

RECENT DEVELOPMENTS

ARBITRATION

CALIFORNIA LAW OBLIGATES A COMPANY OR BUSINESS WHO DRAFTS AN ARBITRATION AGREEMENT TO PAY ITS SHARE OF ARBITRATION FEES BY NO LATER THAN 30 DAYS AFTER THE DATE THEY ARE DUE

FAILURE TO PAY FEES AND SPECIFY THAT THE FAILURE TO DO SO CONSTITUTES A “MATERIAL BREACH OF THE ARBITRATION AGREEMENT”

CONSUMER OR EMPLOYEE IS ENTITLED TO A MANDATORY AWARD OF ATTORNEYS’ FEES AND COSTS RELATED TO THE BREACH AND THE OPTIONS OF WITHDRAWING FROM ARBITRATION AND RESUMING LITIGATION

STATE LAW NOT PREEMPTED BY FEDERAL ARBITRATION ACT

Gallo v. Wood Ranch USA, Inc., 81 Cal. App. 5th 621 (2022).
<https://law.justia.com/cases/california/court-of-appeal/2022/b311067.html>

FACTS: Defendant-Appellant, Wood Ranch (“Wood Ranch”) hired Plaintiff-Respondent Sunny Gallo (“Gallo”) to work as a server for its restaurant chain. Gallo agreed to the terms of the employee handbook and signed an arbitration agreement as a condition of employment. Any dispute would be settled by binding arbitration and the arbitrator would heed the California Arbitration Act (“CAA”) and federal law in administering proceedings.

After being terminated, Gallo sued Wood Ranch for damages relating to discriminatory causes of action. Wood Ranch moved to compel arbitration. Wood Ranch’s motion was granted

The application of these regulations is consistent with the FAA’s purpose of abiding by the mutual intent of parties and effectuating timely and cost-effective dispute resolution.

Payment failure results in a “material breach of the arbitration agreement” that permits a plaintiff to vacate arbitration to pursue litigation or compel arbitration with the costs of attorney’s fees and court proceedings assigned to the company. Gallo swiftly paid, but Wood Ranch did not pay in full until thirty-six days after the deadline, despite receiving reminders. The trial court granted Gallo’s subsequent motion to vacate the order compelling

arbitration and mandated the incurred costs and attorneys’ fees be paid by Wood Ranch. Wood Ranch appealed.

HOLDING: Affirmed.

REASONING: Wood Ranch argued that vacating the order compelling arbitration was erroneous because §1281.97 and §1281.99 of the CAA, which established the terms of material breach and withdrawal from arbitration, were preempted by the Federal Arbitration Act (“FAA”). Wood Ranch asserted that the provisions frustrated arbitration by returning the case to the court, dishonoring the parties’ intent, misreading precedent, and inappropriately posing the question of CAA compliance to the court instead of the arbitrator.

The court rejected these arguments, explaining that the state law provisions “enforced rather than frustrated” the goals of the FAA, thus deeming them as not preempted. Furthermore, Wood Ranch lacked a viable excuse for late payment. The court clarified that the provisions at issue defined the date by which parties must pay arbitration fees and set forth consequences for late payment. Payment must be made within 30 days of the date of arbitration set by the arbitration provider. Failure to pay by the due date constitutes a “material breach of the arbitration agreement,” qualifying as “a waiver of the right to compel arbitration,” providing the consumer with options for remedy, such as a mandatory award of attorneys’ fees and costs related to the breach, as well as the options of withdrawing from arbitration and resuming litigation over the matter. The application of these regulations is consistent with the FAA’s purpose of abiding by the mutual intent of parties and effectuating timely and cost-effective dispute resolution.

DIRECTV WAIVED ITS RIGHT TO ARBITRATION BASED ON ITS PRIOR LITIGATION ACTIVITY

Vance et al. v. DirecTV LLC, ___ F. Supp.3d ___ (N.D. W. Va. 2022).

https://storage.courtlistener.com/recap/gov.uscourts.wvnd.42478/gov.uscourts.wvnd.42478.353.0_1.pdf

FACTS: Defendant DirecTV contracted with AC1 to market DirecTV’s and AT&T Mobility’s services. The agreement authorized AC1 to promote, market, advertise and take orders for DirecTV’s systems. AC1 agreed to comply with Defendant’s marketing guidelines, which prohibited cold calling. Plaintiffs David Vance, Roxie Vance, and Carla Shultz were AT&T Mobility customers. Plaintiffs alleged that AC1 made telemarketing calls to their phone numbers and motioned the court for a class certification, which was granted.

Defendant filed a motion to compel arbitration. Plaintiff Carla Shultz (“Shultz”) filed an opposition to the Motion to Compel Arbitration. Defendant filed a Reply Memorandum of Law in support of its Motion to Compel Arbitration.

HOLDING: Denied.

REASONING: Plaintiffs argued that by litigating for months before filing a Motion, Defendant had waived its right to arbitrate. After Shultz was named a plaintiff and class representative, Defendant deposed her, litigated various discovery disputes,

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The court ruled that these actions constituted waiver, holding that a party “knowingly relinquish[es] [its] right to arbitrate by acting inconsistently with that right.”

and argued that she was not an adequate class representative. Defendant did not move to compel arbitration until more than five months after Shultz was added to the case. Prior to that, Defendant litigated the case as if no arbitration agreement existed.

The court ruled that these actions constituted waiver, holding that a party “knowingly relinquish[es] [its] right to arbitrate by acting inconsistently with that right.” Citing *Morgan v. Sundance, Inc.*, the court reasoned that the proper inquiry for arbitration waiver focused solely on the actions of the person holding the right to arbitrate. Thus, the court found that Defendant waived any right to arbitrate based on its litigation activity and denied the Motion.