Arbitration Clauses Extending to Non-Signatory Affiliates: Are They Enforceable?

Wednesday, May 3, 2017

A recent decision of the New Jersey Court of Appeals considered the enforceability of arbitration agreements by non-signatories. In *Foti v. Toyota Motor Sales, U.S.A., Inc.*, the plaintiff filed a putative class action complaint against defendant alleging violations of New Jersey’s Truth-In-Consumer Contract, Warranty and Notice Act (“TCCWNA”), as well as the state’s Lemon Law (N.J.S.A. 56:12-29 to -49). The panel determined, among other things, that by signing a lease agreement, plaintiff agreed to arbitrate her dispute not only with the underlying signatories of the lease, but with any of its affiliates.

Plaintiff entered into a written lease agreement with Classic Imports, Inc. (“Classic”) to lease a 2014 Toyota Corolla. The lease agreement specifically defined “lessor” as including Classic, its anticipated assignee, Toyota Lease Trust (“TLT”), and any future assignee. The agreement also stated that the lease would be serviced by Toyota Motor Credit Corporation (“TMCC”). The lease contained a broad arbitration provision that provided, in pertinent part, that all claims plaintiff asserted against the following “Covered Parties” would be subject to arbitration: “[TLT], TMCC, and/or any of our or its affiliates, and/or any of our or their employees, officers, successors, [or] assigns . . .” The defendant, Toyota Motor Sales, is an affiliate of TLT and TMCC.

After the complaint was filed, Toyota Motor Sales moved to compel arbitration. The plaintiff opposed the motion and argued, among other things, that defendant was not entitled to enforce the arbitration agreement as a non-signatory to the lease. The trial court disagreed and entered an order compelling arbitration. Plaintiff appealed.

In considering the appeal, the panel employed the following two-pronged analysis imposed by the New Jersey Supreme Court in *Hirsh v. Amper Fin. Servs., LLC*, 215 N.J. 174, 188 (2013): (1) the court must determine whether the parties have entered into a valid and enforceable agreement to arbitrate disputes and (2) the court must determine whether the dispute falls within the scope of the agreement.

At step one, the panel concluded that the parties had entered into a valid agreement to arbitrate. “The United States Supreme Court has recognized that, in the context of arbitration, ‘traditional principles of state law allow a contract to be enforced by or against non-parties to the contract through assumption, piercing the corporate veil, alter ego, incorporation by reference, third party beneficiary theories, waiver and estoppel.’” (emphasis in original). The arbitration clause at issue specifically included TLT, TMCC, “and/or any of our or its affiliates.” As such, the panel concluded that defendant Toyota Motor Sales fell within the intended scope of the arbitration clause and that the agreement to arbitrate as between plaintiff and Toyota Motor Sales was valid. In so holding, the panel rejected plaintiff’s assertion that she was unaware that Toyota Motor Sales was affiliated with TLT or TMCC, because the language of the arbitration agreement was confusing.

At step two, the panel found that the broad language covering any claims arising from or relating to the lease agreement covered plaintiff’s TCCWNA and Lemon Law claims. Having concluded that the arbitration clause extended to the defendant-affiliate and covered plaintiff’s asserted claims, the panel affirmed the trial court’s order.

The plaintiff will need to decide whether to pursue her claims in arbitration with the case unable to proceed in court.