

**BLOGS**

Arbitration

## Third Circuit Concludes “Unsophisticated Party” Cannot Avoid Arbitration Provision; Remands Issue of Franchisor’s Ability to Invoke Arbitration Provision in a Contract to Which It Is Not a Party

The Third Circuit Court of Appeals has held that Coverall franchisees must submit their employee misclassification claims against a subfranchisor to arbitration, but remanded the question of whether the franchisor can invoke the same arbitration provision even though it is not a party to the plaintiffs’ franchise agreements. *Richardson v. Coverall N. Am., Inc.*, 2020 WL 2028523 (3rd Cir. Apr. 28, 2020). Plaintiffs Richardson and Silva signed subfranchise agreements with Sojul, LLC in 2016 and 2005, respectively, to operate Coverall commercial cleaning franchised businesses. The agreements both contained requirements to arbitrate certain claims. In 2017, Richardson and Silva filed a class action against Sojul and Coverall on the basis that they had been misclassified as independent contractors. Sojul and Coverall removed the matter to federal court and moved to stay the action until arbitration had concluded. In its decision, the lower court considered whether the agreements delegated the question of arbitrability to an arbitrator and whether Coverall could enforce the arbitration clause. The court held that because Silva was an “unsophisticated party,” the mere incorporation of the American Arbitration Association (AAA) Commercial Arbitration Rules in Silva’s agreement did not constitute the clear and unmistakable evidence required to find delegation. Although Richardson’s claims were subject to arbitration, the court held that because Coverall was not a party to the franchise agreement, it could not enforce the agreement’s arbitration provision. The parties appealed.

Reviewing the decision de novo, the Third Circuit reversed both conclusions by the lower court. First, the court found that no evaluation of the parties’ sophistication is needed when the arbitration clause clearly requires disputes to be resolved under the “then-current Commercial Arbitration Rules of the AAA.” The court found that the arbitration clause was clear and unmistakable, and therefore delegated the question of arbitrability to the arbitrator. Second, the court determined that there was insufficient information in the record regarding Coverall’s ability to invoke the arbitration provision as a third-party beneficiary. Because the issue would benefit from discovery between the parties, the appellate court remanded the issue for further fact-finding.

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