



ARBITRATION AND THE POWER OF THE FAA

by Andrea R. Sitar

A party can often face high hurdles when attempting to enforce what it thought was a valid arbitration agreement. One such hurdle is California Code of Civil Procedure §1281.2(c), which allows a court to deny arbitration if a third party is involved in litigation arising out of the same transaction, and there is a possibility of conflicting rulings on a common issue of law or fact. It is a common scenario where a plaintiff brings suit against two defendants over a single incident. The plaintiff has signed an arbitration agreement with the first defendant but not the second, and the court uses §1281(c) to deny arbitration outright.

The case of *Gloster v. Sonic Automotive, Inc.* (2014) 226 Cal. App. 4th 438 gives these parties new ammunition when seeking to enforce arbitration agreements in California. The opinion states that when the Federal Arbitration Act (FAA) applies to the arbitration agreement in question, California Code of Civil Procedure §1281.2(c) is inapplicable. In *Gloster*, a former employee was compelled to arbitrate his employment-related claims against his former employer, even though a third party was involved in the litigation, because the FAA governed the arbitration agreement.

When does the FAA apply? The FAA makes written arbitration provisions "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. §2. Finding an "expansive congressional intent," the Supreme Court has interpreted Section 2 of the FAA broadly, stating it must apply to any contract evidencing a transaction that merely affects interstate commerce. The only other requirement under the FAA is that the agreement be in writing, which is almost always satisfied.

In *Gloster*, the text of the arbitration agreement in question clearly states that the FAA applied. The Court found this showed a clear intention by the parties to apply the federal law, which does not contain a provision analogous to California's §1281.2(c). Because the Federal Arbitration Act governed the agreement and not California's Arbitration Act, the former employer was able to compel arbitration of the claim against it by former employee, despite the presence of another defendant who was not a party to the arbitration agreement. This case shows that when drafting arbitrations agreements, drafters should consider including explicit reference to the FAA to avoid the potential hurdle of California Code of Civil Procedures §1281.2(c).

About the author:

Andrea Sitar joined Wroten & Associates in 2013. Ms. Sitar obtained her Juris Doctorate from Loyola Law School in Los Angeles. She graduated with an International and Comparative Law concentration. While at Loyola she was a case worker for their International Human Rights Clinic and Ms. Sitar was also a Clinical Extern for their Conflict Resolution Center. Ms. Sitar also served as mentor in the Judge Stephen O'Neil Young Lawyers Mentoring Program.

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