

## **LOUISIANA SUPREME COURT ADDRESSES ARBITRATION AGREEMENTS**

**By Sonny Chastain**

The Louisiana Supreme Court addressed the enforceability of an arbitration agreement in *Aguillard v. Auction Management Corporation*. In this action, defendant Gilmore Auction & Realty Company conducted a public action of certain real estate property. Prior to the auction, a sales brochure was distributed to prospective bidders. Mr. Aguillard attended the onsite auction and received a copy of a document entitled "Auction Terms and Conditions" which included an arbitration clause. He signed and returned the document. Thereafter, Mr. Aguillard submitted the winning bid at the auction. However, the seller subsequently rejected his bid and refused to close the sale of the property arguing that the auction was not absolute and any offer was subject to the seller's confirmation.

Mr. Aguillard filed suit to enforce the sales agreement and in response a joint motion to stay pending arbitration was submitted. The district court denied the motion to stay. The Third Circuit Court of Appeals affirmed finding the entire contract, including the arbitration clause was adhesionary and lacked mutuality because the document was printed in small type; defendant reserved methods of disputed resolution not available to the consumer and defendants had unilateral power to change the contract by verbal announcement.

In addressing the issues, the Supreme court stated, "we note the positive law of Louisiana favors arbitration", citing La. R.S. 9:4201, and that such treatment echos the Federal Arbitration Act ("FAA"). Whether a claim is based on state or federal law, courts must enforce arbitration agreements covered by the FAA. Although the FAA preempts state law in cases involving transactions which affect commerce, states may regulate contracts involving arbitration agreements under general contract law. They may invalidate arbitration clauses on grounds as exists at law or equity per the revocation of any contract.

However, the states may not decide that a contract is fair enough to enforce its basic terms, but not fair enough to its arbitration clause. Any such state policy is

unlawful for it would place arbitration clauses on an unequal footing and contrary to the FAA's language and Congress' intent.

The Court stated that it is not willing to declare all standard form contracts as adhesionary. Contracts of adhesion are defined in broad terms as standard contracts usually in printed form prepared by a party of superior bargaining power for adherence or rejection by a weaker party. Standard form contracts merely serve as a possible indication of adhesion. The issue regarding adhesion is whether the party truly consented to all of the printed terms. The Court noted that although the print in the arbitration agreement was small, it did not differ in any way from the other clauses in the contract.

The Court disagreed with the Third Circuit regarding mutuality. The Third Circuit had concluded the defendant reserved to themselves methods of dispute resolution other than arbitration which was not available to the auction customer. For example, the seller had the option to retain the earnest money to deposit as liquidated damages and re-offer and resale the property in situations of buyer default. However, nowhere in the document did the defendants reserve the right to litigate any issue arising from the contract. Further, the reservation of rights contained with the default provision to which the Third Circuit took exception could only be invoked when the purchaser failed to comply with the Auction Terms & Conditions, which must be determined through arbitration.

The Court concluded the Third Circuit erred in declaring the whole contract adhesionary and lacking in mutuality. It noted that it is well settled that a party who signs a written instrument is presumed to know its contents. Mr. Aguillard signed the contract acknowledging that he read it. The Court stated that it could find nothing sufficient to establish that the defendants were in a superior bargaining position or that anything in the document itself would call into question the validity of Mr. Aguillard's consent as indicated by his signature. The Court found the doctrine of contract of adhesion was inapplicable and stayed the matter pending arbitration.

Meanwhile, on January 4, 2006, the Louisiana Supreme Court granted a writ application and remanded the case of *Vishal Hospitality, L.L.C. v. Choice Hotels International, Inc.* to the Louisiana First Circuit Court of Appeals to be handled in accordance with its decision in *Aguillard*. In *Vishal*, the First Circuit held the arbitration clause was adhesionary because the franchisor reserved for itself the right to litigate claims for indemnification, collection of monies owed under the agreement or to enjoin the use of trademarks. The First Circuit acknowledged the presumption in favor of arbitration, but held the arbitration clause to be adhesionary where it binds the non-drafting party to arbitration, but reserves to

the drafter of the document other remedies. As instructed, the First Circuit will be addressing these issues again in light of the *Aguillard* decision.

**About the Author:**

*Sonny Chastain is a partner in the Baton Rouge office of Kean Miller. He joined the firm in 2000 and practices in the commercial litigation, bankruptcy and business reorganization, and intellectual property areas. Sonny has represented clients in various commercial disputes involving such areas as truth in lending, unfair competition, antitrust/RICO, non-compete agreements, employment contracts/discrimination, arbitration agreements, software leases, investment suitability/broker relations etc. He has also represented clients in various IP and technology matters including registration, litigation, negotiations and transfers of trademarks, copyrights and trade secrets. He regularly advises clients regarding obtaining and maintaining protection in trademarks, trade secrets and copyrights. He can be reached at 225.389.3706 or [sonny.chastain@keanmiller.com](mailto:sonny.chastain@keanmiller.com)*