Compelling Arbitration: Slam Dunk or Blocked Shot?

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(by **Jess Barnes**)

Contractual provisions providing for dispute resolution via arbitration are fairly common. In fact, federal policy generally favors arbitration. However, your case still may find its way to litigation over a few typical issues that arise regarding the enforceability of arbitration provisions.Recently, the Toronto Raptors and New York Knicks hit not only the court but the courtroom. These professional basketball teams seek a decision from a New York federal district court on whether their intellectual-property dispute belongs before a judge or the NBA commissioner as arbitrator.In New York Knicks, LLC v. Maple Leaf Sports & Entertainment Ltd. d/b/a Toronto Raptors et al., Case No. 23-CV-7394 (JGLC) (S.D.N.Y 2023), the Toronto Raptors moved the court to compel the action to arbitration. The Raptors argued that both teams are parties to the National Basketball Association (NBA)'s constitution and by-laws. The Raptors explained that the NBA Constitution is a contract among the members of the NBA. Moreover, the NBA Constitution provides an arbitration provision that the NBA commissioner has exclusive jurisdiction over disputes involving two or more members of the NBA.

When reviewing this request to compel arbitration, the court must answer two questions: (1) is there a valid agreement to arbitrate, and (2) if so, whether a court or arbitrator should decide if the underlying dispute is arbitrable.

Here, both parties at minimum conceded that a valid agreement to arbitrate existed between the parties in the NBA Constitution. The Knicks, however, argued that this case, contemplating intellectual-property theft, did not fall within the arbitration provision.

Initially, the Knicks claimed that the court, and not the NBA commissioner, should determine whether the case is arbitrable, because the NBA Constitution itself does not explicitly provide the procedure for resolving questions of arbitrability. Thus, the Knicks argued that when an arbitration agreement does not clearly and unmistakably elect to have the arbitrator decide arbitrability, the question is one for judicial determination. The Raptors, on the other hand, argued that the broad language of the arbitration clause shows the clear intent that such questions should go to the NBA commissioner.

If the court finds that arbitrability is its question to decide, the parties laid out their positions on the merits. The Raptors argued that the arbitration provision is clear and must be enforced—if a dispute (any dispute) involves two or more members of the NBA, the commissioner has exclusive, full, complete, and final jurisdiction. The Knicks, on the other hand, argued that the arbitration clause at issue constitutes an "infinite" arbitration clause that courts have refused to enforce; arbitration would prevent the Knicks from vindicating their statutory rights; and under these circumstances, arbitration before the NBA commissioner would be unconscionable and unfair.

The court has yet to decide the winner of this matchup over the applicability of the NBA's arbitration provision. However, there are a couple of lessons to be learned from this case:

1. Practitioners and parties to contracts should carefully consider the benefits and challenges presented with including an arbitration clause in their agreement.
2. If an arbitration clause is to be included, it should be carefully negotiated to reflect the parties' intentions regarding scope of applicability and any conditions on submitting disputes to arbitration.

While arguments surrounding the enforceability of arbitration provisions are likely to continue, careful evaluation and negotiation of these contract terms may minimize such battles.

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