

Third Circuit Finds Incorporation of AAA Rules in Arbitration Clause is Evidence Parties Agreed to Delegate Arbitrability

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The United States Court of Appeals for the Third Circuit recently vacated a District Court's order denying a motion under Section 3 of the Federal Arbitration Act to stay proceedings in favor of arbitration. The Court of Appeals concluded that the parties' incorporation of American Arbitration Association (AAA) rules in an arbitration clause was "clear and unmistakable" evidence that they had delegated the question of arbitrability to an arbitrator. *Richardson, et al. v. Coverall North America, Inc., et al.*, Nos. 18-3393, 18-3399 (filed: April 28, 2020).

In the underlying District Court suit, plaintiffs Ericka Richardson and Luis Silva filed a putative employee class action against Coverall North America, Inc., a commercial cleaning franchisor, alleging they should be classified as employees and not independent contractors. Richardson and Silva claimed that, while the agreements they signed to operate the franchises labeled them as "independent contractors," under New Jersey state law they were really employees.

The agreement at issue in Silva's case contained the following language: "all controversies, disputes or claims between Coverall ... and Franchisee ... shall be submitted promptly for arbitration" and "[a]rbitration shall be subject to ... the then current Rules of the American Arbitration Association for Commercial Arbitration." Op. at 5. Rule 7(a) of the applicable AAA Rules states that "[t]he arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any claim or counterclaim." Op. at 6.

The District Court held that the incorporation by reference of the AAA rules in Silva's agreement "did not satisfy the clarity needed for delegation, at least with an 'unsophisticated party.'" Op. at 4. The Court of Appeals disagreed, finding the provision in Silva's agreement quoted above "about as 'clear and unmistakable' as language can get[.]" and that the rest of Silva's agreement was not "so ambiguous or unclear that the meaning of the AAA Rules becomes murky." Op. at 6. In rejecting Silva's argument that incorporation of rules by reference is unreasonable in agreements involving "unsophisticated parties," the Court said Silva's argument "likely stretches too far and would disregard the 'clear and unmistakable' standard and ignore even the plainest of delegations." *Id.* Because "the clarity of Silva's agreement shows the intent to delegate" arbitrability, the Court of Appeals reversed and remanded the case back to the District Court. Op. at 7.

The Court of Appeals however, stopped short of announcing a bright-line rule on the issue of incorporation by reference of AAA arbitral rules. While acknowledging that "[v]irtually every circuit to have considered the issue has determined that incorporation of the [AAA] arbitration

rules constitutes clear and unmistakable evidence” of the parties’ agreement to delegate arbitrability to the arbitrator, the Court stated that it “need not determine whether such a rule always applies.” Rather, “[e]ven where an agreement incorporates the AAA Rules, a contract might still otherwise muddy the clarity of the parties’ intent to delegate.” Op. at 6, n.2.

A copy of the Court of Appeals’ opinion in *Richardson, et al. v. Coverall North America, Inc., et al.*, Nos. 18-3393, 18-3399 (filed: April 28, 2020) is attached.