JAMS Institute

LEARNING FROM EACH OTHER

January 8, 2025

ADR Case Update 2025 - 1

Federal Courts

- **BANKRUPTCY COURT PRECLUDED FROM HEARING ISSUE RESOLVED IN ARBITRATION**

  In re: Clem v Tomlinson
  United States Court of Appeals, Fifth Circuit
  2024 WL 5198585
  December 23, 2024

  While pouring the foundation for the Tomlinsons' new home, workers for Bella Vita Custom Homes, owned by Andrew Clem (together, Defendants), punctured a water line and flooded neighboring property. The resulting arbitration held that Defendants had breached the construction contract and violated DTPA regulations by, among other things, using non-approved construction materials; failing to provide required expenditure documentation; and lying about their failure to procure project insurance. The panel awarded the Tomlinsons economic damages, but denied their claims for misrepresentation and fraud. Following the award, Clem filed for Chapter 7 bankruptcy. The Tomlinsons petitioned for the award debt to be non-dischargeable on fraud grounds. The bankruptcy court acknowledged the collateral estoppel effect of the arbitration award, but found that the award failed to show that the panel had specifically determined the issue of dischargeability, "i.e, whether the debt was obtained by false pretenses, a false representation, or actual fraud" for purposes of bankruptcy law. The court, after hearing evidence on this issue, concluded that the debt had been incurred by Clem's fraud and non-disclosure and was non-dischargeable. The district court affirmed the award, and Clem appealed.

  The United States Court of Appeals, Fifth Circuit reversed. The Tomlinsons were barred from relitigating fraud issues previously determined in arbitration. The court below erred in its "overly narrow" interpretation of the arbitral award. There was "no question" that "several theories of fraudulent misrepresentation or omission were squarely placed before the three-member panel, and the panel addressed the facts and legal conclusions as to each." The arbitration panel considered the same facts as those before the court, and made specific findings that Clem's actions did not constitute fraud. The court erred in "theorizing" that the issues decided were "not identical" to the fraud issues underlying a dischargeability determination.

- **NON-SIGNATORY NOT SUBJECT TO ARBITRATION**

  Lubin v Starbucks Corporation
  United States Court of Appeals, Eleventh Circuit
  2024 WL 5113125
  December 16, 2024

  Raphyr Lubin was married to a Starbucks employee and obtained insurance under Starbucks' benefits plan as her spouse. Lubin joined a putative class action against Starbucks, alleging that he failed to receive statutorily required COBRA notice following his wife's termination. Starbucks moved to compel arbitration against Lubin under his wife's Employment Agreement. The court denied the motion, holding that the Agreement could not be enforced against Lubin as a non-signatory seeking enforcement of a statutory, rather than contractual, right. Starbucks appealed.

  The United States Court of Appeals, Eleventh Circuit affirmed. Lubin was not subject to arbitration under his wife's Employment Agreement, as he was not a party to the Agreement, nor was he seeking to enforce rights under that Agreement. Neither equitable estoppel nor third-party beneficiary doctrine supported enforcement, as Lubin was enforcing his own statutory rights entirely separate from the Agreement.

- **ARBITRATION AGREEMENT UNCONSCIONABLE**

  Ireland-Gordy v Tile, Inc.
  2024 WL 5162413
  United States District Court, N.D. California
  December 19, 2024

  Four stalking victims (Plaintiffs) filed negligence and product liability claims against Tile for failing to provide basic, easily available anti-stalking features for its geotracking devices, and for implementing "anti-theft" features that rendered its trackers undetectable. Plaintiffs alleged that stalkers had used third-party Tile trackers, and, in one instance, joint access to a Plaintiff's tracker, to trace Plaintiffs' whereabouts. Tile moved to compel arbitration against two of the Plaintiffs who had, in setting up Tile accounts of their own, agreed to Terms containing arbitration agreements. Plaintiffs opposed, arguing that the arbitration agreement was unconscionable.

  The United States District Court, N.D. California granted Tile's motion in part and denied in part. Tile's broad arbitration agreement – requiring arbitration of any claim arising out of or relating to "any Tile product or service" -- was procedurally and substantively unconscionable to the extent it required arbitration of claims relating to third-party use of Tile products or services to stalk Plaintiffs. Such claims were entirely "untethered" to Plaintiffs' consumer contracts with Tile, and bore "no relation" to Plaintiffs' own use of tracker or services under their Tile accounts. Arbitration was enforceable, however, as to the one Plaintiff's claim in which the stalker used joint access to a tile that she had purchased.

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

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