August 23, 2018

ADR Case Update 2018 - 17

Federal Circuit Courts

BROAD ARBITRATION CLAUSE COVERS DISPUTES

Parm et al., v. Bluestem
2018 WL 3733424
United States Court of Appeals, Eighth Circuit
August 7, 2018

Parm and others (plaintiffs) had financing agreements with retailer Bluestem, which sells consumer goods. As part of the financing agreements, plaintiffs agreed to arbitrate any dispute "arising from or relating to" the credit offered or provided to them. Plaintiffs brought a putative class action against Bluestem, alleging that Bluestem imposed hidden finance charges in violation of state and federal usury, contract, truth-in-lending, and deceptive marketing laws. Bluestem moved to compel arbitration, which the court granted in part, providing that the plaintiffs' state law usury counts, state and federal financial-disclosure counts, and state-law unjust enrichment counts did not "arise out of or relate to" the credit agreements and were not arbitrable. Bluestem appealed.

The United States Court of Appeals for the Eighth Circuit reversed and remanded. The key question was whether the arbitration clauses could be interpreted to cover the claims exempted from arbitration by the district court. The Court found that they could. The arbitration clauses in the agreements in question used the "broadest language parties could use" in covering claims "arising out of or relating to" the agreement. The claims were thus arbitrable unless it could be said with "positive assurance" that the arbitration clause was not susceptible to an interpretation that covered the asserted dispute. The usury, financial disclosure, and unjust enrichment counts clearly fell within the scope of the clauses. "The factual allegations underpinning every single claim" arose from or related to the financing agreements because without the agreements, there would be no hidden finance charge and no claims.

ARBITRATOR EXCEEDED AUTHORITY IN REFORMING PURCHASE AGREEMENT

Hebronville Lone Star Rentals, LLC v. Sunbelt Rentals Industrial Services, LLC
2018 WL 3719682
United States Court of Appeals, Fifth Circuit
August 6, 2018

Hebronville Lone Star Rentals (Lone Star) sold its assets to Sunbelt, another equipment rental company. The sales price included an upfront payment and three contingent payments, aimed to incentivize Lone Star to help Sunbelt grow the business. Under the agreement, Sunbelt was to calculate the contingent payments. Lone Star disagreed with the revenue calculation for the first contingent payment and proposed an adjustment. Sunbelt disagreed with the adjustment and, per the agreement, the case proceeded to arbitration. The arbitrator agreed with Lone Star's adjustment and reformed the contract after concluding that the parties made a mutual mistake when their agreement listed the revenue target for former Lone Star clients. Lone Star sued in federal court to confirm the adjustment and to vacate the reformation of the contract. The court confirmed the adjustment and vacated the contract reformation, finding that the arbitrator exceeded its authority. Sunbelt appealed.

The United States Court of Appeals for the Fifth Circuit affirmed and remanded. Because of the policy favoring arbitration, there is a presumption that an arbitration clause will cover a dispute. But the policy favoring arbitration can't stretch a contractual provision beyond the scope intended by the parties. The clause in question, Section 3.5, was limited to a dispute over the Seller's proposed adjustments to the Revenue Calculation. The full agreement carved out three other arbitration clauses covering specified disputes between the parties and provided "other than the four types of disputes subject to arbitration, courts in Texas would resolve disputes arising out of or relating to this Agreement." The lower court correctly treated the reformation argument as a claim relating to the Agreement that should be resolved in court.

Sunbelt also asserted that even if the clause in Section 3.5 did not cover reformation, the engagement letter did. The letter provided "the parties are submitting to the arbitrator for resolution their disagreement as to whether the threshold amount for the contingency payment had been met and if so, the amount of the first contingency." Sunbelt contended that determining this required figuring out what the threshold amount should be. The Court disagreed. The letter limited the dispute to the calculation of the First Contingency Payment; however, a finding of mutual mistake would impact the second and third payments. The letter showed no shared intent of the parties to allow an arbitrator to make the reformation decision that had significance beyond resolving Lone Star's disagreement with the revenue calculation for the first period.

ARBITRATOR DID NOT EXCEED HIS POWERS

Beumer Corp v. ProEnergy Services
2018 WL 3767135
United States Court of Appeals, Eighth Circuit
August 9, 2018

Beumer contracted with ProEnergy to furnish and fabricate steel for a Beumer project. Beumer withheld payment to ProEnergy, citing deficient work. Per the parties' agreement, ProEnergy initiated arbitration to resolve the payment dispute. During the arbitration, the parties disagreed about the enforceability of the contract's limitation on liability. The arbitrator determined that it was enforceable and that the limitation did not extend to attorneys' fees. The arbitrator awarded Beumer the maximum under the liability cap, as well as interest and attorneys' fees. Beumer moved to confirm the award and ProEnergy moved to vacate the attorneys' fees award as beyond the arbitrator's authority. The court confirmed the award and ProEnergy appealed.

The United States Court of Appeals for the Eighth Circuit affirmed. An arbitrator does not exceed his powers by making an error of law or fact. As long as the arbitrator has arguably construed or applied the contract and acted within the scope of his authority, then the award should be confirmed. ProEnergy argued that the arbitrator exceeded his powers because he did not follow the contract's section on governing law (Missouri). The arbitrator cited Missouri law throughout. He did not cite MO decisions but it was possible that there was no MO case law on point; the arbitrator never stated that he substituted his own choice of law preference. And even if the arbitrator overlooked MO decisions and made an error of law, that did not justify vacating the award.

DEFAULT JUDGMENT BASED ON PARTY'S FAILURE TO PAY ARBITRATION FEES INVALID

Hernandez v. Acosta Tractors Inc.

2018 WL 3761126
United States Court of Appeals, Eleventh Circuit
August 8, 2018

Hernandez brought an action against his former employer, Acosta, for unpaid wages under the FLSA. Acosta moved to compel arbitration pursuant to the arbitration clause in its employment contract with Hernandez. The court granted the motion. After failing to pay arbitration fees, Acosta moved to bring the case back to court. The court entered a default judgment against Acosta, providing that Acosta's failure to pay the fees constituted a default under Section 3 of the FAA. Acosta appealed.

The United States Court of Appeals for the Eleventh Circuit vacated and remanded. At issue was whether the court could enter a default judgment based on Acosta's failure to pay arbitration fees. The court cited Section 3 of the FAA for authority, but Section 3 concerns when a court must compel arbitration – and says nothing about what a court should do when the party asking the court to compel wants to return to court. There was no basis in the FAA or related case law to enter a default judgment solely because Acosta defaulted in the arbitration. Federal courts have the authority to do so under federal rules and related case law providing that courts have inherent power to "police those appearing before them." To impose a sanction pursuant to this power, however, the court needed to find that the sanctioned party acted with subjective bad faith. The Court vacated and remanded to the district court to determine if Acosta acted in bad faith.

ARBITRATOR TO DECIDE QUESTION OF CLASS ARBITRATION

Spirit Airlines, Inc. v. Maizes, et al.
2018 WL 3866335
United States Court of Appeals, Eleventh Circuit
August 15, 2018

Maizes and other claimants were members of the Spirit Airlines $9 Fare Club. The Club Agreement provided "any dispute arising between members and Spirit will be resolved by submission to arbitration in Broward County, State of Florida in accordance with the rules of the American Arbitration Association then in effect." Maizes and other class representatives filed a claim in arbitration against Spirit, alleging that Spirit broke promises under the club agreement. Spirit sued in federal court, seeking a declaration that the agreement's arbitration clause did not authorize class arbitration claims and an injunction to stop the arbitration of class claims. The class representatives moved to dismiss for lack of subject matter jurisdiction in federal court. The court denied Spirit's request for an injunction and dismissed the case for lack of jurisdiction, finding that the agreement's choice of AAA rules required the arbitrator to decide whether the agreement permitted class arbitration. Spirit appealed.

The United States Court of Appeals for the Eleventh Circuit affirmed. At issue was whether the judge or the arbitrator was to decide if the arbitration agreement between Spirit and Club Members allowed for arbitration for claims brought by a class. Under *First Options* (115 S. Ct. at 1924), the Supreme Court directed lower courts to never assume that the parties agreed to have an arbitrator decide questions of arbitrability unless there was "clear and unmistakable evidence that they did so." The Court found that here. The parties plainly chose AAA rules, which included AAA's Supplementary Rules for Class Arbitrations. Supplementary Rule 3 provided that an arbitrator shall decide whether an arbitration clause permitted class arbitration. This was clear and unmistakable evidence that the parties chose to have the arbitrator decide the question of class arbitration.

California

COMPROMISE OF FEES IN MALPRACTICE CLAIM VALID CONSIDERATION FOR SETTLEMENT AGREEMENT

Property California SCJLW One Corporation v. Leamy
2018 WL 3768805
Court of Appeal, First District, Division 1, California
August 9, 2018

Robin and Kris Leamy entered a contract with JT Holmes to buy a home. After discovering undisclosed defects, Leamy hired attorney Bowie, who negotiated a return of half of the deposit. Leamy wanted to recover the full amount and hired law firm MMB to do so, incurring legal fees of $400K. Leamy balked at the amount, asserting that the firm did not always adhere to client wishes and questioning MMB's handling of the case. Leamy and MMB reached agreement in which Leamy would release his legal malpractice claims in exchange for reduced legal fees. Soon after, MMB dissolved and its assignee, Property California, sued Leamy for breach of contract and moved for summary judgment to enforce the agreement. Leamy asserted that the agreement was unenforceable for lack of consideration because MMB committed legal malpractice. The court granted the motion for summary judgment. Leamy appealed.

The Court of Appeal, First District, Division 1, California affirmed. In its motion for summary judgment, Property One set forth a prima facie case for breach of the Agreement, which shifted the burden to Leamy to raise a triable issue of fact. Leamy failed to do so. They relied on the expert witness declaration to support their claim; however, the opinion lacked adequate foundation and analysis. The malpractice claim did not preclude the finding that the fee settlement agreement was supported by consideration. It is established that the compromise of disputes or claims asserted in good faith constitutes consideration for a new promise. The Court found the firm's purported failure to disclose facts and circumstances of their alleged malpractice did not entitle Leamy to rescind the agreement. The Court further found that MMB's failure to inform Leamy that he could seek the advice of an independent lawyer before signing the agreement was not prejudicial. Leamy knew of the right to independent counsel and suffered no prejudice.

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