

Eleventh Circuit: Arbitration Clauses Are Like Makeup – They Only Cover So Much

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by Kaleb McNeely



The Kardashians, America's favorite celebrity family, have been having a tough time of late, with Kim Kardashian being robbed at gunpoint in her Paris apartment, and her husband Kanye West attracting criticism for his support of Donald Trump. A federal appeals

court has recently added to the Kardashians' woes.

In a pun-laden opinion, the Eleventh Circuit Court of Appeals affirmed the district court's ruling in *Kroma Makeup EU, LLC v. Boldface Licensing + Branding, Inc.* that the Kardashian sisters Kim, Kourtney, and Khloe (the "Kardashians") could not rely on the doctrine of equitable estoppel to compel Plaintiff Kroma Makeup EU, LLC ("Kroma EU") to arbitrate its claims. The Eleventh Circuit noted that at "first blush, the issue appears to require application of Florida's doctrine of equitable estoppel under which a party to an agreement who relies on it in a dispute with a non-party can be required by that non-party to comply with other terms of the agreement, including the arbitration clause." However, as the court put it, "there is a wrinkle in this case: the arbitration clause which the non-party to the agreement is seeking to enforce is explicitly limited to disputes between the parties." Where the arbitration clause is so limited, the Eleventh Circuit held that the non-party (the Kardashians) could not "re-sculpt what appears on the face of a contract" to force a party to the agreement (Kroma EU) to arbitrate its claims against the Kardashians.

Background

Back in 2004, the make-up company By Lee Tillett, Inc. ("Tillett") developed and registered the Kroma trademark for a cosmetics line. In 2012, Tillett entered into an agreement giving Kroma EU the exclusive rights to sell and distribute Kroma products in

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the EU. The agreement contained an arbitration clause, stating in relevant part that “the Parties agree that disputes arising between them . . . should be considered [in] independent arbitration in the State of Florida, United States.”

While the Kroma EU agreement was in effect, the Kardashians entered into a licensing agreement with Boldface Licensing + Branding, Inc. (“Boldface”) to create a Kardashian makeup line named “Khroma.” Boldface filed a lawsuit against Tillett for a declaratory judgment of non-infringement, and Tillett asserted counterclaims against Boldface and the Kardashians for trademark infringement. After that suit settled, Tillett refused to share any of the settlement proceeds with Kroma EU. As a result, Kroma EU brought claims for trademark infringement and tortious interference with contract against Boldface, claims for vicarious liability for trademark infringement against the Kardashians, and a claim for promissory estoppel against Tillett. The district court granted Tillett’s motion to compel Kroma EU to arbitrate, but denied the Kardashians’ motion to compel Kroma EU to arbitrate its claims against them. The Kardashians appealed to the Eleventh Circuit.

Analysis

The Eleventh Circuit first clarified that although federal law generally governs arbitration agreements, the “issue of whether a non-signatory to an agreement can use an arbitration clause in that agreement to force a signatory to arbitrate a dispute between them is controlled by state law,” and that the parties “agree that Florida law controls on that issue.”

The Kardashians argued that even though they are non-signatories to the agreement between Kroma EU and Tillett, they could nonetheless compel Kroma EU to arbitrate its claims by relying on Florida’s doctrine of equitable estoppel. Under that doctrine, a defendant who is a non-signatory to an agreement containing an arbitration clause can force arbitration of a signatory’s claims when “the signatory . . . must rely on the terms of the written agreement in asserting its claims against the non-signatory.”

As the court explained, however, a “non-signatory cannot invoke the doctrine to compel arbitration of claims that are not within the scope of the arbitration clause.” Relying on the Florida District Court of Appeal’s decision in *Koechli v. BIP International, Inc.*, 870 So. 2d 940 (Fla. 1st DCA 2004), the Eleventh Circuit held that, to invoke equitable estoppel, the Kardashians would need to show not only that Kroma EU was relying on the agreement to assert its claims against them, but also that the scope of the arbitration clause covered the dispute.

The court then turned to the arbitration clause at issue, which by its own terms was limited to disputes between the “Parties.” Because the Kardashians were not “Parties” to the agreement within the scope of the arbitration clause, the court held that they were barred from relying on equitable estoppel to compel arbitration of the claims against them.

In doing so, the court rejected the Kardashians’ argument that such a conclusion ignores the “equitable nature” of the doctrine of equitable estoppel, which (in the Kardashians’

view) should operate to permit a non-signatory who is not bound by an agreement to enforce it notwithstanding the fact that the claims are outside the scope of the arbitration clause. Indeed, the court found that “[s]uch a holding would be, well, inequitable” because it would “effectively be rewriting the agreement between the signatories about which disputes they would arbitrate to require one of them to arbitrate disputes that they had not agreed to.” As the court explained, “Kroma EU never consented to arbitrate any disputes between it and the Kardashians or any other non-signatory. All it consented to arbitrate were disputes between it and the other party, which was Tillett.” By contrast, if the arbitration clause was not limited to disputes between the parties, but covered “any disputes concerning the validity, interpretation, etc., of the contract . . . , the Kardashians may have been able to use equitable estoppel to require Kroma EU to arbitrate the dispute between it and them.

Given the rash of pro-arbitration decisions from the federal courts in recent years, the *Kroma EU* decision might seem surprising. It should not be, however, since the court did no more than affirm the basic contract law principle familiar to all first-year law school students: contracts are generally limited by their terms, and may not be rewritten by courts (or parties to a litigation). As the Eleventh Circuit artfully concluded: “Like makeup, Florida’s doctrine of equitable estoppel can only cover so much The district court correctly denied the Kardashians’ motion to compel Kroma EU to arbitrate the dispute between them.”