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RUAG Ammotec GmbH v. Archon Firearms, Inc., 139 Nev. Adv. Op. 48 (Nov. 16, 2023)¹
WHEN A NONSIGNATORY SEEKING TO COMPEL ARBITRATION SHOWS BOTH A
RIGHT TO ENFORCE THE CONTRACT AND JUSTIFIES COMPELLING ANOTHER
NONSIGNATORY UNDER STANDARD CONTRACT LAW OR ESTOPPEL,
COMPELLING ARBITRATION IS APPROPRIATE.

Summary

The Supreme Court of Nevada found that under certain circumstances, a nonsignatory to a contract with an arbitration clause can compel another nonsignatory to participate in arbitration. This compulsion is appropriate if the nonsignatory seeking to compel arbitration shows both the right to enforce the contract and that compelling arbitration aligns with standard principles of contract law or estoppel. The Court reversed the district court's orders denying motions to compel arbitration and remanded for further proceedings.

Background

The dispute arose from agreements between Arsenal Firearms Ltd. and RUAG Hungarian Ammotec, Inc., involving a pistol's manufacture and distribution. These agreements contained identical arbitration clauses. Subsequent contractual relationships and assignments led to a complex web of parties, with both RUAG and Arsenal entities as defendants in a lawsuit filed by Archon Firearms, Inc. Archon's lawsuit alleged breach of contract and requests for declaratory relief. RUAG entities, as nonsignatories to the original contracts, sought to compel arbitration, which the district court denied. This appeal followed.

Discussion

I. The first motion to compel arbitration was premised on arbitration clauses in the RUAG-Arsenal Contracts.

The issue was whether RUAG-Germany, a nonsignatory, could compel Archon, another nonsignatory, to arbitration under the RUAG-Arsenal Contracts. These contracts included a delegation provision referring to International Chamber of Commerce (ICC) Rules of Arbitration, which assign the arbitrator the role of deciding issues related to the arbitration agreement's existence, validity, or scope.² This understanding aligns with the precedent set in *Portland Gen. Elec. Co. v. Liberty Mut. Ins. Co.* and *Rent-A-Center, West, Inc. v. Jackson*, where incorporated ICC Rules showed that questions about the power to arbitrate were handed to the arbitrator.³

¹ By Aika Dietz.

² ICC RULES, ARTICLE 6(3).

³ See *Portland Gen. Elec. Co. v. Liberty Mut. Ins. Co.*, 862 F.3d 981, 985 (9th Cir. 2017) (holding that the incorporation of the ICC Rules into an arbitration agreement is clear evidence that parties intended to delegate questions of arbitrability to the arbitrator); *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 68–69 (2010) (finding that an agreement to arbitrate threshold issues, such as whether parties have agreed to arbitrate or whether their agreement covers a particular controversy, is valid and can be separately enforceable from the underlying contract).

A. Courts appear split on whether an arbitration agreement’s enforceability as to a nonsignatory is an arbitrability question delegable to an arbitrator.

The opinion discusses the split in judicial perspectives on whether the enforceability of an arbitration agreement by non-signatories is a question for the courts or for an arbitrator. The court cites cases such as *Blanton v. Domino’s Pizza Franchising LLC*, *Britannia-U Nigeria, Ltd. v. Chevron USA, Inc.*, *Eckert/Wordell Architects, Inc. v. FJM Properties of Willmar, LLC*, and *De Angelis v. Icon Entm’t Grp. Inc.*, which suggest that such questions might be appropriate for an arbitrator’s decision.⁴ In contrast, cases like *Newman v. Plains All Am. Pipeline, L.P.* and *QPro Inc. v. RTD Quality Servs. USA, Inc.* lean towards judicial determination.⁵

B. The issue is one of contract formation that must be decided by the courts.

The Court agreed with the logic in *In re StockX*, emphasizing that matters concerning contract creation, like an arbitration agreement, should always be resolved by the courts.⁶ It pointed out that even if an arbitration agreement includes a section that assigns certain decisions to an arbitrator, the court still has the fundamental duty to verify that the contract itself actually exists. The Supreme Court in *Henry Schein, Inc. v. Archer and White Sales, Inc.* also made it clear that the courts have to decide if there's really an arbitration agreement before an arbitrator can be brought in to resolve any issues.⁷

The Court stressed a key point: before giving an arbitrator the job of sorting out disputes under an arbitration deal, a judge has to first make sure the deal is real and valid. This emphasis arises from a recognition that arbitration is rooted in contract, and without a contract, there can be no arbitration.

II. *The second motion to compel arbitration, where the RUAG defendants sought to compel the Arsenal defendants to arbitrate their crossclaims, was premised in part on the Settlement Agreement.*

⁴ *Blanton v. Domino’s Pizza Franchising LLC*, 962 F.3d 842, 852 (6th Cir. 2020) (holding that the question of whether a non-signatory can enforce an arbitration agreement is appropriate for an arbitrator’s decision based on the incorporation of a delegation clause); *Britannia-U Nigeria, Ltd. v. Chevron USA, Inc.*, 866 F.3d 709, 715 (5th Cir. 2017) (holding that an incorporated delegation clause in an arbitration agreement applies to claims against non-signatories, suggesting arbitrability questions are for the arbitrator); *Eckert/Wordell Architects, Inc. v. FJM Properties of Willmar, LLC*, 756 F.3d 1098, 1100 (8th Cir. 2014) (holding that the question of whether a non-signatory can compel a signatory to arbitrate is a threshold question of arbitrability subject to delegation to the arbitrator); *De Angelis v. Icon Entm’t Grp. Inc.*, 364 F. Supp. 3d 787, 797 (S.D. Ohio 2019) (holding that the question of whether a non-signatory can enforce an arbitration agreement is a matter of the enforceability of the arbitration clause that can be delegated to the arbitrator).

⁵ *Newman v. Plains All Am. Pipeline, L.P.*, 23 F.4th 393, 398 (5th Cir. 2022) (holding that the court must decide whether a non-signatory can enforce an arbitration agreement, not an arbitrator, emphasizing the court’s role in determining the existence and enforceability of arbitration agreements); *QPro Inc. v. RTD Quality Servs. USA, Inc.*, 761 F. Supp. 2d 492, 497 (S.D. Tex. 2011) (holding that when the issue is whether a non-signatory to an arbitration clause may enforce it against a signatory, it is a matter for the court to decide, underscoring the judicial determination of arbitrability involving non-signatories).

⁶ *In re StockX Customer Data Sec. Breach Litig.* 19 F.4th 873, 879 (6th Cir. 2021).

⁷ *Henry Schein, Inc. v. Archer and White Sales, Inc.* 586 U.S. 139 S. Ct. 524, 529 (2019).

The second motion focused on compelling arbitration based on the Settlement Agreement, which similarly contained a delegation provision. The court distinguished this scenario from the first motion by noting that the Settlement Agreement included both signatories and non-signatories.

Conclusion

For RUAG-Germany, Arsenal, and AF-PTG in the first motion, the Court found an error in the district court's decision to deny the motion since the agreement's delegation provision removed the court's authority to decide on arbitrability issues.⁸

As for the non-signatories to the Settlement Agreement (ArsenalUSA, RUAG-Holding, and RUAG-USA), the court reiterated its position from the first motion, mandating a district court determination on whether a binding arbitration agreement involving the non-signatories exists. The court underscored that if an arbitration agreement is clearly established and delegates threshold arbitrability issues to an arbitrator, then the arbitrator should resolve whether a specific claim falls within the arbitration's scope.⁹

⁸ *Id.*

⁹ *See Uber Techs., Inc. v. Royz*, 138 Nev. Adv. Op. 66, 517 P.3d 905, 910 (2022). (holding that “the district court may not bypass contract language delegating threshold issues to the arbitrator by finding that the arbitration agreement does not apply to the dispute”).