

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Roy Montgomery v. Vince Bruno Construction, LLC

Montgomery · No. No. 14-0949 · Decided August 28, 2015

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the circuit court’s denial of Roy Montgomery’s motion to set aside an arbitration award and its judgment for Vince Bruno Construction, LLC. The Court held that the limited record did not establish fraud, facial error, partiality, imperfect execution of arbitral authority, or another basis under West Virginia Code § 55-10-4 to vacate the award, including the award of prejudgment interest.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Margaret L. Workman; Justice Robin Jean Davis; Justice Brent D. Benjamin; Justice Menis E. Ketchum; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	August 28, 2015
DOCKET	No. 14-0949
DISPOSITION	affirmed
PROCEDURAL POSTURE	Roy Montgomery appealed the Circuit Court of Brooke County's order denying his motion to set aside an arbitration award and granting Vince Bruno Construction, LLC judgment enforcing the award.
STANDARD OF REVIEW	Findings of fact concerning whether the parties agreed to arbitrate are reviewed for clear error, while questions of law are reviewed de novo. An arbitration award is subject to highly deferential review and may be set aside only on the statutory grounds or for fraud or other recognized defects; courts may not reconsider the merits merely because they disagree with the arbitrator's factual findings, contract interpretation, or remedy.
PRECEDENTIAL VALUE	Nonprecedential memorandum decision
PARTIES	Roy Montgomery v. Vince Bruno Construction, LLC

TOPICS

arbitration

construction law

appellate procedure

standard of review

prejudgment interest

PRACTICE AREAS

construction law

contracts

arbitration

appellate procedure

remedies

QUESTIONS PRESENTED

1. Whether delays in submitting and completing the arbitration justified denying or reducing prejudgment interest awarded from the date the cause of action accrued.
2. Whether the circuit court erred in refusing to set aside the arbitration award based on alleged factual or legal mistakes, imperfect execution of the arbitrator's authority, and alleged arbitrator partiality.
3. Whether the arbitration award was erroneous on its face or otherwise subject to vacatur under West Virginia Code § 55-10-4.

HOLDINGS

1. The circuit court did not err in upholding the arbitrator's award of prejudgment interest from May 6, 2008. The limited record did not establish that the interest award resulted from fraud or any statutory ground for setting aside the award.
2. The arbitration award could not be set aside merely because Montgomery alleged that the arbitrator made factual or legal mistakes or interpreted the construction agreement incorrectly. Because the arbitrator was at least arguably construing the contract, the court was not authorized to correct those alleged errors.
3. Montgomery failed to demonstrate fraud, partiality, misbehavior, imperfect execution of the arbitrator's powers, or another ground under West Virginia Code § 55-10-4 sufficient to vacate the award.

KEY QUOTATIONS

“So long as the arbitrator was “arguably construing” the contract -- which this one was -- a court may not correct his mistakes under § 10(a)(4).” (at 4)

“It is the arbitrator’s construction [of the contract] which was bargained for; and so far as the arbitrator’s decision concerns construction of the contract, the courts have no business overruling him because their interpretation of the contract is different from his.” (at 4)

FACTUAL BACKGROUND

The parties entered into a May 18, 2007, construction agreement for Vince Bruno Construction to build Montgomery a home for \$383,300, with completion scheduled for December 31, 2007. Montgomery took possession on May 6, 2008, although work remained incomplete, and work ceased on October 8, 2008, with numerous projects unfinished; the final draw was never paid. After delays and unsuccessful efforts to complete arbitration, the parties arbitrated the dispute, and the arbitrator awarded Vince Bruno Construction \$31,925.90 plus interest while granting Montgomery specified offsets for delay and repair work.

PROCEDURAL HISTORY

Vince Bruno Construction filed a circuit-court complaint seeking amounts allegedly owed under a construction agreement, and Montgomery moved to dismiss based on the agreement's arbitration provision. The dispute was eventually arbitrated, resulting in an award of \$31,925.90 plus interest, later corrected from 8.5% to 7%. The circuit court denied Montgomery's motion to set aside the award and entered judgment for Vince Bruno Construction; the Supreme Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- First Options of Chicago v. Kaplan, 514 U.S. 938, 947-48 (1995)
- United Paperworkers Intern. Union, AFL-CIO v. Misco, Inc., 484 U.S. 29, 30 (1987)
- Clinton Water Ass'n v. Farmers Const. Co., 163 W.Va. 85, 87, 254 S.E.2d 692, 694 (1979)
- Grove, By and Through Grove v. Myers, 181 W.Va. 342, 382 S.E.2d 536 (1989)
- First Options of Chicago, Inc., 514 U.S. at 942
- Eastern Associated Coal, 531 U.S. at 62, 121 S. Ct. 462
- Enterprise Wheel, 363 U.S. at 599, 80 S. Ct. 1358
- Oxford Health Plans LLC v. Sutter, 133 S. Ct. 2064, 2070-71 (2013)