CLIENT ALERTS & INSIGHTS

Know Your Arbitration Clause: What Remains of State Arbitration Statutes under the Ever-Growing FAA

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Arbitration is a prevalent method for dispute resolution, and most contracts include an arbitration clause. A recent Ohio Eighth District Court of Appeals decision emphasizes the importance of careful drafting and picking the appropriate arbitration regime.

In *Credit Acceptance Corporation v. Gloria Beard, et al.*, 2024-Ohio-4799, the parties had a sales contract that contained an arbitration clause governed by the Federal Arbitration Act ("FAA"). The Parma Municipal Court stayed the case and compelled arbitration. Appellants challenged the judgment of the Parma Municipal Court, relying on R.C. 27022.02(C) which makes the grant of a stay pending arbitration a final appealable order.

The Court of Appeals, however, denied the appeal for lack of appellate jurisdiction because (unlike an order *denying* arbitration) an order compelling arbitration and staying a case is not an appealable order under the FAA. In doing so, the Court of Appeals determined that the FAA preempted Ohio state law because the parties' arbitration agreement specified that it was governed by the FAA and not by any state arbitration law.

The outcome would have been the same even if the contract had not specified the FAA at all. For purposes of compelling arbitration, a clause that does *not* specify an arbitration statute is governed by the FAA, and not by state arbitration law. This is true even if the contract generally specifies the substantive law of a specific state. *See Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 60 (1995) (holding that absent a clear statement about arbitrability law, a choice-of-law clause governs only the parties' "substantive rights and obligations," not the "allocation of power between alternative tribunals"); *see, e.g.*, *Cape Flattery Ltd. v. Titan Mar., LLC*, 647 F.3d 914, 921 (9th Cir. 2011) (under *Mastrobuono*, "courts should apply federal arbitrability law absent 'clear and unmistakable evidence' that the parties agreed to apply nonfederal arbitrability law.").

The *Gloria Beard* ruling highlights the importance of specifying which body of rules will govern your arbitration. Not only will this decision impact how the arbitration will proceed, but it also impacts the appealability of an order compelling arbitration.

Benesch continues to monitor arbitration trends so that our clients can be aware of new developments and best practices.

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