

October 4, 2023

ADR Case Update 2023 - 19

Federal Courts

- **PARTY ORDERED TO PAY ARBITRATION FEES**

Wallrich v Samsung Electronics America, Inc.
United States District Court, N.D. Illinois, Eastern Division
2023 WL 5934842
September 12, 2023

In order to register Samsung devices such as smartphones or tablets, the User must agree to Samsung's Terms and Conditions, which include a mandatory Arbitration Agreement with a delegation clause. A group of Users exercised their rights under the Agreement by filing 50,000 individual arbitration demands with designated arbitration provider AAA, alleging that Samsung violated the Illinois Biometric Information Privacy Act. The provider invoiced both parties for their shares of the arbitration fees. The Users paid, but Samsung notified the provider that it would pay arbitration fees only for the 14 California claims in order to avoid that state's automatic sanctions. It refused to pay fees for the remaining claims because of discrepancies in the claimant list. The provider requested a corrected spreadsheet, which Users provided to the provider's satisfaction. The provider notified Samsung and again requested payment. Samsung declined, and the provider closed all non-California cases. Users petitioned to compel arbitration.

The United States District Court, N.D. Illinois, Eastern Division granted Users' petition to compel arbitration and ordered Samsung to pay its fees. The court found the existence of a valid agreement to arbitrate: Samsung acknowledged that each User accepted the Terms and Conditions upon registration; the provider determined that the Users had met the filing requirements; and Users corrected the claimant list to the provider's satisfaction. Under the Arbitration Agreement's delegation clause, Samsung's objections that 1) the mass demand filing violated the collective action waiver and 2) the Users' claims were frivolous were for the arbitrator to decide. Filing fee issues, however, were for the Court, as they were substantive issues "bound up in the right to arbitrate." Here, Samsung was "hoist with its own petard": "It made the business decision to preclude class, collective, or representative claims in its arbitration agreement with consumers," and the fees it now faced were "attributable to that decision."

- **BANK FAILED TO PROVE THAT IT SENT ARBITRATION AGREEMENT**

Katsnelson v Citibank National Association
United States District Court, E.D. New York
2023 WL 5813562
September 8, 2023

Citibank credit card holder Robert Katsnelson filed an FCRA action against Citibank. Citibank moved to compel arbitration under the associated Card Agreement, which, Citibank alleged, was mailed to Katsnelson along with his credit card. In support of its motion, Citibank submitted “Exhibit 1,” which included 1) a dated letter to Katsnelson stating, “your new card will be arriving soon,” and 2) a standard copy of its 2016 Card Agreement. A Citibank employee testified that Citibank had no record of Katsnelson opting out of the Agreement’s arbitration provision. Katsnelson “vehemently denied” receiving the Agreement.

The United States District Court, E.D. New York denied Citibank’s motion to compel. By submitting Exhibit 1 as a “composite single exhibit,” Citibank attempted to “leave the impression” that it was providing proof of the actual mailing. However, the letter stated only that the card would be sent to the Katsnelson at some future time and made no reference to the Card Agreement. Citibank could have supported its motion with a declaration from “someone with knowledge of its 2016 business practice” to establish that the customary practice was to include the Agreement with the credit card mailing. Its employee merely stated there was no record of Katsnelson opting out, which was meaningless without proof that he received the Agreement.

- **SETTLEMENT TERM SHEET WAS BINDING CONTRACT**

In re: Legarde
United States Bankruptcy Court, E.D. Pennsylvania
2023 WL 6035596
September 14, 2023

Christopher Helali filed a defamation action against Zipporah Legarde. Legarde subsequently filed for bankruptcy, and Helali filed a proof of claim for an unsecured debt arising from the pending lawsuit. Helali, Legarde, and Legarde’s husband, Frank Cardillo, Jr., submitted to mediation, which concluded in a signed Settlement Term Sheet. The Terms provided that Helali would drop his lawsuit and, in exchange, Cardillo would pay a stipulated sum, and Legarde would remove her online statements about Helali and refrain from future disparagement. Legarde soon had second thoughts and, through her counsel, notified Helali’s counsel that she would not agree to the Term Sheet or its approval. Helali moved to enforce the Term Sheet. Legarde opposed, claiming that she had not been told that the mediation was binding, and Cardillo opposed on grounds that he was not represented by counsel during the mediation.

The United States Bankruptcy Court, E.D. Pennsylvania granted Helali’s motion to enforce the Settlement Term Sheet. An agreement to settle a lawsuit is binding “even if one of the parties has a change of heart shortly after assenting to its terms.” The Term Sheet was an enforceable contract, as 1) the parties manifested an intention to be bound by signing the Term Sheet; 2) the terms were specific and enforceable; and 3) all parties provided sufficient consideration. Under Pennsylvania law, neither Legarde’s alleged lack of understanding of the terms nor Cardillo’s lack of representation constituted a defense to enforcement.

California

- **BYLAWS’ PROVISION VIOLATED RULE AGAINST PREDISPUTE WAIVERS**

EpicentRx, Inc. v Superior Court of San Diego County
Court of Appeal, Fourth District 1, California
2023 WL 6157420
September 21, 2023

EpiRx, the largest Shareholder of Delaware biotechnology company EpicentRx, sued EpicentRx in the Superior Court of San Diego for multiple claims arising from misappropriation of investor funds. EpicentRx moved to dismiss, as forum selection clauses in its corporate bylaws required such claims to be brought in the Delaware Court of Chancery. The court denied the motion, holding that the forum selection clauses violated California’s rule against predispute jury trial waivers. EpicentRx petitioned for a writ of mandate directing the court to vacate its order.

The Court of Appeal, Fourth District 1, California, denied EpicentRx's petition, confirming that the forum selection clauses violated California's rule against predispute jury trial waivers. There was "no dispute" that EpiRx would be entitled to a jury trial in California. The Delaware Court of Chancery is a court of equity that provides no right to a trial by jury: jury trial occurs by "advisory only" and, in practice, is essentially "extinct." The forum selection clauses, therefore, de facto "operate as implied predispute waivers" that "deprive" EpiRx of its right to a jury trial. The Court rejected EpicentRx's argument that forum selection clauses were no different than arbitration agreements in removing disputes from the California judicial system. The predispute jury waiver rule does not apply to arbitration agreements because they "represent an agreement to avoid the judicial forum altogether." Here, the agreement was to a particular judicial forum, and in a judicial forum, the rule against predispute jury trial waivers applies.

Illinois

- **"TERMINATION-UPON-DEATH" PROVISION EXTINGUISHED ADR AGREEMENT**

Clanton v Oakbrook Healthcare Centre, Ltd.
Supreme Court of Illinois
2023 IL 129067
September 21, 2023

Laurel Jansen was admitted to an Oakbrook Healthcare nursing facility subject to an Admissions Contract containing an ADR Agreement. A separate Contract provision stated that the Contract terminated "immediately upon the resident's death." Jansen died after suffering a series of falls at the facility, and her Estate's representative sued Oakbrook for negligence, violations of the Home Care Act, and wrongful death. Oakbrook moved to compel mediation and/or arbitration. The court denied the motion, holding that the ADR Agreement unconscionably required Jansen to waive her rights to punitive and treble damages. The appellate court confirmed on different grounds, holding that, under the Contract's termination-on-death provision, the ADR Agreement was no longer enforceable at the time the action commenced. Oakbrook petitioned for and was granted leave to appeal.

The Supreme Court of Illinois affirmed that the Admissions Contract, including the ADR Agreement, terminated upon Jansen's death. The Court rejected Oakbrook's argument that the Estate's claims for negligence and Home Care Act violations accrued prior to Jansen's death and were, therefore, subject to the ADR Agreement. The express terms of the Contract provided that "once the resident died, the contract ceased to exist."

Nevada

- **HEIRS' WRONGFUL DEATH CLAIMS NOT SUBJECT TO DECEDENT'S AGREEMENT**

El Jen Medical Hospital, Inc. v Tyler
Supreme Court of Nevada
2023 WL 6167077
September 21, 2023

When Gary Tyler was admitted to the El Jen nursing facility, his wife Stacy, acting under POA, signed an Arbitration Agreement on his behalf. The Agreement required arbitration of "all claims" arising from Gary's care and applied to "all persons" whose claims were "derived through or on behalf of" Gary, including "any parent, spouse, child, guardian, executor, administrator, legal representative, or heir of the Resident." Gary Tyler died after suffering a fall at El Jen, and his Estate, Stacy, and the Tylers' children sued El Jen for negligence, wrongful death, and survivorship claims. El Jen moved to compel arbitration of all claims. The court held that the Estate's claims were subject to the Arbitration Agreement but that the Agreement was not binding upon non-signatories Stacy and the Tyler children. El Jen appealed.

The Supreme Court of Nevada affirmed that the Arbitration Agreement did not bind Stacy Tyler and the Tyler children. Wrongful death is a statutory action, and in Nevada, NRS 41.085 creates a wrongful death claim in the decedent's heirs, providing for damages personal to the heirs themselves, such as grief, sorrow, or loss of companionship. State courts are split on the issue of whether an heir's wrongful death claim is derivative of the decedent's rights, in which case the decedent could bind non-signatory heirs to arbitration. The Court joined the "growing majority" of courts in holding that NRS 41.085 creates an independent cause of action to compensate heirs for their individual loss. This action is "separate from the decedent and not subject to the decedent's pre-death contracts."

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