

January 4, 2023

ADR Case Update 2023 - 1

Federal Circuit Courts

- VENDOR NOT “BENEFICIARY” ENTITLED TO ENFORCE ARBITRATION**

Johnson v Mitek Systems, Inc.
United States Court of Appeals, Seventh Circuit
2022 WL 17826480
December 21, 2022

Johnson is a registered driver with HyreCar, an online “car share” service that connects drivers, typically those who wish to drive for services such as Uber and GrubHub, with people willing to lease their cars for this use. Drivers are required to submit personal information, including a photograph and driver’s license. HyreCar then sends this information to Mitek Systems, which verifies the driver’s identity, license validity, and driving record. Johnson sued Mitek, claiming that Mitek used his personal information without consent. Mitek moved to compel arbitration under the arbitration agreement in HyreCar’s User Agreement, which requires arbitration of disputes arising between the driver and HyreCar, HyreCar-related entities, and “all authorized or unauthorized users or beneficiaries of services or goods provided under the Agreement.” The court held that Mitek was not a “beneficiary” and denied the motion. Mitek appealed.

The United States Court of Appeals, Seventh Circuit, affirmed that Mitek was not a “beneficiary” of the User Agreement entitled to enforce arbitration. The Court rejected Mitek’s claim that it benefits from the User Agreement because HyreCar pays Mitek to verify information pursuant to that Agreement. The “services or goods” provided under the Agreement are vehicles, and Mitek does not receive or use vehicles. Mitek is simply in the position of any vendor that sells “office supplies and computers and website management” to HyreCar. The Court rejected Mitek’s argument that FAA policy favoring arbitration required the Court to construe the arbitration provision in its favor. The FAA requires courts to treat an arbitration agreement the same as any other contract, not to “jigger the rules to promote arbitration.”

- ARBITRATION AGREEMENT SUPERSEDED**

Suski v Coinbase, Inc.
United States Court of Appeals, Ninth Circuit
2022 WL 17726673
December 16, 2022

When creating accounts with Coinstar, an online cryptocurrency exchange, David Suski and other users (Plaintiffs) agreed to an online User Agreement containing an arbitration clause with a delegation provision. Plaintiffs later opted into Coinbase's Dogecoin Sweepstakes, which provided its own "Official Rules." The Official Rules included a forum selection clause that stated that California courts had "exclusive jurisdiction" over any controversy arising from the Sweepstakes. Plaintiffs sued Coinstar for false advertising and violating consumer protections, and Coinstar moved to compel arbitration under the User Agreement. The court denied the motion, holding that it was for the court, rather than the arbitrator, to determine which contract governed the dispute. The court held that the Official Rules superseded the User Agreement and that the User Agreement's arbitration agreement, therefore, did not apply. Coinstar appealed.

The United States Court of Appeals, Ninth Circuit, affirmed that the Sweepstakes dispute was not subject to arbitration. Whether the forum selection clause in the Official Rules superseded the User Agreement's arbitration clause was a question as to the existence, rather than to the scope, of an arbitration agreement and was properly decided by the courts. The court correctly ruled that because the User Agreement and the Official Rules conflicted on the question of whether the parties' dispute must be resolved by the arbitrator or the court, the Official Rules' forum selection clause superseded the User Agreement's arbitration clause.

- **AWARD NOT IRRATIONAL OR MADE IN MANIFEST DISREGARD OF LAW**

HayDay Farms, Inc. v FeeDx Holdings, Inc.
United States Court of Appeals, Ninth Circuit
2022 WL 17748109
December 19, 2022

Forage crop grower HayDay Farms entered into a Distribution Agreement (DA) under which FeeDx provided HayDay \$8 million for expansion, and HayDay agreed to produce annual crop minimums that FeeDx would purchase at a set rate. HayDay underproduced, and FeeDx underpaid, and the parties modified the DA in a Settlement Agreement (SA). FeeDx agreed to purchase crops through 2016, and HayDay agreed to repay the \$8 million. When FeeDx did not buy the crops, and HayDay paid back only \$1 million, the parties submitted to arbitration, resulting in a \$19 million damages award to HayDay. Because FeeDx materially breached the SA's purchase requirements, the tribunal held, it remained liable for all pre-SA as well as post-SA claims, and HayDay was excused from repaying the remaining \$7 million. FeeDx argued in briefings that the award would violate Cal. Civ. Code § 3358's prohibition of "windfall" damages, but the tribunal did not acknowledge the briefings. HayDay sued to confirm the award, and FeeDx moved to vacate. The court confirmed in part but vacated the excusal of HayDay's \$7 million obligation as showing manifest disregard of § 3358. Both parties appealed.

The United States Court of Appeals, Ninth Circuit, affirmed in part but reversed the partial vacatur with respect to the \$7 million. The Court noted that it did not "do so gladly" and "shared the district court's concern" about the unfair windfall. Emphasizing the extremely limited nature of its review, the Court held that the award was not irrational. Although the tribunal "probably" misread the SA, the award was based on a "plausible" interpretation reflecting the tribunal's "best effort to construe the parties' agreement." The Court similarly found no manifest disregard. As the tribunal did not acknowledge FeeDx's briefings, there was "no sign" that the tribunal recognized its award as a "windfall" or that it understood and disregarded a law prohibiting such windfall. The award, the Court cautioned, "shows in stark terms the real risk that parties assume when they trade away their right to adjudicate their claims in court."

- **CITY REQUIRED TO ARBITRATE DISCONTINUED FIREFIGHTER BENEFITS**

In re: City of Yonkers
Court of Appeals of New York
2022 WL 17683457
December 15, 2022

Under Municipal law § 207-a(2), the City of Yonkers provided age-eligible disabled firefighters a “special pays” benefit in the amount of the difference between state disability benefits and the firefighter’s regular salary. In 2015, the City announced that it would discontinue these benefits. The Union demanded arbitration under its CBA. The City filed a petition to permanently stay the arbitration. The trial court granted the motion but was reversed on appeal. The City requested leave to appeal, which the Court of Appeals of New York granted.

The Court of Appeals of New York affirmed. The Court found that the parties had agreed to arbitrate the grievance, as the dispute at issue bore a “reasonable relationship” to the general subject matter of the CBA. Appendix C to the CBA included very broad arbitration provisions specifically granting the arbitrator authority to decide entitlement claims of 207-a benefits, and provided that, in any matter presenting termination of 207-a benefits, the Fire Department would bear the burden of proof by a preponderance of the evidence. As the grievance was not barred by public policy, statutory, or constitutional concerns, the City was therefore required to arbitrate the dispute.

Alabama

- **MOTION FOR CLARIFICATION OF ARBITRAL AWARD DENIED FOR UNTIMELY RAISING OF MODIFICATION ISSUES**

Communications Unlimited Contracting Services, Inc. v Clanton
Supreme Court of Alabama
2022 WL 17729214
December 16, 2022

Steve Clanton recruited CUI to help him expand his NC-based “storm-restoration services” company to the AL market. Under a purchase agreement, Clanton agreed to sell 50% of SCI to CUI. Clanton was to be paid from multiple sources, including transfer of a house from CUI, monetary payments from CUI and SCI, and a promised SCI annual salary. When Clanton failed to receive these payments in a timely fashion, he e-mailed CUI that he wished to “unwind” the purchase agreement. Clanton and CUI submitted their disputes over the purchase to arbitration. The arbitrator made clear, in issuing the award, that she was resolving only the monetary claims between the parties. She made no findings as to ownership interests in SCI and did not purport to dissolve SCI. CUI commenced a statutory dissolution action in GA and sued to confirm the award in AL. Clanton moved to dismiss the GA action on estoppel grounds or, alternatively, to stay the action pending clarification of the award. Clanton submitted two clarification requests to the arbitration provider, requesting rulings that 1) ownership of SCI had reverted to him; 2) the Purchase agreement was null and void; 3) he owned the house. The provider denied the requests for lack of jurisdiction. The GA court rejected Clanton’s motions, holding that collateral estoppel did not apply, as the arbitration award “nowhere makes any finding regarding ‘unwinding the deal,’ nor on the ownership of SCI.” Clanton filed his answer in the AL confirmation action, with a motion requesting that the court clarify the award or remand to the arbitrator for clarification. The court remanded the award to the arbitration provider. CUI appealed.

The Supreme Court of Alabama reversed. Remand of arbitration awards may be granted only where the award is so ambiguous as to be unenforceable. Here, however, the arbitrator’s order was “simply not ambiguous.” The arbitrator clearly stated that she was ruling only on monetary relief, and she made no findings on the issues on which Clanton sought “clarification.” Clanton’s “clarification” motion was, in fact, an untimely motion for modification, requesting rulings on

issues not placed before the arbitrator. Requiring the arbitrator to make such rulings would exceed the scope of the arbitration. The Court directed the lower court to confirm the award.

Case research and summaries by Deirdre McCarthy Gallagher and Rene Todd Maddox.

Contact Information

David Brandon
Program Manager
JAMS Institute
415-774-2648
DBrandon@jamsadr.com