Administrative Office of the Courts

FOR IMMEDIATE RELEASE
Oct. 7, 2024

Supreme Court rules arbitration dispute must be considered by a judge

SANTA FE – The state Supreme Court today clarified what consumers must do to fight a requirement that their damage claims against a business be resolved by a third-party arbitrator outside the traditional court process.

The ruling allows an Albuquerque woman to move forward in court in hopes of avoiding mandatory arbitration of her lawsuit against a debt services company for unfair business practices.

In a unanimous opinion, the Court directed a district court to determine the validity of a "delegation clause" in the arbitration requirement of a contract between United Debt Counselors, LLC, and Marlene Sanchez, who paid the company thousands of dollars to help settle her credit card debt.

The delegation clause gives an arbitrator – rather than a court – the power to decide initial or "gateway" legal matters about the contract's arbitration provision, such as what disputes are subject to arbitration and whether the arbitration requirement is valid and binding. An arbitrator also would decide the merits of the underlying consumer protection claims against it.

Sanchez filed a class action lawsuit in 2021 for damages she and other consumers suffered because the company allegedly violated the New Mexico Unfair Practices Act (UPA). Sanchez contends that United Debt Counselors misled her to stop paying credit card bills and instead pay it to resolve her debts owed to banks. She maintains the company did nothing to help despite her payments to it.

The lawsuit sought to have all damage claims handled in court rather than through arbitration, a way of privately resolving matters outside of the court system. A district court in Albuquerque ordered her dispute to arbitration, declining to decide Sanchez's objections to the contract's arbitration provisions.

The judge ruled it was a matter for an arbitrator to determine because Sanchez had failed to properly challenge the delegation clause. The state Court of Appeals agreed with the district judge. Sanchez then asked the Supreme Court to review the dispute over who decides whether she and the company must arbitrate her claims.

The justices reversed the Court of Appeals, and directed the district court to determine "whether the delegation clause is valid and enforceable." If the clause was invalidated, a district judge – not an arbitrator – would decide whether the lawsuit's claims are subject to arbitration.

Sanchez argued in district court that both the delegation clause and the contract's arbitration agreement were unenforceable by law because their terms were contrary to public policy and so unfair that it made them "unconscionable" — a legal basis for voiding them. The judge ruled that she needed to challenge the delegation clause on different legal grounds than her arguments against the contract's overarching requirement for arbitration.

The state's highest court concluded that Sanchez's challenge to the delegation clause was "sufficiently specific," as required by a precedent-setting U.S. Supreme Court ruling on arbitration disputes.

In an opinion by Justice Michael E. Vigil, the Court explained that the law "does not prohibit a party who makes a specific challenge to a delegation clause from challenging the arbitration clause or the contract as a whole on the same grounds."

The justices wrote that Sanchez's argument in district court "could not have been more clear: the arbitration agreement is unconscionable under the UPA because it strips her of attorney's fees and costs for successfully litigating the UPA claim, *and* the delegation clause is unconscionable under the UPA because it strips her of attorney's fees and costs for successfully litigating gateway issues."

Sanchez contends that she and other consumers would not be able to pursue damage claims against the company without the ability to recover attorney fees and other litigation costs as provided for in state law.

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To read the decision in *Sanchez v. United Debt Counselors, LLC.*, No. S-1-SC-39563, please visit the New Mexico Compilation Commission's website using the following link: https://nmonesource.com/nmos/nmsc/en/item/530519/index.do