ARBITRATION

Nonsignatory employer allowed to enforce arbitration agreement

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Can an employer compel an employee to arbitration based on an arbitration agreement to which the employer wasn't a party? Yes, under certain circumstances, according to a recent ruling from the California Court of Appeal. An employer may enforce arbitration agreements between employees and the employer's predecessor if the employer assumed its predecessor's rights and obligations with respect to employment relationships.

Facts

M. Todd Jenks was hired to work as an associate attorney at the law firm Gray Cary Ware & Friedenrich in 2000. In 2005, Gray Cary merged with another law firm to become DLA Piper Rudnick Gray Cary US LLP. Jenks remained employed by DLA Piper after the merger.

In January 2005, Jenks requested and was granted a 20 percent reduction in his hours (and a corresponding reduction in pay) as an accommodation of a medical condition. In September 2005, it was discovered that he had made a filing error on behalf of an important client. Jenks attributed the error to his deteriorating health and subsequently went on a paid leave of absence. In February 2006, Jenks and DLA Piper entered into a termination agreement under which DLA Piper agreed to continue his salary and benefits through August 2006.

In August 2006, Jenks asserted that his medical condition had worsened, rendering him unable to work, so he sought disability benefits from DLA Piper. The parties disputed whether he was entitled to receive disability benefits, but DLA Piper ultimately agreed to pay his disability benefits based on his reduced salary.

Jenks filed a lawsuit against DLA Piper in October 2009 alleging that he had been deprived of his rights under the termination agreement. Specifically, he claimed the firm "undervalued" his disability benefits by basing them on his reduced salary. He alleged claims for breach of contract, breach of the implied covenant of good faith and fair dealing, promissory fraud, and constructive fraud. He sought contract damages, compensation for his alleged emotional distress, punitive damages, attorneys' fees, and interest.

DLA Piper filed a motion to compel arbitration based on the offer letter Jenks had signed when he was hired by Gray Cary, which included a provision requiring both parties to submit all disputes arising out of their employment relationship to binding arbitration. The trial court granted DLA Piper's motion.

Jenks subsequently arbitrated his claims against DLA Piper and was awarded $41,000 in contract damages, $45,000 in emotional distress damages, and $7,535.67 in costs. The trial court confirmed the arbitration award and entered judgment accordingly. Jenks appealed, arguing that the trial court erred by compelling arbitration because DLA Piper wasn't a signatory to the offer letter.

Court of appeal upholds trial court's ruling

The court of appeal affirmed the judgment. First, the court ruled that Jenks had forfeited his argument that DLA Piper, as a nonsignatory to the offer letter, wasn't entitled to enforce the arbitration agreement by failing to raise that argument in opposition to the firm's motion to compel arbitration.

Second, the court ruled that even if Jenks hadn't waived the argument, DLA Piper was entitled to enforce the arbitration agreement even though it wasn't a signatory to the agreement. As the court explained, "Exceptions to the general rule that one must be a party to an arbitration agreement to invoke it or be bound by it generally are based on the existence of a relationship between the non-signatory and the signatory, such as principal and agent or employer and employee, where a sufficient identity of interest exists between them."

In reaching its holding, the court cited other instances in which nonsignatories were allowed to enforce arbitration agreements—including cases involving company acquisitions in which the employee signed an arbitration agreement with the predecessor employer but not with the successor employer. In those cases, where the successor assumed the predecessor's rights and obligations arising from its employment relationships, the successor was entitled to enforce arbitration agreements between the predecessor and its employees. Likewise, the employees were deemed to have implicitly consented to enforcement of the original terms of employment—including arbitration agreements signed with the predecessor—by continuing employment with the successor.

Based on that established precedent, the court ruled that DLA Piper assumed Gray Cary's rights with respect to its employment relationships, and it therefore had the right to compel Jenks to arbitrate under the terms of the offer letter between him and Gray Cary.

Third, the court rejected Jenks' argument that DLA Piper "nullified" the terms of the original offer letter by distributing its own set of workplace rules, policies, and procedures after the merger. The court found that the evidence showed that DLA Piper intended to acquire all of Gray Cary's assets, employees, rights, and liabilities as a result of the merger, and there was no evidence that the terms of the offer letter were rescinded or modified in any way.

Finally, the court ruled that the termination agreement didn't supersede the terms of the original offer letter. Jenks contended that because the termination agreement contained an integration clause—"This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations and agreements, whether written or oral"—the offer letter was void. The court disagreed, reasoning that the integration clause in the termination agreement was limited to the subject matter of the termination letter—namely, the terms of Jenks' separation—not dispute resolution. Because the termination agreement was silent on the subject of dispute resolution, it did not conflict in any way with the offer letter. As a result, the court found that "the identified forum for dispute resolution remains arbitration based on the original Offer Letter." *Jenks v. DLA Piper Rudnick Gray Cary US LLP* (California Court of Appeal, 1st Appellate District, 12/16/15).

Bottom line

This case is important for employers that have gone through or are planning on going through corporate acquisitions. If an employer desires to implement a dispute resolution policy that requires the employer and its employees to arbitrate their disputes, it is advisable to enter into an arbitration agreement with employees after an acquisition to avoid disputes about enforceability. However, even if the employer and employees don't enter into a new arbitration agreement after an acquisition, this case demonstrates that arbitration agreements that were in place before the acquisition may remain effective.

At the same time, employers should be aware that employment policies and agreements implemented after an acquisition may be found to nullify arbitration agreements that preceded the acquisition if the terms of the subsequent policies and agreements conflict with the terms of the original arbitration agreements. Therefore, in situations involving company acquisitions, pre- and postacquisition dispute resolution policies and agreements should be carefully scrutinized to ensure the desired results are achieved.

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