

## ALERTS AND UPDATES

### Supreme Court Allows Arbitrators to Determine Validity of Arbitration Agreements, Strengthening Enforcement

June 24, 2010

In a decision potentially affecting how a wide variety of arbitration agreements are enforced, on June 21, 2010, a narrowly-divided U. S. Supreme Court—in *Rent-A-Center, West, Inc. v. Jackson*<sup>1</sup>—held that, under the Federal Arbitration Act (FAA), arbitration agreements delegating to an arbitrator the ability to rule upon the validity of the arbitration agreement itself can be enforced without prior judicial review. Under the Supreme Court’s ruling, unless the party attempting to avoid arbitration raises a challenge going specifically to the validity of the delegation provision, the arbitrator (rather than a court) has the power to decide whether the agreement is enforceable.

In the *Rent-A-Center* case, Jackson—a former employee of Rent-A-Center (RAC)—filed an employment discrimination suit against RAC in federal district court. RAC then sought to enforce an agreement Jackson had signed requiring arbitration of all “past, present or future” disputes arising out of Jackson’s employment with RAC, and directing that “[t]he Arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any dispute relating to the interpretation, 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.” Jackson claimed that this agreement was unconscionable under state law and could not be enforced. RAC, in turn, argued that Jackson’s agreement to arbitrate the validity and enforceability of his arbitration agreement meant that the threshold question of unconscionability had to be decided by the arbitrator, not the court.

The Supreme Court began its analysis by noting the FAA’s “fundamental principle that arbitration is a matter of contract” and that agreements to arbitrate commercial disputes “shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.” Accordingly, there are only two ways to challenge an arbitration agreement: (1) to specifically challenge the validity of the agreement to arbitrate and (2) to challenge the contract as a whole. The former must be decided by a court before it can order arbitration, while the latter is a matter for the arbitrator to resolve. This is because only the first type of challenge is relevant in deciding the enforceability of the arbitration agreement, as the FAA provides that such agreements are “valid, irrevocable, and enforceable” without mention of the validity of the contract in which it is contained. In other words, even if an entire contract is otherwise invalid, an arbitration provision contained in it can be severed from the rest of an invalid contract and enforced. And as the FAA’s purpose is to place agreements to arbitrate on a par with other contracts, the same result holds true where a party to an arbitration agreement challenges it as a whole, but does not claim that one or more provisions of that contract cannot be enforced.

Because Jackson had not specifically challenged the validity of the arbitration agreement’s delegation of authority to the arbitrator to decide the threshold question of enforceability, the FAA mandated that the agreement be given effect and that the arbitrator be permitted to decide that question.

#### What This Case Means for Parties to Arbitration Agreements

There seems little doubt that *Rent-A-Center* will lead to a flood of new claims by parties seeking to avoid contractually-mandated arbitration by challenging specific provisions of their agreements as unenforceable, including but not limited to

delegation provisions such as the one at issue in this case. This “deconstruction” process will in turn strengthen the overall enforcement of arbitration agreements, as individual provisions of such contracts are less likely to be found invalid, unconscionable or unenforceable when taken in isolation. In addition, companies seeking to maximize both the enforceability and effectiveness of their agreements to arbitrate should include a delegation provision like the one involved in this case.

### **For Further Information**

If you have any questions about this *Alert*, please contact [Richard L. Seabolt](#), [Wayne A. Mack](#), [Brian J. Slipakoff](#), any [member](#) of the [Trial Practice Group](#) or the attorney in the firm with whom you are regularly in contact.

### **Note**

1. *Rent-A-Center, W., Inc. v. Jackson*, 2010 U.S. LEXIS 4981 (U.S. June 21, 2010).