CIRCUIT COURT FINDS CLAIMS OF ERISA FIDUCIARY BREACH DO NOT "RELATE TO" EMPLOYMENT FOR PURPOSE OF EMPLOYMENT-BASED ARBITRATION AGREEMENT

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With a 2-1 split decision, the Second Circuit reversed and remanded a district court decision compelling a former employee to arbitrate his ERISA fiduciary breach claims, although the defendant was not a party to the agreement requiring arbitration of employment-related claims. We previously reported on the district court's decision to compel arbitration here.

Clive Cooper participated in the DST Systems, Inc. 401(k) Profit Sharing Plan ("Plan") whose investments were managed by Ruane Cunniff & Goldfarb Inc. After Cooper realized the benefit he was going to receive from the Plan was not nearly what he expected it would be, Cooper accused DST and Ruane of fiduciary breaches under ERISA, alleging losses exceeding $100 million arising from imprudent investments, failure to monitor, self-dealing, and excessive fees. After filing suit in the district court, Cooper voluntarily dismissed DST from the lawsuit leaving Ruane as the sole defendant.

When Cooper became a DST employee, he received an Associate Handbook containing an Arbitration Program and Agreement covering "all legal claims arising out of or relating to employment." The district court found that Cooper's claims for alleged mismanagement of Plan assets "arose out of" and "related to" his employment with DST and, hence, were subject to arbitration. As a result, the judge held that Ruane could compel arbitration, although not a signatory under the Arbitration Agreement, under the doctrine of equitable estoppel.

On appeal, the Second Circuit reversed the district court's order to arbitrate and remanded the case for further proceedings. First, the circuit court noted that despite the Federal Arbitration Act's national policy favoring arbitration, courts may only order arbitration of a dispute when the parties agreed to arbitrate the dispute. Thus, the question became whether Cooper's claims against Ruane were covered by the phrase "all legal claims arising out of or relating to employment" in the Arbitration Agreement.

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Following persuasive precedent from the Fifth and the Eleventh Circuits, the court decided that the "but for" test is not the appropriate inquiry when the interpreting the phrase "relating to" in the context of an employment-based arbitration agreement. Instead, the Second Circuit ruled that "in the context of an employment arbitration agreement, a claim will 'relate to' employment only if the merits of that claim involve facts particular to an individual plaintiff's own employment."

In Cooper's case, the court found that "none of the facts relevant to the merits of Cooper's claims against Ruane relates to his employment. Cooper's claims hinge entirely on the investment decisions made by Ruane; the substance of his claims has no connection to his own work performance, his evaluations, his treatment by supervisors, the amount of his compensation, the condition of his workplace, or any other fact particular to Cooper's individual experience at DST." Consequently, the district court's order to compel arbitration was reversed and remanded.

Notably, the Second Circuit decided not to resolve an increasingly common conundrum. The Second Circuit has "construed ERISA § 502(a)(2) to require parties suing on behalf of a plan to demonstrate their suitability to serve as representatives of the interests of other plan stakeholders." When arbitration clauses prohibit joinder of multiple parties, however, it is unclear how an employee can bring an ERISA suit that satisfies the adequacy-of-representation requirement while also comply with the arbitration agreement. As the court said, "Either [the claimant] brings a claim in arbitration in some representative capacity, as our case law requires, and the claim is dismissed for violating the Agreement's prohibition on bringing claim in a representative capacity; or she brings a claim absent the required procedural safeguards, and courts in this Circuit decline to enforce any award she secures in arbitration for running afoul of [the adequacy-of-representation requirement]." This part of the decision is dicta, but it is an issue that will require the court's full attention soon.

This case is a reminder that arbitration clauses can only reach so far and need to be drafted carefully. Companies with large retirement plans that wish to implement an arbitration agreement to encompass ERISA fiduciary breach claims should discuss the potential pitfalls, like having a substantial number of arbitrations filed at once, with legal counsel.

Cooper v. Ruane Cunniff & Goldfarb Inc., 990 F.3d 173 (2d Cir. 2021).