December 2, 2021

ADR Case Update 2021 - 22

Federal Circuit Courts

- **PARTIES DELEGATED ARBITRABILITY TO ARBITRATOR**

  ROHM Semiconductor v. Maxpower Semiconductor
  2021 WL 5267923
  United States Court of Appeals, Federal Circuit
  November 12, 2021

  ROHM Japan and Maxpower were parties to a technology license agreement (TLA) under which ROHM and its subsidiaries were permitted to use technologies of Max Power in exchange for royalties. The TLA included an agreement to arbitrate and provided that arbitration would be conducted in accordance with the California Code of Civil Procedure (CCCP). ROHM USA, a subsidiary of ROHM Japan, filed a complaint for declaratory judgment of non-infringement of MaxPower patents in the Northern District of CA and four inter partes review petitions concerning the same patents. MaxPower moved to compel arbitration. The court granted the motion, finding that the TLA unmistakably delegated the question of arbitrability to the arbitrator. ROHM USA appealed.

  The United States Court of Appeals for the Federal Circuit affirmed. In contracts between sophisticated parties, incorporating rules that address an arbitrator's power to rule on their jurisdiction is considered sufficiently clear and unmistakable evidence of parties' intent to delegate arbitrability to an arbitrator. Here, CCCP §1297.161 provided that an arbitrator may rule on their own jurisdiction in *international* commercial arbitration. The Court found ROHM's effort to pigeonhole this as a domestic action unavailing, noting that this case was one aspect of a sprawling international dispute.

- **WHOLE CONTROVERSY ANALYSIS SHOULD NOT BE EXTENDED TO DEFINE PARTIES TO CONTROVERSY**

  ADT v. Richmond
  2021 WL 5228520
  United States Court of Appeals, Fifth Circuit

November 10, 2021

ADT fired security system installer Aviles after discovering that he had been spying on customers. One of the victims, the Richmond Family, sued Aviles and ADT in state court. Because the Richmonds' contract with ADT contained an arbitration clause, ADT brought this suit under FAA §4, premising jurisdiction on the complete diversity between the Richmonds of TX and ADT of FL and DE. Under *Vaden v. Discover Bank*, courts must look to the whole controversy, not just the petition to compel arbitration, to define the controversy over which the petition asserts federal jurisdiction. If a court could hear a suit arising from that whole controversy, then the court could hear the §4 suit. The court looked through ADT's federal suit to the Richmonds' state court complaint, which named Aviles and ADT as defendants, and concluded that the whole controversy included Aviles, ADT, and the Richmonds. Because Aviles was also from TX, the court dismissed ADT's suit for want of diversity jurisdiction. ADT appealed.

The United States Court of Appeals for the Fifth Circuit vacated and remanded. The district court erred in applying *Vaden's* look through test not only to the controversy but to the parties to that controversy. §4 uses parties to mean only the parties to the §4 suit: those who refuse to abide by their agreement to arbitrate and those whom they aggrieve by doing so. Non-parties to that suit do not matter. *Vaden's* language and method supported this reading. Though there was diversity jurisdiction over ADT's suit to compel arbitration, one wrinkle remained: whether Aviles was an indispensable party whose joinder was vital to avoid serious prejudice to that person or the parties already joined. On remand, the court should decide whether Aviles could be indispensable to an arbitral proceeding to which he never agreed.

- **PARTIES IMPOSED AN ATTORNEY-SIGNATURE REQUIREMENT FOR AGREEMENT**

Constance and Dolores Barot v. Aldon Management
No. 20-7083
United States Court of Appeals for the District of Columbia Circuit
October 19, 2021

When Constance and Dolores Barot sued Aldon Management for employment and housing discrimination, the parties agreed to participate in the district court's mediation program. Because the Barots were *pro se*, the district court appointed an attorney to serve as their counsel for the mediation. The parties reached a settlement, which the Barots signed – but their mediation counsel did not. When the Barots changed their minds and moved to revoke their agreement, Aldon moved to enforce, prompting the Barots to invoke Local Rule 84.7(f), which provides that agreements reached during mediation would not bind parties unless they were reduced to writing and signed by both counsel and the parties. The court denied the Barots' motion and granted Aldon's. The Barots appealed.

The United States Court of Appeals for the District of Columbia Circuit reversed and remanded. The Court found that by contract, the parties imposed their own attorney-signature requirement through the agreement they signed at the outset of the mediation, providing that any settlement "shall be reduced to writing and signed by the parties and counsel, and thereupon shall be binding."

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

Contact Information
David Brandon
Program Manager
JAMS Institute
415-774-2648
DBrandon@jamsadr.com