

## California Supreme Court Defies Federal Arbitration Law in Pointless Exercise

April 6, 2017 - A few years ago California enacted a law that banned enforcement of mandatory arbitration clauses in many contracts including those involving credit cards. But US Supreme Court overturned most of that law when it ruled that the Federal Arbitration Act superseded California law. As much as we dislike that decision, that should have been the end of it. Unfortunately, California's Supreme Court has decided that it wants to test the Supreme Court probably not the wisest move and has revived a lawsuit between a consumer and Citibank. It's a poor decision that will likely wind up back at the US Supreme Court once again.

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The case is between one Sharon McGill and Citibank. In short, Ms. McGill purchased an insurance plan that protected her Citibank credit card in the event she became unable to pay. When she purchased the plan, she signed a contract with the bank that had an arbitration clause in it. She was also given the option of opting-out of the clause; something which she didn't do.

McGill later sued Citibank using California's Unfair Competition law. That law invalidates mandatory arbitration laws when it is the primary reason cited in a lawsuit. Unfortunately, federal law prevails here and the Supreme Court has already weighed in on the matter, and not too long ago. In 2015, the US Supreme Court overturned a similar ruling by the California Supreme Court in a consumer case against DirecTV making one wonder if the California justices enjoy being overturned.

Over the years we've published a large number of articles on the problems associated with mandatory binding arbitration clauses. We'd very much like to see a law that allowed consumers to opt out of them in virtually all purchases. The deck is definitely stacked against any individual consumer entering into the arbitration process.

With that said, this case is a complete waste of time for both the US and California Supreme Courts. Given that the Supreme Court has already addressed this matter in prior rulings, it is quite likely that the final decision by federal justices will include a sharp rebuke to the California court. And it really wouldn't surprise us if a final decision against California is unanimous. While there may be a partisan divide on the court, none of the justices are likely to be happy when a state court repeatedly challenges prior decisions.

At this point, any change in arbitration law needs to be driven by congress. Lawsuits challenging federal arbitration laws filed in state courts are almost certain to end in failure.

byJim Malmberg

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