January 30, 2019

ADR Case Update 2019 - 2

U.S. Supreme Court

- **COURT TO DETERMINE FAA SECTION 1 EXCLUSION EVEN IN FACE OF DELEGATION CLAUSE**

New Prime Inc. v. Dominic Oliveira
2019 WL 189342
Supreme Court of the United States
January 15, 2019

Dominic Oliveira is an independent contractor with New Prime, an interstate trucking company. Oliveira and New Prime's operating agreement included a mandatory arbitration clause, providing that any disputes arising out of the parties' relationship would be resolved by an arbitrator, including disputes over the scope of the arbitrator's authority. Oliveira filed a class action, alleging that New Prime denied its drivers lawful wages and New Prime moved to compel arbitration per the parties' arbitration agreement. Oliveira asserted that the court lacked authority because FAA §1 excepts from coverage disputes involving certain transportation workers. The court denied the motion and the United States Court of Appeals for the First Circuit affirmed. Certiorari was granted.

The Supreme Court of the United States affirmed. The Court addressed two questions. First, when a contract delegates questions of arbitrability to an arbitrator, must a court leave disputes over the application of FAA §1 exception for the arbitrator to resolve? A court's authority under the FAA to compel arbitration is not unconditional. The scope of a court's powers under §§3 and 4, which often require a court to stay litigation and compel arbitration according to the terms of the arbitration agreement, is limited. §2 provides that the Act applies only when the parties' agreement to arbitrate is set forth as a "written provision in any maritime transaction or a contract evidencing a transaction involving commerce." §1 helps to define §2's terms, providing that nothing in the Act shall apply to contracts of employment of "seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." The parties' private agreement may be crystal clear and require arbitration of every question under the sun, but that does not necessarily mean that the Act authorizes a court to stay litigation and send parties to arbitration. Sequencing is important. To invoke its statutory powers under §§3 and 4 to stay litigation and compel arbitration according to a contract's terms, a court must first decide whether §1's "contracts of employment" exclusion applies. The second question for the Court was whether §1"s "contracts of employment" refers only to contracts between employers and employees, or also reaches contracts with

independent contractors? Words generally should be interpreted as taking their ordinary meaning at the time Congress enacted the statute. In 1925, when the FAA was adopted, a contract of employment usually meant nothing more than an agreement to perform work. This understanding was confirmed by the Act 's exclusion from its coverage contracts of employment of any class of "workers" engaged in foreign or interstate commerce. Congress didn't use the word employees. It instead spoke of workers, a term that embraces independent contractors.

Federal Circuit Courts

- **SILENCE EQUALS ACCEPTANCE OF ARBITRATION AGREEMENT**

Rivera-Colon v. AT&T Mobility Puerto Rico
2019 WL 211418
United States Court of Appeals, First Circuit
January 16, 2019

Rivera-Colon worked with AT&T Mobility in Puerto Rico. In 2011, AT&T emailed her an offer to participate in its arbitration program. Rivera could decline through a two-step process: Step One to acknowledge review of the agreement and Step Two to opt out. The offer emphasized that failure to opt out within a specified timeframe manifested agreement "to the arbitration process as set forth in the Agreement." Rivera completed Step One of the opt out process but did not complete Step Two. When AT&T fired Rivera in 2016, Rivera sued AT&T for age discrimination and wrongful termination under federal and Puerto Rico law. AT&T moved to stay the proceedings and compel arbitration, pursuant to the arbitration agreement. The court granted the motion and Rivera appealed.

The United States Court of Appeals for the First Circuit affirmed. Rivera argued that there was no agreement to arbitrate because she never accepted AT&T's unsolicited offer. The facts unequivocally showed that Rivera manifested her intent to accept AT&T's arbitration agreement: She acknowledged review of the provision that lack of action to opt out would be construed as acceptance to opt in. Given that, AT&T had reason to "believe from her silence that she promised to arbitrate the claims." Rivera argued that even if she could accept the offer with silence, there was no evidence of her intention to do so, noting her opposition to AT&T's attempt to enforce the contract. Rivera's objection to arbitration when the litigation commenced had no bearing on whether she manifested intent to accept the agreement when it was proposed. Rivera knew that she had a duty to speak and her choice not to would be interpreted as acceptance of the offer. Rivera also argued that the agreement was both a waiver of substantive rights and a forum selection clause, which required a heightened standard of acceptance. Even if she could prove these assertions, Rivera's argument failed because a state or territory cannot apply any standard to an arbitration agreement that it does not apply to contracts in general.

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