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**U. S. Supreme Court Favors Arbitration And
Allows Arbitrator to Decide Enforceability
of Arbitration Agreement**

On June 21, 2010, the U. S. Supreme Court ruled in a 5-4 decision that an arbitrator, not a court, should determine the validity of an arbitration agreement when the agreement expressly gives such authority to an arbitrator. Rent-A-Center, West, Inc. v. Jackson, No. 09-497, 2010 U.S. LEXIS 4981 (June 21, 2010). The Court held that where parties to an arbitration agreement include a delegation clause, which delegates authority to the arbitrator to decide gateway questions such as whether the agreement is enforceable or whether there is fraud, duress or unconscionability, courts will honor the parties' wishes and an arbitrator will decide such issues. However, if a party challenges the delegation clause itself, or the agreement is ambiguous regarding arbitrability, courts will intervene.

The Rent-A-Center decision clarifies that it is not always a judge's role to decide the fairness of arbitration, particularly where the parties have agreed expressly in writing that an arbitrator should decide whether the agreement is enforceable. In those instances, the Court will give effect to the language chosen by the parties in the arbitration agreement. Consequently, pursuant to a delegation clause, an arbitrator may determine that an agreement requires arbitration but the agreement may ultimately be deemed, as a whole, invalid. In other words, the arbitrator rules on whether the underlying agreement is valid in an arbitration proceeding, not in a court proceeding. Under Rent-A-Center, the interest in enforcing the parties' private right to contract outweighs the inherent possible contradiction of such a ruling.

Key Facts & Points of Law

Plaintiff Antonio Jackson brought a race discrimination claim under 42 U.S.C. § 1981 against his former employer, Rent-A-Center, in the U.S. District Court for the District of Nevada. Rent-A-Center moved to dismiss or stay and to compel arbitration under the terms of an arbitration agreement signed as a condition of Jackson's employment. The delegation clause in the agreement specifically provided:

The Arbitrator and not any federal, state or local court or agency, shall have exclusive authority to resolve any dispute relating to the interpreting, applicability, enforceability or formation of this Agreement including, but not limited to any claim that all or any part of this Agreement is void or voidable.

Id. at *5. Jackson argued that the agreement was unconscionable under Nevada law and, therefore, unenforceable. The district court rejected Jackson’s argument and compelled arbitration. The Ninth Circuit Court of Appeals reversed, holding that courts decide threshold questions of unconscionability, regardless of what an arbitration agreement states.

The U. S. Supreme Court reversed the Ninth Circuit and allowed the arbitrator to rule on unconscionability, pursuant to the parties’ plain language in the delegation clause in the arbitration agreement. The Court found that since Jackson challenged the validity of the entire agreement – not merely the delegation clause, it was proper for the arbitrator to decide the issue. Judge Scalia also noted in his opinion: “Nowhere in his opposition to Rent-A-Center’s motion to compel arbitration did [Jackson] even mention the delegation provision,” and raising it for the first time with the U.S. Supreme Court was “too late, and we will not consider it.” Id. at *22.

Implications for Employers

- Given the U.S. Supreme Court’s continued pro-arbitration stance as a vehicle to resolve legal disputes, district courts are increasingly limited in their power to rule on the fairness of arbitration agreements.
- The Court’s ruling is directly contrary to the proposed Arbitration Fairness Act, a legislative initiative pending in Congress which would prohibit or severely limit mandatory arbitration provisions in employment agreements.
- The Rent-A-Center decision limits the avenues through which an employee can challenge the fairness of an arbitration agreement in court. Therefore, employers wishing to resolve employment disputes through arbitration should include strong delegation clauses in arbitration agreements to reduce court involvement in arbitration dispute resolution.

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September 1, 2010

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