

SUPREME COURT OF SOUTH DAKOTA

Wright v. GGNSC Holdings LLC

2011 S.D. 95 (2011) · No. #25953 · Decided December 28, 2011

SUMMARY

The South Dakota Supreme Court held that Federal Arbitration Act § 5 required appointment of a substitute arbitrator after the National Arbitration Forum became unavailable to administer its Code of Procedure. The court concluded that the NAF Code was an ancillary logistical component rather than an integral part of the parties' arbitration agreement, and it reversed and remanded for appointment of a substitute arbitrator. The decision did not preclude consideration on remand of the plaintiffs' other defenses to arbitration.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Justice Zinter; Chief Justice Gilbertson; Justice Konenkamp; Justice Severson; Justice Wilbur
JURISDICTION	South Dakota
DECIDED	December 28, 2011
DOCKET	#25953
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendants appealed the circuit court's denial of their motion to compel arbitration after the National Arbitration Forum became unavailable to administer the arbitration.
STANDARD OF REVIEW	The interpretation of an arbitration agreement is reviewed de novo.
PRECEDENTIAL VALUE	published state supreme court opinion
PARTIES	GGNSC Holdings LLC d/b/a Golden Horizons and Golden Living, GGNCS-Rapid City Black Hills LLC d/b/a Golden Living Center—Black Hills, South Dakota, Beverly Enterprises, Inc. d/b/a Beverly Healthcare—Black Hills, Beverly Enterprises, Inc., Jeffery L. Gengler, Frances K. Franke, John Does 1-10, John Does 11-30 v. Lewellyn Wright, Della Richards, special co-administrator of the Estate of Katherine G. Wright

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QUESTIONS PRESENTED

1. Whether Section 5 of the Federal Arbitration Act required appointment of a substitute arbitrator after the National Arbitration Forum became unavailable.
2. Whether designation of the National Arbitration Forum Code of Procedure was an integral, rather than ancillary, part of the parties' arbitration agreement.
3. Whether the agreement's penalty provision for resorting to a lawsuit or other action prevented arbitration by a substitute arbitrator.

HOLDINGS

1. Section 5 of the Federal Arbitration Act applies when the designated arbitral forum becomes unavailable and requires the court, upon a party's request, to appoint a substitute arbitrator unless the designated forum was as important to the agreement as the agreement to arbitrate itself.
2. Designation of the National Arbitration Forum Code of Procedure was an ancillary logistical concern and did not make the agreement incapable of enforcement through a substitute arbitrator.
3. The NAF Code penalty provision did not bar arbitration by a substitute arbitrator after the NAF became unexpectedly unavailable.

KEY QUOTATIONS

"We hold that Section 5 applies, and that absent some other defense, Section 5 requires the appointment of a substitute arbitrator." (¶ 1)

"Under these circumstances, we conclude that designation of the NAF's Code of Procedure was an ancillary logistical concern that was not as important to the agreement as the agreement to arbitrate itself." (¶ 28)

"Reversed and remanded for the appointment of a substitute arbitrator." (¶ 29)

FACTUAL BACKGROUND

Katherine Wright was admitted to a GGNSC nursing home, and her husband, Lewellyn Wright, signed two identical resident and facility arbitration agreements on her behalf. The agreements required disputes concerning her care to be resolved exclusively through binding arbitration under the National Arbitration Forum Code of Procedure and governed by the Federal Arbitration Act. After Katherine died, her estate filed a wrongful-death action; while the motion to compel arbitration was pending, the National Arbitration Forum became unavailable to administer consumer arbitrations.

PROCEDURAL HISTORY

The estate filed a wrongful-death action in circuit court. GGNSC moved to compel arbitration under agreements signed on Katherine Wright's behalf. After a hearing concerning the authenticity of the signatures, Katherine's competency, and Lewellyn Wright's authority, the circuit court denied the motion solely because the National Arbitration Forum was unavailable. The Supreme Court of South Dakota reversed and remanded for appointment of a substitute arbitrator, without foreclosing consideration of the estate's other defenses to arbitration.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for appointment of a substitute arbitrator under Section 5 of the Federal Arbitration Act. The circuit court may still consider the estate's other pending defenses to arbitration because the prior decision addressed only the National Arbitration Forum's unavailability.

CASES CITED

- Masteller v. Champion Home Builders Co., 2006 S.D. 90, ¶ 9, 723 N.W.2d 561, 563
- Prima Paint Corp. v. Flood & Conklin Manufacturing Co., 388 U.S. 395, 401-02, 87 S. Ct. 1801, 1804-05, 18 L. Ed. 2d 1270 (1967)
- KPMG LLP v. Cocchi, 565 U.S. ___, 132 S. Ct. 23, 25 (2011)
- Reddam v. KPMG LLP, 457 F.3d 1054, 1060 (9th Cir. 2006)
- Brown v. ITT Consumer Financial Corp., 211 F.3d 1217, 1222 (11th Cir. 2000)
- Zechman v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 742 F. Supp. 1359, 1364-65 (N.D. Ill. 1990)
- Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 631, 105 S. Ct. 3346, 3356, 87 L. Ed. 2d 444 (1985)
- Thunderstik Lodge, Inc. v. Reuer, 1998 S.D. 110, ¶ 14, 585 N.W.2d 819, 822
- Rossi Fine Jewelers, Inc. v. Gunderson, 2002 S.D. 82, ¶ 7, 648 N.W.2d 812, 814
- Moses H. Cone Memorial Hospital v. Mercury Construction Corp., 460 U.S. 1, 24-25, 103 S. Ct. 927, 941, 74 L. Ed. 2d 765 (1983)
- In re Salomon Inc. Shareholders' Derivative Litigation, 68 F.3d 554, 559 (2d Cir. 1995)
- National Iranian Oil Co. v. Ashland Oil, Inc., 817 F.2d 326 (5th Cir. 1987)
- Carr v. Gateway, Inc., 241 Ill. 2d 15, 944 N.E.2d 327 (2011)
- Stewart v. GGNSC-Canonsburg, L.P., 9 A.3d 215, 217, 220 (Pa. Super. Ct. 2010)
- Grant v. Magnolia Manor-Greenwood, Inc., 383 S.C. 125, 678 S.E.2d 435 (2009)
- Great Earth Cos. v. Simons, 288 F.3d 878, 890 (6th Cir. 2002)
- Owens v. National Health Corp., 263 S.W.3d 876, 886 (Tenn. 2008)
- New Port Richey Medical Investors, LLC v. Stern ex rel. Petscher, 14 So. 3d 1084, 1087 (Fla. Dist. Ct. App. 2009)

- Jones v. GGNSC Pierre LLC, 684 F. Supp. 2d 1161, 1168 (D.S.D. 2010)
- Wilson v. Dell Financial Services, L.L.C., No. CIV.A. 5:09-CV-00483, 2010 WL 503093, at *2 (S.D.W. Va. Feb. 8, 2010)

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