



## Joseph v. Amazon.com Inc. et al

2024 | Cited 0 times | N.D. California | June 14, 2024

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA

RHAWN JOSEPH,

Plaintiff, v. AMAZON.COM INC., et al.,

Defendants.

Case No. 23-cv-05176-PCP

ORDER GRANTING MOTION TO COMPEL ARBITRATION & DENYING MOTION FOR SUMMARY JUDGMENT Re: Dkt. Nos. 11, 14 Pro se plaintiff Dr. Rhawn Joseph brings this action against defendants Amazon.com, Inc. and Amazon.com Services LLC breach of contract, Direct Publishing. Amazon has moved to compel arbitration under the Federal Arbitration Act,

trate any dispute and delegated questions of arbitrability to the arbitrator motion for summary judgment. For the following reasons judgment is denied without prejudice. This case is stayed pending arbitration.

BACKGROUND business relationship with Amazon. Dr. Joseph is a self-publishing author who has used

Kindle Direct Publishing (KDP) to publish his work. As a condition of creating an account to KDP services, authors must agree to Amazon KDP Terms and Conditions . Dkt. No. 13, at 2 3. According to Amazon, in August 2011, Dr. Joseph agreed to the Agreement as published on the KDP website on July 8, 2011. Id. at 2. Amazon contends that each time Dr. Joseph published a new book or created an account through CreateSpace, a separate program, Dr. Joseph was again presented with, attested to compliance with, and agreed to the KDP terms and services. Id. at 4 5. Dr. Joseph does not dispute that he entered into the Agreement with Amazon. 1

The Agreement included the following arbitration provision:

10.1 Disputes. Any dispute or claim relating in any way to this Agreement or KDP will be resolved by binding arbitration, rather than in court, except that either party may elect to proceed in small claims court in the United States if the claims qualify under applicable law. The United States Federal



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Arbitration Act and federal arbitration law apply to this Agreement. There is no judge or jury in arbitration, and court review of an arbitration award is limited. However, an arbitrator can award the same damages and relief as a court (including injunctive and declaratory relief or statutory damages), and must follow the terms of this Agreement as a court would. Before you may begin an arbitration proceeding, you must send a letter notifying us of your intent to pursue arbitration and describing your claim to our registered agent Corporation Service Company, 300 Deschutes Way SW, Suite 304, Tumwater, WA 98501, USA. The arbitration will be conducted by the American Arbitration Association (AAA) under its Commercial Arbitration Rules. Payment of all filing, administration Schedule. You and we each agree that the underlying award in rules and fee schedules are available at [www.adr.org](http://www.adr.org) or by calling 1-800-778-7879 (in the United States). You and we each agree that any dispute resolution proceedings will be conducted only on an individual basis and not in a class, consolidated or representative action. If for any reason a claim proceeds in court rather than in arbitration you and we each waive any right to a jury trial and you and we agree that any such suit may proceed only in state or Federal court in King County, Washington. Dkt. No. 13-4, at 12. The Agreement also included a choice-of- The United States Federal Arbitration Act, applicable United States federal law, and the laws of the state of Washington, USA, without regard to principles of conflict of laws, will govern this Agreement and any dispute of any sort that might arise between you and Amazon relating to this Agreement or the Program. Id.

Dr. Joseph alleges that Amazon breached its duties under the Agreement in April 2022 failed to post all began withholding and refusing to deposit most

1 Dr. Joseph attached a 2023 version of the Agreement as Exhibit 7 to his Complaint. Dkt. No. 1-3, at 41 information is suddenly incorrect which is an obvious lie as Amazon continues to make some but Compl., Dkt. No. 1-3, at 4. He seeks to recover royalties owed under the Agreement pursuant to Subsection 5.4.2, which provides Royalties due on Book sales approximately 60 days following the end of the calendar month

Dkt. No. 13-4, at 7 8.

Pursuant to the Agreement, Dr. Joseph initiated arbitration with AAA on July 26, 2023. Due to a dispute about administrative fees, however, Dr. Joseph did not proceed with arbitration. On September 8, 2023, Dr. Joseph instead filed the present action in Santa Clara County Superior Court. On October 10, 2023, Amazon removed this action to federal court. Amazon subsequently moved to compel arbitration, and Dr. Joseph moved for summary judgment.

### LEGAL STANDARD

transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction ... shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contr Bielski v. Coinbase, Inc., 87 F.4th



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1003, 1009 (9th Cir. 2023). And like other contracts, arbitration agreements are subject to *Lim v. TForce Logs., LLC*, 8 F.4th 992, 999 (9th Cir. 2021). There is one way arbitration provisions in a contract an arbitration provision *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 445 (2006). In other words, notwithstanding state law on severability, an arbitration provision can be valid and enforceable even if other parts of the contract it is in are not.

agreement to arbitrate was actually formed. See *Ahlstrom v. DHI Mortg. Co., Ltd., L.P.*, 21 F.4th 631, 634 35 (9th Cir. Bielski, 87 F.4th at 1009, Id.

Normally, these gateway questions are resolved by a court. But parties to an arbitration provision can also enter a separate agreement to arbitrate some of these gateway questions a clearly and unmistakably *Brennan v. Opus Bank*, 796 F.3d 1125, 1130 (9th Cir. 2015) (emphasis in original) (quoting *AT&T Techs., Inc. v. Commc'ns Workers of Am.*, 475 U.S. 643, 649 (1986)); see also *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995) .

a gateway issue is simply an additional, antecedent agreement the party seeking arbitration asks the federal court to enforce, and the FAA operates on this additional arbitration agreement just as *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 70 (2010). And, like any other arbitration provision, a delegation provision is severable. See *Buckeye*, 546 U.S. at 445. Not of validity and ar *Ahlstrom*, 21 F.4th at 634 35.

All of this means that when presented with a contract that includes both an arbitration provision and a delegation provision, a reviewing court can consider three types of challenges: (1) formation challenges to the delegation provision, see *Ahlstrom*, 21 F.4th at 635; (2) validity and enforceability challenges to the delegation provision, see *Bielski*, 87 F.4th at 1009; and (3) formation challenges to the underlying arbitration provision, see *Ahlstrom*, 21 F.4th at 635. But if the delegation provision is valid, the court cannot consider validity or enforceability challenges to the underlying arbitration provision. See also *Caremark, LLC v. Chickasaw Nation*, 43 F.4th 1021, never formed, even in the presence of a delegation clause. Next, a court must also resolve any

challenge directed specifically to the enforceability of the delegation clause before compelling arbitration of any remaining gateway issues of arbitrability. Finally, if the parties did form an agreement to arbitrate containing an enforceable delegation clause, all arguments going to the scope o

Formation challenges to either a delegation provision or an underlying arbitration provision are decided pursuant to state law. *Berman v. Freedom Fin. Network, LLC*, 30 F.4th 849, dispute, federal courts apply state-

y resisting arbitration must mention that *Bielski*, 87 F.4th at 1009. delegation provision and the



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arbitration agreement for the same reasons, so long as the party

Id. at 1009 10.

judgment standard applies. Hansen v. LMB Mortg. Servs., Inc., 1 F.4th 667, 670 (9th Cir. 2021).

Sanford v. MemberWorks, Inc., 483 F.3d 956, 963 n.9 (9th Cir. 2007).

ANALYSIS As noted already, contracting p Henry Schein, Inc. v. Archer & White Sales, Inc. To be sure, before referring a dispute to an arbitrator, the court determines whether a valid arbitration agreement exists But if a valid agreement exists, and if the agreement delegates the arbitrability issue to an arbitrator, a court may not decide the arbitrability issue. Id.

Amazon contends that the Agreement clearly and unmistakably delegates arbitrability questions to the arbitrator because it incorporates the AAA Commercial Arbitration Rules and arbitration will be conducted by the American Arbitration Association (AAA) under its

Dkt. No. 13-4, at 12. Rule R-7(a) under the AAA Commercial Arbitration Rules and Mediation Procedures provides:

The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any claim or counter claim.

Dkt. No. 13-3, at 15. The Ninth Circuit has held that such an ut[e] Brennan, 796 F.3d at 1130. Joseph does not dispute that he entered into the agreement, the parties validly delegated all

questions of arbitrability to the arbitrator. 2 Dr. Joseph raises arguments going to the merits of the underlying dispute and challenges the scope of the Agreement, arguing, for example, that the Agreement does not cover five of his six causes of action. Dkt. No. 14, at 17. Because there is a valid arbitration agreement with a clear and unmistakable delegation clause, however, these issues are not properly before the Court. he parties did form an agreement to arbitrate containing an enforceable delegation clause, all arguments going to the scope or enforceability of the arbitration provision are

Caremark, 43 F.4th at 1030.

CONCLUSION For the foregoing and Dr. denied without prejudice. Because Amazon requests a stay pending arbitration, Dkt. No. 11, at 16, this action will be stayed until the arbitration has been completed. Smith v. Spizzirri, 144 S. Ct. 1173, 1178 (2024). Amazon shall notify the Court within 14 days after the arbitration is completed, and shall submit a one-page status report by the first day



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2 Brennan and Brennan v. Opus Bank, 796 F.3d 1125, 1130 (9th Cir. 2015); see Patrick v. Running Warehouse, LLC, 93 F.4th 468, 481 ( whether Brennan s holding should extend to arbitration clauses in consumer contracts between a Dr. Joseph does not contend that Brennan. of every September and March in the meantime.

IT IS SO ORDERED. Dated: June 14, 2024

P. Casey Pitts United States District Judge

