ARBITRATION

AN AMBIGUOUS AGREEMENT CANNOT PROVIDE THE NECESSARY CONTRACTUAL BASIS FOR COMPELLING CLASS ARBITRATION

Lamps Plus, Inc., v. Varela ___U.S.___ (2019).
https://www.supremecourt.gov/opinions/18pdf/17-988_n6io.pdf

FACTS: Plaintiff-Appellee Frank Varela was an employee of Defendant-Appellant Lamps Plus, Inc. Lamps Plus mistakenly disclosed tax information on Varela and other employees to a hacker. A fraudulent tax income tax return was later filed in Varela's name.

Varela filed a putative class action against Lamps Plus. Lamps Plus sought to compel individual arbitration based on the arbitration agreement in Varela's employment contract. The trial court rejected the individual arbitration request, but authorized class arbitration and dismissed Varela's claims. Lamps Plus appealed, arguing the trial court erred by compelling class arbitration. The Ninth Circuit affirmed. Lamps Plus appealed and the Supreme Court granted certiorari.
HOLDING: Reversed and remanded.
REASONING: Lamps Plus argued that the trial court erred by compelling class arbitration because a court cannot force a party to submit to class arbitration unless there is a contractual basis for concluding that the party agreed to do so.

Courts cannot infer consent to participate in class arbitration absent an affirmative contractual basis for concluding that there was an express agreement to do so.

The Court agreed with Lamps Plus's argument, holding that class arbitration was improper when the employment contract at issue did not expressly contract for class arbitration.

The Court explained that shifting from individual to class arbitration was a fundamental change. The Court noted that class arbitration is not only markedly different from the "traditional individualized arbitration," it also undermines the most important benefits of that familiar form of arbitration. Specifically, class arbitration sacrifices arbitration's principal advantage of informality and makes the process slower, costlier, and "more likely to generate procedural morass than final judgment." Because of the crucial differences, the Court stated that courts cannot infer consent to participate in class arbitration absent an affirmative contractual basis for concluding that there was an express agreement to do so.

CONTINUING TO WORK CONSTITUTES CONSENT TO ARBITRATION CLAUSE

Diaz v. Sohnen Enters., 34 Cal.App.5th 126 (Cal. Ct. App. 2019).
https://www.leagle.com/decision/incaco20190410037

FACTS: Plaintiff-Appellee Erika Diaz ("Diaz") was employed by Defendant-Appellant Sohnen Enterprises ("Sohnen") when she received notice that Sohnen was adopting a policy requiring arbitration of all claims. Sohnen stated that continued employment by employees who refused to sign the agreement would constitute implied acceptance of the agreement. Diaz expressed her intent not to sign the agreement, to which Sohnen reiterated that continuing to work constituted acceptance of the agreement. After once again informing Sohnen that she rejected the arbitration agreement but intended to continue her employment, Diaz filed suit.

Sohnen moved to compel arbitration. The trial court denied Sohnen's motion, holding that the arbitration agreement was a contract of adhesion. Sohnen appealed.
HOLDING: Reversed and remanded.
REASONING: Sohnen argued that Diaz's continued work with Sohnen constituted consent to the arbitration agreement.

The court agreed, holding that Diaz implied consent to the arbitration agreement by continuing her employment after receiving notification that agreement to arbitration was a condition of continued employment.

The court gave three reasons for the holding. First, Diaz received an express explanation that continued employment was itself manifestation of agreement to the arbitration policy. Second, Diaz continued her employment after receiving the express explanation that doing so was sufficient to accept the arbitration agreement. Because Diaz continued her employment, she was bound by the arbitration agreement even before she notified Sohnen of her rejection of the agreement and her intent to continue employment. Third, the employment agreement was at will, allowing Sohnen to unilaterally change the terms of Diaz's employment as long as Sohnen provided notice.

IF PARTIES STIPULATE ARBITRATION AWARD IS TO BE "REASONED," AN ARBITRATOR WHO FAILS TO SATISFY THAT REQUIREMENT MAY BE EXCEEDING HIS/HER POWERS BY RENDERING AN AWARD IN A NON-COMPLIANT FORM.

Smarter Tools, Inc. v. Chongqing SENCI Imp. & Exp. Trade Co., Ltd., ___ F. Supp. 3d ___ (S.D.N.Y. 2019).
https://law.justia.com/cases/federal/district-courts/new-york/nysdce/1:2018cv02714/490905/37/

FACTS: Plaintiff Smarter Tools, Inc. ("STI") and Defendant Chongqing SENCI Import & Export Trade Company, Ltd. ("SENCI") entered into arbitration proceedings regarding a purchase order agreement into which STI and SENCI had previous entered. The final award stated that (1) STI must pay SENCI the balance owed to SENCI; (2) STI's claims against SENCI were denied; (3) each side was to bear its own costs; and (4) the costs of arbitration were borne as incurred.

STI filed suit to vacate the arbitral award. SENCI cross-moved to vacate STI's petition and confirm the arbitral award.
HOLDING: Denied and remanded.
REASONING: STI argued that the award must be vacated because the arbitrator exceeded its authority in failing to issue a reasoned award.

The court accepted this argument, holding that although an arbitrator's rationale for an award need not be explained, parties are free to contract around the default rule to require more detailed awards, such as here, where it was undisputed that the parties had requested a "reasoned award."

The court referred to the Second Circuit's holding in *Leeward Const. Co., Ltd. v. Am. Univ. of Antigua-College of Med.*, explaining that a reasoned award requires "something more than a line or two of unexplained conclusions, but something less than full findings of fact and conclusions of law on each issue raised before the panel." The court found that because the arbiter gave no rationale for rejecting STI's claims, but only provided a conclusory statement, the award at issue did not meet the standard for a reasoned award. Because the parties agreed to a reasoned award, the arbitrator exceeded his authority by issuing an award that did not meet the standard of a reasoned opinion.

The court nonetheless declined to vacate the award, strictly limiting the remedy of vacatur in order to facilitate the purpose underlying arbitration.

SUBSEQUENT BUYER OF HOME WHO DID NOT SIGN AGREEMENT SUBJECT TO ARBITRATION AGREEMENT UNDER DIRECT-BENEFITS ESTOPPEL

Toll Dallas TX, LLC v. Dusing, Not Reported in S.W. Rptr. (Tex. App. 2019) LEXIS 3947, WL 2127885
https://law.justia.com/cases/texas/third-court-of-appeals/2019/03-18-00099-cv.html

FACTS: Toll Dallas TX, LLC ("Toll") was a homebuilder who constructed and sold a home to third-party Brodney Pool. Pool entered into a Purchase and Sale Agreement ("Agreement") with Toll that contained an arbitration provision requiring all matters administered under the DTPA to be arbitrated. Brent and Edith Dusing later purchased the home from Pool.

A year later the Dusings filed suit against Toll, alleging DTPA violations. Toll moved for arbitration. The trial court denied the motion, stating the Dusings were not party to the arbitration provision contained in the Agreement.

HOLDING: Reversed and remanded.

REASONING: The Dusings argued that they were not subject to the arbitration provision contained in the Agreement because they were not signatories.

The court agreed that only parties to an arbitration agreement may be compelled to arbitrate claims falling within its scope but noted that the doctrine of direct-benefit estoppel was an exception that may bind nonparties when the rules of law or equity would bind them otherwise.

The court stated that the doctrine of direct-benefits estoppel holds that a party cannot avoid arbitration when that party seeks and obtains direct benefits from a contract by means other than a lawsuit. The court held that the Dusings were subject to the doctrine because the Dusings made claims under a warranty provided in the Agreement and negotiated a lower purchase price with Pool due to the needed repairs called for by the warranty.

Finally, the court referred to evidence that Pool and the Dusings agreed to pursue a warranty claim against Toll and split the proceeds. This suggested that the Dusings both sought and obtained substantial and direct benefits under the warranty sufficient to trigger the estoppel doctrine and bind them to the Agreement and the arbitration provision contained therein.

PROCEDURAL UNCONSCIONABILITY DETERMINATION WAS FOR JUDGE NOT ARBITRATOR, NOTWITHSTANDING A DELEGATION CLAUSE

Bowles v. OneMain Fin. Grp., L.L.C., 927 F.3d 878 (5th Cir. 2019).
https://www.courtlistener.com/opinion/4631352/cathy-bowles-v-onemain-financial-group-llc/

FACTS: Plaintiff-Appellant Cathy J. Bowles was a former employee of Defendant-Appellee OneMain Financial Group ("OneMain"). On multiple occasions during Bowles's employment with OneMain, Bowles was required to review and acknowledge an employee dispute resolution agreement ("Agreement"). Bowles had worked for OneMain for nearly twenty years when she was terminated for interacting inappropriately with employees under her supervision. Bowles filed suit against OneMain, alleging age discrimination.

OneMain moved to compel arbitration, per the Agreement. The trial court granted OneMain's motion. Bowles appealed.

HOLDING: Reversed, vacated, and remanded.

REASONING: Bowles argued that the district court incorrectly upheld the validity of the Agreement by erroneously referring her procedural unconscionability claim to the arbitrator. Bowles argued that, under Mississippi law, such objections were for the trial court to decide.

The court accepted Bowles's argument, holding that procedural unconscionability was a claim on the formation of the contract. Accordingly, the trial court had a duty to resolve the challenge. The court acknowledged that general allegations of unconscionability going to the formation of the entire contract were an issue for an arbitrator. However, when a party challenges the specific decision to agree to arbitrate as unconscionable, the trial court must decide.

DEBT COLLECTOR CANNOT ENFORCE ORIGINAL CREDITOR'S ARBITRATION AGREEMENT

Orn v. Alltran Fin., L.P., ___ F.3d ___ (3rd Cir. 2019).
https://www.leagle.com/decision/infco20190712126

FACTS: Plaintiff-Appellee Diane Orn opened a credit card account with Citibank, N.A. The account was governed by a contract that included a mandatory arbitration provision ("Agreement"). In identifying who could force arbitration, the Agreement spoke of "us" or "you," which it defined as Citibank and the cardmember who opened the account, respectively. The agreement did not expressly allow any third party to compel arbitration. However, it did state that all claims were subject to arbitration, including "[c]laims made by or against . . . us or you . . . or by someone making a claim through us or you, such as a[n] . . . agent . . . or an affiliated/parent/subsidiary company." When Orn fell behind on her credit card payments, Citibank referred her account to Defendant-Appellant Alltran for collection. Alltran sent Orn letters seeking to collect on her account, one of which Orn alleged was violative of the FDCPA. Orn filed suit with a complaint that neither relied on the terms of the Agreement with Citibank nor asserted that Citibank committed any wrongdoing, but instead named Alltran as the sole defendant.

Alltran moved to compel the arbitration provision contained in the Agreement. The trial court denied Alltran's motion. Alltran appealed.

HOLDING: Affirmed.

REASONING: Alltran argued it could invoke the Agreement as a third-party beneficiary or as Citibank's agent.

The court rejected both theories. First, the court explained that, under South Dakota law, a non-signatory may enforce an agreement as a thirdparty beneficiary if the contract was entered into by the parties directly and primarily for the third-party's benefit. The court stated that this condition created a "but-for" test that required a non-signatory to show that the parties would not have executed the agreement unless they intended to benefit the third party. The court stated that Alltran failed to meet this condition because there was no evidence that Citibank and its cardholders would not have entered the Agreement but for the intent to benefit debt collectors like Alltran.

The court stated that the first condition was not met because Alltran did not attempt to argue that the allegations against it amounted to allegations of "substantially interdependent and concerted misconduct."

Second, the court rejected Alltran's agency theory because South Dakota treats the ability of agents to compel arbitration as a type of equitable estoppel. Under the applicable test for equitable estoppel, Alltran could have enforced the Agreement based on its role as Citibank's agent if either (1) "all the claims against the nonsignatory defendants are based on alleged substantially interdependent and concerted misconduct by both the nonsignatories and one or more of the signatories to the contract," or (2) Orn asserted "claims arising out of agreements against nonsignatories to those agreements without allowing those defendants also to invoke the arbitration clause contained in the agreements." The court stated that the first condition was not met because Alltran did not attempt to argue that the allegations against it amounted to allegations of "substantially interdependent and concerted misconduct." The court reasoned that the second condition was not met because Alltran could not show that Orn's claims arose out of the Citibank agreement because the claim that Orn asserts against Alltran did not rely on any terms in the Card Agreement."

FIFTH CIRCUIT HOLDS CLASS ARBITRATION IS A GATEWAY ISSUE TO BE DECIDED BY THE COURTS—NOT ARBITRATORS—ABSENT "CLEAR AND UNMISTAKABLE" LANGUAGE IN THE ARBITRATION AGREEMENT TO THE CONTRARY

20/20 Commc'ns, Inc. v. Crawford, 930 F.3d 715 (5th Cir. 2019). https://law.justia.com/cases/federal/appellate-courts/ca5/18-10260/18-10260-2019-07-22.html

FACTS: Defendant-Appellant 20/20 Communications, Inc. ("20/20"), was a marketing company that employed the class of plaintiffs, including Plaintiff-Appellee Lennox Crawford. 20/20 required employees to sign an arbitration agreement (the "Agreement") under which they agreed to bring only individual actions, and not class or collection actions, to arbitration. Despite this, numerous field sales managers of 20/20 filed class arbitration claims alleging identical complaints. 20/20 sought a declaration in federal court that the issue of class arbitrability was a gateway issue for a court rather than the arbitrator to decide, and that the class arbitration bar did indeed foreclose class arbitration.

Meanwhile, some employees asked their individual arbitrators to issue clause construction awards holding that the class arbitration bar is prohibited by the NLRA. Of six arbitrators who issued clause construction awards, one arbitrator concluded that the class arbitration bar is indeed unenforceable under the NLRA.

In response, 20/20 filed a new suit, seeking to vacate the one arbitrator's clause constriction award invalidating the class arbitration bar and reasserting class arbitrability to be a gateway issue. The trial court dismissed 20/20's complaint, confirming the clause constriction award and holding that the arbitration agreement authorized the arbitrator, rather than a court, to determine class arbitrability. 20/20 appealed.

HOLDING: Vacated and remanded.

REASONING: 20/20 argued that the issue of class arbitrability was a gateway issue for a court to decide.

The court accepted 20/20's argument, explaining that class arbitrability was a gateway issue for a court to decide, unless clear and unmistakable language within an agreement states otherwise. The court held that the Agreement purported to permit only individual arbitrations and prohibited class arbitrations "to the maximum extent permitted by law." The court held that this class arbitration bar foreclosed any suggestion that the parties meant to disrupt the presumption that questions of class arbitration are decided by courts rather than arbitrators.