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Arbitration: Again Favored as a Means of Dispute Resolution

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11.06.2018

A recent decision of the United States District Court of South Carolina again demonstrated a liberal federal policy favoring arbitration agreements. *Suzanne Young v. AMISUB of South Carolina, Inc. d/b/a Piedmont Medical Center*, 2018 WL 5668619 (November 1, 2018). While analyzed here in the context of an employment dispute, the guiding principles are equally applicable to other contexts.

Shortly after Young was hired by AMISUB, she signed a document entitled "Acknowledgement," which included an arbitration provision. That provision provides, in part, that both parties agree to submit any dispute arising from Young's employment to binding arbitration, thereby waiving any right to a jury trial. The agreement further provides, in part, an arbitrator chosen by the parties conduct the arbitration under the procedural rules of the American Arbitration Association. Lastly, the agreement establishes a limit of arbitration costs that would be assessed to Young.

Six years after execution of the Acknowledgement, AMISUB terminated Young's employment. Young filed suit in state court, alleging AMISUB violated Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act of 1990. AMISUB removed the case and filed its motion to compel arbitration. The Magistrate Judge recommended the court grant AMISUB's motion; Young objected, arguing the agreement between the parties lacked sufficient consideration; the arbitration agreement was unconscionable and finally that responsibility for discrimination claims falls exclusively to the courts, making arbitration inconsistent with the original intent of Congress. The matter was before the court upon review of the Magistrate Judge's Report.

In order to compel arbitration, the following must be established:

1) a dispute between the parties;

2) a written agreement including an arbitration provision that purports to cover the dispute;

3) the relationship of the transaction to interstate commerce; and

4) the failure, neglect or refusal of defendant to arbitrate.

In determining whether there is a valid arbitration agreement, a federal court must apply state law governing contracts. Specifically, the court must determine if there is an offer, acceptance and valuable consideration. Consideration may be a right, interest or benefit to one party or forbearance, loss or detriment to the other. It has been long recognized in South Carolina jurisprudence that when a contract is signed by one party only and is accepted by the other, it is binding upon both, just as if it includes both signatures. Here, Young signed the agreement in question in 2011, and AMISUB accepted the agreement as evidenced by Young's employment from that date until her termination some six years later. Thus, the arbitration agreement is binding under South Carolina law. While the court's analysis could have ended there, it engaged in further analysis, addressing Young's argument there was insufficient consideration to have an enforceable contract.

Valuable consideration requires there must have been a benefit to one party and a detriment to the other. Where, as here, both parties agreed to submit claims to arbitration and to forego any right to a jury trial, there is an exchange of benefits and detriments establishing sufficient consideration.

In its continuing analysis of the sufficiency of consideration, the court acknowledged South Carolina courts have found similar arbitration agreements binding. Furthermore, the South Carolina Court of Appeals recently examined the same agreement at issue, finding it was supported by adequate consideration, in the form of continued employment. See *Marzulli v. Tenet S.C. Inc.*, 2018 WL 1531507 (March 28, 2018).

The court next examined Young's allegations that the arbitration agreement is an unconscionable contract of adhesion because its terms were non-negotiable and it offered her no significant choice. This argument also failed.

As examined in *Marzulli*, in order to establish an arbitration agreement as unconscionable, the claimant must show both the absence of a meaningful choice due to one–sided provisions and the terms of the agreement are so oppressive that no reasonable person would make them and no fair and honest person would accept them. Without determining whether Young can establish the absence of a meaningful choice in whether to arbitrate, she cannot meet the second prong; the *Marzulli* court already made that determination.

Finally, Young's argument that anti-discrimination statutes are the exclusive responsibility of the courts, thus making arbitration of such claims inconsistent with Congressional intent, also failed. While acknowledged as an interesting and novel argument, the court found it completely without merit and in contravention of well-established case law. Despite scholarly debate as to the significance of legislative intent and history, the United States Supreme Court has rendered significant opinions in which employees were forced to arbitrate discrimination claims in light of a valid agreement between employee and employer. The Fourth Circuit has handed down similar rulings, finding discrimination statutes are subject to arbitration.

The trend continues toward more liberal interpretation of interstate commerce as well as broader construction of the terms that establish an offer, acceptance and consideration. As this and the *Marzulli* opinion demonstrate, the courts continue to view arbitration as a more efficient means of dispute resolution than litigation. The message to practitioners remains – include an arbitration provision in your agreements, with focus on satisfying the basic principles of contract law.

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