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June 2010

The U.S. Supreme Court has held that a clause in an arbitration agreement delegating to an arbitrator the issue whether the arbitration agreement itself is unconscionable is presumptively enforceable.

U.S. Supreme Court Rules Arbitration Clause Delegating Contract Enforceability Issues to Arbitrator Is Enforceable

By Henry Lederman

Ordinarily, when a party moves to compel arbitration, a court will decide whether the arbitration agreement is enforceable. In the employment setting, many times the enforceability issue is addressed in the context of a challenge to the agreement on the ground of "unconscionability," where the party opposing arbitration will contend that the agreement was a mandatory condition of employment and that specific terms of the agreement were unfair. On June 21, 2010, the United States Supreme Court decided *Rent-A-Center West, Inc. v. Jackson*, No. 09-497, where the question of who decides the unconscionability question was front and center.

Background

In *Rent-A-Center*, a case handled by Littler Mendelson, the arbitration agreement contained a clause delegating to the arbitrator the question whether the arbitration agreement itself was enforceable. Thus, under the agreement, the arbitrator, and not the court, would decide whether the agreement was unconscionable. In the case before the Supreme Court, the plaintiff, Antonio Jackson, argued that several clauses of the agreement were unfair to him. He also claimed that the agreement was a mandatory condition of employment at Rent-A-Center, and therefore he did not have any meaningful choice whether to sign it or not. He thus resisted enforcement of his arbitration agreement, and Rent-A-Center moved to compel arbitration. One of its principle arguments was that the court should not address Jackson's unconscionability challenges because the delegation clause required Jackson's challenges to be heard by an arbitrator, not a court. Rent-A-Center contended that the court must abide by the delegation clause and therefore should send the entire matter, including the unconscionability challenge, to arbitration for resolution.

The United States District Court for the District of Nevada agreed with Rent-A-Center that the delegation clause required that the court refer Jackson's claim that the arbitration agreement was unconscionable to an arbitrator for decision. The Ninth Circuit Court of Appeals, however, reversed, holding that where an employee

challenges the validity of an arbitration agreement on the ground that it was unconscionable there was no “meaningful assent” to the agreement to arbitrate. The Ninth Circuit held, therefore, that under such circumstances the court must decide whether an arbitration agreement is unconscionable, and an arbitrator could never decide the issue. Indeed, the Ninth Circuit singled out one provision attacked by the plaintiff addressing arbitral costs and held that it was not unconscionable. This finding was consistent with the district court’s alternative finding that the agreement was enforceable.

Supreme Court’s Decision

In a decision reaffirming the central provision of the Federal Arbitration Act that arbitration agreements are a matter of contract and courts are required to enforce them according to their terms, the Supreme Court reversed the Ninth Circuit and held that the clause in Rent-A-Center’s agreement delegating the issue of unconscionability to the arbitrator would be presumptively enforceable.

The Supreme Court rejected arguments by Jackson and the Ninth Circuit’s holding that the unconscionability issue must be one for the courts alone. The Court held that, if the delegation clause itself were undermined by other provisions of the arbitration agreement, then perhaps the clause could be attacked on that ground. Thus, for example, if provisions of the arbitration agreement other than that which delegated unconscionability to the arbitrator rendered it unreasonably difficult for the arbitrator to rule on the unconscionability question, then a court could intervene and refuse enforcement of the delegation clause.

However, that was not the case in *Rent-A-Center*. In *Rent-A-Center*, the Court pointed out that Plaintiff Jackson challenged the arbitration agreement as a whole, contending that the agreement was both procedurally and substantively unconscionable. The Court noted that none of Jackson’s substantive unconscionability challenges were specific to the delegation provision and that there were no other provisions of the arbitration agreement that would have rendered the delegation provision unconscionable.

Rent-A-Center holds that under the Federal Arbitration Act such delegation clauses are presumptively enforceable unless it can be shown that other provisions of the arbitration agreement inhibit the arbitrator from addressing the challenge to the arbitration agreement’s validity. So long as an arbitration agreement’s other terms, therefore, do not inhibit enforcement of the delegation clause, courts must now enforce them in cases arising under the Federal Arbitration Act as required by the precedent established in *Rent-A-Center*.

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Henry Lederman, a Shareholder in Littler Mendelson’s Walnut Creek office, was one of the Littler attorneys who represented Rent-A-Center at the U.S. Supreme Court. If you would like further information, please contact your Littler attorney at 1.888.Littler, info@littler.com, or Mr. Lederman at hlederman@littler.com.