

**AMERICAN ARBITRATION ASSOCIATION
Employment and Class Action Arbitration Tribunal**

In the Matter of Arbitration Between:

RE: 11 160 00194 05

**DALE GROVES and ROBERT PICOU, individually,
and on behalf of all others similarly situated**

– and –

**HEMET MANUFACTURING CO., INC. (d/b/a/
GENESIS CONSTRUCTION)**

CLAUSE CONSTRUCTION AWARD OF ARBITRATOR

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into by the above-named parties, and having been duly sworn and having considered the briefs, evidence and arguments of the parties, hereby issue this Clause Construction Award as follows:

BACKGROUND/PROCEDURAL HISTORY

This action was originally filed in Riverside Superior Court by Claimants Dale Groves and Robert Picou (“Claimants”),¹ both former employees of Hemet Manufacturing Co., Inc., dba Genesis Construction (“Hemet” or “Respondent”). The case was filed as a class action, alleging that Hemet failed to pay Claimants and the purported class members prevailing wages, minimum wages and overtime wages, and failed to provide legally-mandated rest and meal periods. A claim for Unfair Competition is also alleged. In response to the lawsuit, Hemet filed a motion to compel arbitration. This motion was heard on November 22, 2004 by the Honorable E. Michael Kaiser, Superior Court of California, County of Riverside (Case No. RIC 411270). The motion was granted.

The motion to compel was based on an arbitration clause contained in an Employment Application which each Claimant signed as a condition of his employment. This arbitration clause (referred to herein as the “Agreement”) reads:

¹At the time the action was filed, a third person, Hector Garcia-Villegas, was a named plaintiff. He was dropped from the caption after the arbitration was referred to me, apparently because he did not sign an employment agreement containing an arbitration clause.

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I hereby agree to submit to binding arbitration all disputes and claims arising out of the submission of this application. I further agree, in the event that I am hired by the company, that all disputes that cannot be resolved by informal internal resolution which might arise out of my employment with the company, whether during or after that employment, will be submitted to binding arbitration. I agree that such arbitration shall be conducted under the rules of the American Arbitration Association. This application contains the entire agreement between the parties with regard to dispute resolution, and there are no other agreements as to dispute resolution, either oral or written.

As noted above, Hemet's motion to compel arbitration was granted, resulting in this arbitration. After being appointed, I conducted a conference call with counsel for the parties on August 25, 2005. The purpose of the call was to establish a briefing schedule for the "Clause Construction" requirements of Rule 3 of the American Arbitration Association's (AAA) Supplementary Rules for Class Arbitration. Counsel for the parties submitted briefs in support of their respective positions. Oral argument was conducted by telephone conference call on November 1, 2005. The parties agree that the issue of whether the Agreement permits class action arbitration is now ready to be decided.

DISCUSSION

The issue of whether a contract or arbitration clause which is silent about whether a claim may or may not be maintained as a class action is for an arbitrator to decide. Green Tree Financial Corp. v. Bazzle, 539 U.S. 444, 123 S. Ct. 2402 (2003).

The issue to be decided here is what type of arbitration — individual or class action — is mandated under the Agreement. In addressing this question, Respondent argues this arbitration should go forward only as to the two Claimants and not as a class action. Respondent argues the primary objective of the arbitration agreement — to give full effect to all of its terms (see Dean Witter Reynolds Inc. v. Byrd, 470 U.S. 213, 220 (1985)) — would be met and

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enforced if this arbitration was limited to the individual claims. Respondent also argues that the Agreement must be interpreted to preclude class action arbitration because it does not specifically provide for class arbitration.

Claimants contend that because the Agreement does not specifically preclude class or collective relief, they have not, nor can it be presumed they have, waived their right to participate in a class action. The Agreement, which they urge is a contract of adhesion, should be construed to permit class actions when the contract is silent. Claimants argue that because Hemet, who drafted the contract, excluded any reference to class actions, the Agreement is ambiguous and should be construed against the drafter and interpreted to allow such actions.

Hemet argues that there is no ambiguity in the Agreement. Indeed, in its motion to compel arbitration, Hemet proclaimed the Agreement is “clear, concise, and to the point.” (See Notice of Petition to Compel Binding Arbitration, at p. 3, line 26, attached as Exhibit B to Claimants’ Reply Brief Re: Construction of the Arbitration Clause.) Hemet now argues that the Agreement extends only to the *individual* claims of Claimants, and that class action arbitration was never contemplated. Hemet relies heavily on the last sentence of the Agreement — i.e., “This application contains the entire agreement between the parties . . .” — for the proposition that allowing a class action to proceed in this case would utilize a “procedural device” not permitted under the Agreement.

I find this argument unpersuasive. First of all, the final sentence of the Agreement relates to the issue of “dispute resolution” and does not address the issue of whether class arbitration is precluded. Secondly, Hemet’s position is contradicted by its own motion to compel arbitration filed in the Superior Court. In that motion, Hemet stated, among other things:

The claims asserted in the [First Amended Complaint] clearly fall within the scope of the arbitration agreement. The arbitration agreement is valid, fulfills important public policies, is neither procedurally nor substantively unconscionable, and therefore it must be enforced by the court.

* * *

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Although plaintiffs have styled their action as a class action complaint, this does not trump defendant's right to have these disputes arbitrated. According to Garcia v. DirecTV (2004) 115 Cal. App. 4th 297: "In the absence of a class action waiver, California law authorizes class wide arbitrations . . ."

* * *

Accordingly, all claims and issues that might be raised by the plaintiffs as part of their class action are specifically addressed by the [American Arbitration Association] rules on class actions, and further insure that rights of the plaintiffs, defendant, and the absent class members are adequately protected in the arbitration process. (Emphasis in original.)

See Notice of Petition to Compel Binding Arbitration at p.4, lines 9-11; p. 8, lines 19-22; p. 9, lines 17-20, attached as Exhibit B to Claimants' Reply Brief Re: Construction of the Arbitration Clause.

Therefore even if there were no ambiguity in the Agreement, Hemet's own statements acknowledge that all claims — including class action — are covered by the Agreement.

If there is an ambiguity in the Agreement (and I find that there is), Hemet's position is still without merit. The role and goal of the Arbitrator is to identify, apply and enforce the provisions of the Agreement to give effect to all of its provisions.² The Agreement

²Hemet argues that to give full effect to the arbitration clause, the Arbitrator should look at issues such as whether this is "sham" litigation for purposes of pressuring it to unionize; and whether class arbitration is suitable because of possible problems with numerosity, common questions of law and fact, typicality, etc. These are issues for another day. The sole issue to decide now is whether the arbitration

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clearly requires arbitration (following any “informal internal resolution” efforts). In attempting to identify the intent of the parties, to the extent that any ambiguity might exist, the Agreement, as a contract, should be read and liberally construed, and “any doubt about the scope of the arbitrable issues should be resolved in favor of arbitration.” Green Tree Financial Corp., supra, 539 U.S. at 445, 123 S. Ct. at 2403 (citing Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 105 S. Ct. 3346 (1985)).

If any ambiguity exists about how silence on this subject should be interpreted, the general rules of contract interpretation would compel this silence be interpreted against the drafter and/or the party who would most benefit from the silence. Cal. Civ. Code § 1654; Maggio v. Winward Capital Management Co., 80 Cal. App. 4th 1210, 96 Cal. Rptr. 2d 168 (2000). That party here is the Respondent. Respondent cannot benefit from this silence and by doing so preclude rights or remedies that the Claimants would otherwise have bargained for (had they been asked or able to engage in such negotiations) or had available to them in court, by operation of the AAA Rules or legal precedent.

There are many things that the parties did not specifically address in their arbitration agreement.³ However, the parties did agree to resolve by binding arbitration under the rules of the AAA, “all disputes and claims arising . . . out of any employment with the company . . .” (emphasis added). Because Respondent expressly provided for administration of its employment contract by AAA, it also must consent to the rules promulgated by AAA. Although the Agreement itself is silent on whether a class action may be maintained, the rules it incorporates allow such an action. The AAA Policy on Class Arbitration states that AAA “will administer demands for class arbitration pursuant to its Supplementary Rules for Class

clause allows or prohibits this case to proceed as a class arbitration.

³For example, there is no reference whether a claim for harassment, discrimination or wrongful termination should or could be arbitrated, but it is virtually certain that such claims would be covered by the arbitration agreement, and Hemet clearly would not argue that such claims were not specifically provided for and therefore should not be subject to arbitration.

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Arbitration if (1) the underlying agreement specifies that disputes arising out of the parties' agreement shall be resolved by arbitration in accordance with any of the Association's rules, and (2) the agreement is silent with respect to class claims, consolidation or joinder of claims." Given the language of the Agreement, California law on this issue, and the position taken by Hemet when it sought this arbitration, class arbitration should be allowed.

CONCLUSION/AWARD

Having considered the arguments and other submissions of the parties, and based on the foregoing, I find and conclude as follows:

1. The arbitration clause entered into by these parties cannot be construed as prohibiting class arbitration and is construed to permit this arbitration to proceed as a class.
2. Respondent's objections to processing this arbitration as a class are dismissed.
3. This matter shall be processed in accordance with the AAA Employment Rules and the Supplementary Rules for Class Arbitration.
4. Pursuant to the Supplementary Rules, the Arbitrator retains jurisdiction, but these proceedings shall be stayed for 30 days to permit any party the opportunity to move a court of competent jurisdiction to confirm or to vacate this Clause Construction Award.
5. Once all parties inform the AAA in writing during the period of this stay that they do not intend to seek judicial review of this Clause Construction Award, or once the requisite time period expires without any party having informed the AAA that they have done so, this matter shall proceed.
6. If any party informs the AAA within the time period provided that it has

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sought judicial review, further proceedings, or some part of them, may be stayed until the AAA is informed of the ruling of the Court.

7. All issues and/or arguments raised by the parties have been considered, but not all have been expressly addressed in this Opinion/Award. Any arguments not addressed in this Clause Construction Award are hereby rejected or denied. Given this Award, there is no reason to rule on the Objections raised by Claimants to the Declaration of Bruce Perry and the "Prevailing Wage Chart," attached as Exhibit B to Respondent's Opposition.

Dated: November 8, 2005



Nicholas DeWitt

I, Nicholas DeWitt, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

Dated: November 8, 2005



Nicholas DeWitt