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ADR Case Update 2019 - 23

New York

- **STATE STATUTE PROHIBITING MANDATORY ARBITRATION CLAUSES NOT PREEMPTED BY FAA**

Smith v. Nobiletti Builders, et al.

2019 WL 5945487

Supreme Court, Appellate Division, Second Department, New York

November 13, 2019

Matthew Smith brought a breach of contract action against Nobiletti Builders and its subcontractors, alleging that defendants defrauded him by having subcontractors submit inflated invoices in order to pay kickbacks to Nobiletti. Smith moved for injunctive relief and defendants cross-moved to compel arbitration pursuant to the binding arbitration clause in its contract with Smith. The Supreme Court denied defendants' cross-motion, determining that the subject arbitration clause was null and void under General Business Law §399-c, which prohibited such clauses in written contracts for the sale or purchase of consumer goods. Defendants moved for leave to renew the cross-motion, contending that the plaintiff admitted, in a related federal court action, that the dispute at issue affected interstate commerce – and the prohibition on mandatory arbitration clauses under General Business Law §399-c was thus preempted by the FAA. The court denied the motion for leave to renew, finding that the defendants failed to proffer new facts. Defendants appealed.

The Supreme Court, Appellate Division, Second Department, New York affirmed. The defendants did proffer new facts; however, they failed to demonstrate that the new facts would change the determination of the court on the cross-motion. Defendants' submissions did not establish a transaction affecting interstate commerce. The named defendants were local, the scale and scope of the work was not of a magnitude to affect interstate commerce, and though some of the materials were sourced from out-of-state suppliers, this factor alone in a single-family home renovation was not enough to establish an effect on interstate commerce. The contract did not trigger application of the FAA, as required to preempt the state statute prohibiting mandatory arbitration clauses.

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

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