

U.S. SUPREME COURT ISSUES RULING FAVORABLE TO ARBITRATION OF FEDERAL STATUTORY CONSUMER PROTECTION CLAIMS: IS THERE HOPE FOR ARBITRATION OF EMPLOYMENT DISPUTES?

During December 2000, the U.S. Supreme Court decided a case entitled *Green Tree Financial Corp. v. Randolph*, holding that arbitration agreements requiring mandatory arbitration of federal statutory rights are not rendered unenforceable merely because the agreement is silent with regard to the costs of arbitration.

While the arbitration agreement in the *Green Tree* case was not contained in an employment agreement, this decision may be significant for employers. Many federal Courts of Appeal find reasonable employment arbitration agreements enforceable, but the Ninth Circuit Court of Appeals (including Washington, Oregon, California and other Western states) has declined to enforce arbitration provisions in employment agreements when federal statutory claims are at issue (for example, discrimination claims). The U.S. Supreme Court is expected to rule soon, in *Circuit City Stores v. Adams*, 194 F.3d 1070 (9th Cir. 1999), *cert. granted* November 6, 2000, with regard to whether employees' agreements to arbitrate claims are excluded from the enforcement provisions of the Federal Arbitration Act. Because of the favorable treatment accorded to the arbitration agreement in the *Green Tree* decision, *Green Tree* may foreshadow a decision in the pending *Circuit City* case that would permit enforcement of mandatory arbitration of federal statutory claims in the employment context.

In *Green Tree*, Larketta Randolph, a consumer, entered into a mobile home financing agreement with Green Tree Financial that provided for mandatory arbitration of disputes. The arbitration agreement was silent as to how the arbitration costs were to be paid or divided between the parties. Later Randolph sued alleging a violation of the Truth in Lending Act ("TILA") and the court granted Green Tree's motion to compel arbitration. On appeal, the Ninth Circuit held that since the arbitration agreement was silent as to payment of expenses, it was unenforceable because it posed a risk that Randolph's ability to vindicate her statutory rights under TILA would be "undone" by steep arbitration costs.

The U.S. Supreme Court disagreed. In words that may foreshadow the Court's much anticipated decision in *Circuit City*, the Court first acknowledged that the Federal Arbitration Act's purpose was to "reverse the longstanding judicial hostility to arbitration agreements . . . and to place arbitration agreements upon the same footing as other contracts." The Court went on to recognize that even federal statutory claims designed to further important social policies can be appropriately resolved through arbitration "so long as the prospective litigant effectively may vindicate his or her statutory cause of action in the arbitral forum." After holding that such vindication is not precluded when agreements are silent as to arbitration costs, the Court added that the party seeking to invalidate the agreement to arbitrate disputes bears the burden of establishing that arbitration costs would be prohibitive to the aggrieved party, preventing him or her from obtaining the benefits of statutory federal rights.

What This Means for Employers

Until the U.S. Supreme Court decides *Circuit City*, the current Ninth Circuit rule refusing to enforce arbitration agreements with regard to federal statutory claims in the employment arena remains the law in Washington, Oregon, California and other Western states. Therefore, employers in those states should remain aware that mandatory arbitration clauses in employment agreements might be unenforceable as to federal statutory claims brought by their employees. The *Green Tree* case provides hope, however, that the U.S. Supreme Court may allow enforcement of reasonable mandatory arbitration clauses for employment agreements in the near future. Employers considering whether to require their employees to agree to arbitrate employment disputes as a condition of employment should seek advice from counsel. We will continue to keep our readers informed of future developments in this area.

Because of the changing nature of this area of the law and the importance of individual facts, this information is not meant to provide legal opinions and is not a substitute for the advice of legal counsel.

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