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ARBITRATION

Expert Analysis

SCOTUS to Decide If Exemption for Transportation Workers Extends to Independent Truckers

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On Feb. 26, 2018 the U.S. Supreme Court granted certiorari in *New Prime v. Oliveira*, 17-340. It took up two questions for review: (1) whether a dispute over applicability of the Federal Arbitration Act (FAA)'s Section 1 exemption must be resolved in arbitration pursuant to a valid delegation clause; and (2) whether the FAA's Section 1 exemption, which applies only to "contracts of employment" involving transportation workers, is inapplicable to agreements establishing an independent contractor relationship. A related issue is whether the question of independent contractor status is decided solely on the words of the contract or is a factual issue requiring discovery.

Background

New Prime (Prime) is an interstate trucking company that operates a student truck driver apprenticeship program. After Dominic Oliveira completed his apprenticeship as a trainee, Prime offered him the choice of working as a company driver or as an independent contractor. He signed a contract agreeing that he would be "deemed for all purposes to be an independent contractor and not an employee of Prime." In addition the agreement provided that "disputes arising under, arising out or relating to the relationship created by the agreement" would be subject to arbitration, "including the arbitrability of disputes between the parties." The agreement also contained a class action waiver provision. After working under the agreement as an independent contractor, Oliveira briefly stopped driving for Prime, and then returned as a company driver. Prime made deductions from its payments to Oliveira for lease payments owed on the truck, and required Oliveira to supply tools and fuel. During several pay periods, Oliveira owed money to Prime, despite having worked during the pay period. Oliveira then brought a class action lawsuit against Prime, alleging Fair Labor Standards Act violations and state law claims. Prime moved to compel arbitration under 9 U.S.C. §16. The U.S. District Court for the District of Massachusetts denied the motion. On appeal, the First Circuit affirmed. *Oliveira v. New Prime*, 857 F.3d 7 (1st Cir. 2017). The appellate court reasoned that whether the FAA Section 1 exemption applied was a question of law to be resolved by the court, even in the face of a valid clause delegating the issue of arbitrability to the arbitrator. Two members of the panel would have gone further, stating that "contracts of employment" for purposes of Section 1 include "transportation-worker agreements that establish or purport to establish independent-contractor relationships."

FAA Section 1

Section 2 of the FAA provides that an agreement to arbitrate is "valid, irrevocable, and enforceable, save

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upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. Section 1 of the FAA, however, provides that the FAA does not apply "to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." Id. §1. The Supreme Court has interpreted Section 1 to exempt transportation workers' employment contracts from the FAA. *Circuit City Stores v. Adams*, 532 U.S.105, 119 (2001).

A related issue is whether the question of independent contractor status is decided solely on the words of the contract or is a factual issue requiring discovery.

Who Decides Whether the Exemption Applies?

Prime relies on Eighth Circuit precedent holding that where the parties' agreement incorporates the rules of the American Arbitration Association, which provide that the arbitrator has the power to determine the arbitrator's own jurisdiction, the arbitrator has the authority to determine threshold questions of arbitrability, including the applicability of the Section 1 exemption *Green v. SuperShuttle International*, 653 F. 3d 766 (8th Cir. 2011). Oliveira, in turn, relies on a Ninth Circuit case, *In re Van Dusen*, in which the court explained that "a district court has no authority to compel arbitration under Section 4 [of the FAA] where Section 1 exempts the underlying contract from the FAA's provision." 654 F.3d 838 (9th Cir. 2011). The First Circuit in this case rejected the underlying premise of *Green*, and determined that "the question of whether the [Section] 1 exemption applies is an antecedent determination that must be made by the district court before arbitration can be compelled under the FAA." *Oliveira,* 857 F.3d at 14.

Does the Exemption Apply to Independent Contractors?

The district court ordered discovery as to whether Oliveira was truly an independent contractor, as "courts generally agree that the [Section] 1 exemption does not extend to independent contractors." Prime concedes that Oliveira is a "transportation worker," but argues that the Section 1 exception does not extend to independent contractors, and that discovery is inappropriate because whether or not Oliveira is an independent contractor is a question for the arbitrator. Oliveira also offers a textual argument that "contracts of employment" means simply "agreements to do work," and thus, does not distinguish between employees and independent contractors; and that allowing discovery on independent contractor status would circumvent federal policy embodied in the FAA in favor of enforcing arbitration agreements.

Implications

Prime contends that the First Circuit's decision would have a sweeping impact on the transportation industry rendering essentially all contracts with transportation workers unarbitrable. Oliveira counters that any ruling in this case will apply "only to contracts of employment of transportation workers and only to the Federal Arbitration Act," and that the enforceability of these contracts of employment under state law will not be affected. The U.S. Chamber of Commerce (Chamber) and the American Trucking Association (ATA) have both filed amicus briefs in support of Prime's position. The Chamber contends that the distinction between independent contractors and employees was well established in 1925, when the FAA was passed, and that the Supreme Court should not "[shoehorn] independent contractors into Section 1's exemption." The ATA defends the trucking industry's use of arbitration agreements as a cost-effective, business-friendly method of dispute resolution.

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