

New York Court Upholds Arbitration Clause in Fee Agreement with Client

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The Supreme Court of the State of New York issued a decision recently upholding an arbitration clause in a fee agreement with a client. This is a short summary of that opinion. In *Connectu, Inc. v. Quinn Emanuel Urquhart Oliver & Hedges, LLP*, N.Y. Supr. Ct., No. 602082/08 (Sept. 12, 2008), the Court ruled that the arbitration provision was neither contrary to public policy nor was it infirm for any other reasons that would otherwise bar the enforceability of the arbitration clause in the fee agreement.

Background

The background of the case involved the group of individuals who had sued Facebook, Inc. concerning the ownership of the social networking website, Facebook.com. The plaintiffs in this case were that same group that were formerly Quinn Emanuel clients. They had initially been represented by a nationally-known law firm who had been handling the litigation for several years. In September 2007, the plaintiffs engaged Quinn Emanuel, and after lengthy discussions they entered into a contingency fee agreement. That contingency fee agreement was reviewed by separate independent counsel for the plaintiffs, and eventually the terms were agreed upon and the engagement letter was executed.

The arbitration clause in the engagement letter required binding arbitration with the American Arbitration Association in the event of any disputes between Quinn Emanuel and the plaintiffs. After Quinn Emanuel represented them in the Facebook litigation for several months, settlement was achieved in February of 2008 through mediation.

The plaintiffs did not pay the attorneys' fees that Quinn Emanuel claimed to be owed, however. Instead they terminated Quinn Emanuel's representation and hired new counsel, without success, to attack the settlement. Quinn Emanuel initiated arbitration proceedings claiming \$13 million plus expenses pursuant to its September 2007 fee agreement. Although the arbitration demand was filed with the AAA in April 2008; because a separate action was commenced, unsuccessfully attempting to challenge the settlement agreement, Quinn Emanuel asked the AAA to hold the arbitration in abeyance until that separate action was completed. In June 2008 when the Facebook settlement was upheld in that separate action by a federal court as enforceable, Quinn Emanuel then instructed the AAA to reinstate the arbitration proceedings to collect its fee.

Legal Arguments

The former clients presented a long list of arguments to support their position that the Quinn Emanuel claims were not subject to arbitration. For example they argued that the arbitration clause was obtained without their consent and that the arbitration clause violated the public policy of the State of New York because it was obtained in breach of Quinn Emanuel's duties to its clients and applicable rules of legal ethics. They also argued that Quinn Emanuel waived its rights to arbitration. In sum, the Court rejected all of these arguments.

The former clients relied on a rule in New York that provides for arbitration of fee disputes between attorneys and clients. However, the arbitration provisions of that New York State rule do not apply to fee disputes in excess of \$50,000, as here.

The New York Court relied on basic contract principles in its reasoning that the written agreement involved was complete, clear and unambiguous and must be enforced according to the plain meaning of its terms. There was no showing, the Court found, that the arbitration clause was obtained without consent or that it was the result of fraud, misrepresentation or duress.

Neither the argument that the fee agreement was infirm due to a provision that it shortened the statute of limitations for claims arising out of the engagement to one year, nor the provision that a 1.5% per month late fee for legal fees owed beyond 60 days, was sufficient to establish any grounds for not enforcing the arbitration clause. The Court also made short work of the argument that Quinn Emanuel waived its right to arbitrate.

Of course, this decision is not binding on other states but it should give hope to lawyers who want to provide for the benefits that in some cases can be enjoyed by the arbitration of disputes with clients, as opposed to litigation, to the extent that litigation through the court system in some instances takes longer and may be more of a public exercise. See generally Rule 1.5 of the Model Rules of Professional Conduct, comment 9 (encouraging arbitration or mediation of fee disputes); ABA/BNA Lawyers' Manual on Professional Conduct; Section 41:101 (2008) (citing states that have upheld mandatory arbitration programs or arbitration clauses in fee agreements, that include California, Colorado, Georgia, Maine, New Jersey, Ohio and Pennsylvania).

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