United States District Court, N.D. Texas, Dallas Division
·
Civil Action No. 3:02-CV-2267-L (N.D. Tex. Dec 03, 2002)
·
Decided December 3, 2002

DII INDUSTRIES, LLC v. UNDERWRITERS AT LLOYD'S, LONDON

DII INDUSTRIES, LLC, Successor by Conversion to DRESSER INDUSTRIES, INC., Plaintiff, v. UNDERWRITERS AT LLOYD'S, LONDON, et al., Defendants.
· Civil Action No. 3:02-CV-2267-L
·United States District Court, N.D. Texas, Dallas Division
· December 3, 2002

FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS OF THE UNITED STATES MAGISTRATE JUDGE

PAUL D. STICKNEY, United States Magistrate Judge.

Pursuant to the District Court's Order of Reference, entered October 22, 2002, "Plaintiff's Motion to Remand," filed November 1, 2002, has been referred to the United States Magistrate Judge for hearing, if necessary, and for recommendation. The Court held a hearing on this matter on November 19, 2002. For the following reasons, the motion to remand should be GRANTED.

I. Procedural History

On August 28, 2001, Plaintiff brought suit against Defendants in the 192nd Judicial District Court of Dallas County, Texas, alleging in pertinent part that the defendant insurance companies had failed to reimburse Plaintiff for payments and costs associated with certain asbestos claims as required by a Coverage-in-Place Agreement ("CIP"). (P.'s App. at 1, 15.) Defendants answered with a Plea in Abatement, which argued that the CIP contained an arbitration agreement and that the suit should be abated so that arbitration could proceed. (Id. at 42.) On June 6, 2002, after hearing oral arguments, Judge Hartman of the 192nd Judicial District Court of Dallas County denied Defendants' Plea in Abatement without comment. (Id.

at 177, 193.) Defendants thereafter petitioned for a writ of mandamus from the Fifth District Court of Appeals of Texas, seeking to compel arbitration under the CIP. (Id. at 195.) On July 30, 2002, after requesting Plaintiff to respond to Defendants' petition, the Court of Appeals denied Defendants' petition for writ of mandamus without comment. (Id. at 221, 222-45, 246.) Finally, Defendants petitioned for a writ of mandamus from the Supreme Court of Texas, seeking to compel arbitration under the CIP. (Removal Record Vol. 4, Tab 45.) However, on October 10, 2002, after requesting Plaintiff to respond to Defendants' petition, the Supreme Court of Texas denied Defendants' petition for writ of mandamus without comment. (Removal Record Vol. 2, Tab 58; P.'s App. at 17.) On October 17, 2002, Defendants removed the action to the Northern District of Texas pursuant to 9 U.S.C. § 205, Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("the Convention").

Plaintiff now moves to remand the case to state court on the grounds that: (1) the removal was not timely under § 205 because Defendants failed to remove the case before trial, and (2) even if the removal were timely, Defendants waived their right to remove by obtaining an adjudication on the merits in state court. (P.'s Br. at 6, 9.) Defendants, on the other hand, contend that: (1) the removal was timely under § 205 because Defendants removed the case before trial, and (2) Defendants did not expressly waive their right to remove under § 205. (D.s' Resp. at 2, 4.) Because the Court concludes that it lacks subject matter jurisdiction over this case,1 the Court does not reach the contentions of the parties.

1.

"[F]ederal courts . . . must consider jurisdiction sua sponte if not raised by the parties." Ojeda-Terrazas v. Ashcroft, 290 F.3d 292, 294 n. 4 (5th Cir. 2002) (quoting Howery v. Allstate Ins. Co., 243 F.3d 912,919 (5th Cir. 2001)).

The Court now turns to discuss the legal standards that will guide its analysis.

II. Legal Standards

The Convention grants state and federal courts concurrent jurisdiction over cases arising out of the Convention. McDermott Int'l, Inc., 944 F.2d at 1208 n. 12. See also In re Oakwood Mobile Homes, Inc., 987 S.W.2d 571,573 (Tex. 1999) (recognizing that, under the Federal Arbitration Act,2 a state "trial court must compel arbitration and stay its own proceedings" once it is established that a party has "a claim within [an] arbitration agreement").

2.

The Federal Arbitration Act ("FAA") "is the approximate domestic equivalent of the Convention . . . [such that] [t]he Convention . . . incorporates the FAA except where the FAA conflicts with the Convention['s] . . . few specific provisions." McDermott Int'l, Inc. v. Lloyds Underwriters of London, 120 F.3d 583, 588 (5th Cir. 1997) (emphasis omitted).

With respect to removal, the Convention provides:

Where the subject matter of an action or proceeding pending in a State court relates to an arbitration agreement or award falling under the Convention, the defendant or the defendants may, at any time before the trial thereof, remove such action or proceeding to the district court of the United States for the district and division embracing the place where the action or proceeding is pending.
9 U.S.C. § 205. An arbitration agreement falling under the Convention3 "relates to" a plaintiff's suit whenever the agreement "could conceivably affect the outcome of plaintiff's case." Beiser v. Weyler, 284 F.3d 665, 669 (5th Cir. 2002) (recognizing that, absent a defendant's "completely absurd or impossible" assertions, an arbitration agreement "could conceivably affect the outcome" of the case). Furthermore, the Convention provides for removal "at any time before the trial," which courts in the Fifth Circuit have generally construed as allowing removal "at any time before an adjudication on the merits." Acosta v. Master Maintenance Construction, Inc., 52 F. Supp.2d 699,705 (M.D. La. 1999). See also Certain Underwriters at Lloyd's v. Bristol-Myers Squibb Co., 51 F. Supp.2d 756, 759 (E.D. Tex. 1999) (concluding that the defendant had not removed the case "before the trial" when the defendant had engaged in extensive discovery and had participated in the first phase of a "trifurcated" proceeding). Finally, any waiver of the right to remove under § 205 must be explicit. McDermott Int'l, Inc. v. Lloyds Underwriters of London, 944 F.2d 1199,1209-13 (5th Cir. 1991).

3.

For purposes of the instant suit, an arbitration agreement falls under the Convention if it arises out of a commercial relationship and includes a party who is not a citizen of the United States.9 U.S.C. § 202.

The Court now turns to address the merits of the motion.

III. Analysis

As noted above, the Convention grants state and federal courts concurrent jurisdiction over cases arising out of the Convention. McDermott Int'l, Inc., 944 F.2d at 1208 n. 12. See also In re Oakwood Mobile Homes, Inc., 987 S.W.2d 571, 573 (Tex. 1999). In the instant case, it is not disputed that the 192nd Judicial District Court of Dallas County, the Fifth District Court of Appeals of Texas, and the Supreme Court of Texas have all considered and decided that the arbitration agreement in the CIP did not compel arbitration in this case. Thus, at the time of removal, there was effectively no arbitration agreement upon which Defendants could rely to invoke § 205 in this case.

Defendants contend that this Court has appellate jurisdiction to review the arbitration decision of the state court.4 However, such appellate review is barred by the Rooker-Feldman doctrine. See District of Columbia Court of Appeals v. Feldman, 460 U.S. 462

(1983); Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923). "[T]he Rooker-Feldman doctrine . . . provides that lower federal courts lack jurisdictional authority to sit in appellate review of state court decisions." Reitnauer v. Texas Exotic Feline Foundation, Inc., 152 F.3d 341, 343 (5th Cir. 1998). Although Congress has legislated limited exceptions to the Rooker-Feldman doctrine, see id. at 343 n. 8, no such exception appears in the text of the Convention.5 9 U.S.C. § 201-08. Furthermore, the Court has been unable to locate any judicially recognized exception to the Rooker-Feldman doctrine with respect to the Convention. Accordingly, this Court has no jurisdiction to review the final arbitration decision of the Supreme Court of Texas; appellate jurisdiction of that nature rests solely with the Supreme Court of the United States. Feldman,460 U.S. at 476. See also Carbonell v. Louisiana Dept. of Health Human Resources, 772 F.2d 185, 188 (5th Cir. 1985) ("[O]nce a determination has been made by a state court relative to the existence or non-existence of a federal right . . ., the only avenue of review is to the United States Supreme Court.").

4.

Defendants contend that "[a]lthough the state trial court (and appellate courts on interlocutory mandamus review) denied . . . Defendants' request for abatement in favor of arbitration, this Court may consider the effect of the CIP Agreement's arbitration provision." (D.s' Notice of Removal at 4.) Defendants elaborated on this contention during oral argument by suggesting that the Convention contemplates this Court's exercise of appellate jurisdiction over the state court arbitration decision. (Oral Argument, 11/19/02 Hearing.)

5.

Indeed, 9 U.S.C. § 203 states that "[t]he district courts of the United States (including the courts enumerated in section 460 of title 28) shall have original jurisdiction over such an action or proceeding, regardless of the amount in controversy." 9 U.S.C. § 203 (emphasis added).

Defendants further contend that the arbitration agreement at issue "could conceivably affect the outcome" of the case and that therefore removal under § 205 was proper under Beiser v. Weyler, 284 F.3d 665,669 (5th Cir. 2002). (D.s' Notice of Removal at 3.) This argument is without merit. Beiser recognizes that, absent "completely absurd or impossible" assertions by a defendant, an arbitration agreement "could conceivably affect the outcome" of the case. Beiser, 284 F.3d at 669 (emphasis added). Defendants' assertions in this case present two legal impossibilities. First, the state court, exercising concurrent jurisdiction, decided that the arbitration agreement in the CIP did not compel arbitration in this case. Thus, at the time of removal, there was effectively no arbitration agreement upon which Defendants could rely to invoke § 205 in this case. Second, this Court cannot exercise appellate jurisdiction over the arbitration decision of the state court. Thus, there is no way for this Court to find an arbitration agreement upon which Defendants could rely to invoke § 205. Because Defendants' assertions are legally impossible, Beiser compels the Court to conclude that there is no arbitration agreement that "could conceivably affect the outcome" of this case. Id. Accordingly, Defendants improperly relied upon § 205 for the removal of this case.

As a final matter, Defendants rely heavily on the case of Certain Underwriters at Lloyd's v. Bristol-Myers Squibb Co., 51 F. Supp.2d 756 (E.D. Tex. 1999), for the proposition that their removal under § 205 was not barred by the arbitration decision of the state court. (D.s' Resp. at 2-3, 7 n. 4.) Specifically, Defendants point to the statement in Certain Underwriters at

Lloyd's that the defendant could have removed the case after unsuccessfully petitioning for a writ of mandamus on a denied motion to compel arbitration. (Id. at 2-3.) Although Defendants are correct that the instant case presents exactly that situation, Defendants' reliance on Certain Underwriters at Lloyd's is misplaced. First, the language relied upon by Defendants is dicta. Certain Underwriters at Lloyd's, 51 F. Supp.2d at 758. Next, Certain Underwriters at Lloyd's did not decide the issue that is currently before this Court. Id. Finally, Certain Underwriters at Lloyd's is not binding authority on this Court.

Because Defendants improperly removed this case under § 205, the case should be remanded for lack of subject matter jurisdiction.

IV. Recommendation

For the foregoing reasons, the Court RECOMMENDS that "Plaintiff's Motion to Remand" be GRANTED and that the case be REMANDED to the 192nd Judicial District Court of Dallas County, Texas. The Court further RECOMMENDS that the parties be ORDERED to address the issue of attorney fees and costs in separate briefing after the District Court's adoption of this recommendation.