Arbitration in the Fifth - September 2024

October 11, 2024 Odean Volker

PRACTICES International Arbitration, Litigation

In September 2024, the Fifth Circuit's RSM Prod. Corp. v. Gaz du Cameroun, S.A reminds arbitrators of their authority to interpret and apply institutional rules as well as the standard applied by courts to assess whether an arbitrator interpreted a contract or "imposed his own notions of economic justice." Also from the Fifth Circuit, Pumphrey v. Triad Life Scis., Inc. draws a distinction between Rule 12(b)(6) motions that waive arbitration and those that do not.

Opinions of the Fifth Circuit

Pumphrey v. Triad Life Scis., Inc., No. 24-60028, 2024 WL 4100495 (5th Cir. Sept. 6, 2024) (per curiam). Order that arbitration was waived reversed. "[G]iven the variety of motions to dismiss under 12(b)(6), along with the differing consequences that attend them, we have held that simply filing a motion to dismiss can be, but is not necessarily, enough to waive arbitration rights." Defendants Rule 12(b)(6) arguments did not seek adjudication of plaintiffs claims on the merits and dismissal with prejudice. The 12(b)(6) arguments were non-merits arguments directed at the sufficiency of the pleadings and did not waive the right to seek arbitration.

RSM Prod. Corp. v. Gaz du Cameroun, S.A., No. 23-20583, 2024 WL 4231885 (5th Cir. Sept. 19, 2024). Order vacating "addendum award" reversed and case remanded with instructions to confirm. After entering its "Partial Final Award" the tribunal granted the parties' joint application to correct two errors and granted an opposed application to correct the amount awarded. The district court vacated the addendum under section 10(a)(4) holding that the arbitrators had exceeded their authority. "Courts interpret § 10(a)(4) narrowly, allowing vacatur of an award only 'if the arbitrator acts outside the scope of his contractually delegated authority—issuing an award that simply reflects his own notions of economic justice rather than drawing its essence from the contract.'" The parties' arbitration agreement incorporated ICC Rule 36 which permitted the arbitrators to "correct a clerical, computational or typographical error, or any errors of similar nature contained in an award." The tribunal determined that Rule 36 provided it with authority to correct computational errors. The tribunal "not only had the contractual authority to correct computational errors, but it also had the authority to determine what constituted a computational error in the first instance . . . The Tribunal cited and interpreted Rule 36, ultimately classifying its error in the Partial Final Award as 'computational.'" The Fifth Circuit explained that its "precedent reinforces that the parties' agreements gave the Tribunal authority to construe the meaning of the ICC Rules themselves—including. . . whether an error truly is 'computational' or not." In deciding whether an arbitrator interpreted a contract, the court reviews the award and considers relevant: "'(1) whether the arbitrator identifies his task as interpreting the contract; (2) whether he cites and analyzes the text of the contract; and (3) whether his conclusions are framed in terms of the contract's meaning."

Opinions of United States District Courts

Motions to Compel Arbitration

Paris Rd. Shopping Ctr., LLC v. Certain Underwriters at Lloyds London, No. CV 23-5770, 2024 WL 4038235 (E.D. La. Sept. 4, 2024) (insurance). Motion to compel granted. Conduct of the foreign

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insurer and the domestic insurers was intertwined "and indeed identical." Accordingly, application of equitable estoppel was warranted.

Stanford by & through Phillips v. Brandon Nursing & Rehab. Ctr., LLC, No. 3:22-CV-589-HTW-LGI, 2024 WL 4028718 (S.D. Miss. Sept. 3, 2024) (personal injury). Motion to compel denied. Plaintiff was a mentally impaired resident of the defendant nursing home. His brother signed the admission documents as "Family Member or other Representative," and appeared to be the patient's statutory "healthcare surrogate." However, construing Mississippi law the court determined that a "higher priority" relative of the patient was reasonably available. Therefore, the brother did not have statutory authority to act for the patient in signing the arbitration agreement.

Rummage v. Bluegreen Vacations Unlimited, Inc., No. 4:23-CV-962-ALM-KPJ, 2024 WL 4272939 (E.D. Tex. Aug. 26, 2024), report and recommendation adopted 2024 WL 4268447 (Sept. 23, 2024) (employment). Motion to compel granted. Arbitration agreements are contracts. Whether an enforceable agreement to arbitrate exists is a question of contract formation and that determination is "guided by ordinary state contract law principles governing the formation of contracts." Plaintiff contended that the employee onboarding process where the arbitration agreement was signed did not provide a meaningful opportunity to read the agreement. Under Texas law, "[u]nless a party can show she was fraudulently induced to sign a contract, she 'is bound by the terms of the contract [s]he signed, regardless of whether [s]he read it or thought it had different terms.'"

Pradier v. Starbucks Corp., No. CV 23-5769, 2024 WL 4346426 (E.D. La. Sept. 30, 2024) (employment). Motion to compel granted. A motion seeking dismissal for improper venue under Rulle 12(b)(3) is an appropriate vehicle to seek dismissal based on an arbitration clause. On accepting employment, plaintiff entered her Social Security number and date of birth and typed her name to electronically sign an "e-Signature Consent" page. Plaintiff was also required to view and sign an arbitration agreement as a condition of her employment. To acknowledge the arbitration agreement, plaintiff entered her account login password to confirm her electronic signature. Unsubstantiated and unsworn assertions that plaintiff did not recall signing the agreement or that "anyone might have uploaded her resume and submitted an application" did not contradict evidence submitted by the employer.

Hillary v. Love's Travel Stops & Country Stores, Inc., No. 7:23-CV-00408, 2024 WL 4369720 (S.D. Tex. Sept. 30, 2024) (employment). Motion to compel granted. Evidence submitted in support of the motion to compel arbitration "need not be in an admissible form if it can be presented in admissible form at trial." An "uncontroverted affidavit, even when supplied by a party or a party's employee, can establish the existence of an agreement to arbitrate." Where "competent evidence showing the formation of an agreement to arbitrate has been presented," the respondent must "produce some contrary evidence to put the matter 'in issue." To satisfy this standard, respondent "must (1) unequivocally deny that he agreed to arbitrate and (2) produce some evidence to support this assertion."

Chavira v. Stericycle, Inc., No. EP-24-CV-178-KC, 2024 WL 4139408 (W.D. Tex. Sept. 10, 2024) (employment). Motion to compel granted. Waiver of arbitration was not found where defendant's litigation activity was limited to "filing a motion to dismiss in state court, removing the action to this Court, and complying with this Court's directives to submit a Corporate Disclosure Statement and a Report of Parties' Planned Meeting."

Stephens v. DFW LinQ Transp., Inc., No. 3:24-CV-00352-N, 2024 WL 4361609 (N.D. Tex. Sept. 30, 2024) (employment). Motion to compel denied. The parties subject to the arbitration agreement were identified in a schedule. Defendant did not submit the schedule as part of its evidence.

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"Without these documents, the contract is incomplete, and the Court cannot determine whether a contract exists."

Other Arbitration-related Decisions

JLR Glob., LLC v. PayPal Holding Co., No. 4:22-CV-559, 2024 WL 4198003 (E.D. Tex. Sept. 13, 2024). Reconsideration denied. The court had previously granted a motion to compel arbitration. Plaintiff had "hired counsel to represent her before this Court on a contingency basis . . ., but once the Court ordered the parties into arbitration, counsel was unable to advance fees for arbitration and withdrew." Plaintiff was unable to afford a lawyer not on a contingent fee, and argued that arbitration costs were therefore unconscionable and she should not be required to arbitrate. "Arbitrations costs" that are considered do not include attorney fees, rather they include "costs such as filing fees for a claim, the cost of the arbitrator, and administrative fees."

Quintana v. DR Horton Inc. Gulf Coast, No. 2:24-CV-01127, 2024 WL 4245494 (W.D. La. Sept. 19, 2024). Plaintiff sought to dismiss the claim. Defendant had pled mandatory arbitration as an affirmative defense. The "affirmative defense provided plaintiffs with full notice of [defendant's] intent to compel arbitration." The assertion of arbitration as a counterclaim would have barred plaintiff from dismissing the suit because all claims asserted by plaintiffs are potentially subject to arbitration. Affirmative defense was redesignated as a counterclaim in the interest of justice.

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