Appellate Division Affirms FAA Limits on Judicial Review

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In *Strickland v. Foulke Management Corp*., 475 N.J. Super. 27 (2023), the Appellate Division considered whether parties may expand the scope of judicial review of an arbitration agreement governed by the Federal Arbitration Act (FAA), 9 U.S.C §§ 1 to 16.

The dispute began with the purchase of a used vehicle by plaintiffs from the defendant. The transaction required plaintiffs to sign multiple agreements, including an arbitration agreement. The agreement stated that any arbitration hearing would be governed by the FAA, but included a clause that bound the arbitrator to render a decision in conformance with New Jersey Law, and which permitted judicial review of the arbitrator's application of that law. The agreement also contained a severance clause providing that if any term in the agreement was deemed unenforceable, it would be severed and the remaining terms of the agreement would remain enforceable.

Both plaintiffs later signed new loan agreements which increased their monthly payments. One of the plaintiffs no longer could afford the monthly bill and had her vehicle repossessed. Plaintiffs then filed an arbitration demand with the American Arbitration Association, asserting multiple violations of New Jersey consumer protection laws, as well as fraud. The arbitrator dismissed plaintiffs' claims, finding that the contractual limitation period contained in the agreements had run.

Plaintiffs then filed an order to show cause to vacate the arbitration award, asserting that the arbitrator failed to render a decision in conformance with New Jersey Law and that they were entitled to judicial review of that issue pursuant to the arbitration agreement. Defendants argued that the judicial review clause was unenforceable because it improperly expanded the court's jurisdiction to review the award beyond what the FAA permits and therefore should be severed from the contract. The trial court denied the order to show cause and dismissed the complaint, finding that the agreement clearly stated that it was governed by the FAA and that the arbitrator's decision was final.

The Appellate Division affirmed. The panel first examined plaintiffs' contention that the arbitration agreement contractually expanded the scope of judicial review beyond what the FAA typically allows. As a preliminary matter, the panel noted that the agreement's terms provide that it shall be governed by the FAA. The FAA permits judicial review of arbitration awards in limited circumstances, such as where the award is procured by corruption or fraud, where there is misconduct on the part of the arbitrator, or where the arbitrator exceeds their powers. The panel then looked to the United States Supreme Court's decision in *Hall Street Associates v. Mattel, Inc*., 552 U.S. 576 (2008), in which the Court determined that the terms for vacatur of an arbitration award under the FAA are exclusive and cannot be modified by contract, meaning that parties cannot contractually agree to expand judicial review under the FAA.

The panel then turned to the issue of whether the provision that bound the arbitrator to New Jersey law meant that New Jersey arbitration law was to be applied, rather than the FAA, thus removing the agreement from the strictures described above. With no New Jersey precedent on the issue, the panel looked to federal case law. In a Fifth Circuit case, *Cooper v.*

WestEnd Cap. Mgmt., LLC, 832 F.3d 534 (5th Cir. 2016), the parties agreed that their arbitration agreement should be governed by California Law, but did not reference California arbitration law. The Fifth Circuit held that the FAA applied absent clear and unambiguous contractual language to the contrary; therefore, the choice-of-law provision did not compel the application of California standards in regard to arbitration. The Appellate Division also noted two other analogous cases in the Third and Seventh Circuits holding that a broad choice-of-law provision, standing alone, was not sufficient to establish the parties' clear intent to opt out of the FAA scheme. See *MarkDutchCo 1 B.V. v. Zeta Interactive Corp,* 411 F. Supp. 3d 316 (3rd Cir. 2019); *Renard v. Ameriprise Fin. Servs. Inc.*, 788 F.3d 563 (7th Cir. 2015).

Applying these holdings to the current case, the panel found no clear and unambiguous intent to opt out of the FAA statutory framework. Accordingly, plaintiffs could seek judicial review only by alleging and demonstrating a ground for vacatur under the FAA, which they had not done. In accordance with the express provision in the agreement that any provision may be severed from the agreement while leaving the remaining provisions enforceable, the panel deemed the judicial review provision unenforceable and severed it from the remainder of the agreement.

The Appellate Division's decision affirmed that judicial review of arbitration awards governed by the FAA cannot be expanded outside of the limited circumstances warranting judicial review under the FAA. Moreover, in a matter of first impression, the panel disagreed with plaintiffs' contention that the agreement's general provision requiring the arbitrator to apply New Jersey law was sufficient to bring the agreement outside of the FAA. The panel's decision reaffirms the strong breadth and reach of the FAA and clarifies that parties wishing to provide standards to govern an arbitration agreement outside of those specified in the FAA must do so clearly, unequivocally, and precisely.