

COURT OF APPEALS OF TEXAS, EIGHTH DISTRICT, EL PASO

In re Polymerica, LLC d/b/a Global Enterprises, Inc.

No. 08-08-00070-CV (Tex. App.—El Paso Nov. 25, 2008) · No. No. 08-08-00070-CV · Decided November 25, 2008

SUMMARY

The Eighth District Court of Appeals of Texas conditionally granted in part a petition for writ of mandamus concerning the denial of a motion to compel arbitration. The court held that equitable estoppel allowed Global Enterprises to enforce arbitration agreements for claims arising while the joint-employment agreements were in effect, but not for claims arising after Global's relationship with Dickason ended.

CASE DETAILS

COURT	Court of Appeals of Texas, Eighth District, El Paso
WRITING FOR THE COURT	Kenneth R. Carr; McClure, J.; Carr, J.; Gomez, Judge, sitting by assignment
JURISDICTION	Texas
DECIDED	November 25, 2008
DOCKET	No. 08-08-00070-CV
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Original proceeding in mandamus arising from the trial court's denial of Global's motion to compel arbitration and motion for reconsideration.
STANDARD OF REVIEW	Mandamus requires a clear abuse of discretion and no adequate remedy by appeal. Factual matters are reviewed deferentially, but legal issues are reviewed with little deference and de novo as to the existence and enforceability of an arbitration agreement. A trial court abuses its discretion when it clearly fails to analyze or apply the law correctly.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Polymerica, LLC d/b/a Global Enterprises, Inc. v. Angelica Soltero

TOPICS

employment arbitration

arbitration

appellate procedure

standard of review

wrongful termination

PRACTICE AREAS

arbitration

employment law

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether Global preserved its direct-benefits equitable-estoppel argument in the trial court and mandamus proceeding.
2. Whether Global preserved its argument that it was an intended third-party beneficiary of the arbitration agreements between Soltero and dmDickason.
3. Whether Soltero's receipt of substantial benefits under the joint-employment agreement and dispute resolution plan equitably estopped her from resisting arbitration of claims arising while those agreements were in effect.
4. Whether Global could enforce the arbitration agreements as to claims arising from Soltero's termination after Global's operating agreement with dmDickason ended.
5. Whether mandamus relief was appropriate to correct the denial of Global's motion to compel arbitration.

HOLDINGS

1. Global preserved its direct-benefits equitable-estoppel argument because its reliance on *In re Dallas Peterbilt, Ltd.*, in the motion to compel arbitration put the trial court on notice of the contention in context.
2. Global failed to preserve its contention that it was an intended third-party beneficiary of the arbitration agreements because it did not raise that contention in the trial court.
3. A nonsignatory may compel arbitration when the opposing party deliberately seeks or obtains substantial benefits from the contract containing the arbitration provision, and Soltero's continued employment and receipt of benefits under the joint-employment agreement and dispute resolution plan required arbitration of covered claims arising while those agreements were in effect.
4. Global could enforce the arbitration agreements only for claims arising during the period those agreements were effective, not for claims arising from Soltero's alleged wrongful termination after Global's operating agreement with Dickason ended.
5. Mandamus is conditionally available to correct the erroneous denial of contractual arbitration rights under the Federal Arbitration Act when there is no adequate remedy by appeal.

KEY QUOTATIONS

“A party seeking to compel arbitration is required to establish the existence of a valid arbitration agreement and show that the claims raised in the pleadings fall within the scope of that agreement.” (Opinion text, Discussion)

“We find that under this substantial benefits type of equitable estoppel, the court should have granted the motion to compel arbitration.” (Opinion text, Discussion)

FACTUAL BACKGROUND

Soltero worked for Global and became a joint employee of Global and dmDickason in 2002 after signing an employment agreement and a dispute resolution plan containing broad arbitration provisions. Global later ended its relationship with dmDickason on December 31, 2005, and terminated Soltero's employment on January 4, 2006. Soltero sued Global in 2007 for wrongful termination, national-origin discrimination, and retaliation based on alleged reports of sexual harassment. The trial court denied Global's motion to compel arbitration.

PROCEDURAL HISTORY

Angelica Soltero sued Global for wrongful termination, including claims alleging national-origin discrimination and retaliation under the Texas Labor Code. Global moved to compel arbitration based on arbitration agreements executed during Soltero's joint employment with Global and dmDickason Staff Leasing Company. The County Court at Law Number Six of El Paso County denied the motion and Global's motion for reconsideration, prompting Global to seek mandamus relief.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The trial court must vacate its order denying Global's motion to compel arbitration, compel Soltero to arbitrate claims arising before termination of the joint agreement between Global and Dickason, and stay all proceedings pending arbitration. The writ will issue only if the trial court fails to comply.

CASES CITED

- In re American Nat'l Ins. Co., 242 S.W.3d 831, 833-34 (Tex. App.—El Paso 2007, orig. proceeding)
- Walker v. Packer, 827 S.W.2d 833, 839-40 (Tex. 1992) (orig. proceeding)
- In re Border Steel, Inc., 229 S.W.3d 825, 829, 832-33 (Tex. App.—El Paso 2007, orig. proceeding)
- In re FirstMerit Bank, N.A., 52 S.W.3d 749, 753 (Tex. 2001) (orig. proceeding)
- In re Bunzl USA, Inc., 155 S.W.3d 202, 209 (Tex. App.—El Paso 2004, orig. proceeding [mand. denied])
- In re East Tex. Med. Ctr. Athens, 154 S.W.3d 933, 936 (Tex. App.—Tyler 2005, orig. proceeding)
- West v. Solito, 563 S.W.2d 240, 244-45 (Tex. 1978) (orig. proceeding)
- In re Dallas Peterbilt, Ltd., 196 S.W.3d 161, 163 (Tex. 2006)
- In re Weekley Homes, L.P., 180 S.W.3d 127, 132-33 (Tex. 2005) (orig. proceeding)
- In re Kellogg Brown & Root, Inc., 166 S.W.3d 732, 739 (Tex. 2005) (orig. proceeding)
- TC Arrowpoint, L.P. v. Choate Constr. Co., No. 3:05-CV-00267, 2006 WL 91767, at *12 (W.D.N.C. Jan. 13, 2006)

- St. Clair v. Brooke Franchise Corp., No. 2-06-216-CV, 2007 WL 1095554, at *5 (Tex. App.—Fort Worth Apr. 12, 2007, no pet.)
- In re Neutral Posture, Inc., 135 S.W.3d 725, 730 (Tex. App.—Houston [1st Dist.] 2003, orig. proceeding)
- In re Merrill Lynch Trust Co. FSB, 235 S.W.3d 185, 191 (Tex. 2007) (orig. proceeding)

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