Arbitration in the Fifth - October 2024

By Odean L. Volker | November 18, 2024

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In October 2024, the Fifth Circuit's *Cure & Associates, P.C. v. LPL Fin. LLC* confirmed nonsignatories may be compelled to arbitration under state-law estoppel principles. Coincidentally, nonsignatory issues featured in cases resolved by several of the district courts.

Opinions of the Fifth Circuit

Cure & Associates, P.C. v. LPL Fin. LLC, 118 F.4th 663 (5th Cir. 2024). Order denying motion to compel vacated. Nonsignatories to an arbitration agreement may be compelled to arbitrate under state-law equitable estoppel principles. The court applied "direct benefits estoppel" to hold that the nonsignatories should be compelled to arbitrate. Both nonsignatories were entities owned by the plaintiff who was a signatory, and both "deliberately sought and received direct benefits from [the plaintiff] and [defendant's] contractual relationship, such that their claims are subject to arbitration per those underlying contracts."

Opinions of United States District Courts

Motions to Compel Arbitration

Bros. Petroleum, L.L.C. v. Certain Underwriters at Lloyd's, No. CV 23-445, 2024 WL 4443966 (E.D. La. Oct. 8, 2024) (insurance). Motion to compel granted. "Service of suit" clause was not inconsistent with requirement to arbitrate. Participation in the court's streamlined settlement program for hurricane claims did not waive arbitration. Louisiana Revised Statute § 22:868 "does not come into play" in cases under the New York Convention.

Brandt v. CNS Corp., No. CV 24-574, 2024 WL 4492131 (E.D. La. Oct. 15, 2024) (employment/noncompete agreement). Motion to compel granted. On the circumstances of this case, the court declined to apply issue preclusion in relation to a decision by another court on substantially the same arbitration agreement. "The party seeking to invalidate the contract as adhesionary bears the burden of demonstrating that the non-drafting party did not consent to the terms or his consent was vitiated by error." A party cannot avoid arbitrating its claims on the grounds that it did not understand the terms of the arbitration provision when the contract was signed. Provision of the parties' agreement describing consequences of a judicial determination that the noncompete was unreasonable did not displace the arbitration provision. Claims against nonsignatories were stayed pending resolution of the arbitration.

Mitchell v. Mercedes-Benz Fin. Services USA LLC, No. 3:24-CV-00052-MPM-RP, 2024 WL 4466735 (N.D. Miss. Oct. 10, 2024) (auto purchase agreement). Motion to compel granted. Buyer had paid-off the vehicle. Before doing so, the buyer had defaulted on some payments. Months after the vehicle was paid-off, the finance company hired a third-party to repossess the vehicle under the mistaken belief that buyer was behind on repayment obligations. The termination of an agreement containing an arbitration clause does not automatically extinguish the parties' duty to arbitrate disputes. The defendant conceded that the repossession was wrongful; however, since the

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repossession was in connection with the buyer's alleged prior defaults under the contract, the termination of the contract did not render buyer's claims free from arbitration.

Cajun Indus., LLC v. Calgon Carbon Corp., No. 1:24CV107-LG-RPM, 2024 WL 4518285 (S.D. Miss. Oct. 16, 2024) (construction). Motion to compel granted as to the contractor/subcontractor signatories and denied as to the nonsignatory owner. Under Mississippi law, "direct-benefits estoppel applies to non-signatories 'who, during the life of the contract, have embraced the contract despite their non-signatory status, but then, during litigation, attempt to repudiate the arbitration clause in the contract.'" The nonsignatory owner was not required to arbitrate as it did not sign the subcontracts containing the arbitration clauses, and it had not filed any claims attempting to enforce the subcontracts. The claims against the nonsignatory owner were stayed pending resolution of the arbitration between the contractor and subcontractor.

Guillen v. U-Haul Co. of Tex., No. 3:24-CV-1413-X, 2024 WL 4626080 (N.D. Tex. Oct. 30, 2024) (truck rental/personal injury). Motion to compel granted. Plaintiffs were father and son. Though the lease agreement was not signed, a contract was entered into and plaintiff "behaved as if the contract was executed." The nonsignatory son was designated as the authorized driver under the rental agreement. He argued that he was not bound by the arbitration agreement "because the parties did not intend to give him third-party-beneficiary status with the Rental Agreement." Under Texas law, "non-signatories who 'accepted direct benefits' from a contract 'can be compelled through direct-benefits estoppel to arbitrate.'" Though the son was not a signatory, "he was listed as an authorized driver and he benefitted" from using the truck.

Grant v. Worley Group Inc., No. 4:24-CV-00161, 2024 WL 4438780 (S.D. Tex. Oct. 7, 2024) (employment). Motion to compel denied. "Every circuit but the Fifth Circuit utilizes the summary judgment standard of Federal Rule of Civil Procedure 56 to evaluate motions to compel arbitration under the [Federal Arbitration Act], though the Third and Eighth Circuits also appear to endorse a standard based on Federal Rule of Civil Procedure 12(b)(6) in cases where arbitrability is apparent from the face of the pleadings." The court evaluated the motion to compel under the Rule 56 standard. The court held that there was not a valid agreement between the parties as the employer's promise to arbitrate was illusory. "[A] provision allowing a party to amend an [arbitration agreement] retroactively renders the agreement illusory." Under Texas law, "where an employer is able to amend an arbitration agreement, such an agreement must have provisions preventing a party from unilaterally terminating or retroactively amending the agreement."

Parker v. Innovaplas, No. 4:23-CV-02909, 2024 WL 4476556 (S.D. Tex. Oct. 10, 2024) (pool construction). The plaintiff initiated an arbitration with the American Arbitration Association. The AAA declined the case, though the parties disagreed on the reason the dispute was declined. The defendant argued that the case was declined because it was filed under the Consumer rules rather than the Commercial rules as provided for in the parties' agreement. The plaintiff argued that case was declined because the defendant refused to comply with the Consumer rules that the AAA determined were applicable. In granting the defendant's motion, the court reasoned that "the fact that [plaintiff] initially filed arbitration–whether under a consumer or commercial arbitration forum–reinforces the understanding that he was bound to arbitration for the underlying disputes."

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