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ADR Case Update 2024 - 12

Federal Circuit Courts

- ***FORUM NON CONVENIENS* NOT APPLICABLE TO CONFIRMATION PROCEEDINGS**

Estate of Ke Zhengguang v Yu Naifen Stephany
United States Court of Appeals, Fourth Circuit
2024 WL 3189327
June 27, 2024

A Hong Kong arbitration held Stephany Yu, a U.S. citizen, jointly and severally liable to her business partners, Ke Zhengguang and Xu Honbiao. Yu paid the amount owed to Xu, wiring the money from a partnership subsidiary directly into his China bank account. Ke's Estate, however, sought to avoid Chinese currency laws and insisted that Yu make payments into a Hong Kong account. When Yu did not do so, the Estate filed an enforcement action in federal district court. Yu moved to dismiss, arguing that the court was a *forum non conveniens*, that the Estate failed to join necessary parties, and that offshore payment would violate China's currency control laws contrary to U.S. public policy. The court denied the motion, finding that Yu had failed to assert any of the "seven exclusive defenses to enforcement" available to her under the New York Convention, and entered a $3.6M judgment against Yu. Yu appealed.

The United States Court of Appeals, Fourth Circuit affirmed. Absent extraordinary circumstances, forum non conveniens does not apply to confirmation proceedings under the New York Convention, as there is "no case to try, only a binding award to recognize and enforce." The arbitration award was admittedly complex, involving five parties and nine separate orders, but the enforcement action addressed only Yu's financial obligation to the Estate and, therefore, did not require the Estate to join other parties. Yu's public policy argument failed, as she made no showing why payment of a Hong Kong arbitration award enforced against a U.S. citizen by a U.S. court must be made to a Chinese account, or that this was the only means of payment available to her.

- **NO SUBJECT MATTER JURISDICTION OVER VACATUR ACTION**

Ascension Data & Analytics, L.L.C. v Pairprep, Incorporated
United States Court of Appeals, Fifth Circuit
2024 WL 3154797
June 25, 2024

Ascension Data & Analytics terminated its contract with Pairprep, a data extraction company after Pairprep's servers suffered a data breach. Ascension initiated arbitration against Pairprep to

recover the remediation costs. Pairprep then sued Ascension and the remediation company, Altada, for violating the federal Defend Trade Secrets Act (DTSA). The court referred the Ascension action to the existing arbitration, and the Altada case settled. In arbitration, Pairprep raised the DTSA violations as counterclaims, which Ascension argued were barred on res judicata grounds by the Altada settlement. The arbitration panel held in favor of Pairprep. Ascension applied to vacate the award in federal district court, which dismissed for lack of subject matter jurisdiction. Ascension appealed.

The United States Court of Appeals, Fifth Circuit affirmed. Pairprep's DTSA counterclaims in the arbitration proceeding and Ascension's res judicata defense were insufficient to support subject matter jurisdiction. A vacatur action determines only an award's enforceability, and neither the counterclaims nor the res judicata defense were before the district court. As the action was not diverse, and the vacatur claim did not arise under federal law, enforceability must be litigated in state court.

- **GOVERNANCE PROVISION ENFORCED**

Rodgers-Rouzier v American Queen Steamboat Operating Company, LLC
United States Court of Appeals, Seventh Circuit
2024 WL 3034849
June 18, 2024

Mary Rodgers-Rouzier worked as a bartender on American Queen steamboats. Rodgers-Rouzier filed a putative class action against American Queen for wage violations. American Queen moved to dismiss under her employee Arbitration Agreement, which specified that the Agreement and any associated arbitrations were governed by the FAA. The court denied dismissal, holding that Rodgers-Rouzier was a "seaman" exempt from arbitration enforcement under FAA § 1. American Queen renewed its motion to dismiss, this time under Indiana state law. The court held that the Agreement was enforceable under the IUAA and dismissed. Rodgers-Rouzier appealed.

The United States Court of Appeals, Seventh Circuit reversed and remanded. All contracts, including arbitration agreements, are governed by state law, as the FAA "does not itself provide a substantive law governing the formation or general interpretation of contracts." Under Indiana contract law, the governance provision functioned as a "valid, enforceable choice-of-law clause," meaning that the parties had "agreed to arbitrate subject to the FAA." Therefore, the Court found the case could continue in federal court, leaving the question of whether it may do so as a collective action for further litigation.

- **NO VALID ARBITRATION AGREEMENT**

Wallrich v Samsung Electronics America, Inc.
United States Court of Appeals, Seventh Circuit
2024 WL 3249646
July 1, 2024

A group of 35,651 Illinois Consumers filed arbitration demands against Samsung with AAA, as required by the arbitration agreement set forth in Samsung's Terms, claiming that Samsung was unlawfully collecting biometric data through their Samsung electronic devices. AAA notified the parties that Consumers had met AAA's filing requirements and issued bills for initial administrative filing fees. Samsung refused to pay. AAA offered Consumers the opportunity to pay Samsung's fees and proceed with the arbitration. Consumers declined, and AAA closed the arbitration. Consumers then sued for a court order compelling Samsung to pay the fees, submitting in evidence 1) Consumers' arbitration demands; 2) copies of Samsung's terms and conditions; 3) a spreadsheet of all Consumers' names and addresses; and 4) AAA's notice that Consumers had met its filing requirements. The court ordered Samsung to pay the fees and proceed in arbitration. Samsung appealed.

The United States Court of Appeals, Seventh Circuit reversed. The court below erred in ordering Samsung to pay arbitration fees and proceed in arbitration, as Consumers failed to meet their burden of producing a valid arbitration agreement. Samsung conceded that, under its terms and conditions, "an individual agrees to arbitrate all disputes when he or she purchases or uses a Samsung device." However, Consumers failed to provide any evidence that they had, in fact, purchased or used Samsung devices – no "receipts, order numbers, or confirmation numbers," or even "declarations attesting to the allegations in their arbitration demands." Rather, they relied on the arbitration demands themselves, which were "nothing more than allegations" signed by counsel. Further, the court's actions exceeded its authority and the scope of the arbitration agreement. Procedural issues such as fee disputes are "presumptively" for the arbitrator, not the court, to decide. Here, Consumers filed for arbitration, Samsung refused to pay the fees, and the

AAA terminated the arbitration for non-payment. At that time, the arbitration was complete, and the court "did not have the authority to flout the parties' agreement and disturb the AAA's judgment."

- **ARBITRATOR LACKED AUTHORITY TO REVIEW FSIP ORDER**

Federal Education Association Stateside Region v Federal Labor Relations Authority
United States Court of Appeals, District of Columbia Circuit
2024 WL 2873103
June 7, 2024

The teachers' Union and the DOD's Domestic Dependent Elementary and Secondary Schools (DDESS) reached impasse in negotiating a new CBA. DDESS submitted the dispute to a Federal Services Impasse Panel (FSIP) and implemented the resulting CBA. The Union filed arbitral grievances, claiming that DDESS had violated their negotiating agreement by bringing in the FSIP and by implementing the CBA without the Union's signature. The arbitrator found for the Union and reinstated the prior CBA. DDESS then filed an exception with the FLRA, which set aside the award, finding that the arbitrator lacked authority to review the FSIP's jurisdiction. The Union petitioned for review.

The United States Court of Appeals, District of Columbia Circuit denied review. The FLRA was correct in finding that the arbitrator lacked authority to review the FSIP order under § Section 7119, which allows for review only in the very specific situation of a party challenging the legality of an FSIP order in defense against a noncompliance claim. The DDESS complied with statutory requirements in submitting the impasse to the FSIP, and notwithstanding the absent Union signature, the new CBA was fully "executed" for implementation purposes when the FSIP issued its order.

California

- **FAA DID NOT PREEMPT CAL. CIV. PROC. SECTION 1281.98**

Keeton v Tesla, Inc.
Court of Appeals of California, First District, Division 1
No. A166690
June 26, 2024

Production associate Dominique Keeton filed discrimination claims against her employer, Tesla. Tesla successfully moved to compel arbitration and stay litigation under Keeton's employee arbitration agreement. After arbitration commenced, however, Tesla failed to pay its share of the arbitration fees within 30 days of the due date. Keeton moved to vacate the arbitration order under Cal. Civ. Proc. § 1281.98, which provides that an employer's failure to pay arbitration fees within a 30-day grace period constitutes a "material breach" of the arbitration agreement, waiving the employer's enforcement rights and giving the employee the option to withdraw from the arbitration and proceed in litigation. Tesla opposed, arguing that § 1281.98 was preempted by the FAA. The court granted Keeton's motion, lifted the litigation stay, and imposed a $1,000 sanction against Tesla. Tesla appealed.

The Court of Appeals of California, First District, Division 1 affirmed. The FAA does not preempt § 1281.98. The FAA contains no preemption provision and evinces no Congressional intention to occupy "the entire field of arbitration." The Court joined "almost" all California appellate courts in finding that § 1281.98 does not conflict with the FAA but, rather, promotes the FAA's goal of ensuring the "efficient and speedy resolution of claims." Akin to a statute of limitations, the provision "does not speak to the enforceability of the arbitration provision itself" and takes effect only "because of the drafting party's own actions." The Court rejected Tesla's additional claim, on appeal, that § 1281.98 violates the contracts clauses of the U.S. and California constitutions. The provision in no way impairs the obligations of contract but, rather, fosters compliance with arbitration agreements and serves the public purpose of deterring unnecessary arbitration delays through reasonable and appropriate means.

- **NON-SIGNATORY COULD NOT ENFORCE ARBITRATION AGREEMENT**

Soltero v Precise Distribution, Inc.
Court of Appeal, Fourth District, Division 1, California
2024 WL 3039929
June 18, 2024

A temporary staffing agency, Real Time Staffing, placed Nelida Soltero in a warehouse position with Precise Distribution, where she worked for more than three years. Soltero filed a putative class action against Precise for Labor Code violations. Precise moved to compel arbitration under her Employment Agreement with Real Time, asserting non-signatory enforcement rights based on principles of equitable estoppel, third-party beneficiary, and agency. The court rejected all three arguments and denied the motion to compel. Precise appealed.

The Court of Appeal, Fourth District, Division 1, California, affirmed. Equitable estoppel did not apply. Soltero's claims all arose from her employment with Precise and "did not mention or rely on any provision of" her Employment Agreement with Real Time. Precise was not a third-party beneficiary: the Employment Agreement listed intended third-party beneficiaries, and Precise was not among them. Finally, there was no evidence that Precise acted as an agent for Real Time. Although Precise asserted that Precise and Real Time were "joint employers" – and, therefore, "agents of one another" – there was no legal support for finding that a principal-agent relationship "arises as a matter of law" whenever a staffing agency places a temporary worker.

Washington

- **CLAIMS OUTSIDE SCOPE OF CBA ARBITRATION AGREEMENT**

Service Employees International Union Healthcare 1199NW v Snohomish County Public Hospital Dist. No. 1
Court of Appeals of Washington, Division 1
2024 WL 2890068
June 10, 2024

The CBA between the Union of service employees and Evergreen, the operator of the county hospital, required Evergreen to found, and make matching payments to, a 401(a) retirement Plan. Evergreen did so and, in the Plan documents, agreed to pay its matching contributions at the end of each month. Evergreen failed to make its payments in these monthly installments, and the Union sued. Evergreen moved to compel arbitration under the CBA, arguing that because Evergreen's Plan obligations arose from the CBA, a claim for breach of the Plan was "equivalent" to a claim for breach of the CBA. The court granted the motion to compel, holding that breach of the Plan "would be a breach of the express provisions" of the CBA. The Union appealed.

The Court of Appeals of Washington, Division 1, reversed and remanded. The Union's claims were not subject to the CBA's arbitration provision, which applied only to disputes over the "terms and conditions" of the CBA. The Union's claims alleged breach only of the Plan-specific monthly payment requirement; they did not implicate Evergreen's CBA obligation to found the Plan or to make matching contributions in general. Evergreen's agreement in the CBA "to provide and follow the terms of a separate benefit plan" did not "in and of itself bring disputes arising under the benefit plan into the scope of the CBA's arbitration clause."

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

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