SUPREME COURT OF TEXAS

Henry v. Cash Biz, LP

551 S.W.3d 111 (Tex. 2018) · Decided February 23, 2018

SUMMARY

The Texas Supreme Court held that borrowers' claims concerning a lender's use of the criminal justice system to collect payday loans fell within a broadly worded arbitration agreement. The court further held that the lender did not waive arbitration by providing information about dishonored checks to the district attorney, because the borrowers presented no evidence that the lender substantially invoked the judicial process. The court affirmed the court of appeals and required arbitration.

CASE DETAILS

COURT	Supreme Court of Texas
JURISDICTION	Texas
DECIDED	February 23, 2018
DISPOSITION	affirmed
PROCEDURAL POSTURE	Borrowers brought putative class claims against a short-term lender for malicious prosecution, fraud, and statutory violations arising from the lender's reporting of returned checks to the district attorney. The trial court denied the lender's motion to compel arbitration. The court of appeals reversed, holding that the claims fell within the arbitration provision and that the lender had not waived arbitration. The Supreme Court of Texas affirmed.
STANDARD OF REVIEW	An order denying a motion to compel arbitration is reviewed for abuse of discretion. Factual determinations supported by evidence receive deference, while legal determinations, including whether claims fall within an arbitration agreement and whether arbitration was waived, are reviewed de novo.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Texas; binding Texas precedent.
PARTIES	Cash Biz, LP, Redwood Financials, LLC, Cash Zone LLC d/b/a Cash Biz v. Hiawatha Henry, Addie Harris, Montray Norris, Roosevelt Coleman, Jr.

TOPICS

arbitration contracts commercial litigation class actions civil procedure

PRACTICE AREAS

arbitration contracts commercial litigation civil procedure

QUESTIONS PRESENTED

1. Whether the borrowers' claims arising from Cash Biz's reporting of returned checks and alleged use of the criminal justice system fell within the scope of the loan contracts' broad arbitration provision.
2. Whether Cash Biz impliedly waived its right to arbitrate by substantially invoking the judicial process through its conduct involving the criminal justice system.
3. Whether the trial court erred by refusing to enforce the contractual class-action waiver.

HOLDINGS

1. The borrowers' claims fell within the scope of the arbitration provision because the provision covered all disputes arising from or relating directly or indirectly to the loan agreements, and the claims were based on Cash Biz's method of collecting loans made under those agreements.
2. Cash Biz did not waive its right to arbitrate because the borrowers failed to prove that Cash Biz substantially invoked the judicial process. Providing information about returned checks to the district attorney, without evidence that Cash Biz filed formal charges, participated in criminal trials, or obtained criminal judgments, was insufficient.

KEY QUOTATIONS

> *"Given the presumption favoring arbitration and the policy of construing arbitration clauses broadly as noted above, it follows that the arbitration clause here applies-just as it says-to all disputes, even those relating only indirectly to the loan agreements."* (551 S.W.3d at 116)

> *"This evidence alone does not meet the Borrowers' burden to prove that Cash Biz substantially invoked the judicial process."* (551 S.W.3d at 118)

> *"We conclude, as he did, that although some lenders may be "gaming the system" by taking actions like the lenders took there and as Cash Biz took here, more is required for waiver of a contractual right to arbitrate."* (551 S.W.3d at 119)

FACTUAL BACKGROUND

Cash Biz made short-term loans to the borrowers under contracts containing broad arbitration provisions and class-action waivers. The borrowers gave Cash Biz postdated checks securing the loans; after the borrowers defaulted, the checks were deposited and returned for insufficient funds. Cash Biz provided information about the returned checks to the district attorney, after which bad-check charges were brought and later dismissed. The borrowers sued, alleging that Cash Biz improperly used the criminal justice system to collect civil debts.

PROCEDURAL HISTORY

The trial court denied Cash Biz's motion to compel arbitration, finding that the claims concerned use of the criminal justice system and that Cash Biz had substantially invoked the judicial process. Cash Biz took an interlocutory appeal. The court of appeals reversed, concluding that the broad arbitration provision covered the claims and that Cash Biz's conduct did not waive arbitration. The Supreme Court of Texas affirmed the court of appeals.

DISPOSITION

affirmed

CASES CITED

- In re Rubiola, 334 S.W.3d 220, 223 (Tex. 2011)
- In re FirstMerit Bank, N.A., 52 S.W.3d 749, 753-54 (Tex. 2001)
- Venture Cotton Cooperative v. Freeman, 435 S.W.3d 222, 227 (Tex. 2014)
- In re Services Corporation International, 85 S.W.3d 171, 174 (Tex. 2002)
- Moses H. Cone Memorial Hospital v. Mercury Construction Corp., 460 U.S. 1, 24-25 (1983)
- In re Labatt Food Service, L.P., 279 S.W.3d 640, 642-43 (Tex. 2009)
- Perry Homes v. Cull, 258 S.W.3d 580, 589-92, 595-98 & n.102 (Tex. 2008)
- Prudential Securities, Inc. v. Marshall, 909 S.W.2d 896, 899 (Tex. 1995)
- Neal v. Hardee's Food Systems, Inc., 918 F.2d 34, 37 (5th Cir. 1990)
- Pinto Technology Ventures, L.P. v. Sheldon, 526 S.W.3d 428, 439 (Tex. 2017)
- G.T. Leach Builders, LLC v. Sapphire V.P., LP, 458 S.W.3d 502, 511-12 (Tex. 2015)
- In re Fleetwood Homes of Texas, L.P., 257 S.W.3d 692, 694 (Tex. 2008)
- In re Bruce Terminix Co., 988 S.W.2d 702, 703-04 (Tex. 1998)
- Principal Investments, Inc. v. Harrison, 366 P.3d 688, 690-91 (Nev. 2016)
- In re Christus Spohn Health System Corp., 231 S.W.3d 475, 481 (Tex. App.—Corpus Christi 2007, no pet.)
- Vine v. PLS Financial Services, Inc., 689 F. App'x 800, 801, 806-07 (5th Cir. 2017) (per curiam)