Case Digests

Arbitration—Class Arbitration

Stolt-Nielsen SA v AnimalFeeds Int'l Corp, __ US __, 130 S Ct 1758 (2010). Plaintiff brought a putative class action against petitioners asserting antitrust claims for prices that petitioners allegedly charged their customers over a period of several years. Other parties brought similar claims and, in a consolidated proceeding, the parties were ordered to arbitrate their dispute pursuant to a clause in a charter party agreement. The arbitrators ruled that the arbitration clause allowed for class arbitration. The district court vacated the award but the Second Circuit reversed, concluding that there is no federal maritime rule of custom and usage against class arbitration and that applicable state law did not establish a rule against class arbitration.

The United States Supreme Court reversed, finding that a party may not be compelled under the Federal Arbitration Act to submit a dispute to class-action arbitration unless there is a contractual basis to conclude that the party in fact agreed to do so. In other words, an arbitrator may not infer solely from an agreement to arbitrate that there is an implicit agreement that authorizes class-action arbitration. The court noted that class-action arbitration changes the nature of the arbitration to such an extent that it cannot be presumed that the parties agreed to do so merely by agreeing to submit disputes to an arbitrator.

Employment Arbitration Agreement—Determination for Court or Arbitrator

Rent-A-Center, W, Inc v Jackson, __ US __, 130 S Ct 2772 (2010). After plaintiff filed an employment-discrimination suit against his former employer, the employer filed a motion under the Federal Arbitration Act to dismiss or stay the proceedings in district court and to compel arbitration under a mutual agreement to arbitrate claims. Plaintiff opposed the motion on the ground that the entire arbitration agreement was unconscionable under state law. The district court granted the employer's motion, finding that the agreement gave the arbitrator authority to decide whether the agreement was enforceable. A divided Ninth Circuit reversed on the question of who had the authority to decide whether the agreement is enforceable and affirmed the conclusion that the provision in question was not unconscionable.

The United States Supreme Court reversed, stating that a party's challenge to a separate contract provision does not prevent a court from enforcing a specific agreement to arbitrate, and arbitration provisions are severable from the rest of the contract. Unless plaintiff challenges the provision delegating the arbitration of threshold issues specifically, it should be treated as valid and enforceable, with any challenge to the agreement's validity as a whole delegated to the arbitrator.

Patents—Business Methods

Bilski v Kappos, __ US __, 130 S Ct 3218 (2010). Petitioners sought patent protection for a claimed invention explaining to buyers and sellers of commodities how they could hedge against the risk of price changes in the energy marker. The patent examiner rejected the application, explaining that it was not implemented on a specific apparatus and merely manipulated an abstract idea. The United States Court of Appeals for the Federal Circuit heard the case en banc and affirmed, holding that a claimed process is patent-eligible under 35 USC 101 if: (1) it is tied to a particular machine or apparatus, or (2) it transforms a particular article into a different state or thing. *In re Bilski*, 545 F3d 943 (2008). The court concluded the machine-or-transformation test is the sole test under 35 USC 101 and was therefore the test for determining patent eligibility of a process under that statute as well. Applying the machine-or-transformation test, the court held that petitioners' application was not patent-eligible.

The United States Supreme Court affirmed but held that the machine-or-transformation test is not the sole test for determining whether an invention is a patent-eligible process. The court also rejected the contention that 35 USC 101 completely excludes business methods. Although 35 USC 273 indicates that some business methods are eligible for patents, it does not suggest wide patentability for inventions of that type. The court ruled that the hedging concept described in the application was an unpatentable abstract idea and that permitting such a patent would preempt this approach in all fields. Because the application in this case could be rejected under prior precedents on the unpatentability of abstract ideas, the court did not need to define further what constitutes a patentable process.

Limited Liability Companies—Applicability of De Facto Corporation Doctrine

Duray Dev, LLC v Perrin, No 287722, 2010 Mich App LEXIS 607 (Apr 13, 2010). Plaintiff real estate developer entered into an excavation contract with an individual defendant (Perrin) and Perrin Excavating, LLC, on September 30, 2004. On October 27, 2004, a contract that was intended to supercede the previous contract was entered into by plaintiff and Outlaw Excavating, LLC, only, with the latter recently formed by defendant Perrin and another person. There were two contracts because Perrin had not formed Outlaw Excavating, LLC, when the first contract was executed and at the time of the second contract the parties believed that the Outlaw Excavating LLC had been properly formed. After a breach of contract dispute arose, it was discovered that Outlaw did not obtain status as a "filed" LLC until November 29, 2004, and therefore it was not a valid LLC when the parties executed the second contract. The trial court ruled in plaintiff's favor, finding that Perrin was in breach of the contract. In a posttrial memorandum, Perrin argued that he was not personally liable for the damages for breach alleging that the LLC was liable under the de facto corporation doctrine.

The court of appeals stated that the LLCA provides precisely when an LLC comes into existence, as MCL 450.4202(2) provides that "[t]he existence of the limited liability company begins on the effective date of the articles of organization as provided in [MCL 450.4104]." MCL 450.4104(2) requires that the articles be delivered to the Bureau of Commercial Services and, after delivery, the administrator "shall endorse upon it the word 'filed' with his or her official title and the date of receipt and of filing[.]" MCL 450.4104(6) further provides that "[a] document filed under [MCL 450.4104(2)] is effective at the time it is endorsed[.]"

Once an LLC comes into existence, limited liability applies, and a member or manager is not liable for the acts, debts, or obligations of the company. MCL 450.4501(3). However, a person who signs a contract on behalf of a company that is not yet in existence generally becomes personally liable on that contract. It is well established that a corporation can nevertheless become liable if (1) it either ratifies or adopts that contract after it comes into existence, (2) a court determines that a de facto corporation existed at the time of the contract, or (3) a court orders that a corporation by estoppel prevented the opposing party from arguing against the existence of a corporation. In this case, Perrin signed the articles of organization for the LLC on the same day as the second contract, October 27, 2004, and then signed the October 27, 2004, contract on behalf of the LLC. The Bureau did not endorse the articles of organization until November 29, 2004. Therefore, under the LLCA, the LLC was not in existence on October 27, 2004, and it did not adopt or ratify the second contract, thus making Perrin personally liable for the LLC's obligations unless a de facto LLC existed or an LLC by estoppel applied.

The de facto corporation doctrine allows a defectively formed association to attain the legal status of a corporation, while the corporation by estoppel doctrine prevents a party who dealt with an association as though it were a corporation from denying its existence. The court found that the similarities between the Business Corporation Act and LLCA support the conclusion that the acts should be interpreted consistently and that the de facto corporation doctrine applies to both corporations and LLCs. The purposes for forming a limited liability company and a corporation are similar and both acts contemplate the moment when an LLC or corporation comes into existence. Thus, in this case, the de facto corporation doctrine applied to the LLC and, as a result, the LLC and not Perrin individually was liable for the breach of the October 27, 2004, contract.

Similarly, the corporation-by-estoppel doctrine—which is an equitable remedy where its purpose is to prevent one who contracts with a corporation from later denying its existence to hold the individual officers or partners liable—applies to LLCs as well as corporations. However, the trial court did not make a clear and obvious mistake by not applying the corporation-by-estoppel doctrine to the LLC when the issue was not raised by the appealing party and there was no precedent indicating that the trial court should have applied the doctrine.

Single Business Tax—Contributions for Employment Benefits

Ford Motor Co v Department of Treasury, No 283925, 2010 Mich App LEXIS 925 (May 20, 2010). The Department conducted an audit of plaintiff to determine plaintiff's tax due under the Single Business Tax Act (SBTA) for years 1997 to 1999 and assessed plaintiff with a tax liability of $21,726,713 above the SBTA taxes already paid by plaintiff because the Department determined that voluntary contributions made to an irrevocable trust created under the Voluntary Employees' Beneficiary Association (VEBA) amounted to employee compensation that was taxable under the SBTA. The court of appeals held that contributions plaintiff made to the VEBA in the tax years in question did not constitute compensation under the SBTA and, therefore, were not subject to the SBTA tax.

Single Business Tax—Remanufacturing

Midwest Bus Corp v Department of Treasury, No 288686, 2010 Mich App LEXIS 790 (Mar 16, 2010). Plaintiff filed a declaratory judgment action following an audit for single business tax years 1999 through 2004, and the receipt of tax due bills. Plaintiff alleged that it was in the business of selling bus parts and remanufacturing buses and that its remanufacturing contracts with various transit authorities involved primarily the sale of tangible personal property—bus parts, regardless of whether plaintiff's installation of those parts was also included in the contracts. Plaintiff argued that revenue from the sales at issue, which gave rise to the disputed tax due bills, should have been sourced to the destinations where they were shipped as sales of tangible personal property under MCL 208.52, and not sourced to Michigan, under MCL 208.53, where the installation services were performed. On the other hand, defendants argued that plaintiff's business of remanufacturing buses did not merely involve the sale of bus parts. Instead, plaintiff remanufactured buses, which meant that the service of actually installing the bus parts was not merely incidental to the sale of the parts but that rehabilitation was the primary purpose of the business contracts. Thus , revenue from the disputed sales was properly sourced to Michigan, under MCL 208.53, where the services were performed, and plaintiff was not entitled to any refund or other relief. The trial court agreed with defendants and granted their motion for summary disposition.

The court of appeals affirmed. A remanufacturing contract is predominantly for the provision of a service—a rehabilitation service. Thus, for purposes of the sales factor under the Single Business Tax, these are sales "other than sales of tangible personal property" and, because the services were provided in Michigan in this case, the sales were "in this state" under MCL 208.53.