

U.S. State Courts Do Not Have Authority To Rule On The Validity Of Contractual Provisions When A Contract Contains A Valid And Enforceable Arbitration Provision

The Federal Arbitration Act (“FAA”) provides that “a written provision in ..a contract evidencing a transaction involving commerce to settle by arbitration in a controversy thereafter arising out of such contract or transaction ...shall be valid, irrevocable, and enforceable....” 9 U.S.C. §2. Under United States Supreme Court precedent, unless a party attempting to avoid arbitration specifically attacks the validity of the arbitration provision, an arbitrator, rather than a judge, has the power to decide whether an agreement is enforceable. In the United States, many states limit the enforceability of non-compete agreements. For instance, an Oklahoma statute provides that an employee who signs a non-compete work agreement may still work for a competitor after termination as long as the former employee does not directly solicit business from the established customers of the former employer. The Oklahoma statute further provides that any agreement in conflict with this statute shall be null and void. Okla. Stat. Tit. 15 §219.

The United States Supreme Court confronted this issue of whether a state court may review an underlying employment agreement based upon a state statute restricting non-compete agreements, notwithstanding the existence of a valid arbitration provision. In *Nitro-Lift Technologies, L.L.C. v. Howard*, 133 S. Ct. 500 (2012), the U.S. Supreme Court concluded a state court violates the FAA by ruling on the validity of a non-compete agreement when there is a valid arbitration provision.

Nitro-lift Technologies LCC (“Nitro-Lift”), an oil and gas enhancer services company, entered into a non-compete agreement with two of its employees. The agreement prohibited the employees from working for a competitor for two years following termination and contained an arbitration provision that disputes arising under the agreement be settled by arbitration to be conducted in Houston, Texas. A year later, the two employees terminated their employment with Nitro-Lift and went to work for a competitor in Arkansas. Nitro-Lift thereafter claimed that the two former employees breached their non-compete agreements. In response, the two former employees filed suit in Oklahoma state court, seeking to declare the non-compete agreement null and void. The court dismissed the former employees’ action, finding the arbitration provision in the non-compete agreement valid. The Oklahoma Supreme Court disagreed and reversed, holding that the non-compete agreement was null and void consistent with Oklahoma’s public policy expressed in Oklahoma Statute Title 15 Section 219.

The U.S. Supreme Court reversed. The Court noted that the Oklahoma Supreme Court’s decision disregarded the Supreme Court’s precedent on the FAA. The Court noted that when the parties commit to arbitrate contractual disputes, attacks on the validity of the contract, as opposed to attacks on the validity of the arbitration provision, are to be resolved by the arbitrator. Thus, in finding the non-compete agreement null and void, the Oklahoma Supreme Court improperly assumed the role of the arbitrator. The U.S. Supreme Court noted that when a court finds an arbitration provision is valid, the validity of the agreement is then for the arbitrator to decide.

The holding in *Nitro-Lift* has important implications for parties entering into agreements that are limited or unenforceable under state law. An inclusion of an arbitration provision could strip away the state court’s power to rule on the validity of the agreement as a whole, leaving such decisions to be made by the arbitrator.

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