

STROOCK SPECIAL BULLETIN

Arbitration Update – Relief Sought in Class Action Held Not to Be “Public Injunctive” Relief

September 20, 2018

This Stroock Special Bulletin provides an update with respect to litigation involving arbitration provisions. Recently, a California federal district court held that relief sought in a putative class action was not “public injunctive” relief that would render the defendant bank’s arbitration provision unenforceable under the California Supreme Court’s decision in McGill v. Citibank, N.A., 2 Cal. 5th 945 (2017).

Following the California Supreme Court’s decision in McGill v. Citibank, N.A., 2 Cal. 5th 945 (2017), the issue of whether relief sought in a putative class action is “public injunctive” relief has been a focus of arbitration-related litigation. The issue is critical because the California Supreme Court held in McGill that claims seeking public injunctive relief are not subject to arbitration unless the parties’ arbitration provision allows the arbitrator to award such relief.

Yesterday, Judge Bernal of the Central District of California ruled in Johnson v. JPMorgan Chase Bank, N.A. that the relief sought by plaintiffs in the action was not public injunctive relief as defined by the California Supreme Court in McGill.

In Johnson, plaintiffs asserted various claims against JPMorgan Chase Bank, N.A. (“Chase”) arising from overdraft charges and other fees assessed to their checking accounts. Plaintiffs alleged that the various fees breached the terms of their deposit account agreements and also violated California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.* (the “UCL”). Plaintiffs sought monetary relief on behalf of putative classes of Chase accountholders and also purported to seek injunctive relief on behalf of other California consumers. Chase moved to compel arbitration, and plaintiffs contended in response that their UCL claims were not subject to arbitration under McGill due to plaintiffs’ requests for public injunctive relief.

The district court rejected plaintiffs’ argument, reasoning that under McGill and Kilgore v. Keybank, N.A., 718 F.3d 1052 (9th Cir. 2013), relief that would primarily benefit or prevent injury to identified plaintiffs or plaintiff classes, with no real prospective benefit to the public at large, was not public injunctive relief. Based on a review of the pleadings, the court concluded that while plaintiffs expressly requested a general injunction and public injunctive relief, a closer

inspection revealed that the relief sought was actually intended to redress and prevent further injury to Chase customers—who allegedly had already been injured—rather than the general public. In particular, the court focused on plaintiffs’ prayer for monetary relief and found that any benefit to the general public “would be incidental to [p]laintiffs’ primary purpose of seeking redress for their own injuries.”

The court expressly rejected plaintiffs’ remaining arguments, including that a suit against one of the largest banks in the country would necessarily result in a benefit to the general public, reasoning that such a rule would effectively convert any consumer action against a large company into a non-arbitrable suit. The court concluded that the size of a class alone could not elevate a class action seeking injunctive relief into a case seeking non-arbitrable public injunctive relief under McGill. Having decided the issue on state-law grounds, the district court did not reach Chase’s alternative argument that the McGill rule is preempted by federal law under the Federal Arbitration Act because the rule improperly interferes with and effectively disfavors arbitration.

Absent a definitive ruling on the preemption question, the issue of whether claims seeking public injunctive relief are subject to arbitration will no doubt continue to be litigated in California state and federal courts. Judge Bernal’s reasoned decision in Johnson should assist proponents of arbitration in ensuring that their arbitration agreements are enforced as written, as directed by the United States Supreme Court.

We represented Chase in Johnson and also represented Citibank in McGill.

The attorneys of Stroock’s Financial Services Litigation, Regulation and Enforcement Group are well positioned to answer any questions you may have about these issues and other aspects of arbitration.

For More Information

Julia B. Strickland
310.556.5806
jstrickland@stroock.com

David W. Moon
310.556.5967
dmoon@stroock.com

Christopher R. Fredrich
310.556.5839
cfredrich@stroock.com

New York

180 Maiden Lane
New York, NY 10038-4982
Tel: 212.806.5400
Fax: 212.806.6006

Los Angeles

2029 Century Park East
Los Angeles, CA 90067-3086
Tel: 310.556.5800
Fax: 310.556.5959

Miami

Southeast Financial Center
200 South Biscayne Boulevard, Suite 3100
Miami, FL 33131-5323
Tel: 305.358.9900
Fax: 305.789.9302

Washington, DC

1875 K Street NW, Suite 800
Washington, DC 20006-1253
Tel: 202.739.2800
Fax: 202.739.2895

www.stroock.com

This *Stroock Special Bulletin* is a publication of Stroock & Stroock & Lavan LLP. © 2018 Stroock & Stroock & Lavan LLP. All rights reserved. Quotation with attribution is permitted. This Stroock publication offers general information and should not be taken or used as legal advice for specific situations, which depend on the evaluation of precise factual circumstances. Please note that Stroock does not undertake to update its publications after their publication date to reflect subsequent developments. This Stroock publication may contain attorney advertising. Prior results do not guarantee a similar outcome.

Stroock & Stroock & Lavan LLP provides strategic transactional, regulatory and litigation advice to advance the business objectives of leading financial institutions, multinational corporations and entrepreneurial businesses in the U.S. and globally. With a rich history dating back 140 years, the firm has offices in New York, Los Angeles, Miami and Washington, D.C.

For further information about *Stroock Special Bulletins*, or other Stroock publications, please contact publications@stroock.com.