



State Court Reluctance to Enforce Arbitration Agreements Remains Despite Recent Supreme Court Holdings

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Those of us who enforce arbitration agreements in consumer disputes have been heartened by recent United States Supreme Court decisions requiring state courts to enforce those agreements.¹ Despite this clear direction, however, a recent decision by the South Carolina Supreme Court reveals that a reluctance to enforce arbitration agreements, particularly with regard to consumer healthcare disputes, remains. By disregarding what one of its members noted was clear United States Supreme Court precedent, the South Carolina Supreme Court decision should be viewed as a warning that even a well-drafted and properly executed arbitration agreement may not be enforced.

Coleman v. Mariner Health Care, Inc., et al.

In Coleman v. Mariner Health Care, Inc., 2014 S.C. LEXIS 72 (S.C. Mar. 12, 2014), the Decedent's sister, Ann Coleman, initially brought a survival action and wrongful death suit against several defendants related to the care her sister received at a skilled nursing facility. Ms. Coleman executed both an admission agreement and an arbitration agreement on behalf of her sister in connection with the admission to the facility. Id. at *2. The arbitration agreement required both parties to submit all disputes related to, or arising from, the care and treatment the Decedent received from the facility to arbitration. Upon a lower court determination that the arbitration agreement was not enforceable, the South Carolina Supreme Court was tasked with determining two issues: 1) whether an individual exercising authority under the state's Adult Health Care Consent Act (the "Act") has the authority to execute a voluntary arbitration agreement; and 2) if there is no such authority under the Act, whether Ms. Coleman was equitably estopped to deny the validity of the arbitration agreement she executed when her sister was admitted to the facility. Id.

On the first issue, the Court ruled that Ms. Coleman had authority under the Act to exercise two types of authority. First, she could consent, on behalf of the Decedent, to the provision or withholding of medical care, including placement in a facility which provides such care. Id. at *5. Second, the Court held the Act authorized Ms. Coleman to make certain financial decisions on behalf of the Decedent that obligated the Decedent to pay for services rendered. Id. In doing so, the Court determined Ms. Coleman's authority under the Act extended primarily to "traditional health care decisions," and only secondarily to the financial decisions necessitated by those decisions. Id. at *6. The Court went on to hold that because the arbitration agreement was not required for the Decedent's admission, contained no provision for medical, nursing, or health care services to be provided for the Decedent, and did not require any financial commitment to pay for such services, Ms. Coleman did not have the authority to bind the Decedent to the arbitration agreement. Id. at *9.

As for the second issue, the Court acknowledged that if the admission agreement and arbitration agreement were executed by the same parties, for the same purposes, and in the course of the same transaction, and there was no contrary intention, those agreements would merge under South Carolina law. Id. at *11. The Court also noted the express language of the admission agreement which stated:

¹ Marmet Health Care Ctr., Inc. v. Brown, 132 S. Ct. 1201, (2012); AT&T Mobility, L.L.C. v. Concepcion, 131 S. Ct. 1740 (2011).

This Agreement, including all Exhibits hereto, and the Arbitration Agreement between the Facility and the Resident, if the parties sign one, supersede all other agreements, either oral or in writing between the parties, and contain all of the promises and agreements between the parties. Each party to this Agreement acknowledges that no representations, inducements, or promises have been made by any party or anyone acting on behalf of any party, that are not contained in this Agreement or in the Arbitration Agreement. This Agreement may be amended only by a written agreement signed on behalf of the Facility and the Resident.

Id. at *11-12. Despite the clear statement of South Carolina law and the express language above, the Court inextricably chose to interpret the admission agreement's language as evincing the parties' intention that the arbitration agreement and admission agreement would remain separate. Id. at *12. Indeed, the Court went so far as to create a new word – "separatedness" – to describe what it viewed as the relationship between the contracts. Id. Because the Court determined there was no merger of the agreements, the Court held that Ms. Coleman was not equitably estopped from denying the enforceability of the arbitration agreement.

In a well-written dissent, the Court's Chief Justice identified the "problems" with the majority's analysis. Id. at *13. First, the Chief Justice noted that the majority's interpretation of the Act contained an inherent inconsistency by reading the statute "more broadly than the literal language to allow a surrogate to bind a patient financially to a healthcare contract, but also reading the language narrowly to prohibit the surrogate from binding the patient to arbitration of the same contract." Id. at *14-15. To eliminate that inconsistency, the Chief Justice said the Court should have interpreted the Act's language to "encompass not just financial decisions but dispute resolution decisions as well." Id. at *15. The Chief Justice went on to say that the majority's interpretation of the statute ran the risk of creating "undesirable future consequences" by suggesting that an arbitration agreement should be included within the admission agreement. Id. at *15-16. Such unintended consequences included diminishing a consumer's freedom of choice, and subjecting the skilled nursing facility to claims that the arbitration contract is unconscionable. Id. at *16.

Perhaps most importantly, the Chief Justice noted that the majority's interpretation of the Act ran afoul of the United States Supreme Court's directives that arbitration agreements must be placed on the same footing as all other contracts. Id. at *17. After citing to and discussing the litany of cases holding that greater scrutiny cannot be placed upon agreements to arbitrate in order to limit their enforceability, the Chief Justice believed that the majority's inconsistent interpretation derived precisely from the fact that the contract at issue was an arbitration agreement. Id. at *17-18. Accordingly, the Chief Justice stated that the majority's interpretation was inconsistent with the clear instructions of the Supreme Court, and that the arbitration agreement should be enforced.

Conclusion

Enforcing arbitration agreements in many jurisdictions remains an uphill battle despite recent favorable United States Supreme Court decisions. Even so, steps can be taken to maximize the likelihood that your arbitration agreement will be enforced. Minor revisions can make all the difference. In this case, for example, while the agreement should have been enforced as written, including within the admission agreement a provision that the arbitration agreement was expressly incorporated into the admission agreement may have negated the Court's reliance upon the "separatedness" of the two agreements. Of course, there is no universal solution to counter what is many times a court's inherent aversion to enforcing arbitration agreements. However, a well-crafted arbitration agreement stands as a solid foundation to improve your chances for moving your cases promptly and efficiently into arbitration.

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