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California Appellate Court Rejects Legislative Attempt to Circumvent Federal Arbitration Act on Claims Involving the Ralph Act and Bane Act

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In *Saheli v. White Memorial Medical Center (B283217, Cal. Ct. App., March 14, 2018)*, the Court of Appeal for the Second Appellate District addressed for the first time whether restrictions on arbitration agreements contained in the Ralph Act and Bane Act are preempted under the Federal Arbitration Act ("FAA").

"The Ralph Act broadly provides that all persons 'have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property' because of, among other things, the person's race, religion, national origin, sex, sexual orientation, or position in a labor dispute." The Bane Act, enacted 10 years after the Ralph Act, "was 'intended to supplement the Ralph Civil Rights Act as an additional legislative effort to deter violence'" and "provides that if a person interferes, or attempts to interfere, by threats, intimidation, or coercion, with the exercise or enjoyment of the constitutional or statutory rights of 'any individual or individuals,'" they may be "'sue[d] for damages[.]'"

Those familiar with the Ralph Act and Bane Act know that they can provide a parallel remedy in harassment or discrimination cases in which the conduct alleged could also be construed as a "hate crime."

After a careful analysis, which included an in-depth analysis of the California legislature's hostility towards arbitration, the Court held that the Acts were preempted to the extent the enforceability of arbitration agreements were conditioned on special requirements not applicable to contracts generally.

In 2014, the Ralph Act and Bane Act were amended to limit the circumstances under which an individual could waive their rights under the Ralph Act or Bane Act, or waive their rights to bring such claims in a judicial forum. The amendments invalidated any agreements or waivers entered into on or after January 1, 2015 that did not meet certain requirements.

On June 7, 2016, plaintiff Gezel Saheli signed an arbitration agreement in connection with a medical residency program at White Memorial Medical Center. The agreement that did not meet the requirements set forth in the Ralph Act and Bane Act. Less than a year later, Saheli filed a complaint that contained claims under the Ralph Act and Bane Act. White Memorial Medical Center successful compelled all claims to arbitration with the exception of the Ralph Act and Bane Act claim, which the trial court denied because the arbitration agreement did not comply with the 2014 amendments to the Ralph Act and Bane Act. White Memorial Medical Center appealed.

On Appeal, the Court addressed two primary issues: (1) whether the parties intended to incorporate state law that are potentially preempted by federal law; and (2) whether the Ralph Act and Bane Act are preempted, in part, by the FAA. As to the first issue, the arbitration agreement provided that the parties agreed not to arbitrate claims that are not arbitrable under "applicable state law." Plaintiff argued that this phrase meant "applicable state law notwithstanding any preemptive effect of federal law." The Court rejected this argument, finding that the ordinary meaning of the phrase "applicable state law" would not encompass preempted state law. As to the second issue, the Court noted that the 2014 amendments "represent a hostility to arbitration and their purpose is primarily, if not exclusively, to discourage arbitration of Ralph Act and Bane Act claims." The Court remarked in

a footnote that the legislative history suggested the amendments were specially tailored to attempt to avoid federal preemption under the FAA. However, since the FAA preempts state rules discriminating against or disfavoring arbitration agreements, the Court held that 2014 amendments were preempted to the extent they created special requirements that were not applicable to contracts generally. The Court ordered the trial court to reverse its order and send all claims to arbitration.

This decision is positive news for employers who have arbitration agreements or are deciding whether to compel arbitration of a Ralph Act and/or Bane Act claim. This decision makes clear employers will not need to revise their arbitration agreements in order to comply with the Ralph Act or Bane Act's special requirements. This decision also provides controlling authority for trial courts asked to rule on a motions to compel arbitration concerning the Ralph Act or Bane Act.