



HRHero.com
A division of BLR®

CALIFORNIA

EMPLOYMENT LAW LETTER

Part of your California Employment Law Service

Vol. 27, No. 17

June 12, 2017

ARBITRATION

Court of Appeal permits alleged joint employer to compel arbitration

by Michael Futterman and Jaime Touchstone
Futterman Dupree Dodd Croley Maier LLP

A temporary employee sued his staffing company and the company where he worked for wage and hour violations and unfair business practices. Both companies asked the court to compel arbitration based on the employee's arbitration agreement with the staffing company. The employee conceded that he would need to arbitrate his claims against the staffing company, but he objected to arbitrating his claims against the alleged joint employer, which wasn't a signatory to the arbitration agreement. The trial court granted the motion to compel for both the staffing company and the alleged joint employer. The court of appeal affirmed the trial court's ruling.

Temporary employee sues for wage and hour violations

Real Time Staffing Services, LLC, hired Narciso Garcia as a temporary hourly employee. As part of the hiring process, Garcia completed an employment application that included an arbitration agreement. The arbitration agreement provided that "any dispute" he and Real Time could not resolve informally would be determined by binding arbitration. The agreement defined "dispute" to include disagreements over wages, vacation pay, sick pay, overtime, and state and federal employment laws. Real Time assigned Garcia to work at Pexco, LLC, which was not a signatory to the arbitration agreement.

Garcia sued Real Time and Pexco for Labor Code violations and unfair business practices. In general, he alleged that the unlawful conduct was performed by or attributable to "All Defendants." No distinction was made between Real Time and Pexco, which he claimed were his joint employers. Real Time and Pexco asked the court to compel arbitration.

Garcia did not dispute the validity of the arbitration agreement and conceded that he would have to arbitrate his claims against Real Time. But he asserted that he could not be forced to arbitrate against Pexco, which was not a party to the arbitration agreement. The trial court granted the motion to compel arbitration for both

Real Time and Pexco, and the court of appeal affirmed the trial court's decision.

Garcia was barred from denying Pexco's right to arbitrate

In general, parties may be compelled to arbitrate only if they have agreed to arbitrate. However, in some circumstances, nonsignatories to an arbitration agreement may compel the arbitration of a dispute arising out of the agreement. Under the doctrine of equitable estoppel, a nonsignatory may compel a signatory to arbitrate when the nonsignatory is being sued for claims "intimately founded in and intertwined with" the underlying obligations that are "based on the same facts and are inherently inseparable" from the arbitrable claims asserted against the signatory to the agreement.

Garcia argued that equitable estoppel did not apply because his claims against Pexco were not sufficiently "intertwined" with the underlying arbitration agreement. He maintained that the claims were based on alleged Labor Code violations rather than contract law. The court rejected that argument.

Garcia's claims against Pexco were rooted in his employment relationship with Real Time, and the broadly worded arbitration agreement between him and Real Time expressly included statutory wage and hour claims. He conceded that he would need to arbitrate his statutory claims against Real Time. However, it would be inequitable for the arbitration regarding his work for Pexco to proceed against Real Time if Pexco was prevented from participating.

Furthermore, Garcia's lawsuit did not distinguish between Real Time and Pexco but instead alleged that they were his joint employers. His claims against Pexco were based on the same facts he alleged against Real Time. The court of appeal refused to let Garcia link Pexco to Real Time for purposes of potential wage and hour liability while arguing that the arbitration agreement applied only to Real Time and not Pexco. He was equitably estopped from refusing to arbitrate with Pexco.

Agency exception also applied

The "agency exception" permits a nonsignatory to enforce an arbitration agreement when a plaintiff alleges that a defendant acted as an agent of one of the parties to the arbitration

June 12, 2017

agreement. Garcia alleged in his lawsuit that Real Time and Pexco were each other's agents, and he asserted identical claims against "All Defendants."

He argued that the courts should not rely on the "boilerplate" agency language in his complaint. However, his complaint contained more than "boilerplate"—it contained allegations of identical workplace violations against Real Time and Pexco, asserted they were joint employers, and referred to both collectively as "All Defendants" without distinction. That was not mere "boilerplate."

As alleged joint employers, Pexco and Real Time were agents of each other in their dealings with Garcia, so the agency exception applied. Accordingly, Pexco could compel arbitration of the claims against it under the arbitration agreement between Garcia and Real Time. *Garcia v. Pexco, LLC* (California Court of Appeal, 4th Appellate District, 4/24/17).

Bottom Line

Arbitration agreements remain viable in the employment context. Even nonsignatories to an arbitration agreement may fall within its scope when an employee seeks to hold two parties—in this case, joint employers—responsible for each other's allegedly wrongful acts.

The authors can be reached at Futterman Dupree Dodd Croley Maier LLP in San Francisco, mfutterman@fdcm.com and jtouchstone@fdcm.com