

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

DANIEL J. DORAN,	:	APPEAL NO. C-180450
		TRIAL NO. A-1705401
ANASTASIA M. COMBS,	:	
DONALD P. MOWRY,	:	
and	:	
KATHLEEN HEGENBERGER,	:	
Appellees,	:	
vs.	:	
PATRICK J. DORAN,	:	
and	:	
KATHERINE E. DORAN,	:	
Appellants.	:	

PATRICK J. DORAN,	:	APPEAL NO. C-180450
		TRIAL NO. A-1801161
and	:	
KATHERINE E. DORAN,	:	
Appellants,	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
DANIEL J. DORAN, TRUSTEE under	:	
the Robert J. Doran Trust Dated March	:	
9, 1989, as amended on March 28,	:	
1989, and Trustee under the Ida E.	:	
Doran Trust dated June 17, 1993, as	:	
amended on March 9, 1995, February	:	

OHIO FIRST DISTRICT COURT OF APPEALS

27, 1997, and February 8, 2000, :

ANASTASIA M. COMBS, TRUSTEE :
under the Robert J. Doran Trust Dated :
March 9, 1989, as amended on March :
28, 1989, and Trustee under the Ida E. :
Doran Trust dated June 17, 1993, as :
amended on March 9, 1995, February :
27, 1997, :

DONALD P. MOWRY, TRUSTEE :
under the Robert J. Doran Trust Dated :
March 9, 1989, as amended on March :
28, 1989, :

and :

DORAN HOLDING COMPANY, LTD., :
Appellees, :

and :

ACE DORAN HAULING & RIGGING :
CO., :

ADCO REALTY, INC., :

and :

RADCO ENTERPRISES, INC., :

Respondents. :

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Following a hearing on competing motions seeking to confirm, and conversely, vacate an arbitration award entered in favor of appellants Patrick J. Doran and Katherine E. Doran (collectively, “the claimants”) on their breach-of-contract claim, the trial court confirmed the arbitration award imposing liability on respondents Ace Doran Hauling & Rigging Co., Adco Realty, Inc., and Radco Enterprises, Inc., (collectively, “the

Ace Doran Group”), but vacated the arbitration award to the extent it imposed liability on appellees Doran Holding Company, Ltd., (“the family partnership”), and imposed liability, individually and/or as trustee under the family trusts, on appellees Daniel J. Doran, Anastasia M. Combs, Donald P. Mowry and Kathleen Hegenberger (collectively, “the individual respondents”). For the following reasons, we affirm the trial court’s judgment.

Twenty years ago, the parties entered into a settlement agreement to resolve unrelated probate litigation. Under the settlement agreement, the Ace Doran Group,¹ was required to make payments to the claimants representing retirement benefits, health-insurance benefits, and the value of the claimants’ future business interests under certain family trusts. These payments were secured by mortgages on real estate owned by the Ace Doran Group. It is undisputed that the Ace Doran Group failed to make all of the required payments under the agreement, which precipitated the claimants’ initiation of arbitration proceedings.

Following a hearing, the arbitrator determined that the individual respondents were not personally liable for the Ace Doran Group’s breach of the settlement agreement, but held them personally liable for breaching the agreement’s implied “duty of good faith and fair dealing” in their capacity as “directors, officers, and trustee and general partners of the various legal entities they controlled.” Therefore, the arbitrator determined that the claimants could not only recover against the Ace Doran Group, but also against the family partnership and the individual respondents to the extent that the Ace Doran Group could not satisfy the award. The arbitrator then decided that the Ace Doran Group, the family partnership and the individual respondents were responsible for the claimants’ attorney’s fees and expenses as well as all of the arbitration costs.

¹ The Ace Doran Group is owned by the family partnership. The family partnership’s general partners are the individual respondents as well as the Ida E. Doran Trust. The limited partner is the Robert J. Doran Trust. The trustees of both trusts are three of the individual respondents.

The individual respondents and the family partnership moved to vacate the arbitration award against them. The claimants' moved to confirm the arbitration award and appoint a receiver for the Ace Doran Group. The trial court held that the arbitrator had exceeded his authority by holding the family partnership and the individual respondents liable for a breach of the settlement agreement when none of them had any "performance obligation" under the settlement agreement. Accordingly, the trial court vacated the arbitration award as to the appellees, but confirmed the award as to the Ace Doran Group. The claimants now appeal.

In their first assignment of error, the claimants contend that the trial court erred by vacating the arbitration award against the individual respondents and the family partnership. Specifically, they argue that the arbitration award did not conflict with the express terms of the settlement agreement, and therefore, the arbitrator had not exceeded his authority in fashioning the arbitration award. We disagree.

Under R.C. 2711.10(D), an arbitrator's award may be vacated where "[t]he arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made." An arbitrator's authority is limited to that granted to the arbitrator under the terms of the parties' agreement, and an arbitrator exceeds that authority where his award does not draw its essence from the agreement. *Bd. of Trustees of Anderson Twp. v. Anderson Twp. Professional Firefighters Assoc., IAFF Local 3111*, 1st Dist. Hamilton No. C-180371, 2019-Ohio-2302.

An [arbitration] award draws its essence from the parties' agreement where there is a 'rational nexus between the agreement and the award, and where the award is not arbitrary, capricious, or unlawful.' But an arbitrator's award departs from the essence of the agreement where '(1) the award conflicts with the express terms of the agreement, and/or (2) the award is

without rational support or cannot be rationally derived from the terms of the agreement.’ (Citations omitted.) *Id.* at ¶ 11.

Here, the arbitration award conflicts with the express terms of the agreement. Under the settlement agreement, the only party obligated to pay the claimants was the Ace Doran Group. To protect against the Ace Doran Group not having assets to pay the claimants, the claimants bargained for a mortgage on several properties owned by the Ace Doran Group. The claimants did not bargain for the family partnership or the individual respondents to be personally liable for those amounts owed to them under the settlement agreement. An arbitrator must apply the contract agreed to by the parties, not “create, in effect, a contract of his own.” *Cleveland v. Cleveland Police Patrolmen’s Assn.*, 2016-Ohio-702, 47 N.E.3d 904, ¶ 26 (8th Dist.).

Although the claimants contend that the arbitrator found that the individual respondents and the family partnership had breached the implied duty of good faith and fair dealing by depleting the Ace Doran Group of assets, under Ohio law there is no breach of the implied duty of good faith and fair dealing unless a specific obligation imposed by the contract has not been met. *See Lucarell v. Nationwide Mut. Ins. Co.*, 152 Ohio St.3d 453, 2018-Ohio-15, 97 N.E.3d 458, ¶ 43-44, citing *Ed Schory & Sons, Inc. v. Soc. Natl. Bank*, 75 Ohio St.3d 433, 444, 662 N.E.2d 1074 (1996). Here, the individual respondents and the family partnership had no specific obligation that they had to meet under the settlement agreement. The only party to have a performance obligation was the Ace Doran Group.

Accordingly, because the arbitration award was unlawful and contradicted the express terms of the settlement agreement, we overrule the first assignment of error.

In the second assignment of error, the claimants maintain that Kathleen Hegenberger, the family partnership and the remaining individual respondents in their capacity as trustees of the family trusts did not move to vacate the arbitration award within the applicable three-month statute-of-limitations period. But under Ohio law, “any party to the arbitration” may move to vacate “the award.” *See R.C. 2711.10* and

2711.13. A plain reading of these two statutes supports the view that each party is not required to move to vacate the award as to each individual party. This view is consistent with the permissible reasons an arbitrator's award may be vacated under the statute: fraud, corruption, bias, arbitrator misconduct, or exceeding the arbitrator's powers. Each type of defect for which the statute provides relief would infect the arbitration award as a whole and thus make it problematic for each party. Therefore, because at least one party to the award moved to vacate the award within the applicable statute-of-limitations period, and both the family partnership and the individual respondents joined in the motion to vacate, the second assignment of error is overruled.

The judgment of the trial court is affirmed.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MOCK, P.J., MYERS and BERGERON, JJ.

To the clerk:

Enter upon the journal of the court on October 30, 2019,
per order of the court_____.

Presiding Judge