

RECENT DEVELOPMENTS

ARBITRATION

FILING A TIME-BARRED COLLECTIONS LAWSUIT WAIVES RIGHT TO ARBITRATE

Roper v. Oliphant Fin., LLC, 2025 U.S. App. LEXIS 18266 (4th Cir. 2025). <https://law.justia.com/cases/federal/appellate-courts/ca4/24-1933/24-1933-2025-07-23.html>

FACTS: Appellee Thelma Roper (“Roper”) sued Appellants Oliphant Financial, LLC (“Oliphant”) and Stillman P.C. d/b/a The Stillman Law Office (collectively “Appellants”) in a purported class action complaint alleging violation of federal and Maryland consumer protection laws for filing collection suits in state court beyond the expiration of the statutes of limitations. When Oliphant sued Roper in state court to collect on a personal loan, the state court dismissed the action citing that it was barred by the statute of limitations. In response, Appellants sought to compel arbitration of the action based on an arbitration provision in the loan agreement,

Maryland law specifically provides that a party acts inconsistently with the intent to arbitrate when it seeks to litigate a case involving the same claims as those it seeks to arbitrate.

but the motion was denied finding that Appellants waived their right to compel arbitration by filing the collection action. Appellants appealed the district court’s judgment.

HOLDING: Affirmed

REASONING: In affirming the judgment of the lower court, the court of appeals outlined two elements for the court to consider in determining whether a party waived the right to compel arbitration. A party must have known the right to compel existed and acted inconsistently with the intention of enforcing the right to compel arbitration. Maryland law specifically provides that a party acts inconsistently with the intent to arbitrate when it seeks to litigate a case involving the same claims as those it seeks to arbitrate. Claims are considered the “same” if they are interrelated and part of one basic issue.

Applying these principles, the court found that by filing suit in state court to collect on the debt after the statute of limitations had expired, the defendants elected to litigate the matter and thus acted inconsistently with preserving their right to arbitrate. The claims in the federal class action concerned only the time-barred lawsuits, not earlier conduct, making the issue fully “interrelated.”

ARBITRATION PROVISION IN THE DISPUTE RESOLUTION PROCESS AGREEMENT SIGNED BY THE PLAINTIFF IS VALID AND ENFORCEABLE

ARBITRATION PROVISION COVERS ALL OF THE PLAINTIFF’S CLAIMS, INCLUDING FDCPA

ARBITRATOR, NOT THE COURT, HAS THE AUTHORITY TO RULE ON ANY ARGUMENTS ABOUT THE ENFORCEABILITY OF THE ARBITRATION PROVISION

Backmon v. Darden Corp., 2025 U.S. Dist. LEXIS 74750 (W.D. Wash. 2025).

law.justia.com/cases/federal/district-courts/washington/wawdce/2:2024cv01420/338802/15

FACTS: Plaintiff Tieast Backmon, (“Plaintiff”) signed a Dispute Resolution Process Agreement, agreeing to Darden Corporation and Darden Concepts, Inc.’s (“Defendants”) Dispute Resolution Process (“DRP”) as a condition of his employment. The DPR dictated that eligible disputes would be submitted to mediation or arbitration rather than to a court. The DPR was broad, purporting to cover all disputes arising out of or relating to the relationship between the parties.

After an injury at work, Plaintiff completed an accident report and filed a worker’s compensation claim. During proceedings, Plaintiff alleged Defendants violated the Fair Debt Collection Practices Act (“FDCPA”) and published defamatory statements about him. Defendants subsequently moved to compel arbitration of the claims based on the DRP.

HOLDING: Granted.

REASONING: Plaintiff argued that the arbitration provision in the DRP was unconscionable because he was an unsophisticated party at the time of signing, and that his claims fell outside the DRP’s scope since the claims arose after his employment ended.

The court rejected both of Plaintiff’s arguments, finding no substantive or procedural unconscionability and holding that the DRP explicitly applied to claims arising during and after employment.

For a provision to be unconscionable, there must be substantive or procedural unconscionability. The DRP arbitration provision spanned three clearly presented pages, used no fine print, and included distinct subheadings. Plaintiff signed an acknowledgment that he had read or had the opportunity to read the provision. Accordingly, the court found the arbitration clause valid and enforceable.

The court held that all of Plaintiff’s claims, including the FDCPA and defamation claims, were covered by the arbitration provision. The plain language of the DRP explicitly stated that its provisions were “binding on the Employee... during and after the

RECENT DEVELOPMENTS

period of the Employee's employment." The court reasoned the FDCPA and defamation claims would not exist but for the initial employment-related injury. Therefore, the court found these claims to be amenable to arbitration as per the DRP policy.

Finally, Defendants contended that the arbitrator must decide any challenges to the arbitration provision's enforceability. The court agreed, citing the DRP's express delegation clause, which granted the arbitrator "sole authority to determine whether a dispute is arbitrable." Because the court found the arbitration agreement valid, it deferred any remaining enforceability issues to the arbitrator.

CALIFORNIA SUPREME COURT DENIES FORD'S BID TO COMPEL ARBITRATION IN WARRANTY CASES BASED SOLELY ON AGREEMENTS BETWEEN THOSE BUYERS AND DEALERSHIPS

Ford Motor Warranty Cases, 2025 Cal. LEXIS 3954 (Cal. 2025). <https://law.justia.com/cases/california/supreme-court/2025/s279969.html>

FACTS: Plaintiffs in these consolidated cases were vehicle owners who purchased cars from various dealerships. Each of Plaintiffs' sales contracts included arbitration clauses. After discovering defects in the vehicles, Plaintiffs filed suit against the manufacturer, Ford Motor Company ("Ford"). Although Ford was not a party to the sales contracts, it sought to compel arbitration based on the sales agreements between the buyers and seller dealerships.

The trial court denied Ford's motion to compel arbitration. The Court of Appeals affirmed. Ford then appealed to the Supreme Court.

HOLDING: Affirmed.

REASONING: Ford argued that Plaintiffs should have been estopped from avoiding arbitration because they sought relief related to the sales contracts. The California Supreme Court disagreed with this argument, holding that Ford, as a non-signatory, could not compel arbitration solely on the basis of contracts it did not sign and to which it was not a party, even if Plaintiffs' claims related to those contracts. The general rule requires that only parties to an arbitration agreement could invoke or be bound by it. The Court further affirmed that equitable estoppel did not apply because Plaintiffs' causes of action alleging warranty violations and fraud did not seek to enforce any contractual provisions.

SAFEWAY CAN'T FORCE CUSTOMERS TO ARBITRATE THEIR PROPOSED FALSE ADVERTISING CLASS ACTION ALLEGING IT MARKETS BOGUS, LIMITED-TIME OFFERS OF DISCOUNTS ON WINE FOR ITS REWARDS MEMBERS

Tempest v. Safeway, Inc., 2025 U.S. Dist. LEXIS 135949 (N.D. Cal. 2025). <https://www.leagle.com/decision/infdco20250717c20>

FACTS: Plaintiffs, Safeway Rewards members, brought a proposed class action lawsuit against Defendant Safeway, Inc. ("Defendant"). The program allows members to receive price discounts on in-store products by providing their account number at checkout. Plaintiffs purchased wine advertised at a members-only discount, only to find out the discounted price was Defendant's regular price that was available to every consumer as part of its free rewards program. Plaintiffs sued Defendant for various causes of action, and Defendant moved to compel arbitration.

HOLDING: Denied.

REASONING: Defendant argued that Plaintiffs were bound by an arbitration clause from Defendant's mass email, which stated the store's updated terms and conditions and included an offer to opt out of arbitration. Plaintiffs argued that Defendant's one-way email notice did not create an enforceable contract that required arbitration. The court agreed with Plaintiffs.

Under the FAA, resolving a motion to compel arbitration requires the court to inquire into two issues: (1) whether a valid agreement to arbitrate exists and, if so, (2) whether the agreement encompasses the dispute at issue. For this case, the court sought to resolve the first issue. A valid agreement to arbitrate is found where there is actual or constructive notice of the contract offer and a manifestation of mutual assent to its terms.

The court held that Plaintiffs had neither actual nor constructive notice of the offer. Plaintiffs did not know about the email Defendant sent, and the email was distinct from a website. Defendant relied

on case law that upholds "clickwrap" and "browsewrap" agreements typically found on websites, but the court reasoned that applying that rationale to emails is incompatible. Defendant also argued that Plaintiffs' ongoing relationship with the store somehow established constructive notice of Defendant's offer to opt out of arbitration. However, Defendant offered no evidence of the terms of use Plaintiffs agreed to when they signed up for Safeway Rewards, nor was there evidence offered to establish that Plaintiff had notice that Defendant could change its terms via email. Furthermore, the discrepancy between in-person rewards sign-up and email notice undermined Defendant's reliance on prior case law. Thus, no notice was established.

Lastly, Defendant argued that Plaintiffs manifested repeated assent to its terms by continuing to shop at Safeway after receiving the email. The court disagreed with this argument. They held that because Plaintiffs had no knowledge of Defendant's email offer, no reasonable trier of fact could find Plaintiffs' subsequent purchases at Defendant's store to be a manifestation of mutual assent. Thus, the court found no agreement to arbitrate and denied the motion.

A valid agreement to arbitrate is found where there is actual or constructive notice of the contract offer and a manifestation of mutual assent to its terms.

RECENT DEVELOPMENTS

CALIFORNIA ARBITRATION ACT THAT GOVERNS THE PAYMENT OF FEES IN EMPLOYMENT AND CONSUMER ARBITRATION, IS NOT PREEMPTED BY THE FEDERAL ARBITRATION ACT

Hohenshelt v. Superior Court, 2025 Cal. LEXIS 4936 (Cal.2025)
<https://www4.courts.ca.gov/opinions/documents/S284498.PDF>

FACTS: Plaintiff Dana Hohenshelt (“Hohenshelt”) was employed by Golden State Foods Corporation (“Golden State”) and, upon hiring, signed a mandatory arbitration agreement governed by the Federal Arbitration Act (“FAA”). After reporting harassment, Hohenshelt allegedly experienced retaliation from Golden State and was later terminated from his

position. Hohenshelt then filed a workplace lawsuit. Golden State invoked arbitration, which proceeded for over a year.

At arbitration the arbitrator issued invoices for hearing fees, which Golden state paid but payments were not timely according to the “due upon receipt” invoicing language and the statutory deadlines in California.

Hohenshelt moved to withdraw from arbitration, arguing Golden State’s late payment had forfeited its right to compel arbitration under section of the California Arbitration Act (“CAA”) 1281.98—a statute enacted to prevent companies from stalling arbitrations by withholding payment. The trial court denied relief, but the Court of Appeal reversed, finding preemption by the FAA did not apply and that Golden State’s payment was untimely under California law. The California Supreme Court granted review to resolve whether the FAA preempts section 1281.98.

HOLDING: Reverse and remand.

REASONING: The FAA provides that if the drafting party in an employment or consumer arbitration fails to pay arbitration fees

The provision “does not deviate from generally applicable state law contract principles” and falls within permissible state regulation.

within 30 days of the due date, it is in material breach and loses the right to compel arbitration, allowing the consumer or employee to proceed in court. Golden State argued that this strict “bright-line” rule in-

validates arbitration agreements such as theirs which is an agreement to be bound by the FAA. Hohenshelt argued that section 1281.98 applies because the procedural provisions of the CAA apply in California courts by default.

The California Supreme Court held that the relevant provisions of the CAA requiring timely payment of arbitration fees in employment and consumer cases is not preempted by the FAA, even though it addresses arbitration agreements specifically. The majority reasoned that, properly construed, the statute only penalizes willful or strategic nonpayment, not late payment due to good faith mistake, inadvertence, or excusable negligence. Thus, the provision “does not deviate from generally applicable state law contract principles” and falls within permissible state regulation. Two justices dissented, arguing that even under the majority’s interpretation, the law treats arbitration agreements differently than other contracts and is therefore preempted.