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SCOPE OF AN ARBITRATION AGREEMENT IN ONE DOCUMENT SIGNED CONTEMPORANEOUSLY TO ANOTHER DOCUMENT

The Dallas Court of Appeals recently examined the applicability of a broad arbitration agreement controlled under the Federal Arbitration Act in its recent decision in *In re Swift Transportation Company, Inc.*, 2009 Tex. App. LEXIS 435.

In this mandamus proceeding, the Court concluded that the trial court abused its discretion when it denied Swift's Motion to Abate and to Compel Arbitration. As a result, the Court conditionally granted the petition for writ of mandamus and ordered the trial court to vacate its Order and issue an Order granting the motion to abate and to compel arbitration.

THE FACTS OF THE CASE

On August 14, 2007, Swift and Carlus McDougle entered into a Contractor Agreement, in which McDougle agreed to transport freight for Swift as an independent contractor. On the same day, McDougle also signed a Mentor Addendum, under which McDougle agreed to serve as one of Swift's mentor-drivers, training Swift's employee-drivers. The Contractor Agreement included an arbitration clause, but the Mentor Addendum included no such arbitration clause.

Several months later, McDougle was involved in a tractor-trailer accident while he was riding as a passenger and serving as a mentor to a Swift employee, Michael Glen Curtis. Curtis lost control of the tractor-trailer he was driving, crossed a center highway median, and hit an oncoming tractor-trailer. Curtis was killed and McDougle was injured.

McDougle filed suit against Swift and Curtis' estate, asserting claims for negligence and vicarious liability for Curtis' alleged negligence. Swift and Curtis' estate moved to abate the suit and compel arbitration under the terms of the Contractor Agreement. McDougle fought arbitration and argued that his claims against Swift were "not subject to the arbitration clause in the Contractor Agreement because his claims were strictly 'ordinary negligence claims related to another's operation of a motor vehicle' and he 'does not allege any claim arising under or relating to either his contract with Swift or the relationship created by it.'"

After a hearing, the trial court denied the motion to compel arbitration. The trial concluded that “(1) the Mentor Addendum signed by McDougle on the same day that he and Swift entered into their Contractor Agreement ‘did not amend (or become part of) the Contractor Agreement’ because it was only signed by McDougle, and (2) McDougle's tort claims are unrelated to the Contractor Agreement.”

TEST TO DETERMINE THE SCOPE OF THE PARTIES’

The Dallas Court determined that the arbitration agreement involved interstate commerce and would be resolved in accordance with the Federal Arbitration Act. Therefore, in order for Swift to prevail, Swift must (1) establish the existence of a valid agreement to arbitrate under the FAA, and (2) show that the claims in dispute are within the scope of the agreement. In addition, because of the strong federal presumption favoring arbitration, the Court was required to resolve any doubts in favor of arbitration.

ANALYSIS OF THE SCOPE OF THE ARBITRATION CLAUSE

Does the arbitration agreement extend to the Mentor Agreement?

Although McDougle conceded that, at the time of the accident, he was riding as Curtis's passenger pursuant to the Mentor Addendum, McDougle urged the trial court to disregard the Mentor Addendum for three reasons:

- (1) it is a "separate agreement," which is not referenced in or contemplated by the Contractor Agreement, and has "nothing to do with the claims here,"
- (2) it does not claim to modify or amend the Contractor Agreement, and
- (3) it was only signed by McDougle, and the Contractor Agreement requires any written modifications or amendments to be in a written instrument "signed by the parties."

The Dallas Court concluded that because the Mentor Addendum was signed by McDougle, and because it is expressly referenced in the Contractor Agreement, it is part of the Contractor Agreement. Therefore, the arbitration agreement in the Contractor Agreement extended to the Mentor Addendum.

Are McDougle’s claims Subject to the Arbitration Clause?

Alternatively, Swift argued that McDougle's claims were subject to the arbitration clause because they "arise directly out of the relationship created by the Contractor Agreement." Specifically, Swift argued that McDougle was a passenger in the vehicle Curtis was driving "solely due to McDougle's relationship with Swift, and the vehicle was being operated by a Swift employee under the Mentor Addendum to the Contractor Agreement."

McDougle agreed that the arbitration provision is broad but denied that it covered the accident. Although McDougle conceded that but for the contract he would not have been in Curtis’ truck, McDougle argued that his claims fell outside the arbitration clause because they were tort claims that did not reference the contractor agreement or the contractor relationship.

THE DALLAS COURT OF APPEALS' RULING

The Dallas Court agreed with Swift that the broad arbitration provision included McDougle's tort claims in this case. McDougle's claims directly arose out of and related to the relationship created by the Contractor Agreement and the Mentor Addendum. Without the Contractor Agreement, McDougle would not have been mentoring Curtis in the tractor-trailer. Consequently, he would not have been injured in the accident while riding as Curtis' passenger.

As a result, the Court concluded that the trial court abused its discretion when it denied the arbitration.

WHAT DOES THIS MEAN FOR YOU?

According to the Dallas Court's ruling, an arbitration agreement is given wide latitude when interpreted. Because of the preference the courts already give to arbitration in general, this ruling further serves to reinforce the courts' inclination to support a Motion to Compel Arbitration. It seems the courts favor our contractual method of settling a dispute outside the courtroom.

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