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PRESERVING YOUR ARBITRATION AGREEMENT

The Fourth District Court of Appeals in San Antonio recently upheld a mandatory arbitration clause in a contract. *Serna v. International Bank of Commerce*, 04-11-00097-CV (4th Dist. November 10, 2011).

FACTS OF THE CASE

Dora Serna and International Bank of Commerce (“IBC”) conducted negotiations concerning Serna’s purchase of three properties pursuant to an earnest money contract. The negotiations failed and Serna sued IBC for fraud and violations of the Texas Deceptive Trade Practices Act (“DTPA”).

After suit was filed, IBC filed a Motion to Compel Arbitration, which the Court subsequently granted, and the case was ordered to arbitration. Serna filed a Demand for Arbitration with the American Arbitration Association.

The case was heard before the Arbitration panel. After the hearing, the panel denied all relief sought by Serna. Serna moved to vacate the arbitration award. The trial court affirmed the award and Serna appealed the trial court’s decision.

On appeal, Serna argued that the trial court improperly compelled the case to arbitration and that her constitutional right to a jury trial was violated. The Appellate Court affirmed the trial court’s rulings.

On appeal, Serna relied on a sentence in the arbitration provision which she argued allowed the parties to file the claim in either arbitration or the trial court. She also argued that IBC agreed not to arbitrate her DTPA claim.

The Appellate Court disagreed with Serna's arguments. The Court examined the sentence relied upon by Serna in the arbitration provision. The sentence was stated in Paragraph (e) and specifically stated "the parties agree that legal action regarding this agreement of any liabilities hereunder shall either be brought by arbitration, as described herein, or by judicial proceedings." Serna argued that this sentence indicated that arbitration was not mandatory and the parties could resolve their dispute in a trial court. She also contended that the sentence rendered the arbitration provision ambiguous, and therefore unenforceable. The Court disagreed with Serna's arguments.

The Court relied upon traditional contract principles to interpret the arbitration agreement. The Court focused on the paragraphs that preceded the paragraph containing the sentence relied upon by Serna. Paragraph (a) stated that any arbitrable dispute between the parties shall be settled by arbitration. The Court found that this section of Paragraph (a) was unambiguous.

The Court next focused on Paragraph (b) which defined the term "arbitrable dispute." According to Paragraph (b), an arbitrable dispute included "any claim based on contract, tort, or statute that arises out of or relates to the transaction evidenced by the earnest money contract." The Court reasoned that Paragraph (a) and (b) required that any contractual, tort-based, or statutory claim arising out of or related to the earnest money contract must be submitted to arbitration.

The sentence relied upon by Serna was contained in Paragraph (e), which concerned the resolution of any dispute other than one arising out of or related to the earnest money contract. The Court reasoned that because Serna did not argue that her claims were not within the scope of an "arbitrable dispute" as defined in Paragraph (a), her claim against IBC must be resolved through arbitration.

The Court also analyzed Serna's claim that IBC agreed not to arbitrate her DTPA claim. In her argument, Serna relied upon a clause in the contract which contained a section entitled "DISCLAIMER, WAIVER OF CLAIMS, AND INDEMNIFICATION." The clause stated that Serna waived certain provisions of the Texas Deceptive Trade Practices-Consumer Protection Act. The Court analyzed the waiver language and ruled that it addressed Serna's waiver of her right to bring a DTPA claim, and not an agreement between the parties that DTPA claims were not subject to arbitration.

The final argument made by Serna concerned her assertion that she had not agreed to the mandatory arbitration and did not waive her constitutional right to a jury trial. The Court disagreed with Serna. It found that she had signed the earnest money contract with IBC, which contained the arbitration provision, she had filed her own Demand for Arbitration, and that she had fully participated in the arbitration proceedings. The Court concluded, therefore, Serna had agreed to mandatory arbitration.

The Court also ruled that Serna was not deprived of her constitutional right to a jury trial. The Court reasoned that by signing the earnest money contract, Serna agreed to resolve any disputes through arbitration, rather than through a jury trial. Therefore, Serna waived her right to a jury trial.

HOW THIS CASE CAN AFFECT YOU

If you enter into a contract with another party, and the contract contains an arbitration provision, make sure the following steps are taken:

- ☆ Always have the arbitration provision clearly stated in the contract;
- ☆ Ensure that the arbitration provision clearly and plainly states what happens when it is signed;
- ☆ Ensure that the arbitration provision complies with contractual rules to ensure that it remains enforceable;
- ☆ Leave no room for interpretation; and
- ☆ Thoroughly read and understand all sections of the contract you are entering into.



The Bassett Firm

**Two Turtle Creek Village
3838 Oak Lawn Avenue
Suite 1300
Dallas, Texas 75219
(214) 219-9900 Telephone
(214) 219-9456 Facsimile
Toll Free: 1-800-310-9769
www.thebassettfirm.com**

ATTORNEYS

- **MIKE H. BASSETT**
- **JENNIFER R. ASHMORE**
- **ROBERT L. MCGEE, JR.**
- **WILLIAM A. NEWMAN**
- **MICHAEL J. NOORDSY**
- **J. ANDREW ROBERTSON**
- **MATHEW SAMUEL**

Information regarding *The Bassett Bulletin* TM is available from Annie C. (acopeland@thebassettfirm.com) at (214) 219-9900. ©2004 The Bassett Firm. All rights reserved.

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