

The Ninth Circuit Forced to Join the Fold: *Circuit City Stores v. Adams*

The Supreme Court's opinion in *Circuit City Stores v. Adams*, -- U.S. --, 121 S. Ct. 1302, 149 L.Ed.2d 234 (2001) illustrates how judicial attitudes towards arbitration have evolved from rejection to encouragement since the passage of the Federal Arbitration Act (the "FAA"), 9 U.S.C. §§ 1, *et seq.*

How the FAA Works

The FAA provides that:

A written provision in any maritime transaction or a contract evidencing a transaction involving [interstate]¹ commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.²

The FAA was enacted in 1925 as "a response to hostility of American courts to the enforcement of arbitration agreements, a judicial disposition inherited from then-longstanding English practice." *Circuit City*, 121 S. Ct. at 1307. The FAA does not make particular disputes arbitrable as a matter of law, but simply provides for nationwide enforcement of arbitration clauses in privately negotiated agreements involving interstate commerce. It holds parties to their bargains and, as such, merely ensures the application of run-of-the-mill contract principles.³ Preemptive federal legislation may seem unnecessary for such a non-controversial proposition. When the FAA was enacted, however, courts routinely refused to apply traditional contract rules to arbitration provisions. And despite widespread current acceptance of arbitration, and the fact that over 75 years have passed since the FAA was enacted, parties still encounter judicial resistance to arbitration in state courts requiring federal court intervention.⁴

¹ The definition of "commerce" in 9 U.S.C. § 1 makes clear that the FAA only applies to "commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation or between the District of Columbia and any State or Territory or foreign nation."

² 9 U.S.C. § 2.

³ While the FAA preempts any conflicting state law when it applies, most states have also enacted some form of the Uniform Arbitration Act, which mirrors many of the provisions of the FAA and covers agreements that may not be covered by the FAA. *See e.g.*, Steven K. Huber & E. Wendy Trachte-Huber, *Top Ten Developments in Arbitration in the 1990s*, 55 Disp. Resol. J. 24, 32 (January 2001).

⁴ *See e.g.*, *Doctor's Associates, Inc. v. Stuart*, 85 F.3d 975, 978 (2d Cir. 1996). The law firm of Wiggin & Dana LLP, the author's employer, represented Doctor's Associates, Inc. in this case.

A typical invocation of the FAA occurs like this: Alpha in Alabama and Omega in Ohio enter a contract by which Alpha agrees to sell Omega 25 widgets. The widget contract contains, along with its other standard contract provisions, a clause requiring that all disputes involving the contract be submitted to binding arbitration. Several months later, Omega discovers that the widgets it purchased are defective and, believing that a judge or jury would be more sympathetic to its claims than an arbitrator, brings a lawsuit in state court for breach of contract, unfair trade practices and anything else it can think of. Alpha, seeking to enforce the arbitration clause, files a separate lawsuit in federal court in Alabama or Ohio,⁵ petitioning the court to compel Omega to arbitrate in accordance with the agreement and requesting a stay of the state court lawsuit pending arbitration.⁶ Alpha and Omega then proceed to arbitration, and either may later ask the district court to enter judgment confirming any resulting arbitration award.⁷ By establishing this procedure, Congress ensured enforcement of arbitration clauses in contracts within the scope of Congress' commerce clause powers, unfettered by some judges' personal prejudices against arbitration.

Since the FAA was enacted, and with increased vigor in recent years, the United States Supreme Court has broadened the applicability of the FAA to a wide variety of types of disputes and has made clear that state law restrictions on arbitration are unenforceable in cases in which the FAA applies. For example, within the last twenty years the Court has made clear that the FAA is applicable in state courts and pre-empts state laws hostile to arbitration,⁸ has required district courts to compel arbitration of pendent state law claims,⁹ and has overruled its earlier decisions holding that the FAA did not apply to claims brought under the Securities Act of 1933.¹⁰ Indeed, the Court has unambiguously declared that Congress intended, through the application of the FAA, to regulate to the outer limits of its authority under the Commerce Clause.¹¹

Despite the clear judicial trend (in the federal judiciary, anyway) favoring arbitration, the question of whether the FAA applied to contracts of employment remained an open one. The language of the Act is admittedly ambiguous as it explicitly exempts from coverage "contracts of employment of seamen, railroad employees, *or any other class of workers engaged in foreign or interstate commerce.*" (emphasis added).¹² Despite this language, and perhaps influenced in part by the Supreme Court's increasingly solicitous approach to arbitration, all Circuit Courts of

⁵ Or in any other United States district court which, save for the arbitration agreement, would have jurisdiction. 9 U.S.C. § 4.

⁶ 9 U.S.C. §§ 3, 4. *See also Moses H. Cone Mem. Hosp. v. Mercury Const. Corp.*, 460 U.S. 1, 22 (1983).

⁷ 9 U.S.C. § 9.

⁸ *Southland Corp. v. Keating*, 465 U.S. 1 (1984); *Doctor's Associates, Inc. v. Casarotto*, 517 U.S. 681 (1996). The law firm of Wiggin & Dana LLP, the author's employer, represented Doctor's Associates, Inc. in *Casarotto*.

⁹ *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213 (1985).

¹⁰ *De Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477 (1989).

¹¹ *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 277 (1995).

¹² 9 U.S.C. § 1.

Appeals considering the issue except the Ninth Circuit had held that the FAA applied to agreements entered in the employment context. This year, as discussed below, the Supreme Court finally addressed the issue and, true to its recent trend, reversed the Ninth Circuit and held that the FAA does indeed apply to such agreements.

Circuit City Stores, Inc. v. Adams¹³

In *Circuit City*, a Circuit City employee in California, Saint Clair Adams, filed an employment discrimination suit against Circuit City in California state court. *Circuit City*, 121 S. Ct. at 1306. Because Adams had signed an arbitration agreement when applying for the job, Circuit City filed suit in the United States District Court for the Northern District of California seeking to enjoin the state court action and to compel arbitration of Adams' claims pursuant to the FAA. *Id.* The District Court entered the requested orders. *Id.* Adams appealed and, while the appeal was pending, the Ninth Circuit ruled (in an unrelated case) that the FAA did not apply to contracts of employment, leading to the reversal of the District Court's orders in the *Circuit City* case. *Id.* The Ninth Circuit's decision conflicted with those of all other Courts of Appeals addressing the issue, and the Supreme Court stepped in to settle the matter once and for all. *Id.* at 1306-07.

In a 5-4 decision, the Court held that the FAA did indeed apply to contracts of employment, grounding its decision in two separate sections of the FAA. First, as discussed above, the FAA explicitly exempts from its coverage "contracts of employment of seamen, railroad employees, or any other class of workers engaged in ... interstate commerce."¹⁴ Adams argued that the FAA was therefore inapplicable to all contracts of employment. However, most Courts of Appeals -- unlike the Ninth Circuit -- had concluded that the exclusion provision was limited to those workers "actually engaged in the movement of goods in interstate commerce." *Circuit City* at 1307. The Court, applying the maxim *ejusdem generis*, agreed that the limitations applied only to "contracts of employment of transportation workers. *Id.* at 1311.

Second, the FAA only applies to "transaction[s] involving [interstate] commerce."¹⁵ Adams therefore argued that the FAA could not apply to an employment dispute because an employee's relationship with his or her employer was not a "transaction" and therefore not covered by the FAA. *Id.* at 1308. Adams urged that the FAA should be read to cover only "commercial deals" or "merchant's sales," a position that the Ninth Circuit had recently adopted.¹⁶ In interpreting the meaning of "transactions" in this context, however, the Court referred back to § 1, the provision specifically exempting certain contracts of employment, and concluded that "transactions" must be read to include employment relationships because § 1 would otherwise be rendered superfluous. *Id.* at 1308. The Court therefore reversed the Ninth Circuit and remanded the case to the trial court "for further proceedings consistent with [its] opinion." *Id.* at 1313.

¹³ -- U.S. --, 121 S. Ct. 1302, 149 L.Ed.2d 234 (2001)

¹⁴ 9 U.S.C. § 1.

¹⁵ 9 U.S.C. § 2.

¹⁶ *Craft v. Campbell Soup Co.*, 177 F.3d 1070 (9th Cir. 1999).

Conclusion

The *Circuit City* decision, while not surprising given the weight of authority on the FAA's application to employment agreements, represented an important further step in ensuring uniform recognition of arbitration clauses across the country and bringing more arbitration agreements within the reach of the FAA.

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