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Federal Arbitration Act Forecloses State Supreme Court's Judicial Hostility Towards Arbitration

By: Emily J. Bordens

In a move considered by many legal analysts as reinforcing federal precedence favoring arbitration, the U.S. Supreme Court recently issued a *per curiam* decision, vacating an Oklahoma Supreme Court opinion. ***Nitro-Lift Technologies, LLC v. Eddie Lee Howard, et al.,*** **No. 11-1377, 568 U.S. ___, 184 L. Ed. 2d 328 (2012).**

In vacating the state court's opinion, the U.S. Supreme Court found that the lower court failed to adhere to a correct interpretation of the Federal Arbitration Act ("FAA" or the "Act") finding, in pertinent part, that "[b]y declaring the noncompetition agreements in two employment contracts null and void, rather than leaving that determination to the arbitrator in the first instance, the state court ignored a basic tenet of the Act's substantive arbitration law." *Nitro-Lift Technologies, LLC*, 184 L. Ed. 2d at 330-31.

The facts in this case are relatively straight forward. Nitro-Lift Technologies contracts with operators of oil and gas wells to provide services that enhance oil production. It entered into two employment contracts with the defendant-employees, which contained confidentiality and noncompetition agreements. The contracts contained the following arbitration clause:

> Any dispute, difference or unresolved question between Nitro-Lift and the Employee (collectively the "Disputing Parties") shall be settled by arbitration by a single arbitrator mutually agreeable to the Disputing Parties in an arbitration proceeding conducted in Houston, Texas in accordance with the rules existing at the date hereof of the American Arbitration Association.

Id. at 331. After working for Nitro-Lift on oil wells in several states including Arkansas, Oklahoma, and Texas, the defendant-employees quit and began working for one of Nitro-Lift's competitors. *Id.* Nitro-Lift served defendant-employees with a demand for arbitration. Defendant-employees then filed suit in Oklahoma seeking to enjoin the enforcement of the contracts on the grounds that they were null and void. *Id.* The trial court dismissed the complaint, finding that the contracts contained valid arbitration clauses and holding that, in this instance, the arbitrator and not the court must resolve the parties' dispute. On appeal, the Oklahoma Supreme Court reversed, stating that "despite the U.S. Supreme Court cases on which the employers rely, the existence of an arbitration agreement in an employment contract does not prohibit judicial review of the underlying agreement." *Id.* at 332 (internal quotations omitted).

At the outset, the U.S. Supreme Court found that it had jurisdiction over this appeal because it determined that the state court decision did not rest on adequate and independent state grounds; instead, the lower court incorrectly concluded that the underlying contract's validity "is purely a matter of state law for state-court determination." *Id.*

The U.S. Supreme Court went on to find that the lower court's decision disregards ample federal precedent regarding the FAA and instructed that state courts must abide by the FAA, which is the supreme law of the land and by the opinions of the U.S. Supreme Court interpreting this law. The Court then set forth the federal rule with regard to contract interpretation involving the FAA as follows:

> An arbitration provision is severable from the remainder of the contract, and its validity is subject to initial court determination; but the validity of the remainder of the contract (if the arbitration provision is valid) is for the arbitrator to decide.

Nitro-Lift Technologies, LLC, 184 L. Ed. 2d at 332. In vacating the decision below, the Court explained that, because the trial court found that the contracts contained valid arbitration clauses, and the Oklahoma Supreme Court did not hold otherwise, it was error for that Court to assume the arbitrator's role by declaring the noncompetition agreements null and void. *Id.*

Ultimately, this decision instructs that it is for the arbitrator to decide in the first instance whether a covenant not to compete is valid as a matter of law. This opinion also makes clear that there is strong federal policy favoring arbitration and state courts are required to adhere to and follow federal precedence.

The Bottom Line. This opinion is good news for employers who want their arbitration provisions enforced. These employers should also make sure the agreement contains a class waiver provision. For those employers who do not have arbitration agreements with their employees, they should strongly consider one. Given the extraordinary costs of defending employment-related lawsuits in today's environment, especially those involving class and collective actions, an enforceable arbitration agreement is an important risk management tool. Employers who fail to use it do so at their peril. ■

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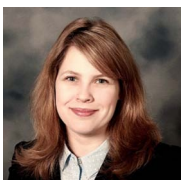

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