

December 16, 2020

ADR Case Update 2020 - 23

Federal Circuit Courts

- DEFENDANTS HAD AUTHORITY TO ENFORCE ARBITRATION PROVISION**

Barbosa v. Midland Credit Management, Inc.
2020 WL 6939627
United States Court of Appeals, First Circuit
November 25, 2020

Barclays sold Barbosa's overdue credit card balance to Midland Funding. Midland Funding assigned the rights to the account to Midland Credit Management (MCM). MCM retained the Schreiber/Cohen law firm to assist in its debt collection. Barbosa sued MCM and Schreiber/Cohen, claiming they violated the Fair Debt Collection Practices Act (FDCPA) by attempting to collect the credit card debt after the statute of limitations expired. MCM and Schreiber/Cohen moved to compel arbitration under the credit card agreement's arbitration election provision. The court adopted a magistrate judge's report and recommendation, finding that the agreement contained a valid arbitration provision that MCM and Schreiber/Cohen were authorized to enforce, and the parties should proceed to arbitration. Barbosa appealed.

The United States Court of Appeals for the First Circuit affirmed. The issue was whether MCM and Schreiber/Cohen, who were not signatories to Barbosa's Cardmember Agreement, could force her into arbitration. The Court found that they could. The Cardmember Agreement included an assignment provision giving Barclays permission to "at any time assign or sell your Account" and providing that "the person(s) to whom we make any such assignment shall be entitled to all of our rights under this Agreement, to the extent assigned." Barclays assigned its full contractual rights to Midland Funding, which put it in the shoes of Barclays. The arbitration provision clearly allowed the account owner's employees, agents, and assigns to elect arbitration. Midland Funding's agents were thus entitled to elect arbitration on Midland Funding's behalf.

- **DECEPTIVE FORM RENDERS AGREEMENT TO ARBITRATE UNENFORCEABLE**

Domestic Linen Supply Co., Inc., v. LJT Flowers, Inc.
2020 WL 7090196
Court of Appeal, Second District, Division 6, California
December 4, 2020

LJT contracted with Domestic for uniform rental. The contract was printed on one double-sided page with the arbitration agreement on the back. After LJT refused to pay Domestic, Domestic petitioned to compel arbitration. The Court denied the petition and granted LJT's motion for attorney fees under the agreement's fee provision. Domestic appealed.

The Court of Appeal, Second District, Division 6, California affirmed. The form of the rental agreement was deceptive. The arbitration clause was not above the purchaser's signature, where one would expect to find it. The clause was on the back of the agreement, which was filled from top to bottom with closely spaced lines of small type. There was nothing to distinguish the arbitration provision from any other paragraph. The attorney's fee provision allowed the award of attorney's fees to LJT.