Tentative Rulings for June 7, 2022
Department 403

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

18CECG03915 ***Martinez & Sons Produces v. Aweta Americas*** **is continued to Tuesday, June 28, 2022 at 3:30 p.m. in Department 403**

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Tentative Rulings for Department 403

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(36)

Tentative Ruling

Re: ***Adeline Legarreta v. Vivint Solar***
Superior Court Case No. 20CECG03050

Hearing Date: June 07, 2022 (Dept. 403)

Motion: By Defendant Vivint Solar for Petition to Compel Arbitration and to Dismiss or Stay the Action

Tentative Ruling:

To grant defendant's motion to compel arbitration of plaintiff's claims and to stay the action pending arbitration. (9 U.S.C.A., § 2; Code Civ. Proc., § 1281.2; Code Civ. Proc., § 1281.4.)

Explanation:

Defendant Vivint Solar moves to compel arbitration of the dispute pursuant to the Federal Arbitration Act (9 U.S.C. section 1, *et seq*.), or under the California Arbitration Act. (Code Civ. Proc., § 1281.2, *et seq.*)

Under the Federal Arbitration Act,

> A written provision in … a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, … shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

(9 U.S.C.A. § 2.)

"The FAA was designed 'to overrule the judiciary's long-standing refusal to enforce agreements to arbitrate,' and to place such agreements '"'upon the same footing as other contracts,'"' While Congress was no doubt aware that the Act would encourage the expeditious resolution of disputes, its passage 'was motivated, first and foremost, by a congressional desire to enforce agreements into which parties had entered.' Accordingly, we have recognized that the FAA does not require parties to arbitrate when they have not agreed to do so, nor does it prevent parties who do agree to arbitrate from excluding certain claims from the scope of their arbitration agreement. It simply requires courts to enforce privately negotiated agreements to arbitrate, like other contracts, in accordance with their terms." (*Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior University* (1989) 489 U.S. 468, 478 [internal citations omitted].)

"In recognition of Congress' principal purpose of ensuring that private arbitration agreements are enforced according to their terms, we have held that the FAA pre-empts

state laws which 'require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration.'" (*Ibid* [internal citations omitted].)

Also, under California Code of Civil Procedure section 1281.2,

> On petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy and that a party thereto refuses to arbitrate such controversy, the court shall order the petitioner and the respondent to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists, unless it determines that:
>
> (a) The right to compel arbitration has been waived by the petitioner; or
>
> (b) Grounds exist for the revocation of the agreement.
>
> (c) A party to the arbitration agreement is also a party to a pending court action or special proceeding with a third party, arising out of the same transaction or series of related transactions and there is a possibility of conflicting rulings on a common issue of law or fact.

(Civ. Proc. Code, § 1281.2.)

"California courts traditionally have maintained a strong preference for arbitration as a speedy and inexpensive method of dispute resolution. To this end, 'arbitration agreements should be liberally construed', with 'doubts concerning the scope of arbitrable issues [being] resolved in favor of arbitration.'" (*Market Ins. Corp. v. Integrity Ins. Co.* (1987) 188 Cal. App. 3d 1095, 1098 [internal citations omitted, brackets added].)

"This strong policy has resulted in the general rule that arbitration should be upheld 'unless it can be said with assurance that an arbitration clause is not susceptible to an interpretation covering the asserted dispute. [Citation.]' [Citations.] [¶] It seems clear that the burden must fall upon the party opposing arbitration to demonstrate that an arbitration clause cannot be interpreted to require arbitration of the dispute.'" (*Bono v. David* (2007) 147 Cal.App.4th 1055, 1062.)

However, "[a]s our Supreme Court stressed several decades ago, the contractual terms themselves must be carefully examined before the parties to the contract can be ordered to arbitration: 'Although "[t]he law favors contracts for arbitration of disputes between parties" [citation], " 'there is no policy compelling persons to accept arbitration of controversies which they have not agreed to arbitrate....'" [Citations.] In determining the scope of an arbitration clause, "[t]he court should attempt to give effect to the parties' intentions, in light of the usual and ordinary meaning of the contractual language and the circumstances under which the agreement was made [citation]." [Citation.]' [¶] Following on from this, and as other courts of appeal have regularly observed, the terms of the specific arbitration clause under consideration must reasonably cover the dispute as to which arbitration is requested. This is so because '[t]here is no public policy favoring arbitration of disputes which the parties have not agreed to arbitrate.'" (*Id.*, 1063 [brackets added].) "[W]hen a petition to compel arbitration is filed and accompanied by prima facie evidence of a written agreement to arbitrate the controversy, the court

itself must determine whether the agreement exists and, if any defense to its enforcement is raised, whether it is enforceable. Because the existence of the agreement is a statutory prerequisite to granting the petition, the petitioner bears the burden of proving its existence by a preponderance of the evidence. If the party opposing the petition raises a defense to enforcement - either fraud in the execution voiding the agreement, or a statutory defense of waiver or revocation (see § 1281.2, subds. (a), (b).) - that party bears the burden of producing evidence of, and proving by a preponderance of the evidence, any fact necessary to the defense." (*Rosenthal v. Great Western Fin. Securities Corp.* (1996)14 Cal. 4th 394, 413 [brackets added].) Thus, in ruling on a motion to compel arbitration, the court must first determine whether the parties actually agreed to arbitrate the dispute, and general principles of California contract law guide the court in making this determination. (*Mendez v. Mid-Wilshire Health Care Center* (2013) 220 Cal.App.4th 534.)

Here, defendant has met its initial burden of showing that there is a written agreement to arbitrate between plaintiff and defendant. According to defendant's evidence, plaintiff checked a box agreeing to arbitration and waiving her right to a jury trial, and electronically signed the agreement. (Anderson, Decl., Exh. A.) Although the arbitration agreement indicates that there are *limited* exceptions to the kinds of disputes that must be arbitrated, defendant argues that plaintiff's claims arising from the purchase or installation of solar panels by defendant is subject to arbitration. (Anderson, Decl., Exh. A, § 6(e).) Since the exceptions to arbitration are unidentified, it is unclear whether the arbitration clause covers the type of claims, that plaintiff has raised in the present case.

However, defendant further argues that the delegation clause contained in the arbitration agreement reserves any questions of arbitrability for the arbitrator. Generally, unless the parties clearly and unmistakably provide otherwise, disputes regarding arbitrability are to be decided by the court, not the arbitrator. (*First Options of Chicago, Inc. v. Kaplan* (1995) 514 U.S. 938, 943.) In order for a delegation clause to be effective, "the language of the clause must be clear and unmistakable… [and] the delegation must not be revocable under state contract defenses such as fraud, duress, or unconscionability. (*Tiri v. Lucky Chances, Inc.* (2014) 226 Cal.App.4th 231, 242 citing *Rent-A-Center, West, Inc. v. Jackson* (2010) 561 U.S. 63, 72.)

- Clear and Unmistakable Language:

"An easy case [establishing delegation] is obviously when there is explicit language in the actual signed document to that effect." (*Ibid.,* quoting *Gilbert Street Developers, LLC v. La Quinta Homes, LLC* (2009) 174 Cal.App.4th 1185, 1192 [brackets in original].) Here, the relevant part of the arbitration agreement provides:

> Either You or We may, without the other's consent, elect mandatory, binding arbitration for any claim, dispute, or controversy arising out of or relating to … the interpretation, validity, or enforceability of this Agreement, including the determination of the scope or applicability of this Section 6(e)...

(Anderson, Decl., Exh. A, § 6(e) [emphasis in original].)

The agreement also defines the word "You" refers to "the undersigned CUSTOMER(s)" (i.e., plaintiff), and the words "We", "Us", or "Our" refers to Vivint Solar Developer, LLC (i.e., defendant). Thus, defendant has demonstrated the existence of an unambiguous delegation clause.

- Defenses to the Agreement:

The delegation clause cannot be revocable on "state-law grounds such as fraud, duress, or unconscionability." (*Id*., 243 [internal citations omitted].) No opposition was filed, so no facts were presented to warrant finding the delegation clause, or the arbitration agreement, to be revocable.

Thus, the court intends to grant defendant's motion to compel arbitration and to stay the action pending arbitration.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 06/06/22.
(Judge's initials) (Date)