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LABOR AND EMPLOYMENT PRACTICE CASE BULLETIN

Green Tree Financial Corp. v. Bazzle

SUPREME COURT LIMITS A COURT'S REVIEW OF ARBITRATION AGREEMENTS

On June 23, 2003, the United States Supreme Court limited the types of challenges that plaintiffs may make to arbitration agreements. In *Green Tree Financial Corp. v. Bazzle,* No. 02-634 (U.S. June 23, 2003), the Supreme Court held that whether an arbitration agreement allowed arbitration of class claims was a question that should be answered by an arbitrator in the first instance, not the court. Although this decision did not arise in the employment context (it relates to home loans), it will apply equally to the employment arena.

In *Bazzle*, homeowners sued Green Tree alleging it violated South Carolina law when making home loans to them. The homeowners moved to certify a class; Green Tree moved to compel arbitration. The trial court compelled arbitration, but only after certifying the class. The arbitrator heard the matter, and awarded the two classes $19,000,000. Green Tree appealed, claiming that the arbitration agreement forbid class arbitration. The United States Supreme Court reversed. It held that whether the arbitration agreement forbid class arbitration "is not completely obvious," and that the question is of the type that the arbitrator should decide in the first instance, not a court. The issue was not the type of "limited … gateway matter" that the parties would have assumed the court and not the arbitrator would decide.

Comment: The *Bazzle* ruling follows the trend of recent cases that limit the types of challenges that employees can make to avoid arbitration. These include employment cases, *see Musnick v. King Motor Co. of Fort Lauderdale*, 325 F.3d 1255 (11th Cir. 2003); *Fernandez v. Clear Channel Broadcasting, Inc.*, 2003 WL 21488201 (S.D. Fla. June 24, 2003), and a Supreme Court RICO case, *see Pacificare Health Systems, Inc. v. Book*, 123 S.Ct. 1531 (2003). At a minimum, these cases establish that any ambiguity in an arbitration agreement must be decided in the first instance by an arbitrator. More expansively, they suggest that virtually any infirmity in an arbitration agreement may be corrected by the court *after* arbitration, thereby greatly reducing the grounds on which arbitration may be avoided.