SHEARSON/AMERICAN EXPRESS V. MCMAHON

U.S. Supreme Court

Shearson/American Express v. McMahon, 482 U.S. 220 (1987)

No. 86-44
Argued March 3, 1987
Decided June 8, 1987
482 U.S. 220

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Syllabus

Respondents were customers of petitioner Shearson/American Express Inc. (Shearson), a brokerage firm registered with the Securities and Exchange Commission (SEC), under customer agreements providing for arbitration of any controversy relating to their accounts. Respondents filed suit in Federal District Court against Shearson and its representative (also a petitioner here) who handled their accounts, alleging violations of the anti-fraud provisions in § 10(b) of the Securities Exchange Act of 1934 (Exchange Act) and SEC Rule 10b-5, and of the Racketeer Influenced and Corrupt Organizations Act (RICO). Petitioners moved to compel arbitration of the claims pursuant to § 3 of the Federal Arbitration Act, which requires a court to stay its proceedings if it is satisfied that an issue before it is arbitrable under an arbitration agreement. The District Court held that respondents' Exchange Act claims were arbitrable, but that their RICO claim was not. The Court of Appeals affirmed as to the RICO claim, but reversed as to the Exchange Act claims.

Held:

1. The Arbitration Act establishes a federal policy favoring arbitration, requiring that the courts rigorously enforce arbitration agreements. This duty is not diminished when a party bound by an agreement raises a claim founded on statutory rights. The Act's mandate may be overridden by a contrary congressional command, but the burden is on the party opposing arbitration to show that Congress intended to preclude a waiver of judicial remedies for the statutory rights at issue. Such intent may be discernible from the statute's text, history, or purposes.

2. Respondents' Exchange Act claims are arbitrable under the provisions of the Arbitration Act. Congressional intent to require a judicial forum for the resolution of § 10(b) claims cannot be deduced from § 29(a) of the Exchange Act, which declares void an agreement to waive "compliance with any provision of [the Act]." Section 29(a) only prohibits waiver of the Act's substantive obligations, and thus does not void waiver of § 27 of the Act, which confers exclusive district court jurisdiction of violations of the Act, but which does not impose any statutory duties.

Wilko v. Swan,346 U. S. 427, which held that claims arising under the Securities Act of 1933, which has similar anti-waiver and jurisdictional provisions, were not subject to compulsory arbitration under an arbitration agreement, does not control here. That case must be read as barring waiver of a judicial forum only where arbitration is inadequate to protect the substantive rights at issue. Cf. Scherk v. Alberto-Culver Co.,417 U. S. 506. There is no merit to respondents' contention, based on Wilko, that their arbitration agreements effected an impermissible waiver of the Exchange Act's substantive protections. Even if Wilko's assumptions regarding arbitration were valid at the time it was decided -- when there was judicial mistrust of the arbitral process -- such assumptions do not hold true today for arbitration procedures (such as those involved here) subject to the SEC's oversight authority under the intervening changes in the regulatory structure of the securities laws. Nor does the legislative history support respondents' argument that, even if § 29(a) as enacted does not void predispute arbitration agreements, Congress subsequently has indicated that § 29(a) should be so interpreted.

3. Respondents' RICO claim is also arbitrable under the Arbitration Act. Nothing in RIC0's text or legislative history even arguably evinces congressional intent to exclude civil RICO claims for treble damages under 18 U.S.C. § 1964(c) from the Arbitration Act's dictates. Nor is there any irreconcilable

conflict between arbitration and RIC0's underlying purposes. Cf. Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.,473 U. S. 614. Neither the potential complexity of RICO claims nor the "overlap" between RICO's civil and criminal provisions renders § 1964(c) claims nonarbitrable. Moreover, the public interest in the enforcement of RICO does not preclude submission of such claims to arbitration. The legislative history of § 1964(c) emphasized the remedial role of the treble-damages provision. Its policing function, although important, was a secondary concern. The private attorney general role for the typical RICO plaintiff does not support a finding that there is an irreconcilable conflict between arbitration and enforcement of RICO.

788 F.2d 94, reversed and remanded.

O'CONNOR, J., delivered the opinion of the Court, in which REHNQUIST, C.J., and WHITE, POWELL, and SCALIA, JJ., joined, and in Parts I, II, and IV of which BRENNAN, MARSHALL, BLACKMUN, and STEVENS, JJ., joined. BLACKMUN, J., filed an opinion concurring in part and dissenting in part, in which BRENNAN and MARSHALL, JJ., joined, post p. 482 U. S. 242. STEVENS, J., filed an opinion concurring in part and dissenting in part, post p. 482 U. S. 268.

JUSTICE O'CONNOR delivered the opinion of the Court.

This case presents two questions regarding the enforceability of predispute arbitration agreements between brokerage firms and their customers. the first is whether a claim brought under § 10(b) of the Securities Exchange Act of 1934 (Exchange Act), 48 Stat. 891, 15 U.S.C. § 78j(b), must be sent to arbitration in accordance with the terms of an arbitration agreement. The second is whether a claim brought under the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S. C. § 1961 et seq., must be arbitrated in accordance with the terms of such an agreement.

I

Between 1980 and 1982, respondents Eugene and Julia McMahon, individually and as trustees for various pension and profit-sharing plans, were customers of petitioner Shearson/American Express Inc. (Shearson), a brokerage firm registered with the Securities and Exchange Commission (SEC or Commission). Two customer agreements signed by Julia McMahon provided for arbitration of any controversy relating to the accounts the McMahons maintained with Shearson. The arbitration provision provided in relevant part as follows:

"Unless unenforceable due to federal or state law, any controversy arising out of or relating to my accounts, to transactions with you for me or to this agreement or the breach thereof, shall be settled by arbitration in accordance with the rules, then in effect, of the National Association of Securities Dealers, Inc. or the Boards of Directors of the New York Stock Exchange, Inc. and/or the American Stock Exchange, Inc. as I may elect."

618 F.Supp. 384, 385 (1985).

In October, 1984, the McMahons filed an amended complaint against Shearson and petitioner Mary Ann McNulty, the registered representative who handled their accounts, in the United States District Court for the Southern District of New York. The complaint alleged that McNulty, with Shearson's knowledge, had violated § 10(b) of the Exchange Act and Rule 10b-5, 17 CFR § 240.10b-5 (1986), by engaging in fraudulent, excessive trading on respondents' accounts and by making false statements and omitting material facts from the advice given to respondents. The complaint also alleged a RICO claim, 18 U.S.C. § 1962(c), and state law claims for fraud and breach of fiduciary duties.

Relying on the customer agreements, petitioners moved to compel arbitration of the McMahons' claims pursuant to § 3 of the Federal Arbitration Act, 9 U.S.C. § 3. The District Court granted the motion in part. 618 F.Supp. 384 (1985). The court first rejected the McMahons' contention that the arbitration agreements were unenforceable as contracts of adhesion. It then found that the McMahons' § 10(b) claims were arbitrable under the terms of the agreement, concluding that such a result followed from this Court's decision in Dean Witter Reynolds Inc. v. Byrd,470 U. S. 213 (1985), and the "strong national policy favoring the enforcement of arbitration agreements." 618 F.Supp. at 388. The District Court also held that the McMahons' state law claims were arbitrable under Dean Witter Reynolds Inc. v. Byrd,

supra. It concluded, however, that the McMahons' RICO claim was not arbitrable "because of the important federal policies inherent in the enforcement of RICO by the federal courts." 618 F.Supp. at 387.

The Court of Appeals affirmed the District Court on the state law and RICO claims, but it reversed on the Exchange Act claims. 788 F.2d 94 (1986). With respect to the RICO claim, the Court of Appeals concluded that "public policy" considerations made it "inappropriat[e]" to apply the provisions of the Arbitration Act to RICO suits. Id. at 98. The court reasoned that RICO claims are "not merely a private matter." Ibid. Because a RICO plaintiff may be likened to a "private attorney general" protecting the public interest, ibid., the Court of Appeals concluded that such claims should be adjudicated only in a judicial forum. It distinguished this Court's reasoning in Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.,473 U. S. 614 (1985), concerning the arbitrability of antitrust claims, on the ground that it involved international business transactions, and did not affect the law "as applied to agreements to arbitrate arising from domestic transactions." 788 F.2d at 98.

With respect to respondents' Exchange Act claims, the Court of Appeals noted that, under Wilko v. Swan,346 U. S. 427 (1953), claims arising under § 12(2) of the Securities Act of 1933 (Securities Act), 48 Stat. 84, 15 U.S.C. § 771(2), are not subject to compulsory arbitration. The Court of Appeals observed that it previously had extended the Wilko rule to claims arising under § 10(b) of the Exchange Act and Rule 10b-5. See, e.g., Allegaert v. Perot, 548 F.2d 432 (CA2), cert. denied, 432 U.S. 910 (1977); Greater Continental Corp. v. Schechter, 422 F.2d 1100 (CA2 1970). The court acknowledged that Scherk v. Alberto-Culver Co.,417 U. S. 506 (1974), and Dean Witter Reynolds Inc. v. Byrd, supra, had "cast some doubt on the applicability of Wilko to claims under § 10(b)." 788 F.2d at 97. The Court of Appeals nevertheless concluded that it was bound by the "clear judicial precedent in this Circuit," and held that Wilko must be applied to Exchange Act claims. 788 F.2d at 98.

We granted certiorari, 479 U.S. 812 (1986), to resolve the conflict among the Courts of Appeals regarding the arbitrability of § 10(b) [Footnote 1] and RICO [Footnote 2] claims.

II

The Federal Arbitration Act, 9 U.S.C. § 1 et seq., provides the starting point for answering the questions raised in this case. The Act was intended to "revers[e] centuries of judicial hostility to arbitration agreements," Scherk v. Alberto-Culver Co., supra, at 417 U. S. 510, by "plac[ing] arbitration agreements upon the same footing as other contracts.'" 417 U.S. at 417 U. S. 511, quoting H.R.Rep. No. 96, 68th Cong., 1st Sess., 1, 2 (1924). The Arbitration Act accomplishes this purpose by providing that arbitration agreements "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. The Act also provides that a court must stay its proceedings if it is satisfied that an issue before it is arbitrable under the agreement, § 3; and it authorizes a federal district court to issue an order compelling arbitration if there has been a "failure, neglect, or refusal" to comply with the arbitration agreement, § 4.

The Arbitration Act thus establishes a "federal policy favoring arbitration," Moses H. Cone Memorial Hospital v. Mercury Construction Corp.,460 U. S. 1, 460 U. S. 24 (1983), requiring that "we rigorously enforce agreements to arbitrate." Dean Witter Reynolds Inc. v. Byrd, supra, at 470 U. S. 221. This duty to enforce arbitration agreements is not diminished when a party bound by an agreement raises a claim founded on statutory rights. As we observed in Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., "we are well past the time when judicial suspicion of the desirability of arbitration and of the competence of arbitral tribunals" should inhibit enforcement of the Act "in controversies based on statutes.'" 473 U.S. at 473 U. S. 626-627, quoting Wilko v. Swan, supra, at 346 U. S. 432. Absent a well-founded claim that an arbitration agreement resulted from the sort of fraud or excessive economic power that "would provide grounds `for the revocation of any contract,'" 473 U.S. at 473 U. S. 627, the Arbitration Act "provides no basis for disfavoring agreements to arbitrate statutory claims by skewing the otherwise hospitable inquiry into arbitrability." Ibid.

The Arbitration Act, standing alone, therefore mandates enforcement of agreements to arbitrate statutory claims. Like any statutory directive, the Arbitration Act's mandate may be overridden by a contrary congressional command.

The burden is on the party opposing arbitration, however, to show that Congress intended to preclude a waiver of judicial remedies for the statutory rights at issue. See id. at 473 U. S. 628. If Congress did intend to limit or prohibit waiver of a judicial forum for a particular claim, such an intent "will be deducible from [the statute's] text or legislative history," ibid., or from an inherent conflict between arbitration and the statute's underlying purposes. See id. at 473 U. S. 632-637; Dean Witter Reynolds v. Byrd, 470 U.S. at 470 U. S. 217.

To defeat application of the Arbitration Act in this case, therefore, the McMahons must demonstrate that Congress intended to make an exception to the Arbitration Act for claims arising under RICO and the Exchange Act, an intention discernible from the text, history, or purposes of the statute. We examine the McMahons' arguments regarding the Exchange Act and RICO in turn.

III

When Congress enacted the Exchange Act in 1934, it did not specifically address the question of the arbitrability of § 10(b) claims. The McMahons contend, however, that congressional intent to require a judicial forum for the resolution of § 10(b) claims can be deduced from § 29(a) of the Exchange Act, 15 U.S.C. § 78cc(a), which declares void "[a]ny condition, stipulation, or provision binding any person to waive compliance with any provision of [the Act]."

First, we reject the McMahons' argument that § 29(a) forbids waiver of § 27 of the Exchange Act, 15 U.S.C. § 78aa. Section 27 provides in relevant part:

> "The district courts of the United States . . . shall have exclusive jurisdiction of violations of this title or the rules and regulations thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by this title or the rules and regulations thereunder. "

The McMahons contend that an agreement to waive this jurisdictional provision is unenforceable because § 29(a) voids the waiver of "any provision" of the Exchange Act. The language of § 29(a), however, does not reach so far. What the anti-waiver provision of § 29(a) forbids is enforcement of agreements to waive "compliance" with the provisions of the statute. But § 27 itself does not impose any duty with which persons trading in securities must "comply." By its terms, § 29(a) only prohibits waiver of the substantive obligations imposed by the Exchange Act. Because § 27 does not impose any statutory duties, its waiver does not constitute a waiver of "compliance with any provision" of the Exchange Act under § 29(a).

We do not read Wilko v. Swan,346 U. S. 427 (1953), as compelling a different result. In Wilko, the Court held that a predispute agreement could not be enforced to compel arbitration of a claim arising under {case ends as such online}