Touro Law Review

Volume 8 | Number 1 Article 70

1991

Trial by Jury

TRIAL BY JURY

N.Y. CONST. art. I, § 2:

Trial by jury in all cases in which it has heretofore been guaranteed by constitutional provision shall remain inviolate forever; but a jury trial may be waived by the parties in all civil cases in the manner to be prescribed by law.

U.S. CONST. amend. VII:

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

COURT OF APPEALS

Motor Vehicle Manufacturers Association of the United States, Inc. v. State[1227]

(decided January 18, 1990)

Plaintiffs alleged that General Business Law (GBL) section 198-a(k),[1228] violated the state constitutional right to trial by jury.[1229] Section 198-a(k) provides for arbitration when a manufacturer may be liable under New York's original Lemon Law,[1230] to replace a motor vehicle or refund the purchase price. Additionally, section 198-a(k) compels the manufacturer to participate in arbitration at the consumer's request. The court of appeals held that a jury trial was not required because the replacement remedy was analogous to specific performance and, therefore, was equitable in nature. The court found that the refund remedy merely returns the parties to their status quo[1231]

1227. 75 N.Y.2d 175, 550 N.E.2d 919, 551 N.Y.S.2d 470 (1990).
1228. N.Y. GEN. BUS. LAW § 198-a(k) (McKinney 1988).
1229. N.Y. CONST. art I, § 2.
1230. N.Y. GEN. BUS. LAW § 198-a (McKinney 1988).
1231. *Motor Vehicle Mfrs. Ass'n*, 75 N.Y.2d at 182, 550 N.E.2d at 922, 551

and, thus, is also an equitable remedy.

Under New York's original Lemon Law Statute,[1232] if a manufacturer was unable to correct a defect on a motor vehicle that substantially impaired its value, the manufacturer was required to "(1) replace the motor vehicle with a comparable motor vehicle or (2) accept return of the vehicle . . . and refund to the consumer the full purchase price . . . ."[1233] However, the original statute did not provide for informal dispute resolution; instead, it provided for measures that proved to be costly, delay-ridden, and unfair to the consumer. The legislative response to this problem was GBL section 198-a(k),[1234] which afforded the consumer the choice of informal arbitration and compelled manufacturer participation at the consumer's request.

In holding that a trial by jury was not required, the court of appeals analogized the replacement remedy of GBL section 198-a(c)(1) to an action for specific performance where the remedy "is designed to produce, as nearly as practicable under the circumstances, the same performance promised under the contract."[1235] Since an action for specific performance is equitable in nature, it would not have been afforded a jury trial under common law and, therefore, the plaintiff would not be afforded one in the present action. The court further rejected plaintiff's argument that the refund remedy of section 198-a(c)(1) is "indistinguishable from the legal actions of [1] breach of warranty . . . and [2] revocation of acceptance and refund of the purchase price,"[1236] and therefore requires a jury trial. Under a breach of warranty theory, the consumer keeps the defective product and also sues for damages and compensation. The refund remedy in issue, however, merely allows the consumer to return the product, resulting in a return to the status quo. Therefore, the two are distinguishable. Further, the refund remedy is

---

N.Y.S.2d at 473.

1232. N.Y. GEN. BUS. LAW § 198-a (McKinney 1988).

1233. *Id.* § 198-a(c)(1).

1234. *Id.* § 198-a(k).

1235. *Motor Vehicle Mfrs. Ass'n*, 75 N.Y.2d at 182, 530 N.E.2d at 922, 551 N.Y.S.2d at 473.

1236. *Id.* (citations omitted).

distinguishable from a revocation of acceptance and refund,[1237] which is a legal remedy for which a jury trial may be had. In a revocation of acceptance, the consumer *first* revokes acceptance and then pursues legal action *after* the rescission to recover the consideration previously paid. In contrast, actions for the GBL refund remedy are maintained *for* a rescission and plaintiff offers to return the product in order to return to the status quo. The court analogized the statutory refund remedy to an action for restitution which is equitable in nature and would not have received a jury trial under common law. Plaintiffs also contended that the arbitration option provided by the GBL[1238] "abridges the constitutionally guaranteed jurisdiction of the Supreme Court"[1239] because the New York State Constitution provides that "the supreme court shall have general original jurisdiction in law and equity."[1240] Prior to the legislative enactment of section 198-a(k), the consumer was forced to resolve disputes pertaining to defective products "by means of nonbinding informal arbitration programs established by the manufacturers, procedures which often proved costly for the average consumer and resulted in long delays and unfair awards."[1241] The enactment of section 198-a(k) provides the consumer with the option of arbitration and compels the manufacturer's participation if such avenue is chosen by the consumer.

The court rejected plaintiffs' contention that section 198-a(k) unconstitutionally abridged the supreme court's jurisdiction because "[t]he Constitution gives the Legislature the 'power to alter and regulate the jurisdiction and proceedings in law and in equity.'"[1242] Further, the supreme court only has jurisdiction when

1237. *See* R. ANDERSON, ANDERSON ON THE UNIFORM COMMERCIAL CODE § 2-608:6 (3d ed. 1983).

1238. N.Y. GEN. BUS. LAW § 198-a(k) (McKinney 1988).

1239. *Motor Vehicle Mfrs. Ass'n*, 75 N.Y.2d at 183, 550 N.E.2d at 923, 551 N.Y.S.2d at 474.

1240. N.Y. CONST. art. VI, § 7(a) ("The supreme court shall have general original jurisdiction in law and equity and the appellate jurisdiction herein provided.").

1241. *Motor Vehicle Mfrs. Ass'n*, 75 N.Y.2d at 179-80, 550 N.E.2d at 920, 551 N.Y.S.2d at 471.

1242. *Id.* at 184, 550 N.E.2d at 923, 551 N.Y.S.2d at 474 (quoting N.Y.

the claim is made the subject of litigation. The consumer has the option of pursuing such litigation or opting out of that avenue in favor of informal arbitration proceedings. Therefore, until litigation is chosen as the avenue for the remedy sought, the court has no jurisdiction. If, however, the consumer chooses litigation either by appealing to the supreme court after arbitration, or by initiating a court action in the first instance, the supreme court has original jurisdiction over the litigation in either case.

Finally, plaintiffs alleged that GBL section 198-a(k) abridged their constitutional right to have disputes with consumers adjudicated by a court or public officer because the statute delegates this authority to private arbiters. The court rejected plaintiffs' claim because established common law indicates that the legislature may, by statute, provide for delegation to the private sector, as long as it does not violate constitutionally guaranteed rights.[1243] Since the court held that plaintiffs were not guaranteed a jury trial for claims arising under this statute, there was no constitutional violation.[1244]

The court rejected the dissent's argument that the legislature may not delegate authority to arbitration tribunals that are "unlimited by rules of law or evidence . . . ."[1245] The court pointed out that "[t]he General Business Law, and the regulations implementing it, carefully outline standards to guide the arbitrators and authorizes judicial oversight to insure a reasonable basis for the decision."[1246] Moreover, the basis for relief and the awards available are well-defined and regulated. Therefore, the court determined that the dissent's concerns were unfounded.

Judge Titone dissented from the opinion of the court. He argued that the statute in question should be given "close scrutiny" because it seems to create a separate, compulsory judicial structure where only certain types of disputes may be resolved.[1247] A

CONST. art. VI, § 30).

1243. *Id.* at 185, 550 N.E.2d at 924, 551 N.Y.S.2d at 475.

1244. *Id.*

1245. *Id.*

1246. *Id.*

1247. *Id.* at 188-89, 550 N.E.2d at 926, 551 N.Y.S.2d at 477 (Titone, J., dissenting) (quoting Givens, Practice Commentary to GEN. BUS. LAW § 198-a,

main concern was the delegation of coercive power "to private entities, who are not accountable to the public either through the elective process or the strictures of the Public Officers Law."[1248] "[A]rbitrators . . . who are not elected, removable or otherwise accountable as public officers[]"[1249] preside over judicial type proceedings in a class of disputes that have been removed from the court system. Judge Titone proceeded to list two types of traditionally recognized non-judicial proceedings in New York, both of which have been constitutionally upheld because of judicial participation and oversight in their procedures and results.[1250] Due process is certainly implicated by "the delegation of the state's coercive judicial powers to a private entity."[1251]

In addition, Judge Titone questioned whether the legislation violated the state's separation of powers doctrine. He stated that upon the legislature's dissatisfaction with the time and expense of the judicial process, it simply bypassed the judiciary in favor of private dispute resolution. Judge Titone stated:

> If the Legislature may authorize disputants to bypass the judiciary and choose an adjudicative forum supervised by the executive branch each time it is dissatisfied with the manner in which the judicial branch is handling a particular class of disputes, there would be little left to insulate the judiciary from legislative incursion.[1252]

Judge Titone concluded by stating that "bypassing, rather than improving, the judicial process -- represents an unacceptable in-

---

CONSOLIDATED LAWS OF NEW YORK 311, 316 (McKinney 1988)).

1248. *Id.* at 189, 550 N.E.2d at 927, 551 N.Y.S.2d at 478 (Titone, J., dissenting).

1249. *Id.* at 190, 550 N.E.2d at 927, 551 N.Y.S.2d at 478 (Titone, J., dissenting).

1250. *Id.* at 190-91, 550 N.E.2d at 927-28, 551 N.Y.S.2d at 478-79 (Titone, J., dissenting) (citations omitted).

1251. *Id.* at 191-92, 550 N.E.2d at 928, 551 N.Y.S.2d at 479 (Titone, J., dissenting).

1252. *Id.* at 193-94, 550 N.E.2d at 929, 551 N.Y.S.2d at 480 (Titone, J., dissenting).

cursion on the province of the judiciary."[1253]

Although federal courts have not been confronted with the constitutionality of legislation that requires arbitration in certain instances, the Supreme Court of the United States has manifested a general acceptance and a favorable policy toward contractual arbitration agreements. In *Gilmer v. Interstate/Johnson Lane Corporation*,[1254] the United States Supreme Court upheld an arbitration agreement entered into by a plaintiff pursuant to an employment agreement. The Supreme Court referred to Title 9 of the United States Code which provides:

> A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.[1255]

The Court stated that unless Congress has evinced an intention to preclude waiver of arbitration when dealing with a particular right, parties will be held to the agreement for arbitration that they had previously entered into.[1256] Since the Court found no congressional intent to preclude waiver of arbitration with regard to the age discrimination claim brought by the plaintiff, the parties would be compelled to adhere to the arbitration agreement entered into by the plaintiff pursuant to his employment agreement.[1257] The *Gilmer* Court stated that various sections of Title 9 of the United States Code "manifest a 'liberal federal policy favoring arbitration agreements.'"[1258]

On the other hand, the Supreme Court has refused to preclude access to the courts based upon arbitration clauses in employment contracts when Congress has evinced an intent to make certain

---

1253. *Id.* at 194, 550 N.E.2d at 930, 551 N.Y.S.2d at 481 (Titone, J., dissenting).

1254. 111 S. Ct. 1647 (1991).

1255. 9 U.S.C. § 2 (1989).

1256. *Gilmer*, 111 S. Ct. at 1652.

1257. *Id.* at 1657.

1258. *Id.* at 1651 (quoting Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24 (1983)).

rights judicially enforceable. For example, in *Alexander v. Gardner-Denver Company,*[1259] the Supreme Court concluded that Congress did not intend claims arising under Title VII[1260] to be precluded by arbitration clauses contained in collective bargaining agreements. "The purpose and procedures to Title VII indicate that Congress intended federal courts to exercise final responsibility for enforcement of Title VII; deferral to arbitral decisions would be inconsistent with that goal."[1261]

Also, in *Barrantine v. Arkansas-Best Freight System,*[1262] the Supreme Court refused to preclude availability of a judicial forum to workers who unsuccessfully submitted their wage claims to an arbitral forum and subsequently sought relief under the Fair Labor Standards Act[1263] in the federal court system. The Court reasoned that:

> [B]ecause Congress intended to give individual employees the right to bring their minimum-wage claims under the FLSA in court, and because these congressionally granted FLSA rights are best protected in a judicial rather than in an arbitral forum, we hold that petitioners' claim is not barred by the prior submission of their grievances to the contractual dispute-resolution procedures.[1264]

Finally, in *McDonald v. City of West Branch,*[1265] the Supreme Court held that a federal court should not give *res judicata* or collateral estoppel effect to an award received in an arbitral proceeding of an action arising under 42 United States Code section 1983.[1266] The Court concluded that Congress intended for judicial enforcement of rights arising under that statute, since the statute actually creates a cause of action.[1267] The Court relied on its decisions in *Barrantine* and *Gardner-Denver.* These two

1259. 415 U.S. 36 (1974).
1260. 42 U.S.C. §§ 2000e-17 (1989).
1261. *Alexander,* 415 U.S. at 56.
1262. 450 U.S. 728 (1981).
1263. 29 U.S.C. §§ 201-219 (1989 & Supp. 1990).
1264. *Barrentine,* 450 U.S. at 745.
1265. 466 U.S. 284 (1984).
1266. 42 U.S.C. § 1983 (1989).
1267. *McDonald,* 466 U.S. at 290.

opinions concluded "that Congress intended the statutes at issue in those cases to be judicially enforceable and that arbitration could not provide an adequate substitute for judicial proceedings in adjudicating claims under those statutes."[1268] Further, the Court concluded that their decisions in *Barrantine* and *Gardner-Denver* "compel the conclusion that [arbitration] cannot provide an adequate substitute for a judicial proceeding in protecting the federal statutory and constitutional rights that § 1983 is designed to safeguard."[1269]

Therefore, it seems that the Supreme Court may be favorable to the provision of the New York Lemon Law providing for arbitration if the statute can be analogized to a contractual provision entered into between two parties and if Congress has not evinced an intention to preclude arbitration in the automobile consumer area.

1268. *Id.* at 289.
1269. *Id.* at 290.