

STATE OF MICHIGAN
COURT OF APPEALS

WENDY SABO & ASSOCIATES, INC., and
WENDY SABO,

UNPUBLISHED
December 4, 2012

Plaintiffs/Counter-Defendants-
Appellants,

v

AMERICAN ASSOCIATES, INC., and
RANDALL HANEY,

No. 305757
Genesee Circuit Court
LC No. 10-094088-CZ

Defendants/Counter-Plaintiffs-
Appellees.

Before: OWENS, P.J., and TALBOT and WILDER, JJ.

PER CURIAM.

In this dispute over entitlement to a real estate sales commission, plaintiffs Wendy Sabo & Associates, Inc., and Wendy Sabo, individually, appeal as of right from an order confirming an arbitration award of \$18,900, in favor of defendants American Associates, Inc., and Randall Haney. We affirm.

Plaintiffs first argue that the circuit court erred when it affirmed the arbitration award in favor of defendants. We disagree. Generally, issues regarding an order to enforce, vacate, or modify an arbitration award are reviewed de novo. *Saveski v Tiseo Architects, Inc*, 261 Mich App 553, 554; 682 NW2d 542 (2004).

The arbitration at issue was governed by the arbitration act, MCL 600.5001 *et seq.*, and MCR 3.602. A court's power to vacate, modify, or correct an award is very limited. A court may not review an arbitrator's factual findings or decision on the merits. *Port Huron Area Sch Dist v Port Huron Ed Ass'n*, 426 Mich 143, 150; 393 NW2d 811 (1986); *Krist v Krist*, 246 Mich App 59, 66; 631 NW2d 523 (2001). *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 495; 475 NW2d 704 (1991). Under MCR 3.602(J)(2), a court shall vacate an arbitration award only if:

- (a) the award was procured by corruption, fraud, or other undue means;
- (b) there was evident partiality by an arbitrator appointed as a neutral, corruption of an arbitrator, or misconduct prejudicing a party's rights;

(c) the arbitrator exceeded his or her powers; or

(d) the arbitrator refused to postpone the hearing on a showing of sufficient cause, refused to hear evidence material to the controversy, or otherwise conducted the hearing to prejudice substantially a party's rights.

Plaintiffs argue that the arbitration award in this case should have been vacated by the trial court under the authority of subsection (c), on the basis that the arbitrator exceed his power or authority by acting in contravention of controlling principles of law. See *DAIIE v Gavin*, 416 Mich 407, 434, 443; 331 NW2d 418 (1982). However, even alleged errors of law are only reviewable by the circuit court when an arbitrator acts with “manifest disregard of the law.” *Id.* at 441-442. In order “[f]or there to be ‘manifest disregard of the law’ the arbitrators must have been presented with controlling precedents which they refused to apply.” *Id.* at 442. Further, these errors of law must be discernible “on the face of the very award itself.” *Krist v Krist*, 246 Mich App at 67, citing *Gavin*, 416 Mich at 443.

Plaintiffs’ claim that it was legally impossible for someone else other than Sabo to have been the “procuring cause” in getting the property sold to the eventual buyers. We disagree with plaintiff’s characterization of the issue. Under the procuring cause doctrine an “agent is entitled to recover his commission whether or not he has personally concluded and completed the [real estate] sale, it being sufficient if his efforts were the procuring cause of the sale.” *Reed v Kurdziel*, 352 Mich 287, 294; 89 NW2d 479 (1958). While plaintiffs couch their impossibility argument as a legal error, at its essence, plaintiff’s claim is a challenge to the arbitrators’ factual findings. In arguing that the evidence established that Sabo was the procuring cause and not defendants’ agent, plaintiff’s proffer precisely the type of factual challenge that is not permitted in a review of an arbitration award. Because there is nothing on the face of the award to indicate that the arbitrators did not apply the correct law, we decline to vacate or otherwise modify the award.

Plaintiffs next argue that the circuit court erred in modifying the arbitration award by changing the respondent from Wendy Sabo to Sabo & Associates. We disagree.

MCR 3.602(K)(2)(a) provides that the court shall modify or correct an award if “there is an evident miscalculation of figures or *an evident mistake in the description of a person, a thing, or property referred to in the award.*” (Emphasis added.) Although plaintiffs argue on appeal that the circuit court erred in modifying the award, plaintiffs’ attorney admitted at the circuit court hearing that Wendy Sabo & Associates, Inc., was the proper party and that MCR 3.602(K)(2) authorized the court to modify the award with respect to the proper party. “A party is not allowed to assign as error on appeal something which his or her own counsel deemed proper at trial since to do so would permit the party to harbor error as an appellate parachute.” *Dresselhouse v Chrysler Corp*, 177 Mich App 470, 477; 442 NW2d 705 (1989). Because plaintiffs argued that the court could either vacate the award against Wendy Sabo or “issue it toward the right party,” plaintiffs cannot now argue that the circuit court erred in doing just that.

Affirmed. Defendants, as the prevailing parties, may tax costs pursuant to MCR 7.219.

/s/ Donald S. Owens

/s/ Michael J. Talbot

/s/ Kurtis T. Wilder