

SUPREME COURT OF TEXAS

In re Macy's Texas, Inc.

291 S.W.3d 418 (Tex. 2009) · No. No. 08-0584 · Decided June 26, 2009

SUMMARY

The Supreme Court of Texas conditionally granted mandamus relief and directed the trial court to compel arbitration of an employee's workplace-injury claims. The court held that the employee could not avoid arbitration by disputing her employer's precise corporate name where the arbitration plan defined the company as her particular employer and the evidence showed she agreed to arbitrate with that employer.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Texas
DECIDED	June 26, 2009
DOCKET	No. 08-0584
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Macy's Texas petitioned for a writ of mandamus after the trial court denied its motion to compel arbitration and the court of appeals denied mandamus relief.
STANDARD OF REVIEW	Mandamus relief is appropriate when the relator establishes a clear right to relief and the trial court has abused its discretion; the opinion focused on whether the evidence established an enforceable arbitration agreement and the identity of the employer. The court also applied the FAA's requirement that arbitration agreements be in writing.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Texas
PARTIES	Macy's Texas, Inc., Relator v. Erica Tomsic, Real Party in Interest

TOPICS

- arbitration
- writ of certiorari
- appellate procedure
- civil procedure
- employment contracts

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the evidence established an agreement to arbitrate between Tomsic and her employer despite discrepancies among the legal names of the Macy's entities.
2. Whether Macy's was entitled to mandamus relief requiring the trial court to compel arbitration.

HOLDINGS

1. The affidavit alone was insufficient to establish the entities' corporate relationship because it was conclusory and did not establish the affiant's basis of knowledge or provide supporting documentation.
2. Tomsic agreed to arbitrate her workplace-injury claims with her employer, and she could not avoid arbitration by raising factual disputes concerning the employer's correct legal name.

KEY QUOTATIONS

"We agree with Tomsic that the affidavit alone is insufficient to require relief." (419)

"As Tomsic agreed to arbitrate with her employer and purported to sue her employer, she cannot avoid arbitration by raising factual disputes about her employer's correct legal name." (420)

"Accordingly, without hearing oral argument, TEX. R. APP. P. 52.8(c), we conditionally grant the petition for writ of mandamus and direct the trial court to enter an order compelling arbitration." (420)

FACTUAL BACKGROUND

Erica Tomsic alleged that she injured her back while working at a Macy's department store in April 2007. In May 2007, she signed an Arbitration Acknowledgment referencing an employee injury-benefit plan that required arbitration of on-the-job injury claims against the employee's particular employer. Tomsic sued Macy's Texas, Inc., while pay stubs identified Macy's South as the paying agent for Macy's TX I, L.P.; Macy's responded with an assistant manager's affidavit stating that Tomsic worked for Macy's West. The trial court denied arbitration, but the Supreme Court concluded that Tomsic could not avoid arbitration merely by disputing the employer's correct corporate name.

PROCEDURAL HISTORY

Erica Tomsic sued Macy's Texas, Inc. for workplace injuries and related allegations. The trial court denied Macy's motion to compel arbitration, and the court of appeals denied mandamus relief. The Supreme Court of Texas conditionally granted mandamus without oral argument and directed the trial court to compel arbitration.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The trial court was directed to enter an order compelling arbitration. The writ would issue only if the trial court failed to comply.

CASES CITED

- In re Weekley Homes, L.P., 180 S.W.3d 127, 130 (Tex. 2005)
- In re Merrill Lynch Trust Co. FSB, 235 S.W.3d 185, 191 (Tex. 2007)
- Seawright v. American General Financial Services, Inc., 507 F.3d 967, 978 (6th Cir. 2007)
- General Electric Co. v. Moritz, 257 S.W.3d 211, 215 (Tex. 2008)

OPINION

PER CURIAM.

291 S.W.3d 418 (2009) In re MACY'S TEXAS, INC., Relator. No. 08-0584. Supreme Court of Texas. June 26, 2009. Michael Phillips, William Tracy Freeman, Neal D. Kieval, Evelyn Ailts Derrington, *419 Phillips & Akers, P.C., houston, TX, for Relator. W. Burl Brock, Karl B. Brock, Brock & Brock, P.C., San Antonio, TX, for Real party In Interest. PER CURIAM. Erica Tomsic alleges injury to her back while working as an employee at a Macy's department store in April 2007.

On May 9, 2007, she signed an "Arbitration Acknowledgment" stating she had "received and read (or had the opportunity to read) the Summary Plan Description... for the Federated Department Stores, Inc. Injury Benefit Plan for Texas Employees, effective February 1, 2005." [1] In the one-page Acknowledgment, she agreed to "immediately report to my supervisor" any accidents involving employees, customers, or herself.

She also acknowledged that the Plan required arbitration of on-the-job injuries against "the Company." On page 1 in bold black lettering, the Plan defined "the Company" as "your particular employer": All Texas employees of Federated Department Stores, Inc, Macy's West, Inc., and Federated Systems Group, Inc. will be covered by this program. References to the word "Company" in this booklet will mean your particular employer.

Tomsic nevertheless sued her employer in court, naming Macy's Texas, Inc. as her employer and the only defendant. At a hearing on the latter's motion to compel arbitration, she argued that she was not employed by any of the entities the Plan expressly named, and offered pay stubs showing she was paid by "Macy's South, Paying Agent for Macy's TX I, L.P."

In response, the defendant presented an affidavit by an assistant manager for human relations at Tomsic's store who said he was an employee of "Macy's South," Tomsic was an employee of "Macy's West," and that both entities were retail divisions of Macy's Inc., formerly known as Federated Department Stores, Inc. The trial court denied the motion to compel arbitration, and the court of appeals denied mandamus relief.

2008 WL 2828794. We agree with Tomsic that the affidavit alone is insufficient to require relief. While the trademark laws make it hard to believe Macy's South or Macy's West are not affiliated with Macy's Inc., it was the defendant's burden to prove they were. See *In re Weekley Homes, L.P.*, 180 S.W.3d 127, 130 (Tex.2005).

On that issue the affidavit was conclusory rather than conclusive, failing to establish any basis for the affiant's knowledge of corporate structure or attach any supporting documents whatsoever. And even if they were affiliates, treating affiliates as one entity for purposes of arbitration may be inconsistent with their separate creation. See *In re Merrill Lynch Trust Co. FSB*, 235 S.W.3d 185, 191 (Tex.2007).

But in this case the Plan itself stated that "the Company" would mean "your particular employer." This definition is certainly nonspecific, but it serves to avoid the kind of disputes about corporate divisions and affiliates that Tomsic tries to raise here.

The FAA contains no requirements for the form or specificity of arbitration agreements except that they be in writing; it does not even require that they be signed. See 9 U.S.C. § 2; *Seawright v. *420 Am. Gen. Fin. Servs., Inc.*, 507 F.3d 967, 978 (6th Cir.2007) (citing cases from the 2nd, 5th, 7th, and 10th Circuits). But in this case the defendant's affidavit establishes that the Acknowledgment was signed "For the Company" by an assistant manager at the Macy's store where Tomsic worked.

Tomsic offers no explanation why she would agree with anyone other than her employer on a health-benefits plan or arbitration for on-the-job injuries. Her suit asserts failure to provide proper equipment and a safe workplace both nondelegable duties owed by her employer. See *Gen. Elec. Co. v. Moritz*, 257 S.W.3d 211, 215 (Tex.2008).

As Tomsic agreed to arbitrate with her employer and purported to sue her employer, she cannot avoid arbitration by raising factual disputes about her employer's correct legal name. Accordingly, without hearing oral argument, TEX. R. APP. P. 52.8(c), we conditionally grant the petition for writ of mandamus and direct the trial court to enter an order compelling arbitration.

We are confident the trial court will comply, and our writ will issue only if it does not. NOTES [1] The Plan's effective date predated her injury, even though her Acknowledgment did not. As it is undisputed that the Plan adopted the Federal Arbitration Act, the limitations on such post-injury agreements in the Texas Act do not apply. See TEX. CIV. PRAC. & REM.CODE § 171.002(c) (prohibiting post-injury arbitration agreements unless signed by each party's attorney).