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Appellate Reports

RETROACTIVE APPLICATION OF ARBITRATION AGREEMENTS IN EMPLOYMENT ACTIONS

Salgado v. Carrows Restaurants, Inc.

(2019) __ Cal.App.5th __ (Second Dist., Div. 6.)

Salgado began working at Carrows in 1984. On November 22, 2016, she filed a lawsuit in the Ventura County Superior Court against it, alleging employment discrimination and violation of civil rights.

On September 5, 2017, Carrows filed a motion to compel arbitration. Carrows argued that Salgado "entered into a binding and enforceable agreement to arbitrate all claims arising out of her employment with Defendants, and all causes of action alleged in her Complaint arise out of such employment." The arbitration agreement attached to the motion indicated that Salgado signed the agreement on December 7, 2016 – hence *after* she had filed her lawsuit.

The arbitration agreement contained two relevant provisions. The first provision provided, "The Company and I agree and acknowledge that we will utilize binding arbitration as the sole and exclusive means to resolve all disputes which may arise out of or be related in any way to my application for employment and/or employment, including but not limited to the termination of my employment and my compensation." The second provision provided, in relevant part, "Both the Company and I agree that any claim, dispute, and/or controversy that I may have against the Company ... or the Company may have against me, shall be submitted to and determined exclusively by binding arbitration ...."

Salgado contended that the arbitration agreement only applied to future claims, because it refers to all "disputes which *may* arise." She argued that this only applies to future claims. Carrows responded that the "may arise" language is followed by the second phrase, "or be related in any way to my application for employment and/or employment." Carrows contended that the "use of the word 'or' means the preceding terms 'may arise' are not exclusive or controlling. So long as [Salgado's] employment dispute is the type of claim that is 'related in any way to [her] employment,' it falls within the terms of the Agreement." The Court of Appeal agreed. Each phrase in the agreement must be considered and given effect. The second phrase following "or" broadly applies to "all disputes" related "in any way" to employment. Salgado's lawsuit is a dispute that falls within the meaning of this provision.

In addition, the second provision includes a broad statement that the arbitration agreement applies to "any claim" she might have against Carrows; there is no qualifying language.

The court also rejected Salgado's claim that the arbitration agreement was not applicable because the dispute involved in her lawsuit occurred before the agreement was signed. The "contention that an agreement to arbitrate a dispute must pre-date the actions giving rise to the dispute is misplaced. Such a suggestion runs contrary to contract principles which govern arbitration agreements." The court then cited several decisions, mostly from other jurisdictions, that applied arbitration agreements retroactively.

Civil Procedure; amended complaints; allegations inconsistent with prior allegations; sham pleadings.

Zakk v. Diesel (2019) __ Cal.App.5th __ (Second Dist., Div. 4.)

Zakk sued Vin Diesel, One Race Films, Inc. and Revolution Studios for breach of an oral contract, breach of an implied-in-fact contract, intentional interference with contract, quantum meruit, and declaratory relief. He claimed he was entitled to be paid and receive an executive producer credit for a film that is a sequel to a film he had worked on and developed. In his original complaint he alleged that there was a single contract between the parties. After successive demurrers were sustained, he filed a third-amended complaint that alleged that there had been a series of contracts between the parties, instead of a single overarching agreement. The trial court sustained the defendants' demurrer to the third-amended complaint without leave to amend, finding that the amendment rendered the complaint a "sham pleading."

Specifically, it observed that "Plaintiff consistently alleged the existence of one oral or implied-in-fact contract, but suddenly, and without reference to any reason for the change, asserts the existence of multiple contracts." The court found that this change was "clearly an attempt by Plaintiff to engineer the [third amended complaint] to escape the reaches of a demurrer," and concluded that this was a sufficient basis to sustain the demurrer or strike the complaint. Reversed.

Read in context, the allegations of the overarching contract in the prior complaints implied it was a contract to enter into separate contracts with respect to each film, because it alleged a range of compensation and credits. Thus, it implied that the exact fee and credit Zakk would receive had to be agreed upon for each film. In other words, there would be a separate agreement for each film with the same general terms as alleged in the overarching contract, but with the specific compensation and credit to be given for that film.

Because the focus of Zakk's complaint has been, from the start and throughout the amended complaints, on the alleged agreement with respect to the "xXx" movie and its sequel, the omission from the third-amended complaint of the allegation of the overarching agreement has no practical effect. If anything, the amended pleading merely clarifies the basis for Zakk's claims for relief. Therefore the sham-pleading doctrine does not apply.

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