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Pennsylvania Court Rules that Arbitrators Should Decide Whether an Arbitration Agreement Has Been Revoked

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BY STRICTLY CONSTRUING A COURT'S ROLE TO THE QUESTIONS OF WHETHER A VALID AGREEMENT EXISTS AND WHETHER A DISPUTE FALLS WITHIN THE TERMS OF AN ARBITRATION AGREEMENT, THE PENNSYLVANIA COMMONWEALTH COURT'S DECISION MAKES CLEAR THAT IT IS INAPPROPRIATE FOR COURTS TO ENGAGE IN ANY ADDITIONAL ANALYSIS OF ARBITRABILITY.

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Executive Summary

A recent split-decision of the Commonwealth Court of Pennsylvania reinforces the limited role that courts play in evaluating issues of arbitrability under Pennsylvania law. In *Hammond v. Southeastern Pennsylvania Transportation Authority (SEPTA)*, the court tackled the issue of who should decide whether a parties' agreement to arbitrate a dispute has been revoked — the court or the arbitrator. Although the trial court reasoned that the interpretation of a revocation clause in an arbitration agreement is an issue of law for the court to decide, the Commonwealth Court reversed, emphasizing the two narrow questions before a court when deciding whether arbitration is appropriate: (1) whether a valid arbitration agreement exists and (2) whether the dispute falls within the scope of the arbitration agreement. The Commonwealth Court stressed that, once these questions are answered affirmatively, a court's analysis is complete and arbitration must be compelled.

The Commonwealth Court's decision failed to consider whether a party's revocation of an arbitration agreement involves an issue of substantive law that should be decided by the court, as the dissent suggested. Rather, by strictly applying the familiar two-question framework, the court avoided consideration of the difficult, and often blurred lines, between substantive and procedural law, thereby promoting the general rule in favor of arbitration. As such, the decision should be viewed as a victory for arbitration proponents because it clearly limits the courts' analysis to the determination of the validity and scope of an arbitration agreement and precludes examination of related questions that could be deemed by a court to entail questions of substantive law.

Although this case arose in the personal injury context, the court addressed arbitration law principles applicable to any contract, including an acquisition agreement or other commercial contract, that contains a provision that attempts to modify or limit the circumstances under which arbitration can take place. It will be interesting to see if other state courts will follow the approach adopted by the Commonwealth Court of Pennsylvania.

Background

The dispute between Mr. Hammond, a train conductor, and his employer, SEPTA, stemmed from injuries Mr. Hammond allegedly sustained to his shoulder while working on the job. Rather than file a lawsuit against SEPTA, Mr. Hammond voluntarily entered into an arbitration agreement and initiated arbitration against SEPTA on March 26, 2013. The arbitration agreement contained the following provision, which gave either party the right to unilaterally revoke the arbitration:

either Party may revoke the Agreement in the event that by the close of discovery the Parties do not agree on the minimum (low) and maximum (high) of the actual award and, if Claimant claims a permanent disability that precludes his/her return to work at SEPTA, Claimant does not agree to resign from the employ of SEPTA and release future medical payments and future indemnity payments under the Workers' Compensation Act.

Hammond v. SEPTA, No. 1166 C.D. 2014, 2015 Pa. Commw. LEXIS 195, at *2 (Pa. Commw. Ct. May 1, 2015).

The parties devoted the next 11 months to arbitrating the dispute — engaging in written discovery and document productions, conducting depositions and exchanging expert reports. Discovery closed on February 28, 2014. Three weeks later, and just days before the scheduled hearing date, Mr. Hammond's counsel informed SEPTA that Mr. Hammond had decided to revoke the arbitration agreement and file an action in the Court of Common Pleas of Philadelphia County. Despite Mr. Hammond's continued employment for SEPTA, Mr. Hammond took the position that he had a permanent disability that precluded him from returning to work.

On March 20, 2014, Mr. Hammond filed a personal injury and negligence action against SEPTA in the Court of Common Pleas. In response, SEPTA filed a preliminary objection, seeking the dismissal of the complaint due to the pendency of a prior agreement for alternative dispute resolution. Pa.R.C.P. 1028(a)(6). SEPTA argued that the arbitration agreement could not be revoked because (1) Mr. Hammond refused to negotiate a high/low agreement in good faith, (2) Mr. Hammond had not claimed a permanent disability prior to the close of discovery, and (3) Mr. Hammond continued to work for SEPTA. Mr. Hammond countered that he had the right to revoke the arbitration agreement because SEPTA had made no effort to negotiate a high/low agreement and because he had properly claimed in his arbitration complaint that he had sustained an injury that "may be permanent in nature" and that now precluded him from returning to his full work duties.

Decision of the Court of Common Pleas

Both parties framed the issue as a matter of contract interpretation, and the Court of Common Pleas agreed. It reasoned that the interpretation of an agreement is a question of law for the court to decide. Specifically, the court focused on two issues of contract interpretation. First, it considered whether the arbitration agreement required Mr. Hammond to claim a permanent disability *prior* to the close of discovery. The court found the

arbitration agreement was ambiguous on this point and opted to read the “by the close of discovery” language in favor of Mr. Hammond and against the agreement’s drafter, SEPTA. Second, the court considered whether Mr. Hammond could revoke the arbitration agreement by claiming, rather than proving, the existence of a permanent injury. The court held that the plain language of the arbitration agreement merely required Mr. Hammond to “claim[] a permanent disability,” and Mr. Hammond satisfied this requirement. Accordingly, the court found that Mr. Hammond had properly revoked the arbitration agreement and denied SEPTA’s preliminary objection.

Decision of the Commonwealth Court

SEPTA appealed the order of the Court of Common Pleas to the Commonwealth Court pursuant to 42 Pa. C.S. § 7320(a)(1), which governs appeals relating to proceedings to compel or stay arbitration. In a 2–1 decision, the Commonwealth Court decided that it was inappropriate for the trial court to engage in arbitration agreement interpretation because such questions are for arbitrators, not the courts, to decide. In reaching its decision, the court emphasized the limited role of courts when examining arbitration agreements, stating:

[J]udicial inquiry as to whether arbitration is appropriate is limited to the following two questions: (1) whether an agreement to arbitrate was entered into, and (2) whether the involved dispute comes within the ambit of an arbitration provision. If both questions are answered affirmatively, the trial court’s inquiry ends, and the arbitrator is responsible for resolving further disputes.

Hammond, 2015 Pa. Commw. LEXIS 195, at *5–6 (internal quotations and citations omitted).

The court observed that the trial court had examined both of these questions and concluded that a valid agreement existed and Mr. Hammond’s claim fell within the scope of that agreement. The trial court, however, erred, when it continued its analysis to determine whether Mr. Hammond properly revoked the arbitration agreement.

In support of its decision, the court relied on the Pennsylvania Superior Court’s holding in *Santiago v. State Farm Insurance Co.*, 683 A.2d 1216 (Pa. Super. 1996). There, the court reversed a trial court’s order denying a motion to compel arbitration based on its interpretation of a venue provision in the parties’ arbitration agreement. The Pennsylvania Superior Court reasoned that it was inappropriate for the trial court “to make factual find-

ings and interpret what is apparently ambiguous language in the policy” — both of which are jobs for the arbitrator. *Hammond*, 2015 Pa. Commw. LEXIS 195, at *7–8 (quoting *Santiago*, 683 A.2d at 1219). After concluding that a valid arbitration agreement existed, the court’s task was complete, and arbitration should have been compelled. *Id.* (citing *Santiago*, 683 A.2d at 1219). For the same reasons, the Commonwealth Court ruled that the trial court’s interpretation of the revocation clause infringed on the role of the arbitrator and, therefore, should be reversed.

In her dissent, Judge Rochelle Friedman explained that, although the role of courts may be limited when examining arbitration agreements, it is still necessary for courts to address questions of substantive arbitrability. Here, the trial court was required to interpret the revocation clause in order to determine the scope of the arbitration agreement and whether Mr. Hammond’s claim fell within the terms of the agreement. Having concluded that the arbitration agreement was properly revoked, the trial court correctly decided that no valid agreement to arbitrate existed and the dispute fell outside the scope of the agreement.

Conclusion

The Commonwealth Court’s decision requires faithful adherence to the court’s limited role in deciding whether claims are arbitrable. By strictly construing this role to the two questions of whether a valid agreement exists and whether a dispute falls within the terms of an arbitration agreement, the Commonwealth Court’s decision makes clear that it is inappropriate for courts to engage in any additional analysis, even if it could have a substantive bearing on whether the claims should be arbitrated. As the dissent points out, this limited framework can be at odds with the more general rule of leaving issues of substantive arbitrability for the court and issues of procedural arbitrability for the arbitrator. However, the decision should be seen as a welcome sign to proponents of arbitration because it takes away some of the guesswork inherent in deciding whether interpretation of a provision of an arbitration agreement involves decisions of substantive or procedural law. It will be interesting to see if other state courts will follow the approach adopted by the Commonwealth Court of Pennsylvania.