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# Recent Developments: EEOC v. Waffle House: Employment Contract to Arbitrate Employment Related Disputes Does Not Bar the Equal Employment Opportunity Commission from Pursuing Victim-Specific Judicial Relief, Such as Back Pay, Reinstatement, and Damages in an Enforcement Action for Violation of the Americans with Disabilities Act

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## *EEOC v. Waffle House*

### **Employment Contract to Arbitrate Employment Related Disputes Does Not Bar The Equal Employment Opportunity Commission From Pursuing Victim-Specific Judicial Relief, Such As Back Pay, Reinstatement, and Damages in an Enforcement Action For Violation of the Americans with Disabilities Act**

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By Sean McDonough

The Supreme Court held an arbitration agreement in an employment contract to arbitrate employment related disputes does not bar the Equal Employment Opportunity Commission from pursuing victim-specific judicial relief on behalf of an employee, such as back pay, reinstatement, and damages, in an enforcement action for a violation in both Title VII and Americans with Disabilities Act. *EEOC v. Waffle House*, 122 S. Ct. 754, 151 L. Ed. 2d 755 (2002). The Court stated that the Equal Employment Opportunity Commission is not a party to an employment arbitration agreement and has independent statutory authority to bring suit in any federal district court where venue is proper. *Id.* at 758.

As a condition of his employment, Eric Baker (“Baker”) signed an employment agreement with Waffle House, agreeing that any dispute or claim concerning his employment would be settled by binding arbitration. Baker was a grill operator who suffered a seizure at work and was subsequently discharged. He did not initiate arbitration proceedings. However, he filed a charge of discrimination against Waffle

House with the Equal Employment Opportunity Commission (“EEOC”), alleging a violation of the Americans with Disabilities Act (“ADA”).

The EEOC unsuccessfully attempted to conciliate Baker’s claim with Waffle House. As a result, the EEOC filed an enforcement action against Waffle House in the United States District Court for the District of South Carolina that alleged Waffle House’s violation of the ADA was “intentional and done with malice or reckless indifference to Baker’s federally protected rights.” The EEOC sought victim-specific relief such as back pay, reinstatement, compensatory, and punitive damages for malicious and reckless conduct.

Waffle House petitioned to stay the EEOC’s suit and to compel arbitration under the Federal Arbitration Act (“FAA”) or to dismiss the claim. The District Court denied the motion based on a factual determination that Baker’s employment contract had not included the arbitration provision. The Fourth Circuit Court of Appeals granted an interlocutory appeal, and found an enforceable arbitration clause between Baker and Waffle House did exist but was not binding on EEOC. However, the court of appeals held the EEOC

was barred from seeking victim specific relief, because policy goals of the FAA required giving some effect to Baker’s arbitration agreement. The United States Supreme Court granted certiorari to determine whether the EEOC had the authority to pursue victim specific relief, including reinstatement, back-pay, compensatory and punitive damages, under Title VII of the Civil Rights Act of 1964.

The Supreme Court stated that 1972 Congressional amendments to Title VII authorized the EEOC to bring enforcement actions to enjoin employers from engaging in unlawful employment practices that may include reinstatement with or without back pay. *Id.* at 760. In 1991, Congress again amended Title VII to allow recovery of compensatory and punitive damages by a complaining party. *Id.* (citing 42 U.S.C. § 1981(a)(1)(1994 ed.)). More importantly, the amendment included both private plaintiffs and the EEOC, § 1981a(d)(1)(A), and applied to ADA claims, § 1981a(a)(2), (d)(1)(B). *Id.* The Court found no language in the statute suggesting that an arbitration agreement, between private parties affects the EEOC’s statutory function or the remedies that are available. *Id.*

at 761.

In evaluating the policy considerations implemented by the ADA and FAA, the Court relied on *Gilmer v. Interstate/Johnson Lane Corp.*, holding that the FAA's purpose was to place arbitration agreements on the same footing as other contracts. *Id.* (citing *Gilmer*, 500 U.S. 20, 24 (1991)). Moreover, the Court found no ambiguity in the language of the FAA that granted the same relief for breach of an arbitration agreement as exists at law or in equity for the revocation of a contract. *Id.*; 9 U.S.C. § 2. However, following the precedent set in *Mastrobuono v. Shearson Lehman Hutton, Inc.*, the Court recognized absent ambiguity in an arbitration agreement, the language of the agreement defined the scope of the disputes and the parties involved. *Id.* at 762 (citing *Mastrobuono*, 514 U.S. at 52). The Court found EEOC was not a party to Baker's employment agreement. *Id.* Therefore, the EEOC had independent statutory authority to vindicate Baker's interest. *Id.*

The Court stated that to limit the EEOC's recovery in an ADA action, to injunctive relief, would contravene the statutory goals. The effect of this rule was to allow the EEOC to protect the public's interest prohibiting discriminatory employment practices. The Court also stated that an arbitration agreement, between an employer and employee, had no binding affect on any party other than those to the contract. In addition, the Court clarified the EEOC's authority to bring an action for victim specific relief, on behalf of an employee, who

is bound by a valid arbitration agreement with their employer. Further, the Court expatiated upon the EEOC's avenues of recovery that include victim specific relief such as back pay, reinstatement, compensatory and punitive damages for a violation of the ADA.

Currently there are issues surfacing nationwide concerning arbitration agreements which are deterring employees from asserting employment-related disputes. This problem stems from some arbitration agreements placing the financial burden of the arbitral proceedings on an employee in the event their claim is unsuccessful. In addition, some arbitration agreements in employment contracts contain a fee splitting provision which would require the employee to pay thousands of dollars to bring a claim. This case will allow the EEOC to vindicate a persons statutory rights in a judicial system when that person is bound by an arbitration agreement. Therefore, ensuring that an employee's fundamental rights under both Title VII and the Americans with Disabilities Act will not be trampled due to a lack a financial resources. More importantly, promoting a deterrent to employers who violate individual's rights without fear of backlash from the judicial system.

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