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Summary of Pacificare of Nev., Inc. v. Rogers, 127 Nev. Adv. Op. 71

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Summary

An appeal from a district court order denying a motion to compel arbitration in a tort and contract action.

Disposition/Outcome

The Court reversed the district court's order, finding that the parties did not expressly rescind the arbitration provision when renewing the original contract, so the provision survived. The Court also determined that as the Medicare Act expressly preempts any state laws or regulations with respect to the type of Medicare plan at issue here, the Act preempts Nevada's unconscionability doctrine to the extent that it would regulate federally approved Medicare plans.

Factual and Procedural History

From 2007 to 2008, Dorothy Rogers ("Rogers") received Medicare benefits from Pacificare's federally approved Medicare Advantage Plan, Secure Horizons. Each year, Rogers and Pacificare entered into separate contracts that provided the terms and conditions of coverage. In 2007, Rogers received treatment from the Endoscopy Center of Southern Nevada, a facility approved by Pacificare for use by its Secure Horizons plan members. After the Southern Nevada Health District discovered that the Endoscopy Center engaged in unsafe medical practices, Rogers tested positive for Hepatitis C.

Subsequently, Rogers sued Pacificare in district court on various tort claims, alleging that Pacificare failed to adopt and implement an appropriate quality assurance program. Pacificare moved to dismiss Rogers' claims and to compel arbitration based on an arbitration provision in the 2007 contract. Rogers argued that the 2008 contract, which did not include an arbitration provision, should govern. In the alternative, Rogers argued that the 2007 arbitration provision was unconscionable.

The district court determined that the 2007 contract should govern, but the arbitration provision was unconscionable and unenforceable. Thus, the district court rejected Pacificare's argument that the federal Medicare Act preempts Nevada's common law unconscionability doctrine. This appeal followed.

Discussion

Justice Parraguirre wrote for the unanimous Court, sitting en banc. On appeal, Pacificare argued that the arbitration provision in the 2007 contract governed Rogers' dispute, and that the district court erred in concluding that the arbitration provision was unconscionable under Nevada contract law because the federal Medicare Act preempts such law.

¹ By Jason DeForest

Pursuant to federal law, Medicare enrollees may choose each year to receive benefits from the government-run Medicare plan or from one of the various Medicare Advantage (“MA”) plans offered by private organizations.² As part of an annual reselection process, the MA organization must present its enrollees with an Evidence of Coverage (“EOC”) document, which provides the terms and conditions for the given year-long period of coverage. The Centers for Medicare and Medicaid Services (“CMS”) regulate MA plans and approve all EOCs prior to distribution.³

Rogers enrolled in Pacificare’s 2007 and 2008 MA plans and received an EOC for each year. The 2007 EOC contained an arbitration provision, but the 2008 EOC did not. The parties agreed that Rogers received medical treatment that resulted in her hepatitis C infection in January 2007, but because she did not discover the injury until 2008, the parties disagreed as to whether the 2007 or 2008 contract governed. Pacificare argued that the arbitration agreement in the 2007 contract governed because the injury occurred in 2007. Conversely, Rogers argued that the 2008 contract governed because it replaced the 2007 contract.

First, the Court concluded that the 2007 arbitration agreement governs the dispute at issue. The 2007 contract mandated arbitration for “any and all disputes,” specifically including disputes over “any medical services rendered under this contract.” Thus, because Rogers’ medical treatment took place in 2007, the obligations involving her medical procedures were created by the terms of the expired contract, including the arbitration clause. Further, the expiration of a contract does not necessarily terminate arbitration provisions included therein.⁴ In this case, the 2008 contract contained language purporting to “replace all prior” contracts. However, “absent the explicit intention to rescind an arbitration clause . . . the clause will survive even where the prior agreement itself is rescinded by the latter agreement.”⁵ Consequently, because the 2008 contract did not explicitly rescind the 2007 arbitration agreement, the provision survived the expiration of the 2007 contract and its replacement by the 2008 contract.

The Court also decided the Medicare Act preempts inquiry into whether the arbitration provision is unconscionable. The preemption provision in the Medicare Act at issue provides: “the standards established under [Part C] shall supersede any State law or regulation (other than State licensing laws or State laws relating to plan solvency) with respect to MA plans which are offered by MA organizations under this part.”⁶

To determine whether this provision preempted Nevada’s unconscionability doctrine, the Court considered the meaning of the words “standards” and “any state law or regulation.” “A ‘standard’ within the meaning of the preemption provision is a statutory provision or a regulation promulgated under the Act and published in the Code of Federal Regulations.”⁷ Certain

² See 42 C.F.R. § 422.62 (2011).

³ See 42 C.F.R. §§ 422.2260, 422.2262 (2010).

⁴ See *Nolde Bros. v. Bakery Workers*, 430 U.S. 243, 252 (1977) (“The parties obligations under their arbitration clause survived contract termination when the dispute was over an obligation arguably created by the expired agreement.”).

⁵ *Homestead Lead Co. of Mo. v. Doe Run Res.*, 282 F.Supp.2d 1131, 1142 (N.D. Cal. 2003).

⁶ 42 U.S.C. § 1395w-26(b)(3) (2003).

⁷ *Do Sung Uhm v. Humana, Inc.*, 620 F.3d 1134, 1149 (9th Cir. 2010).

contractual documents, such as an EOC, qualify as “marketing materials” regulated by CMS.⁸ Thus, these documents are “standards” for the purposes of the Medicare preemption provision. Regarding the “any state law or regulation” language, after a review of legislative history and case law, the Court determined that “all state standards, including those established through case law, are preempted to the extent they specifically regulate MA plans.”⁹ Accordingly, the Court concluded that the express provision in the Medicare Act foreclosed any inquiry into the arbitration provision’s unconscionability.

Conclusion

An arbitration clause will survive the renewal of a contract unless the parties expressly rescind the provision in the renewed contract. Further, with respect to the type of Medicare plan at issue in this case, the Medicare Act preempts Nevada’s unconscionability doctrine to the extent that it would regulate federally approved Medicare plans.

⁸ *See Id.* at 1151; *Clay v. Permanente Med. Grp., Inc.*, 540 F.Supp. 2d 1101, 1109 (N.D. Cal. 2007) (“By federal regulation, the EOC is considered ‘marketing material’ and must be approved by the CMS.”).

⁹ *Uhm*, 620 F.3d at 1156 (quoting commentary on Rules and Regulations, Department of Health and Human Services, 70 Fed. Reg. 4588, 4665 (Jan. 28, 2005)).