ARBITRATION

DIRECT-BENEFITS ESTOPPEL MAY REQUIRE NON-SIGNATORY TO ARBITRATE CLAIMS PURSUANT TO THE ARBITRATION CLAUSE IN THE ORIGINAL PURCHASE AGREEMENT

GENERALLY, IT IS THE COURTS, RATHER THAN THE ARBITRATORS, THAT DECIDE THE "GATEWAY MATTER" OF "[W]HETHER AN ARBITRATION AGREEMENT IS BINDING ON A NON-PARTY"

Taylor Morrison of Tex., Inc. v. Mason, 2024 Tex. App. LEXIS 238 (Tex. App.—Houston [1st Dist.] 2024, no pet. h.).
https://casetext.com/case/taylor-morrison-of-tex-inc-v-ha-1

FACTS: Appellees Tony D. Ha and Michelle Ha, individually and as next friend of three minor children, filed a lawsuit against Appellant Taylor Morrison, alleging the home they purchased from Morrison was defectively constructed. Morrison filed a motion to compel arbitration of all of Appellees' claims based on the Purchase Agreement that effected the sale of Appellees' home. The trial court granted this motion.

Appellant argued that by signing the agreement, Mr. Ha bound himself to the arbitration provisions, and that Mrs. Ha and the three minor children were also bound as third-party beneficiaries and through direct benefits estoppel. The trial court signed an order granting Appellant's motion to compel arbitration with respect to Mr. Ha's claims and denying the motion to compel with respect to the claims asserted by Mrs. Ha and the three minor children.

Morrison appealed.

HOLDING: Affirmed.

REASONING: The court found that the common law negligence and negligent construction claims asserted by Mrs. Ha and the three minor children do not support an application of direct benefits estoppel. Because these claims do not seek to derive a benefit from the Purchase Agreement, the trial court's decision to deny arbitration on this basis was upheld.

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The court also found that the Purchase Agreement did not show that the parties to the agreement intended the agreement to benefit Mrs. Ha and the three minor children directly. Therefore, the court concluded that Mrs. Ha and the three minor children cannot be compelled to arbitrate as third-party beneficiaries to the Purchase agreement and the trial court did not err by denying compelling arbitration on this basis. Accordingly, the court affirmed the lower court's judgment.

AAA'S CONSUMER ARBITRATION RULES EXPRESSLY DELEGATE POLICY-COMPLIANCE DETERMINATIONS TO THE AAA ADMINISTRATOR

FAILURE TO COMPLY WITH THE RULES OF THE CHOSEN ARBITRAL FORUM RENDERS THE REMEDIES SPECIFIED IN SECTIONS 3 AND 4 OF THE FAA UNAVAILABLE

Bedgood v. Wyndham Vacation Resorts, Inc., 88 F.4th 1355 (11th Cir. 2023).
https://media.ca11.uscourts.gov/opinions/pub/files/202211504.pdf

FACTS: Petitioners, consumers with contracts containing arbitration clauses with Wyndham-affiliated entities, initiated arbitration proceedings through the American Arbitration Association (AAA) to resolve disputes arising from their contractual relationships. However, upon submission of their claims, the AAA determined that the respondents failed to comply with AAA's Consumer Arbitration Rules, which expressly delegate policy-compliance determinations to the AAA Administrator. Consequently, the AAA declined to proceed with arbitration, citing non-compliance with its policies.

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The petitioners, unable to arbitrate their disputes through the chosen forum, brought litigation in federal court seeking remedies specified under Sections 3 and 4 of the Federal Arbitration Act (FAA). The respondents moved to stay the litigation and compel arbitration, arguing that the FAA mandates arbitration of disputes covered by valid arbitration agreements. The district court denied respondents' motion, finding their failure to adhere to the AAA's rules rendered the remedies specified in Sections 3 and 4 of the FAA unavailable.

HOLDING: Affirmed in part; vacated and remanded in part.

REASONING: Appellants argued that respondents' failure to comply with the AAA's Consumer Arbitration Rules made the arbitration agreements unenforceable under the FAA. They argued that the AAA rules delegate compliance determinations to the AAA Administrator. Consequently, they claimed that remedies specified in Sections 3 and 4 of the FAA should be unavailable to the respondents due to their non-compliance.

The court concurred, stating that the FAA's arbitration provisions presuppose compliance with the chosen arbitral forum's rules. Here, the parties had agreed to arbitrate disputes under the AAA's Consumer Arbitration Rules, which assign policy compliance determinations to the AAA Administrator. By disregarding these rules, the respondents undermined the arbitration process envisioned by the parties. Therefore, the court held that respondents could not compel arbitration under the FAA because they had not met the precondition of AAA rule compliance. Otherwise, allowing the respondents to compel arbitration despite their non-compliance with AAA rules would undermine consumer protections and the efficacy of arbitration as a dispute resolution mechanism. The court stressed the significance of upholding the integrity of the arbitration process, particularly in consumer disputes where fairness and procedural adherence are vital. Therefore, the court affirmed the lower court's decision, holding that failure to adhere to the chosen arbitral forum's rules rendered FAA remedies unavailable to the respondents.

COURT WON'T FORCE ARBITRATION PROVISION WHERE DEFENDANT DOES NOT FOLLOW AAA RULES

Hernadez v. Microbilt, __F.3d__ (3rd Cir. 2023).
https://caselaw.findlaw.com/court/us-3rd-circuit/115581525.html

FACTS: Maria Del Rosario Hernandez ("Hernandez") applied for a loan from a lender who relied on a MicroBilt ("MicroBilt") product—an Instant Bank Verification report—to verify Hernandez's identity and bank account information. However, the report by MicroBilt contained information about other individuals unrelated to Hernandez who shared the same last name, one of whom was on a government watchlist. Due to the inaccurate information, the lender denied Hernandez's loan application.

Hernandez filed suit claiming that MicroBilt violated the Fair Credit Reporting Act. Microbilt sought to compel arbitration based on an arbitration provision Hernandez agreed to during the loan application. Hernandez complied and submitted her claims in accordance with the American Arbitration Association ("AAA") as required under the arbitration agreement. The AAA declined to administer arbitration stating Microbilt's agreement with Hernandez was a consumer agreement that instead required the Consumer Arbitration Rules application. Because MicroBilt refused to waive the damages limitation and the AAA declined to administer arbitration under Rule 1(d), the District Court reinstated Hernandez's complaint and denied MicroBilt's motion to compel arbitration. MicroBilt appealed.
HOLDING: Affirmed.
REASONING: MicroBilt argued that the AAA administrator improperly resolved an "arbitrability" issue that an arbitrator should have resolved and that the provision's Exclusive Resolution clause conflicts with Hernandez's return to the court. Microbilt also argued that AAA's application of the Consumer Due Process Protocol was unreasonable. The court disagreed.

The court analyzed whether (1) there was an agreement to arbitrate and (2) whether the dispute at issue fell within the scope of the agreement. For a court to be allowed to compel arbitration, there needs to be evidence of a failure, neglect, or refusal to arbitrate under the written agreement. Because Hernandez fully complied with MicroBilt's arbitration provision, and the AAA declined to administer an arbitration, either party could choose to submit its dispute to the appropriate court for resolution. After the AAA found that the provision's damages limitation conflicted with the Consumer Due Process Protocol Principle 14, the AAA declined to administer the arbitration under Rule 1(d) if MicroBilt refused to waive the damages limitation.

Additionally, because Hernandez complied with the arbitration provision, the Exclusive Resolution provision did not prevent her claims from being handled in court and the court does not have authority to compel arbitration. The court stated "arbitrability" is one which the court was not at liberty to rewrite the agreement to fix any issues of exercising arbitration power. The court explained that Hernandez was allowed to pursue her claims in court, because she fully complied with MicroBilt's arbitration provision. Therefore, the court held that it lacked authority to compel arbitration and affirmed the District Court's denial of MicroBilt's motion to compel arbitration.

ARBITRATION CLAUSE IS NOT BINDING ON THE CONSUMER BECAUSE THE CHANGE-IN-TERMS CLAUSE ALLOWS THE LENDER TO UNILATERALLY DELETE THE ARBITRATION CLAUSE AND GO TO COURT

Bailey v. Mercury Financial, LLC, ___ F. Supp. 3d ____ (D. Md. 2023).
https://law.justia.com/cases/federal/district-courts/maryland/mddce/8:2023cv00827/533054/20/

FACTS: Plaintiff Angelita Bailey accepted a consumer credit line offer from Defendant Mercury Financial, LLC, a subprime credit card loan originator and servicer. The consumer credit was issued and maintained in credit card form, subject to the agreed cardholder agreement by both plaintiff and defendant. The cardholder agreement contained an arbitration provision that the cardholder waived their right to settle a dispute with a credit card servicer through a private or class action lawsuit settled by a judge or jury. The arbitration provision was subject to a change in terms provision that allowed the credit card servicer to add, change, or delete any provision as desired, and only mandated advanced notice of such modification when required by law.

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The plaintiff filed a complaint against the defendant individually and on behalf of others similarly situated, alleging the defendant violated multiple Maryland consumer protection laws. The plaintiff contended these various violations also gave rise to claims for negligence, unjust enrichment, and money had and received. The plaintiff asserted that the defendant extended loans to Maryland consumers without a license and collected on void and unenforceable loans. The defendant promptly removed the matter to federal court and filed a motion to compel arbitration and a motion for stay.
HOLDING: Motion denied.
REASONING: The defendant argued that the agreement's arbitration provision governed the plaintiff's claims, while the plain-

tiff maintained the parties never formed a binding arbitration agreement. The plaintiff argued that the change-in-terms provision in the agreement, which allowed the defendant to modify the agreement unilaterally, rendered the arbitration agreement illusory. The defendants contested this characterization since (1) any change to the arbitration provision would require them to provide notice to the plaintiffs, (2) the change in terms required notice when mandated by law (the defendant cited new federal law requiring credit card companies to give the cardholders notice of changes to dispute resolution processes), and (3) presence of an arbitration provision created a presumption that the parties agreed to submit their disputes to arbitration.

The arbitration clause was not binding to plaintiff's claims because the agreement was illusory because it allowed defendant to unilaterally change the terms of the agreement.

The court rejected the argument that the federal law cited required advance notice of changes to the dispute resolution process. Since the defendant failed to cite a law that would require advance notice of unilateral modification to the arbitration agreement, the court concluded the agreement was illusory as the plain meaning of the agreement's language left the plaintiff without notice of these modifications. The court disagreed with the defendant's contention that the presumption in favor of arbitrability would apply to this dispute since it does not apply to the foundational issue of whether an arbitration agreement was even formed. Since the plaintiff challenged forming an arbitration agreement, the court held the presumption of validity inapplicable. Therefore, the arbitration clause was not binding to plaintiff's claims because the agreement was illusory because it allowed defendant to unilaterally change the terms of the agreement.

J. CREW CUSTOMER MUST ARBITRATE DISPUTE

Babaeva v. J. Crew. Grp., __F.3d.__ (N.D.Cal. 2023).
https://casetext.com/case/evguenia-babaeva-v-j-crew-grp

FACTS: Plaintiff Evguenia Babaeva sued Defendant J. Crew Group, LLC for Defendant's misleading marketing on Defendant's online store. Plaintiff alleged that she was misled by posting "Comparable Value" prices on the items she bought on Defendant's online store. While initially signing on to use the website, Plaintiff agreed to the company's terms of use and the terms of conditions for Defendant's rewards program, which included an arbitration agreement.

Defendant filed a motion to dismiss the claims because Plaintiff's claims were barred by Plaintiff's affirmative agreement to the arbitration clause in Defendant's terms of use. Defendant also filed an alternate motion to dismiss Plaintiff's failure to state a claim upon which relief can be granted.

HOLDING: J. Crew's motion to dismiss was granted.

REASONING: Defendant argued that a valid arbitration agreement was signed and agreed to by Plaintiff after Plaintiff agreed to both the website's terms of use and to the terms of conditions for Defendant's rewards program. The court agreed.

The Federal Arbitration Act ("FAA"), states that a written arbitration agreement "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. The court, citing the precedent set in *Nguyen v. Barnes & Noble Inc.*, explained that courts are usually compelled to enforce arbitration agreements under written contracts. The court's role is thus limited to determining two issues: "whether a valid arbitration agreement exists, and whether the agreement encompasses the disputes at issue." If there is an affirmative response to both inquiries, the court must enforce the arbitration agreements' terms.

Plaintiff argued that the marketing and sale of "J. Crew Factory" branded products misled Plaintiff. However, because the Plaintiff was required to proactively agree to the terms in the order to place the order and progress on the page, it was expressly agreed upon, not misleading, and not unconscionable.

Courts consistently affirm the enforceability of contracts formed via online transactions when consumers are expressly notified that finalizing the purchase or registration on a website entails their agreement to the terms of use. In addition, because the website contained links to the terms conspicuously and in proximity to the button for agreement, the arbitration clause is deemed binding. Plaintiff also received emails as a rewards member, including one titled "Important updates to our Terms & Conditions." Therefore, the court held the Plaintiff had expressly agreed and was already bound by the agreement to arbitrate claims through purchases under the rewards program.

In its final decision, the court granted J. Crew's motion to dismiss after finding that the written and enforceable arbitration agreement covered the claims. Therefore, Plaintiff's claims will be resolved through arbitration, as agreed upon by the parties.