

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2016-CA-000247-MR

ROBERT MICHAEL PFEISTER

APPELLANT

v.

APPEAL FROM OLDHAM CIRCUIT COURT  
HONORABLE KAREN A. CONRAD, JUDGE  
ACTION NO. 14-CI-00716

COURTNEY CELASUN  
and ANTHONY CELASUN

APPELLEES

OPINION  
AFFIRMING

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BEFORE: COMBS, D. LAMBERT, AND NICKELL, JUDGES.

LAMBERT, D., JUDGE: This is an appeal from an Oldham Circuit Court order confirming an arbitration award. The underlying dispute centered on a residential seller's duty to disclose a defective property condition to the buyer. Based on the unique facts of the case, the arbitrator ultimately entered an award in the buyer's favor. After review, we affirm.

## I. BACKGROUND

Roughly five years before selling his house to Anthony and Courtney Celasun, Robert Pfeister remedied a sinkhole that had developed in his backyard. The remediation project consisted of Pfeister's transporting several tons of rock and soil to his backyard and backfilling the sinkhole. At some point during the backfilling process, twenty-two trees located in and around the sinkhole were partially buried.

When selling to the Celasuns, Pfeister never disclosed the sinkhole's existence. He likewise failed to disclose the fact that the trunks of the trees were deeply buried. The Celasuns instead learned about the sinkhole from a neighbor nearly two years after they bought the property.

Once they learned of the sinkhole, the Celasuns complained that Pfeister had fraudulently induced them to buy the house. The Celasuns initially sought to resolve the dispute through mediation, but were unsuccessful. They later petitioned for arbitration pursuant to the terms of their residential sales contract.

In their arbitration demand, the Celasuns claimed Pfeister breached the sales contract and committed fraud "by failing to truthfully and accurately fill out the Seller Disclosure Form . . . in connection with the sale of the Property." The Celasuns further alleged that "[Pfeister] failed to disclose that there [was] a sinkhole in the backyard of the Property that [Pfeister] had previously attempted to fill himself about six years ago." The matter was eventually set for arbitration in May 2015.

During the arbitration proceeding, a single arbitrator heard from the parties. The parties were represented by counsel. A professional arborist also testified on behalf of the Celasuns. The parties explained their respective actions and expectations regarding the real estate transaction, and the arborist explained the effect Pfeister's remediation project would have on the trees. Specifically, the arborist opined that the trees would ultimately die because their root systems were covered by layer of soil between four and five feet thick.

Almost two months later, the arbitrator issued a written opinion wherein he determined Pfeister had no duty disclose the existence of the sinkhole. Nevertheless, the arbitrator ultimately awarded the Celasuns \$19,350 for the damaged trees. The arbitrator concluded that "[Pfeister] had taken a direct and specific action that would[,] without question[,] result in the death of the trees." "Such [an] act," in the arbitrator's view, "[bore] responsibility and should have been disclosed."

Following the arbitrator's decision, the Celasuns moved the circuit court to confirm the arbitration award. Pfeister contested the motion and countered that the arbitrator exceeded his authority by awarding damages relating to the trees. Pfeister specifically claimed that any purported duty to disclose the condition of the trees was not an issue properly before the arbitrator. The circuit court disagreed and confirmed the arbitration award. This appeal followed.

## **II. STANDARD OF REVIEW**

Legal conclusions regarding arbitration agreements are reviewed under the *de novo* standard. *Conseco Finance Servicing Corp. v. Wilder*, 47 S.W.3d 335, 340 (Ky. App. 2001). Reviewing courts cannot second guess the arbitrator’s factual findings or legal applications. *Conagra Poultry Co. v. Grissom Transp., Inc.*, 186 S.W.3d 243, 245 (Ky. App. 2006). They must instead only “look to whether the award was fairly and honestly made within the scope of the issues submitted for resolution or whether the arbitrator[] acted beyond the material terms of the contract.” *3D Enterprises Contracting Corp. v. Lexington-Fayette Urban County Government*, 134 S.W.3d 558, 561 (Ky. 2004).

### III. DISCUSSION

On appeal, Pfeister urges this Court to set aside the arbitration award because the Celasuns’ arbitration demand did not include a claim for damage to the trees. He also contends there was nothing in the sales agreement requiring him to disclose the condition of the trees. According to Pfeister, the arbitrator acted arbitrarily, and thereby exceeded his authority, by finding there was a duty to disclose the condition of the trees but not the existence of the sinkhole. For the following reasons, the arbitrator did not exceed his authority.

Parties seeking to disregard an arbitrator’s award face an uphill climb under Kentucky law. *See Swetnam Design Const., Inc. v. Saurer*, 382 S.W.3d 73, 75-76 (Ky. App. 2012). The only grounds for vacating an arbitration award are as follows:

(a) The award was procured by corruption, fraud or other undue means;

(b) 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;

(c) The arbitrators exceeded their powers;

(d) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of [Kentucky Revised Statutes] KRS 417.090, as to prejudice substantially the rights of a party; or

(e) There was no arbitration agreement and the issue was not adversely determined in proceedings under KRS 417.060 and the party did not participate in the arbitration hearing without raising the objection; but the fact that the relief was such that it could not or would not be granted by a court is not ground for vacating or refusing to confirm the award.

KRS 417.160. Additionally, courts may only modify the arbitration award if there is an error in form or an improper resolution of an issue not submitted for arbitration. KRS 417.170. In the latter instance, the improper resolution must also be capable of correction without affecting the merits of the decision. *See* KRS 417.170(1)(b).

Here, the only issue to address is whether the arbitrator resolved a matter not properly presented to him. Pfeister's other arguments relating to the disclosure form and the inconsistency within the arbitrator's decision were not

appropriate because they merely challenged the arbitrator’s factual findings and his application of Kentucky real estate law—two areas not subject to judicial review.

Instead, because the parties followed the underlying contract and ultimately resolved their dispute through binding arbitration, the language of the Celasuns’ arbitration demand controlled the scope of the arbitration proceedings. *See 3D Enterprises, supra*. And from the record, the Celasuns’ arbitration demand specifically alleged that Pfeister concealed two material facts: the existence of the sinkhole and his subsequent effort to remedy the sinkhole. The arbitration demand also sought damages “because [the sinkhole] was not filled by a professional.” Accordingly, the manner in which Pfeister backfilled the sinkhole, including the partial burial of the trees, fell within the scope of the arbitration. The arbitrator was able to fairly accept the arborist’s opinion as to the fate of the trees and award damages caused by the remediation project. The judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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