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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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RAGNAR BENSON, LLC, d/b/a Ragnar Benson Construction, LLC,	)	Appeal from the Circuit Court of Cook County.
	)	
Plaintiff-Appellee,	)	
	)	No. 10 L 8284
v.	)	
	)	
NATIONAL HEAT & POWER CORPORATION, d/b/a Goodman Plumbing & Heating Company,	)	The Honorable Sanjay Tailor, Judge, presiding.
	)	
Defendant-Appellant	)	

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JUSTICE HYMAN delivered the judgment of the court.  
Presiding Justice Pucinski and Justice Mason concurred in the judgment.

**ORDER**

¶ 1 *Held:* Circuit court order granting a motion to confirm and enter judgment on an arbitration award affirmed where arbitrator had authority to make award and appellant failed to provide a sufficient record of the arbitration proceedings to support its argument that award should be modified.

¶ 2 A building jointly owned by Northwestern Memorial Hospital and Northwestern University sustained extensive water damage after a fitting on a water riser (the system that carries water vertically) failed during repair work. Responsibility for the mishap belonged to defendant National Heat and Power Corporation, d/b/a Goodman Plumbing and Heating

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Company (Goodman Plumbing). Plaintiff Ragnar Benson LLC, d/b/a Ragnar Benson Construction LLC (Ragnar Benson), which had subcontracted with Goodman Plumbing to perform some of the work on the building's water riser system, sued Goodman Plumbing alleging negligence, breach of contract, and breach of the indemnity agreement. The litigation was stayed pending the outcome of arbitration. The arbitrator, after granting summary judgment on liability against Goodman Plumbing, heard evidence only on damages, and then entered an award in favor of Ragnar Benson, which included \$138,433.69 identified as "Northwestern University Administrative Costs." The arbitrator also granted a setoff in the amount of \$223,370 that Ragnar Benson owed to Goodman Plumbing for unpaid work.

¶ 3 Goodman Plumbing appeals from an order of the circuit court of Cook County denying its motion for modification of the arbitration award and granting Ragnar Benson's motion to confirm and enter judgment on the award. Goodman Plumbing contends: (1) the award should be modified because the arbitrator exceeded his authority by granting damages for Northwestern University Administrative Costs, where neither party had an agreement to arbitrate with the university and Ragnar Benson had not paid the university for those costs and (2) the arbitrator should have issued two separate awards—one for the damages incurred by Ragnar Benson and one for the amount Ragnar Benson owed to Goodman Plumbing—rather than applying a setoff.

¶ 4 We affirm, holding that (i) under the agreements between the parties, the amount of damages incurred by Northwestern University came within the scope of the damages Ragnar Benson may seek in arbitration, and (ii) Goodman Plumbing waived the issue of the setoff.

¶ 5 **BACKGROUND**

¶ 6 Northwestern Memorial Hospital and Northwestern University jointly own and operate the building at 710 North Fairbanks Court in Chicago. The building is known by two names, the

Olson Pavilion and the McGaw Pavilion (collectively, the Pavilion), reflecting its dual purpose—one part of the building, the Olson Pavilion, is used by Northwestern Hospital, while the other part, the McGaw Pavilion, is used by Northwestern University. In May 2010, several construction projects were underway at the Pavilion. Northwestern University hired Power Construction for a significant remodeling project on the university's portion of the building. Separately, Northwestern Memorial Hospital contracted with Ragnar Benson to undertake replacement of the water risers in the building, referred to by the parties as the NWM Olson/McGaw Water Riser Replacement Project.

¶ 7 The contract between Northwestern Memorial Hospital and Ragnar Benson (the "Prime Contract") has an indemnification provision, which states, in part:

"§3.19 INDEMNIFICATION

§ 3.19.1 To the fullest extent permitted by law, the Contractor shall indemnify, defend, protect and hold harmless NMH, Northwestern Memorial Healthcare and its subsidiaries, their affiliated corporations, including Northwestern Memorial Physicians Group, Northwestern Memorial Foundation, Northwestern University, Northwestern Medical Faculty Foundation, Inc., the Architect, their respective partners, officers, directors, shareholders, representatives, agents, consultants, employees, members, mortgagees, principals, invitees, affiliates, successors, assigns, and anyone else acting for or on behalf of any of them (each, an "Indemnatee," and collectively "Indemnitees) from and against all liabilities, damages, losses, claims, demands, lawsuits, proceedings, arbitrations, and actions of any nature whatsoever ("Indemnified Claims"), arising out of or relating to:

.1 a breach of any provision of the Contract Documents by Contractor;

- .2 the performance of the Work or any activities contemplated hereunder, including without limitation, the use, misuse, erection, maintenance, operation, or failure of any machinery or equipment (including, without limitation, scaffolds, derricks, ladders, hoists, rigging supports, etc.), whether or not such machinery or equipment was furnished by NMH or others to the Contractor, all to the extent caused by the negligent or tortuous [sic] conduct, acts, or omissions of the Contract, its Subcontractors, Sub-subcontractors, suppliers, materialmen, or anyone directly or indirectly employed by any of them or anyone for whose acts they may be liable;
- .3 the failure of the Contractor or those acting under Contractor to conduct the Work in accordance with the laws, statutes, ordinances, and regulations of any governmental authority[.]

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§ 3.19.4 Each Subcontract shall contain an indemnification in favor of the Indemnitees and the Contractor, which indemnification shall be in substantially the same form as this section 3.18.

¶ 8 Ragnar Benson retained Goodman Plumbing to work on the Project. The subcontract between Ragnar Benson and Goodman Plumbing incorporates Ragnar Benson's Prime Contract with Northwestern Memorial Hospital under the following provision:

"For the project known as NWM Olson/McGaw Water Riser Replacement—(the "Project" as per plans, drawings, specifications, general conditions and other documents incorporated by the General Contract (the "Contract Documents)). The

Contract Documents are a part of this agreement and are incorporated in this agreement by reference, and

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Subcontractor. (a) The Subcontractor warrants and represents that the Subcontractor has examined the Contract Documents, all plans, drawings, and specifications prepared by the Owner or his (its) (their) Architect or Representative, for the entire Project, of which the work covered by this Agreement is a part, and that the Subcontractor and his subcontractors, will be and are bound by any and all parts of the Contract Documents insofar as they relate in any part or in any way to the Subcontract Work (as defined below), and shall be further bound to Subcontract Documents (as defined below).

¶ 9 Also, as required by the Prime Contract, the subcontract contains an indemnification provision that, in relevant part, states:

"Indemnification (a) To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Contractor, the Owner, and their respective officers, directors, agents, and employees from and against any and all loss, liability, damages, costs, attorneys fees, investigative costs, or other expenses of any kind (all of which are collectively referred to as the "Costs) arising in connection with \*\*\* (ii) any claim or claims for injuries, for loss or damage to or destruction of property, real or personal, including loss of use, which arise out of the Subcontract Work or the action of any Subcontractor Party."

¶ 10 Water risers carry water vertically in the building. On May 15, 2010, a fitting on a water riser in the basement of the Olson Pavilion failed causing a release of water into the building,

damaging property belonging to both the university and the hospital. The university and hospital sought damages from Ragnar Benson, which in turn, sought indemnification from Goodman Plumbing. When Goodman Plumbing refused the indemnity demand, Ragnar Benson filed a three-count complaint, on July 19, 2010, against Goodman Plumbing alleging negligence, breach of contract, and breach of indemnity agreement. (The complaint also named Northwestern Memorial Hospital and the board of trustees of Northwestern University as plaintiffs, but when Ragnar Benson later filed a first amended complaint, the hospital and university were not named as parties.)

¶ 11 Goodman Plumbing moved to compel mediation/arbitration and to dismiss or stay plaintiffs' complaint under section 2-619 of the Code of Civil Procedure (the Code) (735 ILCS5/2-619 (West 2012)), arguing that the terms of the subcontract required Ragnar Benson, as well as Northwestern Memorial Hospital, to pursue alternative dispute resolution before filing a lawsuit. On February 23, 2011, the trial court dismissed Ragnar Benson's complaint with prejudice and ordered mediation. After mediation failed to resolve the dispute, Ragnar Benson reinstated the lawsuit.

¶ 12 About a year later, Ragnar Benson filed a second amended complaint against Goodman Plumbing again alleging negligence, breach of contract, and breach of indemnity agreement. Goodman Plumbing moved to dismiss the complaint under section 2-619(a) (6) of the Code (735 ILCS 5/2-619(a) (6) (West 2012) and for sanctions under Illinois Supreme Court Rule 137 (eff. July 1, 2013). Before the motion could be heard, Ragnar Benson filed a motion to stay, stating that it disputed Goodman Plumbing's right to arbitrate, but agreed to stay the litigation pending the outcome of the arbitration hearing. The trial court granted the motion and retained jurisdiction to enforce subpoenas in the arbitration.

¶ 13 In the arbitration proceeding, the parties filed cross-motions for summary judgment as to Goodman Plumbing's liability and Ragnar Benson filed a counterclaim seeking reimbursement for money it paid to Northwestern Hospital and Northwestern University for damages they incurred as a result of Goodman Plumbing's faulty work on the water riser. In its counterclaim, Ragnar Benson asserted that the claims and interests of Northwestern Memorial Hospital and Northwestern University were assigned to it and thus, Ragnar Benson stood in the shoes of the university and the hospital regarding the claims of both entities. Goodman Plumbing moved to dismiss Ragnar Benson's counterclaim.

¶ 14 On September 24, 2012, after a hearing, the arbitrator denied summary judgment as to count I, regarding negligence, but entered summary judgment as to liability on Ragnar Benson's breach of contract (count II) and breach of indemnity agreement (count III). Goodman Plumbing admitted it did not properly install the "A" main riser, which resulted in its failure and the water damage. But the arbitrator denied the summary judgment motion, in part, as to counts II and III, stating that Goodman Plumbing would be permitted to try to establish at the arbitration hearing any other affirmative matter under the subcontract or through the parties' course of dealings that would excuse or negate liability for the material breach of the subcontract.

¶ 15 With respect to Goodman Plumbing's motion to dismiss Ragnar Benson's counterclaim seeking damages on behalf of the hospital and the university, the arbitrator granted the motion, in part, to the extent Ragnar Benson claimed liability and damages for Northwestern University and denied the motion with regard to claims for damages incurred by Northwestern Hospital.

¶ 16 In response, Ragnar Benson filed a motion for reconsideration and for leave to file affirmative defenses. Ragnar Benson argued the university's claims and damages were subject to arbitration because the university was expressly named in the indemnification provision of the

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contract between Ragnar Benson and Northwestern Hospital that flowed to Goodman Plumbing through the subcontract. Ragnar Benson asserted that if it were not able to pursue the university's claims and damages in arbitration, it would be unable to obtain complete relief for all the damages it occurred from the failed water main riser. Ragnar Benson's also sought leave to file an affirmative defense for setoff if it were not permitted to obtain relief on all of its direct claims and assigned claims of the hospital and university.

¶ 17 After hearing arguments, the arbitrator denied Ragnar Benson's motions to reconsider and to file an affirmative defense but permitted Ragnar Benson to recover for damages incurred by Northwestern University and Northwestern Memorial Hospital. The arbitrator noted that Ragnar Benson failed to plead a theory of recovery based on an assignment of claims from the university or the hospital stating that "[t]he legal arguments associated with the assignment of claims from both Northwestern Memorial Hospital and Northwestern University represent redundant theories of recovery which have not been properly plead in the Ragnar Benson Counterclaim in this arbitration." But the arbitrator further stated that "[t]o the extent that Ragnar Benson can establish damages due to Goodman Plumbing's negligence, breach of contract, or breach of indemnity agreement; and those damages were incurred by Ragnar Benson, to and including general damages for losses incurred by Northwestern Hospital and/or Northwestern University, Ragnar Benson may proceed with those proofs at arbitration." With regard to Ragnar Benson's request to file an affirmative defense of set offs, the arbitrator stated, "Both Ragnar Benson, and Goodman Plumbing may seek any and all set offs, back charges, credits, payments and/or adjustments to amounts claimed due for unpaid work, damages and other permitted losses under Goodman Plumbing's Complaint and Ragnar Benson's Counterclaim."

¶ 18 The arbitration hearing was held on October 15 and 16, 2012. Having entered summary judgment as to liability, the arbitrator heard evidence only related to the damages. There was no court reporter at the hearing and thus no record of the proceedings. On December 7, 2012, the arbitrator entered an award. Based on witness testimony, the language of the contract between Northwestern Memorial Hospital and Ragnar Benson, and the subcontract between Ragnar Benson and Goodman Plumbing, invoices, checks and related documents, the arbitrator awarded damages in favor of Ragnar Benson in the amount of \$741,180.47. The award listed five categories of damages submitted by Ragnar Benson, including damages listed in Tab E for "Northwestern University Administrative Costs" in the amount of \$138,433.69. The arbitrator determined that Ragnar Benson owed Goodman Plumbing \$223,370 for unpaid work it satisfactorily performed under the subcontract, leaving a net award of \$517,810, which was inclusive of all costs, fees, and damages due Ragnar Benson.

¶ 19 Ragnar Benson filed a motion to confirm and enter judgment on the arbitration award under sections 11 and 14 of the Illinois Uniform Arbitration Act (the Act) (710 ILCS 5/11, 5/14 (West 2012)). Goodman Plumbing filed an application for modification of the arbitration award, arguing that the arbitrator awarded damages on a matter not submitted to arbitration, namely, the damages incurred by Northwestern University. Goodman contended that because neither Ragnar Benson nor Goodman Plumbing were parties to a contract with Northwestern University and Ragnar Benson never paid Northwestern University for those costs, the arbitrator exceeded his authority by granting the Tab E damages, which is grounds for modification under section 13(a)(2) of the Act (710 ILCS 5/13(a)(2) (West 2012)).

¶ 20 On May 7, 2013, following a hearing, the trial court entered an order denying Goodman Plumbing's application for modification. The trial judge also granted Ragnar Benson's motion to

confirm and entered judgment in its favor on the arbitration award in the amount of \$517,810.47. Goodman Plumbing appealed.

¶ 21

#### ANALYSIS

¶ 22

Goodman Plumbing does not contest its liability for the failure of the water risers and the resulting damage to the Pavilion. Rather, Goodman Plumbing contends the arbitrator erred in awarding Ragnar Benson damages incurred by Northwestern University where neither Ragnar Benson nor Goodman Plumbing had a contractual relationship with the university, and thus no agreement to arbitrate disputes with the university and asks us to correct the award under section 13(a) (2) of the Act, by excising the \$138,433.69 awarded for "Northwestern University's Administrative Costs." Goodman Plumbing also contends the arbitrator erred in granting a setoff because Ragnar Benson's pleadings did not raise a claim for setoff. Goodman Plumbing asks for separate awards to each party.

¶ 23

Ragnar Benson responds arguing that the question of whether the damages incurred by Northwestern University are subject to arbitration and whether a setoff was permissible are not "scope of authority" questions but rather, questions of contract interpretation which go to the merits of the dispute and, accordingly, are not grounds for a modification of award under section 13(a) (3). Further, Ragnar Benson contends the arbitrator properly considered Northwestern University's damages as within the scope of the arbitration provision of its contract with Northwestern Memorial Hospital, which "flowed down" to Goodman Plumbing under the terms of its subcontract with Ragnar Benson. As to the setoff, Ragnar Benson contends the subcontract expressly provides for a setoff and that even if did not, Goodman Plumbing waived the issue by failing to raise it during the arbitration hearing.

¶ 24 Northwestern University's Damages

¶ 25 Goodman Plumbing first asserts the arbitrator exceeded his authority by awarding damages incurred by Northwestern University where neither it nor Ragnar Benson had a contractual agreement with the university to arbitrate disputes. Goodman Plumbing wants the award modified by subtracting Northwestern University's damages from the amount awarded to Ragnar Benson.

¶ 26 Judicial review of an arbitration award is more limited than the review of a trial court's decision. *Galasso v. KNS Companies, Inc.*, 364 Ill. App. 3d 124, 130 (2006). Because the parties agreed to settle their dispute by arbitration, it is the arbitrator's view that the parties have agreed to accept, and the court should not overrule an award simply because its interpretation differs from that of the arbitrator. *Id.* But an award may be modified under section 13(a) (2) of the Act if an "arbitrator[] awarded upon a matter not submitted to [him or her]and the award may be corrected without affecting the merits of the decision upon the issues submitted." 710 ILCS 5/13(a)(2) (West 2012). A presumption attaches that the arbitrator did not exceed his or her authority and a court must try to uphold the validity of an award, if possible. *Galasso*, 364 Ill. App. 3d at 130.

¶ 27 An arbitrator only has authority to decide those issues which the parties agreed to arbitrate. *Shearson Lehman Brothers, Inc. v. Hedich*, 266 Ill. App. 3d 24, 28 (1994). The arbitrator's authority goes as far as unambiguous contract language takes it. *Shearson Lehman*, 266 Ill. App. 3d at 29. The ultimate award must be “grounded on the parties' contract” and arbitrators do not have the authority to ignore plain language and alter the agreement. *Id.* (quoting *Inter-City Gas Corp. v. Boise Cascade Corp.*, 845 F.2d 184, 187 (8th Cir. 1988)). An arbitrator's decision binds the parties on the issues submitted as long as the interpretation is “a

reasonably possible one.” *Id.* (quoting *Rauh v. Rockford Products Corp.*, 143 Ill. 2d 377, 392 (1991)).

¶ 28 Goodman Plumbing and Ragnar Benson were not parties to a contract with Northwestern University. What matters, however, is how the Prime Contract and the subcontract deal with indemnification of the university for damages. As noted, in the "Prime Contract" between Ragnar Benson and Northwestern Memorial Hospital, Ragnar Benson agreed to indemnify the hospital and its affiliated entities, as well as Northwestern University for "damages, losses, claims, demands, lawsuits, proceedings, arbitrations, and actions of any nature whatsoever \*\*\* arising out of or relating to \*\*\* the performance of the Work or any activities contemplated hereunder, including \*\*\* the use, misuse, erection, maintenance, operation, or failure of any machinery or equipment (including, without limitation, scaffolds, derricks, ladders, hoists, rigging supports, etc.), whether or not such machinery or equipment was furnished by NMH or others to the Contractor, all to the extent caused by the negligent or tortuous [sic] conduct, acts, or omissions of the Contract, its Subcontractors \*\*\*." Thus, the Prime Contract obligated Ragnar Benson to indemnify the university for damages the university incurred due to the failure of water risers installed by its subcontractor, Goodman Plumbing.

¶ 29 Under the subcontract with Ragnar Benson, Goodman Plumbing obligated itself to indemnify Ragnar Benson. The subcontract states that Goodman Plumbing will indemnify Ragnar Benson "[t]o the fullest extent permitted by law\*\*\*from all loss, liability, damages, costs, attorneys fees, investigative costs, or other expenses of any kind (*all of which are collectively referred to as the "Costs*) arising in connection with \*\*\* (ii) any claim or claims for injuries, for loss or damage to or destruction of property, real or personal, including loss of use, which arise out of the Subcontract Work or the action of any Subcontractor Party."

¶ 30 In his September 24, 2012 order granting Goodman Plumbing's motion to dismiss Ragnar Benson's counterclaim for damages owed to Northwestern University, the arbitrator stated that "Northwestern University is not a party to the Subcontract or the Master Agreement between Ragnar Benson and Northwestern Memorial Hospital; and there is no agreement to arbitrate the claims of Northwestern University." Later, after a hearing on Ragnar Benson's motion to reconsider, the arbitrator clarified his earlier statement, "[t]o the extent that Ragnar Benson can establish damages due to Goodman Plumbing's negligence, breach of contract, or breach of indemnity agreement; and those damages were incurred by Ragnar Benson, to and including general damages for losses incurred by Northwestern Hospital and/or Northwestern University, Ragnar Benson may proceed with those proofs at arbitration." Based on the plain language of the subcontract, Goodman Plumbing agreed to be bound by the terms of the Prime Contract and be liable not only for Ragnar Benson's own damages, but also, damages of the university and others which Ragnar Benson assumed. As the arbitrator explained, and consistent with the agreements, Ragnar Benson's damages included "general damages for losses incurred by Northwestern Hospital and/or Northwestern University, Ragnar Benson may proceed with those proofs at arbitration."

¶ 31 Goodman Plumbing alternatively asserts that even if some damages to Northwestern University were subject to arbitration, the arbitrator exceeded his authority by awarding the damages listed in Tab E, titled "Northwestern University Administrative Costs," because Ragnar Benson has not actually paid those damages. Goodman Plumbing contends that unless Ragnar Plumbing actually paid Northwestern University for the damages listed in Tab E, it has not incurred those damages and only incurred damages are subject to indemnification. For support, Goodman Plumbing cites *Travelers Casualty & Surety Co. v. A.G. Carlson, Inc.*, 368 Ill. App. 3d

519, 529-30 (2006), which held, in part that "the indemnitee cannot recover until he has made payment or otherwise suffered an actual loss; the mere legal liability to pay is insufficient." Goodman Plumbing does not contest the damages listed in Tab D of the award, titled "Power Construction Payment Applications," which also involved damages incurred by the university because Ragnar Benson demonstrated that it paid those damages and thus could seek indemnification in the arbitration hearing. But Goodman Plumbing asserts that the damages in Tab E were not actually incurred by Ragnar Benson because there was no evidence those damages were actually paid and thus, the arbitrator did not have authority to award Ragnar Benson those damages.

¶ 32 As a threshold matter we note it was Goodman Plumbing's responsibility, as appellant, to provide a sufficiently complete record to support its claims of error, and doubts arising from the incompleteness of the record will be resolved against Goodman Plumbing. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1994). Goodman Plumbing has not provided the court with a transcript of the arbitration hearing and there is nothing in the record explaining the basis for the arbitrator's damages award in Tab E or the arguments that were raised before the arbitrator. We only have a copy of the arbitrator's award listing the five categories of damages. As noted, under the terms of the Prime Contract and the subcontract, the parties agreed that damages incurred by Northwestern University were subject to arbitration. Absent evidence showing the arbitrator exceeded his authority by awarding the damages referred to in Tab E, we will not modify the award.

¶ 33 Setoff

¶ 34 Goodman next contends the award should be modified because it is "imperfect in a matter of form" under section 13(a)(3) of the Act. 710 ILCS 5/13(a)(3) (West 2012). Section

13(a)(3) provides that "Upon application made within 90 days after delivery of a copy of the award to the applicant, the court shall modify or correct the award where [t]he award is imperfect in a matter of form, not affecting the merits of the controversy." 710 ILCS 5/13(a)(3) (West 2012). Goodman Plumbing contends the arbitrator should not have setoff to Goodman Plumbing on its claim for unpaid contract amounts against the damages awarded to Ragnar Benson on its counterclaims because Ragnar Benson did not properly plead its right to a setoff. Goodman Plumbing acknowledges that Ragnar Benson filed a motion for leave to file an affirmative defense for setoff but asserts that motion was denied before the arbitration hearing, precluding setoff. Thus, Goodman Plumbing asks us to modify the arbitrator's award to provide separate awards to each party without setoff.

¶ 35 The Illinois Supreme Court has established two distinct meanings for the term "setoff." First, a setoff may refer to a situation when a "defendant has a distinct cause of action against the same plaintiff who filed suit against him and is subsumed procedurally under the concept of counterclaim." (Internal quotation marks omitted.) *Thornton v. Garcini*, 237 Ill. 2d 100, 113 (2009). Applying this meaning, a setoff may refer to a situation when the defendant claims the plaintiff has done something that results in a reduction in the defendant's damages. When a defendant pursues this type of setoff, the claim must be raised in the pleadings. *Id.* Second, a setoff may refer to a defendant's request for a reduction of the damage award because a third party has already compensated the plaintiff for the same loss. *Id.* This occurs, for example, when a codefendant who would be liable for contribution settles with the plaintiff. This type of setoff may be raised at any time. *Id.*

¶ 36 Ragnar Benson's right to a setoff was the former type and was subsumed procedurally under the concept of the counterclaim. In the arbitration proceeding, Ragnar Benson filed a

counterclaim and sought to file an affirmative defense of setoff. Although the arbitrator denied the motion to file an affirmative defense, the arbitrator permitted both parties to "seek any and all setoffs, back charges, credits, payments, and/or adjustments to amounts claimed due for unpaid work, damages and other permitted losses under Goodman Plumbing's Complaint and Ragnar Benson's Counterclaim." Thus, before the arbitration hearing, Goodman Plumbing was put on notice that the arbitrator would allow damages to be setoff.

¶ 37 "Through the operation of waiver, a party may become bound by an award which otherwise would be open to attack. \* \* \* Waiver occurs whenever a party intentionally relinquishes a known right, either expressly or by conduct inconsistent with an intent to enforce that right." *Craig v. United Auto Insurance Co.*, 377 Ill. App. 3d 1, 3 (2007) (quoting *Tri-City Jewish Center v. Blass Riddick Chilcote*, 159 Ill. App. 3d 436, 439 (1987)). There is nothing in the record indicating that Goodman Plumbing raised the issue of a setoff during the arbitration proceeding. As noted, a transcript of the arbitration hearing was not made. As also noted, Goodman Plumbing, as appellant, was required to provide a complete record on appeal, and any doubts arising from the incompleteness of the record are resolved against it. *Foutch*, 99 Ill. 2d at 391-92. The arbitrator stated in his October 12, 2012 order that both parties would be permitted to claim setoffs. The absence of a record indicating that Goodman Plumbing objected to setoffs during the arbitration hearing serves as waiver of the issue.

¶ 38 CONCLUSION

¶ 39 Under the terms of its subcontract with Ragnar Benson, Goodman Plumbing agreed to arbitrate damages incurred by both Northwestern Hospital and Northwestern University in the NWM Olson/McGaw Water Riser Replacement Project and absent evidence from the arbitration hearing indicating the arbitrator erred in awarding damages to Northwestern University, we

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affirm the circuit court's order confirming and entering judgment on the arbitration award. There is also no basis to reverse the arbitrator's decision to setoff the awards without a record showing Goodman Plumbing raised the issue in the arbitration hearing.

¶ 40           Lastly, at the request of Ragnar Benson we remand so the circuit court can calculate and award any additional incurred attorney fees and costs as well as interest as provided in the arbitration award.

¶ 41           Affirmed and remanded.