

9th Circuit Tackles Arbitration Involving State-Sponsored Debt Collection

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SAN FRANCISCO (CN) – Continuing its recent spree of cases involving arbitration, a Ninth Circuit panel on Wednesday entertained whether a case involving a debt collection agency posing as a division of local district attorney’s offices to collect on bounced checks should be handled out of court.

Narish Bonakdar and four other plaintiffs sued debt collection agency Victim Services in 2016, claiming that despite paying debts they still received collection notices from the company under false pretenses – namely that they would be prosecuted by San Francisco Bay Area district attorneys.

Wednesday’s Ninth Circuit hearing focused more on circumstances unique to Bonakdar, who bounced a \$200 check to the El Dorado Transit Authority in February 2014. She later paid the debt.

However, weeks later she received a letter purportedly from the El Dorado County District Attorney demanding the \$200 and additional fees, which Bonakdar paid. She also agreed to attend a financial assistance class.

This distinguishes her from the other plaintiffs in the suit, who did not pay the debts after receiving the letter – opting instead to seek legal representation.

Attorneys for Victim Services say the fact that Bonakdar willingly enrolled in the program means her dispute can only be resolved through arbitration, as stipulated in the contract she signed when she agreed to repayment and the financial education program.

U.S. District Judge Vince Chhabria ruled in favor of Bonakdar, saying federal arbitration rules only apply between private parties, a state agency and an individual. He further said the anti-SLAPP public interest exemptions applied in the case.

Victim Services appealed, saying courts are bound to honor the integrity of signed contracts.

“Preserving the right to arbitrate in contracts is the whole point of the (Federal Arbitration Act),” Sean Hardy, attorney for Victim Services, told the Ninth Circuit panel.

Bonakdar’s attorney Deepak Gupta took the unusual tack of expanding upon the favorable ruling by Chhabria rather than simply reiterating its merits. Instead of focusing on the state-to-individual arrangement that Chhabria said invalidated federal arbitration rules, Gupta said the contract is invalid because Bonakdar signed a contract under threat of criminal prosecution.

“Arbitration can only occur when both parties freely consent to the process,” Gupta told the three-judge panel. “The other side is saying this is an agreement, when it is a product of a threat of criminal prosecution and coercion.”

Circuit Judge Richard Tallman doggedly pursued a line of questioning about whether the contract between Bonakdar and Victim Services was valid regardless of extenuating circumstances, but Gupta maintained several Supreme Court cases show that if problems arise during the formation of the contract, it can be invalid even if there are signatures from both parties.

Gupta also said California law is clear in stipulating that if cases have a public interest aspect they belong in the courts rather than arbitration.

Hardy responded by saying the contract contained an opt-out clause, making the case for coercion less persuasive.

Arbitration has become a huge legal issue as corporations attempt to prevent class actions and other means of legal recourse by forcing consumers and employees into arbitration, where the chances of victory and ability to appeal are significantly diminished.

A 2015 report by the Economic Policy Institute says a “a massive shift in the civil justice system” has occurred in the past three decades, largely engineered by the U.S. Supreme Court.

“By delegating dispute resolution to arbitration, the court now permits corporations to write the rules that will govern their relationships with their workers and customers and design the procedures used to interpret and apply those rules when disputes arise,” the study says. “Moreover, the court permits corporations to couple mandatory arbitration with a ban on class actions, thereby preventing consumers or employees from joining together to challenge systemic corporate wrongdoing.”

The panel took the matter under submission and is expected to rule within three months. Senior Circuit Judge Mary Schroeder and U.S. District Judge Robert Whaley, sitting by designation from the Eastern District of Washington, rounded out the panel.

The original court case is still pending in the trial court, with Wednesday’s hearing involving only the narrow question of whether Bonakdar can continue to pursue claims in court or whether she must undertake the arbitration process.