Good News for Employers: Disgruntled Employees Can Be Forced to Arbitrate Disputes with You!

The Federal Arbitration Act (“FAA”), 9 U.S.C. § 1, et seq., and the Illinois Uniform Arbitration Act, 710 ILCS 5/1, et seq., provide for the enforceability of written arbitration agreements. Arbitration and dispute resolution agreements are sometimes found in employment contracts. What happens if a dispute between an employer and employee involves a claim for discrimination or an employment related tort? Will an arbitration agreement between an employer and employee require that such an employment dispute proceed to arbitration? Can the disgruntled employee ignore the arbitration clause and pursue his claims in a court? This article examines recent cases where courts have upheld arbitration agreements in cases involving employment discrimination, defamation, and tortious interference.

The United States Supreme Court has recognized that employees can be bound by mandatory arbitration dispute resolution provisions if the parties have agreed to resolve their differences through mandatory alternative dispute resolution. The United States Court of Appeals for the Seventh Circuit has upheld arbitration agreements in employment contracts and required parties to arbitrate employment disputes that include claims under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq. One Illinois appellate court has even enforced an employment related arbitration agreement found in a church’s constitution.

United States Supreme Court Decision in Circuit City Stores, Inc. v. Adams

In Circuit City Stores, Inc. v. Adams, 532 U.S. 105 (2001), the United States Supreme Court was asked to determine whether a plaintiff’s employment discrimination claim had to be arbitrated pursuant to an employment agreement requiring that such employment disputes be arbitrated. The Supreme Court answered in the affirmative and held that mandatory alternative dispute resolution agreements abrogate the rights of an individual employee to seek relief through courts.

In Circuit City Stores, Inc., when a worker was hired for a job at a national consumer electronics retailer, the worker signed an application that included an agreement to settle all future employment disputes exclusively by binding arbitration. Circuit City Stores, Inc., 532 U.S. at 109. The employment application included the following provision:

“I agree that I will settle any and all previously unasserted claims, disputes or controversies arising out of or relating to my application for employment, employment and/or cessation of employment with Circuit City, exclusively by final and binding arbitration before a neutral Arbitrator. By way of
example only, such claims include claims under federal, state, and local statutory or common law, such as the Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964 as amended, including the amendments of the Civil Rights Act of 1991, the Americans with Disabilities Act, the law of contract and the law of tort.”

*Id.* (emphasis in original application).

Two years after being hired as a sales counselor, the worker filed an employment discrimination lawsuit against Circuit City in state court, asserting claims under California’s Fair Employment and Housing Act, Cal. Govt. Code Ann. Sec. 12900, *et seq.*, and other claims based on general tort theories under California law. Circuit City filed suit in the United States Northern District of California seeking to enjoin the state-court action and to compel arbitration pursuant to the FAA. The district court granted the employer’s request for injunctive relief. The United States Court of Appeals for the Ninth Circuit, in reversing the district court, however, interpreted the exemption of Section 1 of the FAA to exempt all employment contracts from the FAA’s reach. *Circuit City Stores, Inc.*, 532 U.S. at 110.

Section 2 of the FAA generally provides for the enforceability of a written arbitration provision in any maritime transaction or a “contract evidencing a transaction involving commerce.” 9 U.S.C. § 2. An exemption clause in the FAA, however, provides that the FAA shall not apply to “contracts of employment of seamen, railroad employees, or *any other class* of workers engaged in foreign or interstate commerce.” 9 U.S.C. § 1 (emphasis added). The worker in *Circuit City Stores, Inc.* argued that her employment contract with Circuit City was not a “contract evidencing a transaction involving interstate commerce,” within the meaning of Section 2 of the FAA.

The Supreme Court reversed the Ninth Circuit decision, and held that the exemption clause in Section 1 of the FAA exempted only contracts of employment of *transportation workers*, rather than all employment contracts. *Circuit City Stores, Inc.*, 532 U.S. at 109. Thus, the court confined the exemption clause in Section 1 to transportation workers. In so ruling, the court recognized that parties generally favor arbitration precisely because of the economics of dispute resolution. According to the court, “arbitration agreements allow parties to avoid the costs of litigation, a benefit that may be of particular importance in employment litigation, which often involves smaller sums of money than disputes concerning commercial contracts.” *Id.* at 123.

**Seventh Circuit Decisions in Oblix and Perdue**

The United States Court of Appeals for the Seventh Circuit has upheld arbitration agreements in the context of Title VII suits. In *Oblix, Inc. v. Winiecki*, 374 F.3d 488 (7th Cir. 2004), a worker signed a contract promising to arbitrate any dispute that might arise out of the employment relation. The worker, who was fired, believed that she had not been paid everything owed her and also that the discharge violated Title VII of the Civil Rights Act of 1964. *Oblix, Inc.*, 374 F.3d at 489. In response, Oblix, Inc. sought a declaratory finding that the worker must arbitrate her disputes. *Id.*

The Seventh Circuit agreed with Oblix that the parties had to arbitrate their disputes. According to the court, “Agreements to arbitrate employment-related subjects, including claims of employment discrimination, are treated the same for this purpose as agreements to arbitrate labor-relations matters, building leases, disputes about patent royalties, and controversies among participants in reinsurance treaties.” *Id.* at 491, citing *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2001), and *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 105 (1991).

The worker in *Oblix* argued that the arbitration agreement did not cover disputes about compensation or discrimination. The court reviewed the language of the agreement and concluded that it was sufficient to comprise disputes about compensation and employment discrimination. *Oblix, Inc.*, 374 F.3d at 488. The court found that the arbitration clause, wherein Oblix did not promise to arbitrate *all* of its disputes with the worker, was supported by consideration. *Id.* In addition, the court stated that “employees fare well in arbitration with their employers—better by some standards than employees who litigate, as the lower total expenses of

In *Perdue v. RBC Mortgage Company*, 156 Fed. Appx. 824, 2005 U.S. App. LEXIS 24608 (7th Cir. 2005), the plaintiff was fired from her position as a loan officer for failing to meet the sales goals of RBC Mortgage Company (“RBC”). She then filed a charge with the EEOC, alleging RBC discriminated against her and fired her because of her race. Within days of the plaintiff’s discharge, RBC rehired her and had her sign an employment contract that contained an express arbitration clause. *Perdue*, 2005 U.S. App. LEXIS at 1. The plaintiff alleged that after she was rehired, RBC moved her office to an undesirable location, in order to punish her for filing the prior EEOC charge. *Id.* at 1-2. The plaintiff then filed another EEOC charge alleging retaliation, and resigned some time later. *Id.* at 2.

After the plaintiff filed her complaint with the United States District Court for the Northern District of Illinois, RBC moved to dismiss the complaint and compel arbitration pursuant to the employment contract. The district court granted the motion and required the plaintiff to submit her retaliation claim to arbitration. RBC initiated arbitration proceedings, but the plaintiff refused to participate. The arbitrator eventually dismissed the plaintiff’s claims for failure to prosecute. The district court confirmed the arbitrator’s dismissal order. *Id.*

The Seventh Circuit Court of Appeals affirmed the dismissal, although in an unpublished order that the court does not consider precedential. The court noted that agreements to arbitrate civil rights disputes are enforceable. The court rejected the plaintiff’s argument that she was the weaker party and thus signed the agreement under duress, stating that the court has held that unequal bargaining power, or even a so-called “take-it-or-leave-it” deal, does not invalidate an arbitration agreement. *Id.*

**Illinois Appellate Court decision in Jenkins v. Trinity Lutheran Church**

Like federal courts, Illinois courts have upheld arbitration agreements in the context of employment disputes. In *Jenkins v. Trinity Lutheran Church*, 356 Ill. App. 3d 504, 825 N.E.2d 1206 (3d Dist. 2005), the appellate court upheld a requirement in a bylaw found in a church’s constitution requiring church disputes be settled exclusively through binding dispute resolution. In finding that the employer could compel the church employee to arbitrate his dispute, the *Jenkins* court relied upon the Illinois Uniform Arbitration Act, which provides that if a valid agreement to arbitrate exists then it will be enforced by the court. 710 ILCS 5/2(a).

In *Jenkins*, the plaintiff resigned from his employment as an associate pastor after a meeting with the head pastor to discuss certain allegations of sexual impropriety made by congregants against the plaintiff. *Jenkins*, 356 Ill. App. 3d at 506. The plaintiff claimed that, in return for his resignation, Trinity Lutheran Church (“Trinity”) agreed to pay his salary, health insurance, and pension benefits for the remainder of the calendar year. *Id.* at 507. The plaintiff later filed suit against Trinity and the head pastor, alleging that the head pastor, on behalf of Trinity, breached the agreement to continue to pay his salary and benefits, interfered with his contract with Trinity, and defamed him by telling members of the congregation that the plaintiff “did the nasty” with a female congregant. The trial court dismissed the complaint for lack of subject matter jurisdiction and ordered the parties to arbitrate the issues in dispute. *Id.*

Trinity was affiliated with the Lutheran Church Missouri Synod (“LCMS”). *Id.* at 506. When the plaintiff became a minister of the LCMS, he agreed to be bound by the bylaws of the LCMS. One of the bylaws required that church disputes be settled exclusively through a binding resolution procedure, except for property and contract disputes. The LCMS has its own conflict resolution procedure and system. Specifically, the LCMS bylaws stated that “the [LCMS’s] conflict resolution procedures shall be the exclusive and final remedy for those who are in dispute.” *Jenkins*, 356 Ill. App. 3d at 506.

The appellate court found that the arbitration agreement was valid and enforceable. The court held that the plaintiff was bound by his agreement to abide by the LCMS bylaws, and therefore had to submit his tort claims to the LCMS for dispute resolution. *Id.* at 511. The court found that the plaintiff’s claims for tortious
interference with contract and defamation had to be arbitrated pursuant to LCMS bylaws and that such claims could not be pursued in court. *Id.* at 512. The court did find, however, that the plaintiff’s breach of contract action was exempted from arbitration by the LCMS bylaws and should not have been dismissed by the trial court. *Id.* at 511.

As might be expected, the plaintiff argued that the arbitrators who would hear his case in accordance with the LCMS bylaws would not be impartial, because the dispute resolution procedure specified that the arbitrators had to be either members or employees of the LCMS. *Id.* at 513. The appellate court rejected this argument, noting that the plaintiff could not point to any specific prejudice he would suffer under the bylaws, “but only a generalized fear of partiality.” *Jenkins*, 356 Ill. App. 3d at 513. The court upheld the LCMS arbitration process finding that the plaintiff’s generalized anxiety was insufficient to overturn the LCMS arbitration process. *Id.*

The *Jenkins* case suggests that attorneys representing religious or other non-profit organizations would be well advised to examine the constitution and bylaws of the organization for arbitration or dispute resolution provisions.

**Conclusion**

As the cases discussed above illustrate, courts generally will enforce arbitration agreements as a means of resolving employment disputes. Practitioners should examine employment contracts and company bylaws for dispute resolution and arbitration clauses. In addition, employers should consider having employees sign employment contracts that call for a mandatory dispute resolution procedure or arbitration of work-related disputes. In accordance with Circuit City, Inc., Oblix, Inc., Perdue, and Jenkins, Title VII and employment-based tort actions likely will proceed to arbitration or a similar mandatory dispute resolution system if an employment contract, bylaws, or another binding agreement so requires.

**About the Author**

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