arbitration by drafting a letter to WEB on behalf of Owatonna. In or around April 2007, Roach joined Briggs & Morgan. But there is no evidence that Roach informed or made it reasonably apparent to anyone at Briggs & Morgan, including Bistram, that he had formerly represented Owatonna (an "interested party" in the arbitration) by drafting the letter.

Bistram presided over the arbitration proceedings on May 21 & 22, 2007, and he viewed the flooring at Itron's facility on May 23, 2007. On or about May 29, 2007, Roach responded to an inquiry from Ehrich (WEB's counsel in the insurance dispute between WEB and Owatonna), stating that he was still representing Owatonna. But there is no evidence in the record that Roach made similar statements to anyone else, including Bistram. Ehrich did not tell anyone about what he learned from Roach until WEB

(Ehrich's client) received a bill, dated July 9, 2007, from Briggs & Morgan accompanying the arbitration award.

Despite Roach's statement to Ehrich, the evidence in the record suggests that Roach only seriously contemplated initiating an attorney-client relationship between Owatonna and Briggs & Morgan when Ehrich copied him on a subpoena sent to Owatonna on June 7, 2007. Roach "immediately" performed an internal conflicts check to determine whether Briggs & Morgan could represent Owatonna in responding to the subpoena. On June 8, 2007, Roach informed Ehrich that he could not continue to represent Owatonna because another attorney at Briggs & Morgan (i.e., Bistram) had been acting as an arbitrator or mediator in the underlying dispute. Roach then helped Owatonna find counsel to respond to the subpoena. Briggs & Morgan did not bill any time to Owatonna. There is no evidence in the record to suggest that Bistram was ever informed that Owatonna was seeking representation of any attorney at Briggs & Morgan.

In *Safeco*, we cautioned that the "provisions on disclosure of an attorney-client relationship are intended to be applied realistically so that the burden of detailed disclosure does not become so great that it is impractical for persons in the business world to be arbitrators . . . ." *Id*. at 666. The facts in the record do not establish that Bistram, while serving as arbitrator, ever discovered Roach's prior representation of Owatonna, learned of Roach's May 29, 2007 telephone conversation with Ehrich, or failed to make *reasonable* efforts to discover any interests or relationships that might appear questionable.

The party challenging an arbitration award must clearly establish the existence of a long-standing and repeated relationship between the arbitrator and the interested party before a court will overturn an arbitration award for failure to disclose a conflict. *Id*. at 666. Here, the facts do not establish that Bistram, or Briggs & Morgan, had a long-standing or repeated relationship with Owatonna. To the contrary, the facts established by the record support the district court's conclusion that Briggs & Morgan did not represent Owatonna in response to the subpoena.

We conclude that, even if Bistram had a conflict, WEB fails to establish that Bistram knew of Roach's relationship with Owatonna or could have discovered the relationship with reasonable efforts. WEB also fails to establish that the relationship between Bistram and Owatonna was long-standing and repeated. WEB has not met the requirements set forth in *Safeco*.

B. Prejudice

WEB claims that it was prejudiced by the following statement in the memorandum accompanying the arbitration award: "Nothing in the Arbitration Award or this Memorandum should be construed as limiting Web Construction's right to seek recover[y] from its Project suppliers or subcontractors regarding the inclusion of shale . . . ." WEB contends that this statement is a determination that Owatonna was responsible for the popouts, thereby linking Owatonna to the award. We disagree.

The award, which does not reference Owatonna, determined that WEB was liable for the damages claimed by Itron. The statement in the memorandum regarding WEB's

right to recover from others, rather than being prejudicial, arguably inures to the benefit of WEB; the statement clearly is not limited to WEB's recovery only from Owatonna.

In conclusion, the evidence in the record does not establish that Bistram knew of a conflict, such that he needed to make disclosures, or that he failed to reasonably investigate any interests or relationships which might appear improper. The evidence also does not establish that WEB was prejudiced or that the arbitration award was in any way impacted by Bistram's failure to disclose his connection to Owatonna. In order to vacate an arbitration award for fraud, the fraud must be established by "clear allegations and proof." *Beebout*, 365 N.W.2d at 273. We find WEB's allegations and proof to be lacking.

The district court concluded that WEB did not establish that there was a conflict of interest requiring the court to vacate the arbitration award for fraud under Minn. Stat. § 572.19, subd.1(1). Our careful review of the record convinces us that the district court's decision should be affirmed.

II. Evident Partiality

WEB argues that Roach had a direct financial interest in the outcome of the arbitration because the award would in turn impact whether WEB sought recovery from Owatonna in the insurance action, which would impact the level of representation Owatonna would seek from Roach. Therefore, WEB contends, Bistram, who was a member of the same law firm as Roach, also had a direct financial interest in the outcome, constituting "evident partiality," which is one of the grounds for vacating an arbitration award under Minn. Stat. § 572.19, subd. 1.

As indicated earlier in this opinion, a judicial appeal from an arbitration decision is typically subject to "an extremely narrow" standard of review whereby this court exercises "every reasonable presumption" in favor of the arbitration award's validity and finality. *Hunter, Keith*, 575 N.W.2d at 854. But each party is legally entitled to a fair arbitration and, therefore, this court reviews a denial of a motion to vacate on the grounds of evident partiality under a de novo standard. *See Pirsig*, 512 N.W.2d at 343–44 ("Whether the conduct challenged constitutes 'evident partiality' is reviewed de novo . . . . [E]vident partiality is a legal question. A party to an arbitration is entitled to a fair arbitration.").

Minn. Stat. § 572.19, subd. 1(2), requires this court to vacate an arbitration award where "[t]here was evident partiality by an arbitrator appointed as a neutral." "['E]vident partiality' generally arises when a neutral arbitrator has contacts with a party or another arbitrator that *might* create an impression of possible bias." *Aaron v. Illinois Farmers Ins. Group*, 590 N.W.2d 667, 669 (Minn. App. 1999) (citation omitted) (emphasis added). A party who moves to vacate an arbitration award for evident partiality must establish facts that create a reasonable impression of partiality. *Id*.

In *Nw. Mech., Inc.*, one of the arbitrators was president of a construction firm that did construction under a contract with the city, which was in "practical effect" the same entity as a party to the arbitration, the public utilities commission for the city. 283 N.W.2d at 524 (stating that the two entities were practically the same, although the commission for the city may have had a "legal status in some ways independent of the city" itself). Another arbitrator had represented the city in at least four cases in the ten

years prior to the current arbitration. *Id*. at 523. The court vacated the award, noting that although the dealings may not have produced actual prejudice, they were "dealings that might create an impression of possible bias." *Id*. at 524 (citing *Commonwealth Coatings Corp.*, 393 U.S. at 149, 89 S. Ct. at 339).

WEB argues that the impression of partiality here is even more problematic than in *Nw. Mech., Inc*. because Roach's representation of Owatonna concerned the *same* dispute as the arbitration. The insurance dispute between Owatonna and WEB and the arbitration between WEB and Itron did concern the same underlying dispute relating to flooring defects, but this case is distinguishable from *Nw. Mech., Inc.* in two respects. First, Owatonna and WEB cannot be characterized as a "single entity." WEB's and Owatonna's interests are aligned regarding the outcome of the arbitration, but the two are separate companies with independent legal statuses, and they generally have separate interests. For example, Owatonna and WEB are in direct opposition regarding the insurance action.

Second, WEB must show that Bistram's relationship with or business connection to Owatonna was "substantial." *See Egan & Sons*, 414 N.W.2d at 786 (affirming vacation of an arbitration award for evident partiality, holding that "where the arbitrator ha[d] a substantial interest in a firm which ha[d] done more than trivial business with a party, that fact must be disclosed"). Yet, WEB fails to show that the relationship was substantial.

Nw. Mech., Inc. involved a substantial relationship because the arbitrator personally represented the city in four cases and another arbitrator's company had a

construction contract with the city. 283 N.W.2d at 524. Moreover, some of the arbitrators' dealings were direct and occurred over a period of several years (including the arbitrator's personal representation of the city) and, presumably, involved financial benefits to the arbitrator.

Here, the facts are in stark contrast to those of *Nw. Mech., Inc.* WEB has not produced any evidence that Bistram, or his firm, Briggs & Morgan, provided services for Owatonna before Bistram was appointed as arbitrator or during the arbitration proceedings. WEB has not provided any evidence that Briggs & Morgan received benefits, financial or otherwise, from Owatonna (an "interested party" in the arbitration). Briggs & Morgan never billed Owatonna, and there is no evidence that Roach did anything for Owatonna while working at Briggs & Morgan, other than commendably performing a conflicts check and finding counsel for the company when he discovered that his law partner, Bistram, was involved in the arbitration between WEB and Itron.

In *Egan & Sons*, this court concluded that the arbitrator had a "substantial relationship" with the partner of Mears Park Development Company where the arbitrator's former firm performed "longstanding and substantial services" for the partner and the arbitrator personally lobbied for the project involved in the Egan/Mears Park dispute while working at the firm. 414 N.W.2d at 786. This court affirmed the district court's vacation of the arbitration award for evident partiality because the contacts between the arbitrator and party were sufficient to require disclosure. *Id.*

Again, the facts here are different. Owatonna was not a party to the arbitration, as Mears Park Development Company was in *Egan & Sons*. Moreover, the relationship

between Bistram and Owatonna was insubstantial in comparison with the relationships in *Egan & Sons*, where the arbitrator himself had done substantial work for a partner of one of the parties to the arbitration. *Id*. Here, WEB does not allege that Bistram personally did any work for Owatonna. As noted above, the record shows that the only work any Briggs & Morgan attorney did for Owatonna was performing a conflicts check and finding counsel for the company when a potential conflict was discovered.

Moreover, in the cases WEB cites, where arbitration awards were overturned based on evident partiality, the party alleging partiality was also the party which would have been primarily disadvantaged by the alleged bias or contacts. *See Nw. Mech., Inc.*, 283 N.W.2d at 523 (where a party to an arbitration challenged the award, alleging business connections between the *other* party to the arbitration and two arbitrators); *Egan & Sons*, 414 N.W.2d at 786 (where a party to an arbitration challenged the award based on the arbitrator's failure to disclose a substantial relationship he had with the *other* party to the arbitration). Here, WEB was not the disadvantaged party. The alleged relationship between Bistram and Owatonna would likely create the impression that the arbitration award would be more likely to favor WEB, whose interests were aligned with Owatonna's interests. But, in fact, the arbitration award favored Itron, which was awarded nearly its entire request for damages.

The district court concluded that WEB did not establish facts that create a reasonable impression of partiality. We agree.

III. Manifest Disregard of the Law

Manifest disregard of the law is a doctrine that allows a court to vacate an arbitration award where the arbitrator "understand[s] and correctly state[s] the law but proceed[s] to disregard the same." *Stroh Container Co. v. Delphi Indus., Inc.*, 783 F.2d 743, 750 (8th Cir. 1986) (quoting *San Martine Compania de Navegacion v. Saguenay Terminals, Ltd.*, 293 F.2d 796, 801 (9th Cir. 1961)).

WEB urges this court to adopt the doctrine of manifest disregard of the law and contends that Bistram manifestly disregarded Minnesota law when he acknowledged the existence of the economic waste doctrine and found the flooring defects to be merely aesthetic, yet awarded damages based on the higher repair cost rather than only the diminution in value. Manifest disregard of the law has never been recognized in Minnesota, and it is not the function of this court to now adopt the doctrine. "The function of the court of appeals is limited to identifying errors and then correcting them." *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988); *see also Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987) (stating that extending existing laws falls to the supreme court or legislature, but not the court of appeals), *review denied* (Minn. Dec. 18, 1987). Therefore, we decline to adopt the doctrine of manifest disregard of the law.

Finally, for the sake of complete analysis, even if we were to address the merits of appellant's manifest disregard of the law issue, we would conclude that the arbitrator did not manifestly disregard the law in his decision.

Affirmed.

MINGE, Judge (concurring specially)

Except for part III, I join in the opinion of the court. With respect to part III, I agree that the record does not establish that the arbitrator manifestly disregarded the law. Accordingly, I concur with the decision of this court in part III on that limited basis. However, because we conclude that there is not such manifest disregard, I would not reach the question of whether the manifest-disregard doctrine should be recognized in Minnesota and do not join in the decision not to recognize the doctrine.