ARBITRATION

ARBITRATION CLAUSE VOIDS SUIT AGAINST DEBT COLLECTOR

Caren Frederick v. Law Office of Fox Kohler & Assn., ___ F.3d ___ (3d Cir. 2021).
https://law.justia.com/cases/federal/appellate-courts/ca3/20-2539/20-2539-2021-03-24.html

FACTS: Plaintiff Caren Fredrick entered into a Professional Legal Services Agreement (the "Agreement") with the Defendant Law Office of Fox Kohler & Assn. (the "Law Firm") to help negotiate her accounts with creditors.

The arbitration provision in the Agreement was enforceable because it made clear and understandable to Frederick that she was waiving her right to bring suit in a judicial forum.

Six years later, Fredrick filed suit against the Law Firm on behalf of herself and others who received legal services from the Law Firm for allegedly engaging in racketeering, consumer fraud, and unlawful debt adjustment practices. The Law Firm moved to compel arbitration pursuant to a provision in the parties' Agreement. The trial court denied the Law Firm's motion, holding the provision to be unenforceable. The Law Firm appealed.

HOLDING: Reversed.

REASONING: The Law Firm argued that the district court erred in concluding that the Agreement's arbitration provision is invalid because the Federal Arbitration Act ("FAA") preempted New Jersey state law.

The Court accepted the Law Firm's argument, holding that because the underlying principle of all arbitration decisions is that arbitration is strictly a matter of consent, the FAA requires courts to enforce arbitration agreements according to their terms. An arbitration clause is valid if it, at least in some general and sufficiently broad way, explains that the plaintiff is giving up her right to bring her claims in court or have a jury resolve the dispute. That standard was met here because the Agreement's arbitration provision explained that arbitration "replace[d] the right to go to court before a judge or jury" and further stated that arbitration "may limit each party's right to discovery and appeal." Additionally, the Agreement stated that "any dispute that cannot be resolved between the parties after 180 days must be resolved by binding arbitration" and the Agreement "shall be submitted for binding arbitration in accordance with the rules of the American Arbitration Association," thereby both clarifying that arbitration is the singular way for the parties to resolve their disputes and establishing the rules that will govern the arbitration. The arbitration provision in the Agreement was enforceable because it made clear and understandable to Frederick that she was waiving her right to bring suit in a judicial forum.

COURT ENFORCES PROVISION OF AN ARBITRATION AGREEMENT THAT REQUIRED THE PARTIES TO WAIVE APPELLATE REVIEW

Beckley Oncology Assocs. v. Abumasmah, 993 F.3d 261 (4th Cir. 2021).
https://www.employmentclassactionreport.com/wp-content/uploads/sites/8/2021/04/191751.P.pdf

FACTS: Plaintiff Beckley Oncology Associates ("BOA") recruited Defendant Dr. Rami Abumasmah to join the practice and Dr. Abumasmah signed an employment agreement with BOA. The employment agreement provided that the parties would arbitrate any claims arising out of the employment contract. The employment agreement between BOA and Dr. Abumasmah purported to waive both judicial and appellate review of the arbitrator's decision. Dr. Abumasmah then left BOA to leave the country to take care of his mother. BOA terminated Dr. Abumasmah's employment and sent him a separation agreement. Dr. Abumasmah disagreed with the incentive bonus he was given. Dr. Abumasmah sought arbitration of his claims against BOA. The arbitrator determined that Dr. Abumasmah was entitled to an incentive bonus. The arbitrator awarded Dr. Abumasmah $167,030.

BOA filed a complaint in federal district court to vacate the arbitration award. The district court granted Dr. Abumasmah's motion to dismiss and confirmed the award. BOA appealed.

HOLDING: Affirmed.

REASONING: The court held that the courts of appeals will enforce agreements that waive appellate review of district court decisions. Deciding to waive appellate review is similar to waiving constitutional rights such as the right to counsel, or the right to a jury trial. They are not precluded from waiving procedural rights granted by statute.

PROPOSED CLASS ACTION CLAIMING FAIR CREDIT REPORTING ACT VIOLATIONS MUST GO TO ARBITRATION DUE TO A PRIOR SUBSCRIBER AGREEMENT SIGNED BY THE PROPOSED LEAD PLAINTIFF.

Hearn v. Comcast Cable Communs., LLC, 992 F.3d 1209 (11th Cir. 2021).
https://www.leagle.com/decision/infco20210405033

FACTS: Plaintiff-appellee Michael Hearn obtained services from Defendant Comcast Cable Communications LLC. While securing these services, Plaintiff signed a work order containing a Subscriber Agreement that included an arbitration provision that broadly applied to "any claim or controversy related to Comcast." Plaintiff later terminated Defendants services in August of 2017. However, in March 2019, Defendant claimed that Plaintiff called about reconnecting services while Plaintiff claimed that they called Defendant to open a new account because he had terminated the previous services under the Subscriber Agreement. Plaintiff contended that Defendant pulled his credit score during this call and thus violated the Fair Credit Reporting Act ("FCRA").

Plaintiff brought a putative class action against Defendant. Defendant moved to compel arbitration. The district court denied the motion concluding that the FRCA claim did not relate to the Subscriber Agreement. Defendant appealed.
HOLDING: Reversed and Remanded.
REASONING: The Defendants argue that (1) under the Federal Arbitration Act (FAA) the courts must enforce a valid arbitration agreement and (2) that this case must be arbitrated because the Plaintiffs claims relate to the subscriber agreement.

The court reasoned that there must be some direct relationship between the dispute and the performance of duties specified by the contract in order to find that the dispute arises out of, relates to, or is connected to the underlying agreement.

Citing to *Doe v. Princess Cruise Lines, Ltd.*, 657 F.3d 1204, 1218 (11th Cir. 2011), the court reasoned that there must be some direct relationship between the dispute and the performance of duties specified by the contract in order to find that the dispute arises out of, relates to, or is connected to the underlying agreement. Following this reasoning, the court concluded the Plaintiff's FCRA claim related to the Subscriber Agreement.

The court held that a comprehensive reading of the Reconnection Provision in the Subscriber Agreement demonstrated that the Plaintiff's claim still related to the agreement even if Plaintiff's claim that they were not calling to reconnect services were accepted. They reasoned that the Reconnection Provision applied because Plaintiff was seeking to reconnect services at the same house Plaintiff originally had them. Thus, it did not matter whether the original services were terminated or suspended.

Moreover, the court held that this made it foreseeable that Defendant would use the Plaintiff's information that it already had on file to reinstate services—furthermore, the Credit Inquiries Provision in the Subscriber Agreement directly related to the Plaintiff's FCRA claim. Thus, the court ordered that the case be reversed and remanded.

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