ARBITRATION

SUBARU CAN'T FORCE ARBITRATION OF SUIT OVER SAFETY CAMERAS

Giron v. Subaru of Am., Inc., ___ F. Supp. 3d. ___ (N.D. Ill. 2022).
https://casetext.com/case/giron-v-subaru-of-am

FACTS: Plaintiff Renee Giron purchased a vehicle on credit by signing a Financing Agreement with Grand Subaru, LLC, the vehicle seller. Plaintiff filed suit against Defendant, Subaru of America, Inc., under the Biometric Information Privacy Act (BIPA). Plaintiff alleged that by using a camera to track a driver's face and eyes, the vehicle's safety feature creates and stores a facial map of each driver. Defendant filed a motion to compel arbitration based on the arbitration provision in the Financing Agreement with Grand Subaru.
HOLDING: Denied.
REASONING: Defendant asserted equitable estoppel allowed it to enforce the arbitration provision. Specifically, that Defendant was induced by Plaintiff to rely to its detriment on the arbitration clause because Plaintiff benefitted from Defendant's Security Maintenance Plan. The court disagreed.

"A claim of equitable estoppel exists where a person, by his or her statements or conduct, induces a second person to rely, to his or her detriment, on the statements or conduct of the first person." *Ervin v. Nokia, Inc*, 812 N.E.2d 534, 541 (2004). Noting that Defendant's Security Maintenance Plan did not address arbitrating claims, the court concluded there was no evidence that Plaintiff made any representation to induce Defendant to rely to its detriment on the arbitration clause.

Therefore, the court held that Defendant failed to meet its burden under Illinois law to enforce the arbitration clause in the Financing Agreement between Plaintiff and Grand Subaru under equitable estoppel. Though the arbitration provision validly applied to the arbitrability of the claim, the court concluded that the arbitrability was between Plaintiff and Grand Subaru, not between Plaintiff and the nonsignatory Defendant.

A NON-SIGNATORY COULD NOT INDEPENDENTLY ENFORCE AN ARBITRATION PROVISION

McGaffey v. Carolina Props., LLC, ___ S.W.3d ___ (Tex. App.—Dallas 2022).
https://casetext.com/case/mcgaffey-v-carolina-props

FACTS: Plaintiff-Appellee Carolina Properties, LLC ("Carolina Properties") agreed to buy a vehicle from Defendant-Appellant, Rodney McGaffey's ("McGaffey") company, Boss Exotics. Carolina Properties made an initial deposit and paid the remaining balance later. Carolina Properties also executed a Bill of Sale. The parties could not come to an agreement about whether an accessory was included in the sales price of the vehicle. Boss Exotics decided to "cancel the transaction" and return Carolina Properties' payment, retaining the initial deposit which it deemed non-refundable. Carolina Properties sued McGaffey and Boss Exotics.

Boss Exotics and McGaffey filed a motion to compel arbitration and attached the Bill of Sale. The trial court denied the motion, and a final judgment was entered in favor of Carolina Properties. McGaffey appealed.
HOLDING: Affirmed.
REASONING: McGaffey asserted that he met his initial burden to prove the existence of a valid, enforceable arbitration agreement by providing the Bill of Sale, which contains the arbitration provision. The court disagreed.

As a general rule, an arbitration clause cannot be invoked by a non-party to the arbitration contract.

A party seeking to compel arbitration must prove that either he is a party to the arbitration agreement at issue or he otherwise has the right to enforce the agreement against the non-movant. As a general rule, an arbitration clause cannot be invoked by a non-party to the arbitration contract. Texas courts have recognized six theories that allow non-signatories to enforce arbitration agreements: (1) incorporation by reference; (2) assumption; (3) agency; (4) alter ego; (5) equitable estoppel; and (6) third-party beneficiary.

Though McGaffey stated the Bill of Sale was enforceable against Carolina Properties because it had an arbitration provision, the court found no explanation by McGaffey as to how he, as a non-signatory, could independently enforce the arbitration provision against Carolina Properties. None of the six theories where a non-signatory can enforce an arbitration agreement were raised by McGaffey in its motion to compel. Therefore, the court held that McGaffey failed to satisfy his burden as a non-signatory to independently enforce an arbitration.

DOCUMENTS CONTAINING ARBITRATION CLAUSES WERE NOT ADMISSIBLE BECAUSE THERE WAS NO EVIDENCE THAT THEY WERE EVER SENT TO THE PLAINTIFF

Chai v. National Enterprise. Systems., Inc., ___ P.3d ___ (Cal. Ct. App. 2022).
https://buckleyfirm.com/sites/default/files/Buckley%20InfoBytes%20-%20Chai%20v.%20National%20Enterprise%20Systems%20-%202022.%2011.08.pdf

FACTS: Plaintiff-Appellee David Chai defaulted on a consumer credit account owed to Citibank, N.A. Defendant-Appellant National Enterprise Systems. Inc. ("NES") was hired to collect the debt owed by Chai. Chai filed a class action complaint against NES, alleging its routine practice of sending initial communications failed to provide notice, as required under Civil Code section 1788.14, subdivision (d)(2), for attempts to collect "time-barred" debts.

NES filed a motion to compel arbitration, which the district court denied. NES appealed.
HOLDING: Affirmed.
REASONING: NES argued it had met its burden on the motion

to compel arbitration by offering two "cardholder agreements" produced by Citibank, a declaration from the custodian of records authenticating the agreements, and a letter from the custodian indicating that the agreement copies were for Chai's credit card account. The court of appeals disagreed.

A party seeking to compel arbitration bears the burden to prove the existence of the agreement by a preponderance of the evidence. If the opposing party disputes the agreement, it can shift the burden to the moving party by declaring under perjury that the party never saw, or does not remember, the agreement. If the opposing party meets that burden, the moving party must then establish with admissible evidence that a valid arbitration agreement exists between the parties.

Here, though NES met the first step of its burden by setting forth the agreement's provision in its motion, Chai shifted the burden back to NES by declaring under penalty of perjury that he had not seen or received the card agreements prior to NES's motion to compel arbitration. Although both agreements included arbitration provisions, because neither agreement referenced Chai by name, his account number, or included Chai's signature, the agreements were inadmissible. Therefore, NES failed to provide foundational facts that Citibank and Chai communicated mutual intent to be bound by the agreements and that Chai had either seen or signed the arbitration agreement.

ARBITRATION DENIED

Lavvan, Inc. v. Amyris, Inc., ___ F.4th ___ (2d Cir. 2022). https://scholar.google.com/scholar_case?case=7030067773918924598&hl=en&as_sdt=6&as_vis=1&oi=scholarr

FACTS: Plaintiff-Appellee Lavvan, Inc. and Defendant-Appellant Amyris, Inc. entered into a contract with an arbitration agreement. In the section relating to dispute resolution, the contract specified that "if a dispute arises with respect to the scope, ownership, validity, enforceability, revocation or infringement of any Intellectual Property, . . . such dispute will not be submitted to arbitration and either Party may initiate litigation."

Lavvan sued Amyris, alleging trade secret misappropriation and patent infringement. The district court denied Amyris's motion to compel arbitration. Amyris appealed.
HOLDING: Affirmed.
REASONING: Amyris argued that the parties delegated the question of arbitrability to an arbitrator to decide. In the alternative, Amyris argued that even if the parties did not delegate the question of arbitrability to an arbitrator, Lavvan's claims were subject to arbitration. The court disagreed.

The Federal Arbitration Act ("FAA") provides that a written proviso in any contract to settle by arbitration a controversy thereafter arising out of such contract or transaction shall be valid, irrevocable, and enforceable. 9 U.S.C § 2. Though the FAA's policy favors arbitration, a court may order arbitration of a particular dispute only where the court is satisfied that the parties agreed to arbitrate that dispute.

The court found insufficient evidence of the parties' intent to arbitrate the arbitrability of their dispute. In the absence of specific language evidencing such an intent, broad language expressing an intention to arbitrate all disputes may support an inference of delegating the issue of arbitrability. However, the parties' contract committed only some types of disputes to litigation. The court reasoned that the agreement did not express a broad intent to arbitrate all aspects of all disputes. The court also noted that the presumption of arbitrability may tip the scale only if an agreement is truly ambiguous. Because Lavvan asserted claims for trade secret misappropriation and patent infringement, the court reasoned these claims were clearly disputes "with respect to the scope, ownership, validity, enforceability, revocation or infringement of any Intellectual Property," and were therefore exempted from arbitration under the parties' agreement. The fact that the intellectual property claims were intertwined with contractual issues concurrently being arbitrated provided no basis on which to require claims exempted from arbitration to be subject to it.

AN ARBITRATION AGREEMENT INCLUDED IN A TIRE PURCHASE DOESN'T APPLY TO THE LIFETIME SERVICES PURCHASE

Kevin Johnson v. Walmart Inc., ___ F.4th ___ (9th Cir. 2023). https://cdn.ca9.uscourts.gov/datastore/opinions/2023/01/10/21-16423.pdf

FACTS: Plaintiff-Appellee Kevin Johnson made two purchases from Defendant-Appellant Walmart Inc. First, Johnson purchased tires from Walmart's website, which came with a Terms of Use containing a mandatory arbitration provision. Second, Johnson separately purchased lifetime tire services from the Walmart Auto Care Center under an agreement with no arbitration provision.

Because Walmart declined to service Johnson's tires after only one time, Johnson filed a putative class action, alleging a breach of contract and breach of the duty of good faith and fair dealing arising out of the service agreement. Walmart moved to compel arbitration under the Terms of Use. The district court denied Walmart's motion because the plain meaning of the Terms of Use did not extend its arbitrability to the lifetime services agreement. Walmart appealed.
HOLDING: Affirmed.
REASONING: Walmart argued Johnson's arbitration agreement in the first purchase's Terms of Use was presumed to favor arbitration in both purchases, even without Johnson's consent to arbitration in the second purchase. Walmart argued Johnson's two purchases were connected contracts in a series of transactions, such that the arbitration agreement of the first applied to the second. The court disagreed.

The court concluded Johnson's claim arose from the lifetime services purchase and not the tire purchase from Walmart's website. Because the arbitration agreement did not exist in the lifetime services purchase, the court did not extend arbitrability from the first to the second purchase. Moreover, the Terms of Use were restricted to its online content and did not address any form of in-store engagement.

The court held that the two purchases were separate and independent. The service agreement indicated that the lifetime services purchase was negotiated and entered into separately from the tire purchase from Walmart's website. Furthermore, the two purchases involved separate considerations: the first was for purchasing goods, while the second was for performing services. Lastly, the proof for Johnson's breach of contract claim exclusively

depended on the breach of the lifetime service purchase. Therefore, the arbitration agreement in the initial purchase of tires did not encompass disputes arising from the later purchase of the lifetime services.

EMPLOYEE CANNOT EVADE AN ARBITRATION AGREEMENT WITH A HANDWRITTEN SIGNATURE BY SIMPLY SAYING, "I DON'T RECALL"

Leroy Iyere v. Wise Auto Group, ___ P.3d ___ (Cal. Ct. App. 2023).
https://scholar.google.com/scholar_case?case=10889581005356132260&q=Iyere+v.+Wise+Auto+Group,&hl=en&as_sdt=6,32&as_vis=1

FACTS: Leroy Iyere, Phillip Derbigny, and Michael Worlow (collectively, "Plaintiffs") were employees of Defendant-Appellant, Wise Auto Group ("Wise"). Upon employment, the Plaintiffs purportedly signed binding arbitration agreements mandating resolution of any claims, disputes, or controversies regarding their employment through binding arbitration. Each Plaintiff signed their agreement acknowledging that they had read, understood, and voluntarily signed the document.

Failure to read an agreement before signing it does not prevent contract formation.

When Wise terminated Plaintiffs, they filed a joint complaint alleging causes of action for discrimination, breach of contract, violation of statutory rights, and wrongful termination, among others. Wise filed a motion to sever the complaints and compel each plaintiff to pursue individual arbitration per the company agreement. The district court ruled in favor of the Plaintiffs and held that Wise failed to prove the authenticity of the signatures on the arbitration agreement. Wise appealed.
HOLDING: Reversed and remanded.
REASONING: The Plaintiffs could not prove that they did not sign the arbitration agreements. Instead, they asserted that they "did not recall signing" the agreements, and if they had known the contents of the agreements, they would have refrained from signing them. The court rejected Plaintiffs' argument.

The court reasoned that without a denial of signing a document, an individual's failure to remember signing one is of little to no significance. If one does not deny that a handwritten signature belongs to him, there is no factual dispute concerning the authenticity of the signature, nor is there an independent basis to find that a contract was not formed. Further, failure to read an agreement before signing it does not prevent contract formation. Because Plaintiffs' failure to object to Wise's assertion that the signed documents were true and correct copies of the agreements, the court held that the district court erred in refusing to compel arbitration pursuant to the signed contracts.

NONSIGNATORY SPOUSE AND MINOR CHILDREN WHO HAVE ACCEPTED DIRECT BENEFITS UNDER THE SIGNATORY SPOUSE'S PURCHASE MAY BE COMPELLED TO ARBITRATE THROUGH DIRECT-BENEFITS ESTOPPEL

Taylor Morrison of Tex., Inc., v. Ha, ___ S.W.3d ___ (Tex. 2023).
https://scholar.google.com/scholar_case?case=17876734061283508326&hl=en&as_sdt=6&as_vis=1&oi=scholarr

FACTS: Respondent-Plaintiff Tony Ha ("Ha"), purchased a home from Petitioner-Defendant Taylor Morrison of Texas, Inc ("Morrison"). The purchase agreement included an arbitration provision that required both parties to resort to arbitration in case of conflict.

Ha, together with his wife and their three minor children, sued Morrison for construction defects and fraud. Morrison moved to compel arbitration for all five plaintiffs. The trial court granted the motion to compel arbitration as to Ha, but not to his wife and children. The decision was affirmed by the court of appeals. Morrison appealed to the Texas Supreme Court.
HOLDING: Reversed and remanded.
REASONING: Taylor Morrison contended Ha's wife and children were subject to the arbitration provision under the direct-benefits estoppel doctrine. The court agreed.

The court reasoned that when a non-signatory spouse and minor children choose to live in a family home purchased by the signatory spouse, they accept the direct benefits from the purchase agreement and are bound by the arbitration provision. The court also emphasized the special nature of parent-child and marital relationships, noting that because parents and a spouse could sign arbitration agreements on behalf of the children and the other spouse, respectively, Ha's signature equitably bound his wife and children through the direct-benefits estoppel doctrine. Therefore, Ha's wife and children would be subject to the arbitration clause in the purchase agreement.

FEDERAL ARBITRATION ACT PREEMPTS CALIFORNIA'S LAW ENACTED TO PROTECT EMPLOYEES FROM "FORCED ARBITRATION" BY MAKING IT A CRIMINAL OFFENSE FOR AN EMPLOYER TO REQUIRE CONSENT TO ARBITRATE SPECIFIED CLAIMS AS A CONDITION OF EMPLOYMENT

Chamber of Commerce v. Bonta, ___ F.4th ___ (9th Cir. 2023).
https://cdn.ca9.uscourts.gov/datastore/opinions/2023/02/15/20-15291.pdf

FACTS: Plaintiff-Appellees, a collection of trade association and business groups (collectively, "Chamber of Commerce"), filed a complaint for declaratory and injunctive relief against Defendant-Appellants, various California officials (collectively, "California"), for enacting California's Assembly Bill 51 ("AB 51"). AB 51 protected employees from "forced arbitration" by making it a criminal offense for an employer to condition employment on consent to the arbitration of specified claims.

The district court granted the motion for a temporary restraining order and the motion for preliminary injunction. The court ruled that the Chamber of Commerce was likely to

succeed on the merits of its preemption claim because AB 51 treats arbitration agreements differently from other contracts and conflicts with the purposes and objectives of the Federal Arbitration Act ("FAA"). California appealed.
HOLDING: Affirmed.
REASONING: California argued that the court could sever the section criminalizing contravention of AB 51 under a severability clause that the court held inapplicable, upholding the balance. However, to avoid preemption by the FAA, the California legislature included a provision ensuring that if the parties did enter into an arbitration agreement, it would be enforceable.

The court rejected California's argument. The court explained that all provisions of AB 51 work together to burden the formation of arbitration agreements. AB 51's unusual structure of criminalizing the act of entering into an agreement while allowing the parties to enforce it once executed was for the purpose of navigating around the FAA. The FAA's preemptive scope is not limited to state rules affecting the enforceability of arbitration agreements, but also extends to state rules that discriminate against the formation of arbitration agreements. AB 51 burdens the formation of arbitration agreements and contradicts the FAA's purpose of furthering Congress's policy of encouraging arbitration and thus is preempted.

CONSUMERS CANNOT BE ASSUMED TO HAVE AGREED TO ARBITRATION JUST BECAUSE THEIR LAWYERS KNOW ABOUT A COMPANY'S ARBITRATION PROVISION

Costa v. Rd. Runner Sports, Inc., 84 Cal. App. 5th 224 (2022).
https://law.justia.com/cases/california/court-of-appeal/2022/d079393.html

FACTS: Plaintiff-Appellee Michael O'Connor signed up for Defendant-Appellant Road Runner Sports' loyalty program. Road Runner mailed O'Connor an automatic renewal-notice each year before charging O'Connor the annual subscription fee for the next four years. Road Runner made no reference to any terms and conditions nor to an arbitration provision on the initial sign-up handout or the first two annual renewal notices. The third annual renewal notice included a URL that listed a hyperlink to another webpage that listed the program's terms and conditions, including an arbitration provision. O'Connor joined a class action suit against Road Runner alleging a violation of the Automatic Renewal Law and the Consumer Legal Remedies Act.

An agreement requires a manifestation of assent.

Road Runner asserted that the parties agreed to arbitration in the terms and conditions of the membership. Road Runner moved to compel O'Connor to arbitrate his claims individually. The trial court denied the motion to compel, and Road Runner appealed.
HOLDING: Affirmed.
REASONING: Road Runner argued that O'Connor created an implied-in-fact agreement to arbitrate when he obtained imputed knowledge of the arbitration provision through his counsel in the course of litigation and still failed to cancel his membership.

The court rejected this argument, identifying three reasons that Road Runner's argument failed. First, there is no authority that suggests consumers may be bound to an arbitration provision by mere inaction based solely on their attorneys' knowledge of the provision. Second, an attorney's knowledge is not imputed to a client before the formation of the attorney-client relationship. Road Runner did not prove that O'Connor had knowledge of the arbitration provision when he was charged the subscription fees in the four years before he joined the lawsuit. Third, imputed knowledge of the arbitration clause was not enough to establish an agreement to arbitrate was formed. An agreement requires a manifestation of assent. O'Connor did not manifest his assent to be bound by the arbitration provision at any time. Thus, O'Connor could not be assumed to have agreed to arbitration just because his attorneys knew about Road Runner's arbitration provision.

FAA REQUIRES THE TRIAL COURT TO FOLLOW THE ARBITRATOR SELECTION METHOD DETAILED IN THE AGREEMENT

Taylor Morrison of Tex., Inc. v. Glass, ___ S.W.3d ___ (Texas. App.—Houston [14th Dist.]).
https://scholar.google.com/scholar_case?case=7454214801076845853&hl=en&as_sdt=6&as_vis=1&oi=scholarr

FACTS: Defendants-Appellants Taylor Morrison of Texas, Inc., and Taylor Woodrow Communities – League City (collectively, "Appellants") entered into a Purchase Agreement with Thomas and Kittee Cart to build a home. The Purchase Agreement contained an arbitration provision that compelled arbitration under the FAA and provided that the Judicial Arbitration and Mediation Services ("JAMS") would hear any disputes between the parties. Plaintiffs-Appellees Matthew Glass and Madeline Glass ("the Glasses") bought the home from the Carts four years later.

The Glasses filed suit against Appellants for breach of the implied warranties of habitability and good workmanship, among other claims. Appellants moved to compel arbitration before the JAMS as stipulated in the Purchase Agreement. The trial court denied Appellants' motion to compel arbitration, and instead issued an order stating that the parties must agree to an alternative arbitration service or arbitrator. Appellants appealed.
HOLDING: Reversed.
REASONING: Appellants argued that the trial court erred by ordering the case to be submitted to arbitration in a manner different than specified in the Purchase Agreement. The court agreed.

The appellate court held that the trial court abused its discretion in attempting to modify the arbitration clause in the Purchase Agreement because the FAA requires the trial court to follow the arbitrator selection method detailed in the agreement. The appellate court found that the only exception allowing the change of the arbitration service would be if JAMS was unwilling or unable to serve. Because the Purchase Agreement was clear that JAMS was the required arbitrator and JAMS was not unwilling or unable to serve as the arbitrator, the trial court abused its discretion by trying to change the arbitration agreement.

DIRECT BENEFITS ESTOPPEL DOES NOT APPLY TO SUBSEQUENT HOME PURCHASERS BASED ON AN ARBITRATION PROVISION IN THE CONTRACT BETWEEN THE BUILDER AND THE ORIGINAL PURCHASER

Meritage Homes of Tex. v. Pouye, ___ S.W.3d ___ (Tex. App.—Austin 2023).
https://law.justia.com/cases/texas/third-court-of-appeals/2023/03-21-00281-cv.html

FACTS: Defendant-Appellant Meritage Homes of Texas, LLC built and sold a home to third parties who then sold the home to Plaintiffs-Appellees Sophie Pouye and Cheikh Toure (collectively, the "Homeowners"). The contract contained a provision in which the signing parties agreed to arbitrate any matter arising out of violations of the DTPA and any alleged breach of warranties, whether express or implied. The Homeowners were not a party to, nor did they sign, the contract. After moving into the home, the Homeowners sued Meritage for alleged design and construction defects. The Homeowners alleged negligence, gross negligence, and violations of the DTPA. Meritage answered with a plea in abatement and a motion to compel arbitration based on the Contract between the original homeowners and Meritage.

The court denied Meritage's motion to compel arbitration. Meritage appealed.

HOLDING: Affirmed.

REASONING: Meritage argued that because the Homeowner's claim was based on Meritage's alleged breach of contract, their claim was bound to its arbitration provision under the direct benefits estoppel doctrine, even though the Homeowners were not parties to and did not sign the Contract. The court disagreed.

Generally, parties must sign arbitration agreements to be bound by them. However, non-signatories to an agreement may be bound to an arbitration clause when rules of law or equity would bind them to the contract generally. The direct benefits estoppel applies when a non-signatory seeks the benefits of a contract, from also attempting to avoid the contract's burdens, including an obligation to arbitrate disputes. The application of the theory of direct benefits estoppel turns on the substance of the plaintiff's claim, not the pleading.

The application of direct benefits estoppel is appropriate when the substance of the claim arises solely from the contract or must be determined by reference to it then.

Here, the court of appeals rejected Meritage's argument, explaining that direct benefits estoppel does not apply when the substance of the claim arises from state law, statutes, torts, other common law duties, or federal law even if the claim relates or refers to the contract. The application of direct benefits estoppel is appropriate when the substance of the claim arises solely from the contract or must be determined by reference to it then. Put another way, if a non-signatory claim can stand independently of the contract, then arbitration should not be compelled. Therefore, because the substance of the Homeowner's claims in their live pleading arises from general obligations imposed by the DTPA and common law duties that stand independently of the contract, direct benefits estoppel does not apply.

FAA REQUIRES THE TRIAL COURT TO FOLLOW THE ARBITRATOR SELECTION METHOD DETAILED IN THE AGREEMENT

Taylor Morrison of Tex., Inc. v. Glass, ___ S.W.3d ___ (Texas. App.—Houston [14th Dist.]).
https://scholar.google.com/scholar_case?case=7454214801076845853&hl=en&as_sdt=6&as_vis=1&oi=scholarr

FACTS: Defendants-Appellants Taylor Morrison of Texas, Inc., and Taylor Woodrow Communities – League City (collectively, "Appellants") entered into a Purchase Agreement with Thomas and Kittee Cart to build a home. The Purchase Agreement contained an arbitration provision that compelled arbitration under the FAA and provided that the Judicial Arbitration and Mediation Services ("JAMS") would hear any disputes between the parties. Plaintiffs-Appellees Matthew Glass and Madeline Glass ("the Glasses") bought the home from the Carts four years later.

The Glasses filed suit against Appellants for breach of the implied warranties of habitability and good workmanship, among other claims. Appellants moved to compel arbitration before the JAMS as stipulated in the Purchase Agreement. The trial court denied Appellants' motion to compel arbitration, and instead issued an order stating that the parties must agree to an alternative arbitration service or arbitrator. Appellants appealed.

HOLDING: Reversed.

REASONING: Appellants argued that the trial court erred by ordering the case to be submitted to arbitration in a manner different than specified in the Purchase Agreement. The court agreed.

The appellate court held that the trial court abused its discretion in attempting to modify the arbitration clause in the Purchase Agreement because the FAA requires the trial court to follow the arbitrator selection method detailed in the agreement. The appellate court found that the only exception allowing the change of the arbitration service would be if JAMS was unwilling or unable to serve. Because the Purchase Agreement was clear that JAMS was the required arbitrator and JAMS was not unwilling or unable to serve as the arbitrator, the trial court abused its discretion by trying to change the arbitration agreement.