

October 20, 2021

ADR Case Update 2021-19

Federal Circuit Courts

- **MATERIAL DISPUTES OF FACT EXIST ON WHETHER PARTIES AGREED TO ARBITRATE**

Foster, et al. v. Walmart

2021 WL 4697952

United States Court of Appeals, Eighth Circuit

October 8, 2021

After purchasing gift cards that turned out to be worthless, Foster and others sued Walmart. Walmart moved to compel arbitration, relying on a notation on the back of the gift cards directing purchasers to “see Walmart for complete terms.” Doing so would direct them to an arbitration provision, which customers were deemed to accept by using or accessing the Walmart Sites. The court denied the motion, and Walmart appealed.

The United States Court of Appeals for the Eighth Circuit reversed and remanded. Material disputes of fact existed on the question of whether the parties agreed to arbitrate, including whether any of the plaintiffs used or accessed Walmart’s website; the structure and design of the website – including the location and prominence of the terms-of-use hyperlink, how many clicks it would have taken for the user to discover the arbitration provision, and whether the website changed during the relevant period; and the size and placement of the notation on the back of the gift cards, which are relevant to determining whether the plaintiffs would have been on notice to inquire further. In these circumstances, the FAA requires the district court to proceed summarily to a trial.

Washington State

- **TRIAL DE NOVO REQUEST DEFICIENT BECAUSE PARTY DID NOT SIGN**

Hanson v. Ramirez

2021 WL 4520053
Court of Appeals of Washington, Division 1
October 4, 2021

Kathleen Hanson struck Jose Ramirez's horse with her car after the horse escaped from a field. Hanson sued Ramirez for negligence and, after Ramirez filed an answer and counterclaim, requested mandatory arbitration under the Superior Court Civil Arbitration Rules (SCCAR). A week after the arbitrator filed an arbitration award, Ramirez filed a timely request for trial de novo. The request was signed by Ramirez's attorney but not by Ramirez. Hanson moved to strike on the grounds that the request was deficient because Ramirez did not sign it. The court granted the motion, and Ramirez appealed.

The Court of Appeals of Washington, Division 1 affirmed. SCCAR 7.1 requires that the attorney and the aggrieved party sign the request for a trial de novo, and Ramirez did not sign. The trial court was not required to make findings of fact or conclusions of law when granting Hanson's motion to strike.

Case research and summaries by Deirdre McCarthy Gallagher and Richard Birke.

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