

Arbitration in the Fifth - August 2021

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PRACTICES Litigation, International Arbitration

In August 2021, the Fifth Circuit reminded parties of the severability of delegation clauses in Noble Capital Group, L.L.C. v. US Capital Partners, Inc. Other cases of interest released in August include Hudnall v. TY Smith, which addressed arbitrator immunity from civil liability and Ixmata v. Mogonye Land Tech, LLC, which covered (yet again) the requirements to challenge the existence of an employment arbitration agreement.

Opinions of the Fifth Circuit

Noble Capital Group, L.L.C. v. US Capital Partners, Inc., 20-50721, 2021 WL 3477481 (5th Cir. Aug. 6, 2021) (per curiam). Order compelling arbitration confirmed. The arbitration agreement included the requirement to arbitrate “claims related to the scope or applicability of this agreement to arbitrate” which delegated questions relating to the “validity” of any part of the agreement to the arbitrator. Delegation clauses are severable, and therefore “much be challenged specifically.” Plaintiffs’ fraudulent inducement claim did not specifically challenge the delegation clause, and as a result plaintiff’s enforceability challenges were sent to the arbitrators.

Opinions of United States District Courts

Motions to Compel Arbitration

Childers v. Rent-a-Center East, Inc., CV 21-960, 2021 WL 3286462 (E.D. La. Aug. 2, 2021) (rental purchase agreement/identity theft). Motion to compel granted. In 2017, the parties entered into a valid agreement containing arbitration and delegation clauses. Defendant invoked the 2017 agreement in this dispute even though the dispute arose from a “fraudulently opened” account discovered by plaintiff in 2021.

Master Woodcraft Cabinetry, LLC v. Choate Constr. Co., 221CV00143JRGRSP, 2021 WL 3288101 (E.D. Tex. Aug. 2, 2021) (construction). Motion to compel granted.

Slough v. Legacy Home Health Agency, Inc., CV H-20-1318, 2021 WL 3367816 (S.D. Tex. Aug. 3, 2021) (employment). Motion to compel granted. The Federal Arbitration Act applies to an arbitration agreement signed by an employee where the employer conducts business and transactions in interstate commerce.

StrucSure Home Warranty, LLC v. Sulzbach, 4:20-CV-2915, 2021 WL 3516242 (S.D. Tex. Aug. 10, 2021) (new home warranty). Motion to compel granted. Exemption from arbitration for homes with “original FHA or VA financing” means “original FHA financing” or “original VA financing.” The clause was unambiguous in its application only to homes with still under the original financing.

Ixmata v. Mogonye Land Tech, LLC, 4:21-CV-01310, 2021 WL 3555832 (S.D. Tex. Aug. 10, 2021) (FSLA). Motion to compel granted. Plaintiff disputed the very existence of the parties’ agreement, therefore the court—not an arbitrator—must determine whether the parties formed the agreement. The party resisting arbitration bears the burden of showing that it is entitled to a jury trial under § 4

of the Federal Arbitration Act. If an employee continues working after being notified of the changes in an at-will employment relationship, then the employee has accepted the changes as a matter of law. Employee's declaration that he did not recall seeing the parties' agreement did not controvert the defendants' evidence that they notified him of the agreement and witnessed him signing the same.

Iberoamericana de Hidrocarburos S.A. v. Exterran Corp., CV H-21-1840, 2021 WL 3682718 (S.D. Tex. Aug. 19, 2021) (gas compression and conditioning). Motion to compel granted. An arbitration clause containing "any dispute" language is broad form. Tortious interference claim based on Mexican criminal complaints that were based on contractual rights touched matters covered by the parties' agreements. Intertwined claims estoppel applied to "instances of strategic pleading by a signatory who, in lieu of suing the other party for breach, instead sues that party's nonsignatory principals or agents for pulling the strings."

Motions to Confirm or Vacate an Award

Link v. United States, 2:20-CV-152-Z-BR, 2021 WL 3744097 (N.D. Tex. Aug. 2, 2021) (Reno, Mag. J.), report and recommendation adopted, 2:20-CV-152-Z-BR, 2021 WL 3743805 (N.D. Tex. Aug. 23, 2021). Motion to confirm award dismissed for lack of federal court jurisdiction.

Other Arbitration-Related Opinions

In re Imperial Hospitality Group LLC v. Vantage Bank Tex., 4:20-CV-3231, 2021 WL 3367815 (S.D. Tex. Aug. 3, 2021) (promissory note). Bankruptcy courts disregard of arbitration notice affirmed. Notice of intent to arbitrate filed after expiration of deadline provided in the parties' agreement was untimely.

Hudnall v. TY Smith, EP-21-CV-00106-FM, 2021 WL 3744580 (W.D. Tex. Aug. 10, 2021) (notice of appeal filed). Motion to dismiss claims against arbitrator granted. An arbitrator does not lose immunity because the arbitrator is not neutral or is biased. Instead, a plaintiff must establish "clear absence of all jurisdiction over the subject matter." There is a difference between acts "in excess of jurisdiction," for which immunity from civil liability applies and acts taken in "the clear absence of all jurisdiction," for which there is no legal protection. Also, plaintiff was "contractually obligated to accept the American Arbitration Association [Construction Rule 54] limitations on civil liability."