

Arbitration in the Fifth – June 2023

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PRACTICES Litigation, International Arbitration

In June 2023, the U.S. Supreme Court determined that district court proceedings are to be stayed when an appeal is taken from the denial of a motion to compel arbitration. In Axiall Canada, Inc. v. MECS Inc., the Fifth Circuit Court of Appeals denied a motion to compel in a “classic battle of forms.” Meanwhile, many of the district courts considered and enforced the severability doctrine compelling arbitration where the arbitration clause was not specifically challenged.

Opinion of the U.S. Supreme Court

Coinbase, Inc. v. Bielski, No. 22-105, 2023 WL 4138983 (U.S. June 23, 2023) (cryptocurrency platform). Order denying stay pending appeal of an order denying a motion to compel was reversed. An interlocutory appeal from the denial of a motion to compel arbitration (but not an order granting a motion to compel) is authorized by 9 U.S.C. § 16(a). An interlocutory appeal, “divests the district court of its control over those aspects of the case involved in the appeal.” Because the question in an appeal under section 16(a) “is whether the case belongs in arbitration or instead in the district court, the entire case is essentially involved in the appeal.” The district court must stay its proceedings while the interlocutory appeal on the question of arbitrability is ongoing.

Opinions of the Fifth Circuit Court of Appeals

Calicdan v. M D Nigeria, LLC, No. 22-30412, 2023 WL 3946400 (5th Cir. June 12, 2023) (per curiam) (employment). Order compelling arbitration affirmed. Under the New York Convention, a court must compel arbitration if (1) there is an agreement in writing to arbitrate the dispute, (2) the agreement provides for arbitration in the territory of a Convention signatory, (3) the agreement arises out of a commercial legal relationship, and (4) a party to the agreement is not an American citizen. Where a contract expressly refers to and incorporates another instrument in specific terms showing a clear intent to incorporate that instrument, the contract and the instrument are to be construed together. The employment contract incorporated “Memorandum Circular No. 10” which, in turn, incorporated the Philippine Overseas Employment Administration standard terms which require arbitration. Even if the agreement had been induced by fraud, the arbitration clause was enforceable unless the plaintiff was fraudulently induced into agreeing to the arbitration clause itself. The Philippine National Labor Relations Commission (“NLRC”) was held to be an acceptable forum for arbitration, and plaintiff did not establish that he would be unable to raise federal statutory claims in arbitration before the NLRC.

Axiall Canada, Inc. v. MECS Inc., No. 21-30105, 2023 WL 4015229 (5th Cir. June 14, 2023) (per curiam) (sale of goods). Order denying motion to compel affirmed. In a “classic battle of forms” dispute, neither party's form communications “were communications that, when read in succession, were sufficient to form contracts under” applicable Louisiana law. A contract, however, was formed through conduct. Under Louisiana law, where a contract is formed by conduct, “the contract consists of those terms on which the communications of the parties agree, together with any applicable provisions of the suppletive law.” Since the parties’ respective forms did not agree on whether to arbitrate, arbitration was not a term of the contract formed by the parties’ conduct.

Opinions of United States District Courts

Motions to Compel Arbitration

Coxen v. RPC Patterson Tubular Services, No. CV 23-653, 2023 WL 4156831 (E.D. La. June 23, 2023) (employment). Motion to compel granted. In determining whether the parties agreed to arbitrate, the court must consider whether: (1) there is a valid agreement to arbitrate the claims and (2) does the dispute in question fall within the scope of that arbitration agreement?

Thumbs Up Race Six, LLC v. Indep. Speciality Ins. Co., No. CV 22-2671, 2023 WL 4235565 (E.D. La. June 28, 2023) (insurance). Motion to compel granted. Equitable estoppel prevents a plaintiff from objecting to arbitration with a domestic insurer when the claims against all defendants, foreign and domestic, are inextricably intertwined. The arbitration clause was not adhesiary under Louisiana law.

6101 Tullis Drive, LLC v. Interstate Fire & Cas. Ins. Co., No. CV 23-1314, 2023 WL 4295716, at *2 (E.D. La. June 30, 2023) (insurance). Motion to compel granted. Louisiana law generally prohibits arbitration clauses in insurance contracts, however, the New York Convention preempts and supersedes state law.

Hackett v. VIP REI LLC, No. 2:23-CV-00522, 2023 WL 3874472 (W.D. La. June 5, 2023) (construction). Motion to compel granted. Plaintiff argued that the contractor was not licensed in Louisiana, and that a construction contract made with an unlicensed contractor is an absolute nullity under Louisiana law. A challenge to the validity of a contract as a whole, and not specifically to the arbitration clause within it, must go to the arbitrator, not the court.

Cyberxforce Corp. v. Inspira Enter. India Ltd., No. 4:23-CV-00452-O, 2023 WL 4010372 (N.D. Tex. June 14, 2023) (trade secrets). Motion to compel granted. Provision of the parties agreement that allowed injunctive relief stated that such relief operated “in addition to any other remedy that may be available to the Company.” As such, the “possibility of injunctive relief [did] not limit the arbitrability of any dispute between the parties.” Delaware law allows an arbitration clause to be enforced by, or against, a nonsignatory through equitable estoppel. “Complex corporate arrangements are to be expected with sophisticated parties, yet that cannot be an excuse to subvert or selectively enforce the Agreement [to arbitrate] . . . As such, Delaware law favors the application of equitable estoppel in these circumstances.”

Adetoro v. Drivetime Car Sales Co., LLC, No. 3:23-CV-8-BN, 2023 WL 4162276 (N.D. Tex. June 23, 2023) (auto purchase/finance). Motion to compel granted. Fraudulent inducement claims cannot defeat a motion to compel unless the challenge is to the arbitration clause itself. Challenges to a contract’s validity are considered by the arbitrator in the first instance. “Even if this contract had been induced by fraud, the arbitration clause is enforceable unless the plaintiffs were fraudulently induced into agreeing to the arbitration clause itself.” Plaintiff’s claim for rescission under the Truth in Lending Act did not defeat the motion to compel. Any attempt to dissolve the agreement was for the arbitrator.

Noble Cap. Fund Mgmt., LLC v. U.S. Cap. Global Inv. Mgmt. LLC, No. 1:20-CV-1247-RP, 2023 WL 41185708 (W.D. Tex. June 22, 2023) (investing). Motion to compel granted in part. In this dispute with a complex procedural and arbitration history, issue preclusion barred re-litigation of the validity of the delegation clause. Movants did not waive their right to arbitrate simply by being in privity with a party who by its conduct lost its right to compel arbitration.

Motions to Confirm/Vacate

10,052, LLC v. Martin, No. 2:23-MC-75-KS-MTP, 2023 WL 4189662 (S.D. Miss. June 26, 2023) (limited liability company agreement). Award confirmed. Section 9 of the FAA provides that “[i]f no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made.” The use of the permissive word “may” indicates that venue in the district where the award was made is permissive and not mandatory.

Reg'l Mgmt. Corp. v. Brown, No. 2:22-CV-238-Z-BR, 2023 WL 4003290 (N.D. Tex. May 22, 2023) (Reno, Mag. J.), report and recommendation adopted, 2023 WL 4010377 (June 14, 2023). Motion to confirm granted. “The growing consensus among trial courts in this circuit is that complaints seeking the confirmation of an arbitration award are to be treated as motions rather than a civil action onto itself . . . Accordingly, the [court] will construe the filing as a Motion to Confirm the Arbitration Award.”

Other Arbitration-Related Issues

In re T-Mobile 2022 Customer Data Sec. Breach Litig., No. MDL 3073, 2023 WL 3829244 (U.S. Jud. Pan. Mult. Lit. June 2, 2023) (data security). Motion to centralize litigation granted. While anticipated motions to compel arbitration may differ as to the way each customer agreed to arbitration, those inquiries involved some overlapping issues. Having a single judge oversee the motions in a coordinated fashion could provide efficiencies while allowing the remaining actions to move forward together.

Ruff v. Ruff, No. 4:22-CV-00321, 2023 WL 3852687 (E.D. Tex. June 6, 2023) (trust). A final award has preclusive effect for res judicata purposes. Spouses are in privity with one another when the non-party spouse's interest in an original suit derives from, and is closely aligned with, their spouse's interests. Claim by spouse who was not a party to the arbitration was barred by res judicata.

Ferrandino & Son, Inc. v. WMG Development LLC, No. 6:23-CV-00679, 2023 WL 3985520 (W.D. La. June 13, 2023) (construction). Request to enjoin arbitration denied. Contractor sought to enjoin arbitration under a construction contract on the basis that the contract was “invalid since [the contractor] did not have a valid contractor’s license” and that the court must decide the validity of the construction contract. A party may not overcome the severability doctrine by merely re-framing a legality challenge as a contract formation question under state law. State law or public policy cannot overcome the severability doctrine with respect to the enforceability of an arbitration agreement. Because plaintiff’s arguments did not place the arbitration provision at issue, the court was not required to determine validity.