SUPREME COURT OF MISSISSIPPI

McKenzie Check Advance of Mississippi, LLC v. Hardy

866 So. 2d 446 (Miss. 2004) · Decided February 26, 2004

SUMMARY

The Mississippi Supreme Court reviewed interlocutory appeals concerning motions to compel arbitration in disputes involving delayed-deposit check-cashing transactions. The court held that the transactions involved interstate commerce, making the Federal Arbitration Act applicable, and concluded that the arbitration agreements were enforceable despite arguments concerning mutuality of obligation, unconscionability, and waiver of the right to a jury trial. The court reversed the circuit court's judgments and remanded with instructions to grant the motions to compel arbitration.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Carlson, Justice; Carlson; Pittman; Smith; Waller; Cobb; Dickinson; Easley; Graves
JURISDICTION	Mississippi
DECIDED	February 26, 2004
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Interlocutory appeal under Mississippi Rule of Appellate Procedure 5 from the Jasper County Circuit Court's denial of motions to compel arbitration.
STANDARD OF REVIEW	De novo review applies to the grant or denial of a motion to compel arbitration.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	McKenzie Check Advance of Mississippi, LLC, d/b/a National Cash Advance, Advance America, Cash Advance Centers of Mississippi, LLC v. Hardy and other current and former customers

TOPICS

arbitration · interlocutory appeal · contracts · consumer protection · appellate procedure

PRACTICE AREAS

arbitration · contracts · consumer protection · civil procedure · appellate procedure

QUESTIONS PRESENTED

1. Whether the transactions evidenced interstate commerce such that the Federal Arbitration Act applied.
2. Whether the arbitration agreements were unenforceable under Mississippi law for lack of mutuality of obligation.
3. Whether the circuit court properly relied on the concurrence in Parkerson v. Smith to reject the arbitration agreements as unconscionable.
4. Whether the customers knowingly, intelligently, and voluntarily waived their constitutional right to a jury trial.

HOLDINGS

1. The Federal Arbitration Act applies because the delayed-deposit check-cashing transactions involved interstate commerce and the parties expressly agreed that the FAA governed the arbitration agreements.
2. Mutuality of obligation is not required for an arbitration agreement to be enforceable under Mississippi law so long as the agreement is supported by consideration.
3. The circuit court erred by relying on Justice Diaz's concurrence in Parkerson v. Smith because the concurrence was not the holding of the court, and the arbitration provisions at issue were factually distinguishable from the provision discussed in that concurrence.
4. The customers knowingly, intelligently, and voluntarily waived their constitutional right to a jury trial by signing the conspicuous, plain-English arbitration agreements.

KEY QUOTATIONS

> *"The Federal Arbitration Act, 9 U.S.C. §§ 1 et seq., applies to all written agreements to arbitrate contained in any contract "evidencing a transaction involving commerce.""* (450)

> *"Pursuant to Mississippi law, mutuality of obligation is not required for an arbitration agreement to be enforceable as long as there is consideration."* (453)

> *"Therefore, the circuit court erred in finding the Customers did not knowingly, intelligently and voluntarily waive their constitutional right to a jury trial when they signed the arbitration agreement with NCA and Advance America."* (455)

FACTUAL BACKGROUND

McKenzie Check Advance and Advance America operated licensed check-cashing businesses in Mississippi and provided delayed-deposit check-cashing transactions for amounts up to $400 plus a statutory service fee. Each customer entered into a written arbitration agreement requiring arbitration of disputes outside small-claims jurisdiction, waiving jury trial, and providing customers with favorable provisions concerning arbitration costs, arbitrator selection, and venue. The agreements were conspicuously presented in plain English, with the jury-trial waiver and arbitration provisions highlighted in capital letters and bold type.

PROCEDURAL HISTORY

Current and former customers filed a collective complaint challenging successive delayed-deposit check-cashing transactions. The circuit court denied the defendants' motions to compel arbitration, concluding that the Federal Arbitration Act did not apply, the arbitration agreements lacked mutuality of obligation, the reasoning in a concurrence in Parkerson v. Smith applied, and the customers had not knowingly and voluntarily waived their jury-trial rights. The Mississippi Supreme Court granted interlocutory review, reversed, and remanded for the circuit court to grant the motions to compel arbitration.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the Jasper County Circuit Court to grant the motions to compel arbitration and conduct further proceedings consistent with the opinion.

CASES CITED

- East Ford, Inc. v. Taylor, 826 So. 2d 709, 713, 716 (Miss. 2002)
- Webb v. Investacorp, Inc., 89 F.3d 252, 256 (5th Cir. 1996)
- Perry v. Thomas, 482 U.S. 483, 489 (1987)
- Moses H. Cone Memorial Hospital v. Mercury Construction Corp., 460 U.S. 1, 24-25 (1983)
- Southland Corp. v. Keating, 465 U.S. 1, 10 (1984)
- Rosenblum v. Travelbyus.com, Ltd., 299 F.3d 657, 662 (7th Cir. 2002)
- First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 943 (1995)
- Allied-Bruce Terminix Cos. v. Dobson, 513 U.S. 265, 268-81 (1995)
- First Family Financial Services, Inc. v. Fairley, 173 F. Supp. 2d 565, 570-73 (S.D. Miss. 2001)
- Russell v. Performance Toyota, Inc., 826 So. 2d 719, 722 (Miss. 2002)
- Pridgen v. Green Tree Financial Servicing Corp., 88 F. Supp. 2d 655, 656-59 (S.D. Miss. 2000)
- Clinton Service Co. v. Thornton, 233 Miss. 1, 100 So. 2d 863, 866 (1958)
- Murphy v. AmSouth Bank, 269 F. Supp. 2d 749, 752 (S.D. Miss. 2003)
- Parkerson v. Smith, 817 So. 2d 529, 535-37 (Miss. 2002)
- Entergy Mississippi, Inc. v. Burdette Gin Co., 726 So. 2d 1202, 1207-08 (Miss. 1998)
- Bank of Indiana, National Association v. Holyfield, 476 F. Supp. 104, 109 (S.D. Miss. 1979)
- Bank One, N.A. v. Coates, 125 F. Supp. 2d 819, 827, 834 (S.D. Miss. 2001), aff'd mem., 34 F. App'x 964 (5th Cir. 2002)
- Godfrey, Bassett & Kuykendall Architects, Ltd. v. Huntington Lumber & Supply Co., 584 So. 2d 1254, 1257 (Miss. 1991)
- Nauru Phosphate Royalties, Inc. v. Drago Daic Interests, Inc., 138 F.3d 160, 165 (5th Cir. 1998)

- Koenig v. Calcote, 199 Miss. 435, 25 So. 2d 763 (1946)
- McCubbins v. Morgan, 199 Miss. 153, 23 So. 2d 926 (1945)

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