

# RECENT DEVELOPMENTS

## ARBITRATION

### PARTIES CANNOT DELEGATE ISSUES OF FORMATION TO THE ARBITRATOR, EVEN WHERE A DELEGATION CLAUSE EXISTS

Ahlstrom v. DHI Mortg. Co., Ltd., L.P., 21 F.4th 631 (9th Cir. 2021).

<https://cdn.ca9.uscourts.gov/datastore/opinions/2021/12/29/20-15114.pdf>

**FACTS:** Plaintiff-Appellant Robert W. Ahlstrom was a loan officer for Defendant-Appellee DHI Mortgage Company, Ltd. (“DHIM”), a subsidiary of nonparty D.R. Horton, Inc. (the “Company”). Ahlstrom signed a Mutual Arbitration Agreement (“MAA”) that required all legal disputes be exclusively determined by binding arbitration. The MAA delegated to the arbitrator “exclusive authority to resolve any dispute relating to the formation, enforceability, applicability, or interpretation” of the MAA.

Ahlstrom filed suit against DHIM, alleging multiple employment-related claims. The district court granted DHIM’s motion to compel arbitration and dismissed Ahlstrom’s claims. Ahlstrom filed a putative state court class action alleging identical causes of action against DHIM. The district court again granted DHIM’s motion to compel arbitration and dismissed Ahlstrom’s claims. Ahlstrom appealed.

**HOLDING:** Reversed and remanded.

**REASONING:** DHIM argued that parties could agree to delegate issues of the formation of an arbitration agreement, like the MAA, to an arbitrator. DHIM also argued that the court did not have the authority to decide whether an agreement to arbitrate existed when the parties “clearly and unmistakably delegated the arbitrability issues to the arbitrator.”

The court disagreed and held that courts must resolve disagreements regarding the formation of an arbitration agreement. The court held that when a party contests the formation, enforceability, or applicability of an arbitration agreement, a court must resolve the disagreement. If a court is “convinced” an agreement to arbitrate was formed, then it may order arbitration of disputing parties. Because Ahlstrom was challenging the existence of the MAA itself, the district court was required to determine whether the agreement existed, not the arbitrator.

### BANK CAN’T BIND HOME MORTGAGE LOAN CONSUMERS TO ARBITRATION AGREEMENTS BECAUSE OF A PROVISION OF THE DODD-FRANK ACT AMENDING THE FEDERAL TRUTH AND LENDING ACT

Lyons v. PNC Bank, 26 F.4th 180 (4th Cir. 2022).

<https://www.govinfo.gov/content/pkg/USCOURTS-ca4-21-01289/pdf/USCOURTS-ca4-21-01289-0.pdf>

**FACTS:** Plaintiff William Lyons, Jr. (“Lyons”) opened a HELOC with Defendant PNC Bank (“PNC”) and the associated agreement did not contain an arbitration provision. Lyons later opened several deposit accounts at PNC and the associated agreement included a provision authorizing PNC to set off funds from the accounts to pay any of Lyons’s debts to PNC. PNC later added an arbitration clause to the deposit accounts agreement. Even though Lyons was given the option to opt out of arbitration, he did not.

**Dodd-Frank Act amended TILA by restricting mandatory arbitration agreements in mortgage-related transactions.**

Lyons filed suit against PNC Bank alleging TILA violations when PNC set-off funds in the amounts from his deposit accounts to pay the outstanding HELOC balance. PNC moved to compel arbitration. The district court found that amendments made by the Dodd-Frank Act to TILA barred arbitration of one of the claims because that deposit account agreement was effective after the Dodd-Frank amendment was enacted. PNC appealed.

**HOLDING:** Affirmed.

**REASONING:** PNC argued that Dodd-Frank Act was not intended to restrict agreements to arbitrate.

The court disagreed based on the plain language of the TILA. The court found that Congress intended the provision to prohibit pre-dispute arbitration agreements because the Dodd-Frank Act amended TILA by restricting mandatory arbitration agreements in mortgage-related transactions. TILA does not allow consumer-creditor agreements on a HELOC or those related to a HELOC to include arbitration clauses. Because Lyons’s deposit account agreement was related to his HELOC agreement based on the set-off provision, TILA barred arbitration as amended by the Dodd-Frank.