ARBITRATION

Avoiding the stuffy courtroom: Arbitration, here we come!

by Garrett Jensen

An employee signs an arbitration agreement when he is employed with you but then turns around and files a lawsuit after termination. Can you wave your "magic arbitration wand" and have an arbitrator decide the case, or will the employee pull a rabbit out of his hat and keep the case before the jury? Stay tuned to find out.

What is the view on arbitration of wage claims?

In the last several years, there has been an increase in litigation arising out of arbitration agreements signed between an employer and employee. When an arbitration agreement is signed, California and federal case law recognizes a strong public policy in favor of arbitrating matters rather than litigating them. Doubts about whether an arbitration clause applies to a particular dispute are usually resolved in favor of sending the parties to arbitration.

However, certain portions of the California Labor Code, including Sections 206.5 and 229, have been cited by employees in an attempt to defeat arbitration provisions. A relevant portion of Section 206.5 reads:

> An employer shall not require the execution of a release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made. A release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee.

Additionally, Labor Code Section 229 provides in part: "Actions to enforce the provisions of this article for the collection of due and unpaid wages claimed by an individual may be maintained without regard to the existence of any private agreement to arbitrate."

How about those kicks?!

Kyle Pulli worked as a designer for Adidas for over eight years. During that time, he worked with NBA athletes such as Kevin Garnett, Tracy McGrady, Tim Duncan, Chauncey Billups, and Dwight Howard. Pulli alleged that while he was working for Adidas, he received an offer letter in April 2007 from Pony International promising him a three-fourths percent equity interest in Pony, a base salary equivalent to what he had been making at Adidas, and a secure position for four or more years.

A day after receiving the offer letter, Pulli resigned from his position with Adidas and began working for Pony the following month. However, he alleged that several months after he started at Pony, the company presented him with a new agreement (the "October 2007 agreement"), which he was told he had to sign to receive any equity in the company and which changed all the terms of the April 2007 offer letter. Two years later, he contended that his salary was reduced by 12 percent and he was subsequently terminated. He then filed suit in San Diego Superior Court.

Pony responded by requesting that the court compel the parties to arbitrate Pulli's claims. It argued the October 2007 agreement included an arbitration provision in which Pulli agreed to arbitrate any disputes he had with the company arising out of his termination. Pulli, in hoping to try his case before a jury, argued that the October 2007 agreement was null and void under Labor Code Section 206.5 because Pony had threatened to withhold earned wages of approximately $7,000 and equity compensation unless he signed it and waived his right to a jury trial. The court agreed with Pulli, and Pony appealed.

Off to arbitration you go

On appeal, Pony argued that Section 206.5 prohibits an employer from requiring an employee to sign a release of a claim for wages under specified circumstances but doesn't preclude a party from waiving its right to a jury trial by agreeing to an arbitration provision. The court analyzed the language of Section 206.5 and determined that it merely prohibits an employer from requiring an employee to sign a release of a claim for wages due and doesn't preclude a party from waiving its right to a jury trial by entering into an agreement containing an arbitration provision. The court, in compelling arbitration, found that the October 2007 agreement operated not as a release of compensation owed to Pulli but rather as an agreement to arbitrate any claims he had against Pony.

In rendering its ruling, the court assumed that the Federal Arbitration Act (FAA) applied in the case; Pony argued that it did, and Pulli didn't contend otherwise. Since he didn't argue for the application of Section 229 to the arbitration agreement, the court didn't address that issue in detail. Despite that, you should pay special attention to that Labor Code section.

Under Section 229, an employee may argue that an arbitration provision he validly signed is void in regard to claims for the collection of due and unpaid wages. However, if the FAA applies to the agreement at issue, it preempts Section 229 and gives the employer a much stronger argument for arbitrating all of the employee's claims, including claims for the collection of due and unpaid wages.

Bottom line

Pony obtained a favorable ruling in seeking to have the claims of its former employee sent to arbitration. You can take several things from the decision:

(1) An employee can agree to release disputed wages without the agreement running afoul of Section 206.5. It's only when it's undisputed that the wages are owed that Section 206.5 can cause problems.

(2) There is a distinction between an employee agreeing to release undisputed wages, which isn't allowed under Section 206.5, and the employee waiving his right to a jury trial, which Section 206.5 doesn't prohibit.

(3) If an employee argues that the matter should stay in court under Section 229, the application of the FAA to an arbitration agreement will preempt Section 229.

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