Consumer Disputes Under The Magnuson–Moss Warranty Act Are Subject to Arbitration Provision.

by Stewart Patton

BACKGROUND

In May of 1997, the Van Blarcums purchased a manufactured home from Nationwide Housing Systems, Inc. (Nationwide). Nationwide provided the Van Blarcums with a written warranty and the parties signed an "Arbitration Provision," which provided that "[a]ll claims, disputes, and controversies arising out of . . . the sale, purchase or occupancy of the [manufactured home] including . . . any claims under any warranties . . . will be resolved by means of final and binding arbitration."

After complaining about alleged defects in the manufactured home for nine months with no response from Nationwide, the Van Blarcums sued Nationwide, the manufacturer of the home, and the party that provided financing. The suit alleged breach of express and implied warranties and violations of the Magnuson-Moss Warranty Act (Magnuson-Moss), Texas Deceptive Trade Practices Act, and Texas Manufactured Housing Standards Act.

The trial court granted Nationwide's motion to compel binding arbitration and stayed the litigation. The Van Blarcums filed a writ of mandamus with the court of appeals, arguing that Magnuson-Moss prohibits binding arbitration of consumer warranty disputes. The court of appeals conditionally granted the writ. The court held that the trial court abused its discretion because Magnuson-Moss, which the court concluded rendered unenforceable a mandatory binding arbitration provision in a written warranty, supersedes the Federal Arbitration Act (FAA). *In re Van Blarcum*, 19 S.W.3d 484, 491 (Texas App.—Corpus Christi 2000). Nationwide petitioned the Texas Supreme Court for mandamus relief.

The supreme court held that Magnuson-Moss does not override the FAA's mandate to enforce binding arbitration agreements. *In re Am. Homestar of Lancaster, Inc.*, 50 S.W. 3d 480 (Tex. 2001). Magnuson-Moss does not preclude the enforcement of an agreement to submit controversies over a written warranty to binding arbitration.

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DISCUSSION

Pursuant to Congress's goal of encouraging warrantors and consumers to expeditiously resolve their disputes, Magnuson-Moss provides that warrantors may establish "informal dispute settlement mechanisms." 15 U.S.C. § 2302(a). If the mechanism complies with the Federal Trade Commission's minimum standards for informal dispute settlement mechanisms and the written warranty provides that the consumer must resort to the mechanism before pursuing a legal remedy, then "the consumer may not commence a civil action . . . unless he initially resorts to such procedure." *Id.* § 2310(a)(3). One aspect of the Federal Trade Commission's minimum standards is that an informal dispute settlement mechanism shall not be binding on any person. 16 C.F.R. § 703.5(j).

The FAA embodies a congressional mandate that mandatory arbitration agreements should be as enforceable as any other type of contract. *See, e.g., Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20 (1991). To overcome the FAA's presumption favoring the enforceability of arbitration agreements, the party opposing arbitration must show that another statute evinces a contrary congressional intent. *See, e.g., Shearson/Am. Express, Inc. v. McMahon*, 482 U.S. 220 (1987). One may show the required contrary intent either through the statute's text, legislative

history, or an inherent conflict between arbitration and the statute's underlying purposes. *McMahon*, 482 U.S. at 227. Therefore, the court looked at each of these three areas to determine whether Magnuson-Moss contained a congressional intent to override the FAA's pro-arbitration presumption.

First, "Magnuson-Moss does not expressly prohibit binding arbitration." *Am. Homestar*, at 487. The court read "informal dispute settlement mechanism" not as a class of objects of which binding arbitration is a part, but as an entity entirely different from binding arbitration. Therefore, the court concluded, "expressly providing for one type of out-of-court settlement mechanism does not necessarily preclude enforcing an agreement to participate in another." *Id.* (discussing that in *Gilmer* the U.S. Supreme Court concluded that the ADEA's provision for out-of-court dispute resolution is not inconsistent with allowing arbitration under the FAA).

Second, the Van Blarcums cited legislative history stating that "an adverse decision in any informal dispute settlement proceeding would not be a bar to a civil action on the warranty involved in the proceeding" to show that congress intended that binding arbitration agreements on warranties be unenforceable. *Id.* at 488 (quoting H.R. REP. NO. 93-1107, at 41 (1974)). The court rejected this argument, holding instead that "[t]he legislative history is not dispositive." *Id.* Because Magnuson-Moss contains no provisions regarding arbitration and the legislative history did not mention binding arbitration directly, the court concluded, "the history upon which the Van Blarcums relied does not even consider arbitration or its effects." *Id.* Additionally, the court read a comment in a Senate report on an earlier version of Magnuson-Moss to mean that Congress contemplated a resort to courts *or* binding arbitration if the informal dispute resolution mechanism failed to resolve the dispute. *Id.*

The Texas Supreme Court noted that the United States Supreme Court rejected as invalid the same reasoning the FTC used to uphold its interpretation of Magnuson–Moss.

Third, the Van Blarcums argued that the purposes of Magnuson-Moss—"to improve the adequacy of information available to consumers, prevent deception, and improve competition in the marketing of consumer products"—are inherently inconsistent with binding arbitration under the FAA. *Id.* at 489 (quoting 15 U.S.C. § 2302(a)). In rejecting this argument, the court concluded that to agree with the Van Blarcums would be to adopt the now-rejected mentality that binding arbitration is *ipso facto* unfair to consumers. *Id.* (stating that this mentality was rejected by the U.S. Supreme Court in *Wilko v. Swan*, 346 U.S. 427 (1953)). Additionally, the court pointed out that the Van Blarcums alleged no unequal bargaining power, fraud in the inducement of the Arbitration Agreement, or that the Arbitration Agreement restricted the arbitrator's ability to grant relief. *Id.* Because the court found nothing in the text, legislative history, or purpose of Magnuson-Moss that precluded enforcement of the Arbitration Agreement, the court concluded that the FAA mandated its enforcement.

The Van Blarcums' final argument was that the FTC's determination that a decision rendered through an informal dispute settlement mechanism may not be binding precludes enforcement of a binding arbitration agreement under Magnuson-Moss. *Id.* at 490. The court rejected this argument, reasoning that although the FTC was the agency in charge of administering Magnuson-Moss, the court was not bound to uphold its interpretation of the statute because the FTC's position did not result from "a permissible or reasonable construction of the Magnuson-Moss Act." *Id.* The Texas Supreme Court noted that the United States Supreme Court rejected as invalid the same reasoning the FTC used to uphold its interpretation of Magnuson-Moss. The court also found that the FTC had not been consistent in its interpretation of the provision in question. (quoting the FTC in 40 Fed. Reg. 60211 ("Nothing in the rule precludes the parties from agreeing to use some avenue of redress other than the mechanism if they feel it is more appropriate.")).

CONCLUSION

The FAA trumps other federal statutes unless there is a clear Congressional command to the contrary. In *In re Am. Homestar of Lancaster, Inc* the Texas Supreme Court did not find such a command, and held that Magnuson-Moss does not stand in the way of the enforcement of an agreement to submit warranty claims to binding arbitration. Therefore, the court granted the writ of mandamus, which will issue only if the court of appeals fails to vacate its judgment.