SUPREME COURT OF MISSISSIPPI

Mississippi Credit Center, Inc. v. Catherine Horton

Horton · No. No. 2004-CA-01699-SCT · Decided August 16, 2004

SUMMARY

The Supreme Court of Mississippi affirmed the denial of a motion to compel arbitration in a dispute involving consumer loan and credit-insurance transactions. Although the court rejected the trial court's finding that the arbitration agreement was procedurally unconscionable, it held that the defendants had waived their right to compel arbitration by substantially invoking the judicial process.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Dickinson, Justice; Waller, P.J.; Dickinson, J.; Randolph, J.; Smith, C.J.; Cobb, P.J.; Easley, J.; Carlson, J.; Graves, J.
JURISDICTION	Mississippi
DECIDED	August 16, 2004
DOCKET	No. 2004-CA-01699-SCT
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the Sunflower County Circuit Court's denial of defendants' motion to compel arbitration.
STANDARD OF REVIEW	The court reviewed the enforceability and scope of the arbitration agreement under the Federal Arbitration Act and determined waiver based on the defendants' litigation conduct and delay.
PRECEDENTIAL VALUE	Published, precedential Mississippi Supreme Court opinion.
PARTIES	MS Credit Center, Inc., d/b/a MS Loan Center, American Bankers Life Assurance Company of Florida, MS Casualty Insurance Company v. Catherine Horton

TOPICS

arbitration · waiver · unconscionability · contracts · civil procedure

PRACTICE AREAS

arbitration · contracts · civil procedure · commercial litigation · consumer protection

QUESTIONS PRESENTED

1. Whether the arbitration agreement was governed by and enforceable under the Federal Arbitration Act.
2. Whether Horton's claims fell within the broad scope of the arbitration agreement.
3. Whether the arbitration agreement was procedurally or substantively unconscionable.
4. Whether defendants waived their right to compel arbitration by substantially and unreasonably delaying pursuit of arbitration while actively participating in the litigation.
5. Whether the defendants' waiver principle should apply more broadly to affirmative defenses or other rights that could terminate or stay litigation.

HOLDINGS

1. The loan and insurance transactions had a sufficient nexus to interstate commerce, so the Federal Arbitration Act governed enforcement of the arbitration agreement.
2. The broad arbitration agreement covered all of Horton's claims against MS Credit and the insurance defendants because the claims arose out of or related to the loan and insurance transactions.
3. The arbitration agreement was neither procedurally nor substantively unconscionable and was valid and enforceable.
4. Defendants waived arbitration by combining an eight-month unjustified delay in pursuing arbitration with active participation in the litigation process.
5. A defendant's failure to timely and reasonably raise and pursue any affirmative defense or other affirmative matter or right that could terminate or stay litigation, coupled with active participation in the litigation, will ordinarily constitute waiver.

KEY QUOTATIONS

> *"However, where – as here – there is a substantial and unreasonable delay in pursuing the right, coupled with active participation in the litigation process, we will not hesitate to find a waiver of the right to compel arbitration."* (¶42)

> *"We do hold however that– absent extreme and unusual circumstances – an eight month unjustified delay in the assertion and pursuit of any affirmative defense or other right which, if timely pursued, could serve to terminate the litigation, coupled with active participation in the litigation process, constitutes waiver as a matter of law."* (¶45)

> *"Therefore, we reverse and render the circuit court's finding that the arbitration agreement was procedurally unconscionable, but affirm the circuit court's denial of Defendant's Motion to Compel Arbitration."* (¶46)

FACTUAL BACKGROUND

Catherine Horton obtained three loans from MS Credit Center, and in connection with her 2001 loan she signed a separate arbitration agreement and jury-trial waiver covering disputes relating to the loan and associated insurance transactions. She later sued MS Credit and insurance defendants over alleged inadequate disclosure of credit-insurance terms, asserting contract, tort, fiduciary-duty, and unconscionability claims. The defendants asserted arbitration but waited approximately eight months after answering while participating in the litigation, including consenting to a scheduling order, engaging in written discovery, and taking Horton's deposition.

PROCEDURAL HISTORY

Horton filed suit alleging nondisclosure and other misconduct concerning credit insurance purchased in connection with loans from MS Credit. Defendants asserted arbitration as an affirmative defense, but after participating in the litigation process, including discovery and a deposition, they moved to compel arbitration. The circuit court denied the motion on the ground that the arbitration agreement was procedurally unconscionable. The Mississippi Supreme Court held the agreement enforceable but affirmed denial of arbitration because defendants waived the right to compel it.

DISPOSITION

affirmed

CASES CITED

- Guiness-Harp Corp. v. Jos. Schlitz Brewing Co., 613 F.2d 468 (2d Cir. 1980)
- East Ford v. Taylor, 826 So. 2d 709, 713-16 (Miss. 2002)
- Shearson/Am. Express Inc. v. McMahon, 482 U.S. 220, 226 (1987)
- Doctor's Assocs., Inc. v. Casarotto, 517 U.S. 681, 686-88 (1996)
- Allied-Bruce Terminix Cos. v. Dobson, 513 U.S. 265, 273-74, 281 (1995)
- Russell v. Performance Toyota, Inc., 826 So. 2d 719, 722, 724 (Miss. 2002)
- Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24-25 (1983)
- American Heritage Life Ins. Co. v. Land, 321 F.3d 533, 539 (5th Cir. 2003)
- Pennzoil Exploration & Prod. Co. v. Ramco Energy Ltd., 139 F.3d 1061, 1067-68 (5th Cir. 1998)
- Mississippi Fleet Card, L.L.C. v. Bilstate, Inc., 175 F. Supp. 2d 894, 899 (S.D. Miss. 2001)
- First Family Fin. Serv., Inc. v. Fairley, 173 F. Supp. 2d 565, 570 (S.D. Miss. 2001)
- Blount v. Nat'l Lending Corp., 108 F. Supp. 2d 666, 669 (S.D. Miss. 2000)
- Pridgen v. Green Tree Fin. Servicing Corp., 88 F. Supp. 2d 655, 655, 657 (S.D. Miss. 2000)
- Entergy Miss., Inc. v. Burdette Gin Co., 726 So. 2d 1202 (Miss. 1998)
- Titan Indem. Co. v. City of Brandon, Miss., 27 F. Supp. 2d 693, 697 (S.D. Miss. 1997)
- Van Zandt v. Van Zandt, 86 So. 2d 466 (Miss. 1956)
- Bank of Indiana, Nat'l Ass'n v. Holyfield, 476 F. Supp. 104, 108, 110 (S.D. Miss. 1979)
- Cox v. Howard, Weil, Labouisse, Friedrichs, Inc., 619 So. 2d 908, 913-14 (Miss. 1993)
- Univ. Nursing Assocs., PLLC v. Phillips, 842 So. 2d 1270, 1278 (Miss. 2003)
- Sanderson Farms v. Gatlin, 848 So. 2d 828, 838 (Miss. 2003)
- Pass Termite & Pest Control v. Walker, 904 So. 2d 1030, 1035 (Miss. 2004)
- Scherk v. Alberto-Culver Co., 417 U.S. 506, 511 (1974)

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