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Volume 2, Issue 4

## THE BASSETT BULLETIN <sup>TM</sup>

### DO ARBITRATION CLAUSES HOLD UP?

According to a recent Texas Supreme Court case, the answer is YES. In *In Re Dillard Department Stores, Inc., et al.*, 49 Tex. Sup. Ct. J. 295 (2006), the Texas Supreme Court held that an arbitration agreement was enforceable. The agreement specifically stated that arbitration applied to (1) any claims arising from employment that were violations of the law or (2) personal injuries arising from termination.

Andrea Martinez was employed with Dillard for almost twenty years. On August 25, 2000, Martinez signed an arbitration agreement. She acknowledged that she had received the agreement and would be subject to the rules of arbitration contained in the agreement and that her continued employment constituted acceptance of the provisions. The arbitration terms expressly applied to claims arising from employment that were violations of the law or to personal injuries arising from termination. Dillard moved to compel arbitration, but the trial court denied the motion to compel. The court of appeals denied Dillard's petition for writ of mandamus but the Supreme Court heard the case.

### THE FACTS

On November 15, 2002, Dillard terminated Martinez's employment, and on November 13, 2003, Martinez filed this lawsuit against Dillard, its district manager, and two unnamed employees. Martinez asserted a cause of action for defamation.

Martinez challenged both the validity and scope of the arbitration agreement. Dillard argued that the arbitration agreement was valid because both parties agreed to it and because Dillard did not retain a unilateral right to modify the agreement.

### RULING

The Supreme Court agreed with Dillard's argument. The Court stated that contract law determines the validity of arbitration agreements. The Court went on to say that the objective intent as expressed in the agreement controls the construction of an unambiguous contract, not a party's after-the-fact conduct.

The Court stated that the arbitration agreement, which was signed by both parties, did not provide Dillard any right to unilaterally modify the agreement. For that reason, and because both parties agreed to and signed the agreement, the agreement was not illusory and was binding on Martinez.

Martinez also argued that if an arbitration agreement applied because of the signature of both parties, it did not apply in her case because she was alleging defamation and defamation was not a personal injury. The Court responded by stating that defamation was a personal injury because Texas courts have included that cause of action to mean injuries to reputation.

In addition, the Court disagreed with Martinez's arguments that her claim did not arise from her termination and therefore was not tied to her arbitration agreement. The Court stated that Martinez's defamation claim was based on comments made near the time of her termination and she sought damages including "loss or earnings and earning capacity." As such, any damages could be viewed as intertwined with her employment and termination, and any ambiguity as to whether "arising from" should mean intertwined, or occurring as a direct result from, would be resolved in favor of arbitration.

## WHAT DOES THIS MEAN?

According to this case, and other recent opinions handed down by the Texas Supreme Court, arbitration clauses are being enforced. We have seen a recent trend where the courts are upholding arbitration agreements and are forcing parties to go to arbitration if a contract is signed by both parties.

As an employer or a company, if you feel that arbitration agreements are favorable to you, it might be wise to include such agreements in any employment contracts or benefit plans for injured employees.

On the flip side, if you are signing an employment contract or entering into an agreement of some sort, make sure that you know what you are signing and getting yourself into. Once you sign your name on the contract or agreement, you will likely be bound by the arbitration clause. Most importantly, know your rights! Remember, you do not have to go through arbitration alone. Under almost all arbitration clauses, you are entitled to have an attorney present with you.

In the next edition of The Bassett Bulletin, we will discuss in detail what arbitration is all about and the pros and cons of arbitration.

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