Ninth Circuit Decision on Arbitrability of Statutory Employment Claims

Arbitration clauses are extremely common in employment contracts. But, despite the Supreme Court's consistent pronouncements that arbitration agreements should be treated like any other contract, issues have lingered in the Ninth Circuit regarding compelling arbitration of statutory or civil rights claims arising from an employment relationship, and in what circumstances an employee has knowingly waived their right to pursue such claims in court.

A Quinn Emanuel appellate victory recently clarified the law on this issue in the Ninth Circuit. In *Zoller v. GCA Advisors* (Case No. 20-15595), Quinn Emanuel successfully argued that an arbitration clause stating that "any controversy or claim relating to or arising out of your employment" required the arbitration of all claims by a former employee, including statutory and civil rights claims.

I. Background

GCA Advisors is a global investment bank. Plaintiff, Ms. Zoller, joined GCA as a managing director in March 2014. Ms. Zoller's employment agreement contained an arbitration clause, which provided that:

"In the event of any controversy or claim relating to or arising out of your employment with the Company, the termination of that employment, this Agreement or interpretation, or because of an alleged breach, default, or misrepresentation of any of this Agreement's provisions, you agree that any such dispute shall be exclusively settled by final and binding arbitration."

After her termination in July 2016, Ms. Zoller filed suit against GCA in the Northern District of California, alleging 16 different causes of action, including various contract claims as well as claims of gender discrimination, denial of equal pay, and a conspiracy to violate her civil rights. The parties stipulated that Ms. Zoller's contract claims would be arbitrated pursuant to the terms of the arbitration clause in her employment agreement. GCA, then represented by different counsel, filed a motion to compel Ms. Zoller's statutory and civil rights claims to arbitration.

The District Court denied GCA's motion to compel arbitration on the grounds that Ms. Zoller had not "knowingly waived" her right to a judicial forum for her statutory and civil rights claims. In so finding, the District Court relied on a series of Ninth Circuit decisions from the 1990s which provide that a knowing waiver is required to compel statutory and civil rights claims to arbitration. According to the District Court, because the arbitration clause in Ms. Zoller's employment contract did not specifically state that statutory and civil rights claims were within its scope, Ms. Zoller had not knowingly waived her right to pursue those claims in a judicial forum. Quinn Emanuel appealed the District Court's decision.

II. The Issues on Appeal

It was not disputed that Ms. Zoller's arbitration agreement was valid and enforceable. Instead, the issues on appeal were whether the Ms. Zoller's statutory and civil rights claims were within the scope of the arbitration agreement or, alternatively, whether Ms. Zoller had knowingly waived her right to have those claims heard in court.

The Ninth Circuit's "knowing waiver" doctrine lay at the heart of the issues on appeal. Pursuant to that doctrine, which is unique to the Ninth Circuit, the scope of the Federal Arbitration Act is limited by certain federal civil rights statutes such that claims arising under those statutes can only be arbitrated if an employee has knowingly and voluntarily waived their right to a judicial forum. The cases establishing this knowing waiver doctrine arise from circumstances where employers sought to enforce arbitration agreements against employees who were not aware that they were agreeing to arbitrate, typically because those arbitration agreements were contained in a separate document to the one signed by the employee (for example, an employee handbook). *See Nelson v. Cyprus Bagdad Copper Corp.*, 119 F.3d 756, 762 (9th Cir. 1997); *Renteria v. Prudential Ins. Co. of America*, 113 F.3d 1104 (9th Cir. 1997); *Prudential Ins. Co. of America v. Lai*, 42 F.3d 1299 (9th Cir. 1994).

The question for the Ninth Circuit in this appeal was whether Ms. Zoller could show that this requirement applied in her case – as an employee who signed the very agreement that contained a broadly-worded arbitration clause.

III. The Ninth Circuit's Decision and Lessons for Employers

The Ninth Circuit found that Ms. Zoller had the burden to establish that the civil rights statutes pursuant to which her claims were alleged required a knowing and voluntary waiver in order to be compelled to arbitration. While the Ninth Circuit acknowledged a tension regarding how courts should analyze the knowing waiver doctrine, the Court assumed, "without deciding, that the knowing waiver requirement remains good law." Helpfully for employers relying on arbitration clauses to provide certainty in future employment disputes, the Court based its decision on the clear terms of the GCA arbitration agreement, which was found to encompass employment disputes and evidence a knowing waiver of a judicial forum to resolve statutory claims.

The Court distinguished the earlier knowing waiver cases because:

- Ms. Zoller's arbitration clause included explicit language regarding employment disputes.
- Ms. Zoller had access to the various documents with arbitration provisions.
- Ms. Zoller signed the documents that contained those arbitration provisions (and not an acknowledgement of receipt of a company handbook or a U4 form commonplace in the banking industry)
- Ms. Zoller was given an opportunity to consult with legal counsel before signing the agreements.

In such circumstances, Ms. Zoller's subjective understanding that she had not waived her right to a judicial forum could not overcome the clear and broad language of her arbitration agreement. As a result, all Ms. Zoller's statutory and civil rights claims were compelled to arbitration before FINRA.

In the wake of this decision, employers who want to ensure the enforceability of their arbitration agreements across all potential claims will be well served to make sure the terms and circumstances comport with the Ninth Circuit's latest guidance. Moreover, all parties should bear in mind that the question whether the Ninth Circuit's earlier "knowing waiver" cases remain good law remains subject to dispute and is likely to be litigated in future cases.

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If you have any questions about the issues addressed in this memorandum, or if you would like a copy of any of the materials mentioned in it, please do not hesitate to reach out to:

Diane Doolittle
Email: dianedoolittle@quinnemanuel.com
Phone: +1 650-801-5007

Derek Shaffer
Email: derekshaffer@quinnemanuel.com
Phone: +1 202-538-8123

Brian Cannon
Email: briancannon@quinnemanuel.com
Phone: +1 650-801-5055