

**BLOGS**

Arbitration

Sixth Circuit Holds that AAA Rules Provide for an Arbitrator to Decide the Question of Arbitrability

In another recent decision from the Sixth Circuit Court of Appeals, the court affirmed a ruling that incorporation of the AAA Rules into an arbitration agreement provides the “clear and unmistakable” evidence required under Supreme Court precedent that the parties agreed to arbitrate the question of arbitrability. *Blanton v. Domino’s Pizza Franchising LLC*, 2020 WL 3263002 (6th Cir. June 17, 2020). The AAA Rules provide, in part, 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.” Domino’s is a large pizza franchisor whose franchise agreements formerly included “anti-poaching” provisions restricting franchisees from hiring the employees of other franchisees. Harley Blanton and Derek Piercing are former employees of Domino’s franchisees and the lead plaintiffs in a putative class action against Domino’s alleging that the anti-poaching provisions violate antitrust law. The district court compelled arbitration of their claims based on employment agreements Blanton and Piercing signed with their franchisee employers. Piercing appealed, urging that a court should decide whether Domino’s could enforce an arbitration provision to which it is not a party. He argued that incorporating the AAA Rules does not provide the required “clear and unmistakable” evidence of an agreement to arbitrate the question of arbitrability and that the arbitrator’s authority to determine jurisdiction is limited to determining the “existence, scope, or validity” of the arbitration agreement—and therefore excludes the questions of whether a non-party can enforce an arbitration provision and whether a particular dispute falls within the agreement’s scope.

The Sixth Circuit based its ruling primarily on nearly universal precedent showing that incorporating the AAA Rules into an agreement does provide “clear and unmistakable” evidence that the parties agreed to arbitrate arbitrability. From there, the court turned to the language of the rule itself. As it remarked, “[a]rbitration agreements may be less fun than a night out with friends. But the same rules of English apply” to determine their meaning. The authority of the arbitrator to determine issues of jurisdiction “including” those listed in the rule extends beyond the particular examples to other issues of jurisdiction—including the questions of whether a non-party can enforce an arbitration provision and whether a particular dispute falls within the agreement’s scope. In the remainder of its opinion, the court held that the “clear and unmistakable” standard established by the Supreme Court is a question of federal, rather than state law,

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affirmed the district court's denial of Piercing's request to amend his complaint where he had not filed a motion for leave to amend, and declined to vacate certain portions of the district court's opinion holding that Domino's is entitled to enforce the arbitration agreement under state law.