October 16, 2024

ADR Case Update 2024 - 17

Federal Circuit Courts

- **NON-SIGNATORIES BOUND TO ARBITRATION UNDER EQUITABLE ESTOPPEL**

  Cure & Associates, P.C. v LPL Financial LLC
  United States Court of Appeals, Fifth Circuit
  2024 WL 4351607
  October 1, 2024

  Investment broker Ellen Cure was an independent contractor and registered representative of investment firm LPL Financial (LPL). Cure was the sole owner of two related entities: Cure & Associates (Associates) which she formed specifically as a vehicle for receiving LPL fees and commissions, and Premier Wealth (Premier), which shared clients, employees, and offices with Associates. LPL terminated its relationship with Cure, stating in its FINRA Form U5, that it did so because of a leaked internal email written by Cure which "reflected potentially racially discriminatory hiring/interviewing preferences" contrary to LPL's standards of conduct. Cure, Associates, and Premier sued LPL for tortious interference with contracts, business disparagement, and defamation. LPL moved to compel arbitration under Cure's Representative Agreement and FINRA Form U4. The court granted the motion to compel as to Cure, but denied the motion as to non-signatories Associates and Premier. LPL appealed.

  The United States Court of Appeals, Fifth Circuit reversed and remanded. Non-signatories Associates and Premier were bound to arbitration by equitable estoppel, as both entities received "direct benefits" from the Representative Agreement. Associates' "very existence" and revenue "sprang solely" from Cure's contractual relationship with LPL, and the "symbiotic relationship" between Associates and Premier facilitated the activities of both companies.

- **AMTRAK EMPLOYEE EXEMPT FROM ARBITRATION ENFORCEMENT UNDER FAA SECTION 1**

  Montoya v National Railroad Passenger Corporation
  United States Court of Appeals, Seventh Circuit
  2024 WL 4380257

October 3,2024

Heide Montoya was discharged from her position at Amtrak, where she worked primarily as an office employee, but also spent several hours per week loading and unloading train cargo. Amtrak discharged Montoya from her position, and she sued for sex discrimination. Amtrak moved to compel arbitration but, at a status hearing, the judge held that there was insufficient evidence to determine the existence of an arbitration agreement. Amtrak filed an interlocutory appeal.

The United States Court of Appeals, Seventh Circuit dismissed the appeal. Montoya, as a railroad employee, was exempt from arbitration enforcement under FAA §1, and Amtrak therefore had no grounds to bring an interlocutory appeal under FAA § 16(a)(1). Although the U.S. Supreme Court has held that FAA §1's exemption for "seamen" applies only to a subset of maritime employees defined by task, the Court made clear in Bissonnette v LePage Bakeries Park St., LLC that "railroad employee" is a "status." It "does not matter" whether Montoya performed office work or unloaded cargo: "She was Amtrak's employee and thus outside the Act."

California

- **EFAA RENDERED ARBITRATION AGREEMENT INVALID AND UNENFORCEABLE AGAINST ALL CLAIMS**

  Doe v Second Street Corp.
  Court of Appeal, Second District, Division 3, California
  2024 WL 4350420
  September 30, 2024

  In 2019, Jane Doe, a hotel server, was sexually assaulted by fellow employee Ryan Jackson and requested to be scheduled only on shifts Jackson did not work. A new manager hired in 2021, Eman Rivani, forced Doe to describe the assault to him in detail, told Doe that she was at fault, and scheduled her on regular shifts with Jackson until May 2022, when she became suicidal and was placed on "involuntary psychiatric hold." Doe sued the hotel owner, Second Street, for sexual harassment, hostile work environment, retaliation, and wage theft. The court held that the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act (EFAA) rendered the arbitration agreement invalid and unenforceable at Doe's election. The court rejected Second Street's arguments that the EFAA did not apply to claims based on actions that occurred before the EFAA's March 3, 2022 effective date, or to wage theft and other claims not directly arising from sexual harassment. Second Street appealed.

  The Court of Appeal, Second District, Division 3, California affirmed. The EFAA barred arbitration of all claims in Doe's complaint. The EFAA provides that, at the election of the party raising sexual harassment claims, no pre-dispute arbitration agreement "shall be valid or enforceable with respect to a case which . . . relates to the sexual assault dispute or the sexual harassment dispute." Doe's claims fell within the coverage of the EFAA, as her complaint "unquestionably asserted actionable sexual harassment that began prior to the EFAA's enactment and continued through May 2022, after the statute's effective date." Applying a plain meaning interpretation, the EFAA therefore rendered the arbitration agreement invalid and unenforceable with respect to the entire case, including claims unrelated to sexual assault.

Colorado

- **COURT "SUBSTANTIALLY UPHELD" ARBITRAL AWARD FOR PURPOSES OF STATUTORY FEE AND COSTS PROVISION**

  In re Marriage of Pawelec
  Court of Appeals of Colorado, Division 5
  2024 WL 4402090

October 3, 2024

When parties have resolved a custodial dispute through arbitration, any one of the parties may, under Colorado law, C.R.S. 14-10-128.5(2), move for a de novo judicial hearing to modify the award. If the court "substantially upholds" the award, the moving party must pay the non-moving party's fees and costs "incurred in responding to the motion." Katarzyna Pawelec filed such a motion challenging an arbitral award granting her ex-husband, Christopher Pawelec, primary residential custody of their daughter and permission to relocate with the daughter to North Carolina. The court conducted a de novo hearing, issued a custody order nearly identical to the arbitration award, and granted fees and costs to Christopher. Katarzyna appealed.

The Court of Appeals of Colorado, Division 5 affirmed. The lower court did not abuse its discretion in the custody award. Its findings were supported by the record, and the Court "may not reweigh the court's resolution of conflicting evidence." The Court rejected Katarzyna's challenge to the fees and costs award. Despite the nearly identical result, Katarzyna argued that the court did not "substantially uphold" the arbitral award, but instead reached its own determination based on "substantially different" reasoning than the arbitrator. Nothing in the statute "distinguishes the result from the reasoning or suggests that both must be the same." The Court did reduce the fee award, which had included attorney fees incurred preceding Katarzyna's filing. The statute applies only to fees and costs incurred in "responding" to the motion, and therefore could apply only to attorney fees incurred after Katarzyna's motion was filed.

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

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