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Arbitration Agreements

Acad. Partnerships, LLC v. Briseno, No. 05-21-00407-CV, 2022 WL 3754536 (Tex. App.—Dallas Aug. 30, 2022, no pet.)

This case addresses the validity of arbitration agreements. Employee Briseno alleged that in November 2019, during a company event, Academic Partnerships' ("AP") manager (and shareholder) Rodriguez sexually assaulted her. Briseno sued both Rodriguez and Academic Partnerships in July 2020 asserting claims for sexual assault and negligence. Academic Partnerships filed a motion to abate and compel arbitration, arguing that Briseno was subject to an arbitration agreement which required arbitration of all disputes "arising out of or relating to the employment relationship." Briseno argued that the agreement was not valid and did not cover her claims, as she did not agree to release intentional tort claims or claims arising from criminal acts. The trial court denied Academic Partnerships' motion, and an interlocutory appeal followed.

Academic Partnerships contended in two issues that the trial court's order was erroneous because the parties had agreed to arbitrate and that any issue related to the agreement's scope would be determined by the arbitrator. Academic Partnerships argued that the agreement was a valid contract and that Briseno's claims fell within its scope. The court first reviewed AP's second issue as it was dispositive.

The Dallas Court of Appeals noted that a party seeking to compel arbitration must (1) establish the existence of a valid, enforceable arbitration agreement and (2) show that the disputed claim falls within the scope of that agreement. It concluded that AP met its burden, as Briseno signed the agreement and the language was broad enough to include her disputes. It also held that the question of the scope of the agreement was to be decided by the arbitrator. According, it remanded the case consistent with its holding.

Of course, with the Ending Forced Arbitration Act, which was enacted after the relevant events of this lawsuit, the result would be much different, since an employee cannot be forced to arbitrate sexual harassment or assault claims.

In re: Dish Network, 657 S.W.3d 518 (Tex. App. – El Paso 2022, pet. filed).

The El Paso Court of Appeals in this case denied the employer's petition for writ of mandamus seeking to overturn a trial court's order that (1) compelled arbitration; and (2) ordered the parties to an arbitrator of the trial court's choosing.

The plaintiff, Delgado, sued her employer for employment discrimination. The employer moved to compel arbitration. The trial court referred the matter to binding arbitration but also suggested that the parties make an attempt at agreeing on the designated arbitrator.

The agreement stated, in relevant part, that "A Single arbitrator engaged in the practice of law from the American Arbitration Association ('AAA') shall conduct the arbitration under [AAA National Rules for Resolution of Employment Disputes]." The parties were unable to agree on an

arbitrator. The judge then appointed a former appellate court justice and former trial court judge who was listed as an AAA arbitrator.

On appeal, the court stated that the language of the agreement, as inartful as it was, required the arbitrator to apply AAA rules but did not require AAA to manage the selection process.

The court stated that the parties could have stated, as many agreements have, that the AAA will appoint the arbitrator under its rules, or, alternatively, that the entire agreement will be governed by the AAA rules. Yet, the court found that the agreement's sequencing "presupposes that the arbitrator has already been selected by the time the AAA rules are followed." The actor in the clause is the arbitrator, not the AAA. Therefore, the court found that the trial court did not abuse its discretion in appointing an arbitrator of its choosing.

Casa Ford, Inc. v. Armendariz, 656 S.W.3d 823 (Tex. App.—El Paso 2022, no pet.)

In this arbitration case, the employee claimed the arbitration agreement was substantively unconscionable because of two provisions requiring employees to pay their own attorneys' fees. The two provisions in question provided" "You and the Company will be responsible for the fees and costs of your own legal counsel …" and "Both you and the Company may be represented by counsel at arbitration at each parties' own expense." The employee argued that these provisions were unconscionable since he was asserted statutory discrimination claims under Chapter 21 and that if he prevailed, he would be entitled to recover his attorneys' fees from the employer. The agreement also provided that the arbitrator "has the authority to award any remedy that would have been available to you had you litigated the dispute in court under applicable law." The employer argued that this provision effectively nullified the other provisions since an arbitrator had the authority to award attorneys' fees. The trial court denied the employer's motion to compel arbitration. On appeal, the El Paso Court of Appeals agreed that the attorneys' fees provision were substantively unconscionable but concluded that they could be severed because the purpose of the arbitration agreement – to arbitrate disputes – would not be impacted by severing the unconscionable provisions.

Other Arbitration Decisions of Note

***Cardinal Senior Care v. Bardwell*, No. 04-21-00057-CV, 2022 WL 17660268 (Tex. App.—San Antonio Dec. 14, 2022, no pet.)**, (holding that workplace injury claims against nonsubscriber were arbitrable and that a one-year "limitations" period in arbitration agreement in which claims had to be asserted did not render agreement unenforceable, particularly when arbitrator had authority to determine the appropriate limitations period).

***Gordon v. Trucking Resources*, No. 05-21-00746-CV, 2022 WL 16945913 (Tex. App. – Dallas Nov. 15, 2022, no pet.)** (affirming arbitration award against a trucking company and its employees in a noncompete/confidential information disclosure case, agreeing that truckdriver recruiters were not engaged in interstate commerce which would have exempted them from arbitration under the FAA because they were not actively engaged in interstate commerce).

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