

The Supreme Court - May 15, 2017

The Supreme Court of the United States issued decisions in three cases today:

Midland Funding, LLC v. Johnson, No. 16-348: Respondent Aleida Johnson filed for Chapter 13 bankruptcy in the Southern District of Alabama. Petitioner Midland Funding then filed a “proof of claim” in the Bankruptcy Court, asserting in its written statement that it concerned a credit card debt for charges that last appeared on Johnson’s account more than 10 years earlier. Alabama’s relevant statute of limitations for such a claim was six years. Johnson objected to the claim on that basis, Midland did not respond, and the claim was disallowed by the Bankruptcy Court. Johnson then filed this lawsuit against Midland, claiming that Midland’s statement in the Bankruptcy Court violated the Fair Debt Collection Practices Act’s prohibition on asserting any “false, deceptive, or misleading representation,” or using any “unfair or unconscionable means” to collect, or attempt to collect, a debt. 15 U.S.C. §§1692e, 1692f. The District Court held that the Act did not apply, but the Eleventh Circuit reversed. Today, the Court reversed, holding that filing (in a Chapter 13 bankruptcy proceeding) a proof of claim that is obviously time barred is not a false, deceptive, misleading, unfair, or unconscionable debt collection practice within the meaning of the Fair Debt Collection Practices Act.

The Court’s decision is available [here](#).

Kindred Nursing Centers, L.P. v. Clark, No. 16-32: Respondents Beverly Wellner and Janis Clark each separately held a power of attorney giving them broad authority to manage the affairs of their respective family member who was residing at a nursing home operated by petitioner Kindred Nursing Centers. Wellner and Clark executed all the necessary paperwork when their family members entered the nursing home. And when their family members died, Wellner and Clark each brought a separate action in Kentucky state court, alleging Kindred had delivered substandard care. Kindred moved to dismiss both suits, invoking arbitration agreements Wellner and Clark had signed. The trial court, Kentucky Court of Appeals, and Kentucky Supreme Court all rejected that argument. According to the Kentucky Supreme Court, given that under that State’s

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constitution the rights of access to the courts and trial by jury are “sacred” and “inviolable,” a general and even seemingly comprehensive grant of power of attorney could not entitle a representative to enter into an arbitration agreement without specific authority to do so. The Court today reversed in part and vacated in part, holding that the Kentucky Supreme Court’s rule singles out arbitration agreements for disfavored treatment, and on that basis violates the Federal Arbitration Act.

The Court's decision is available [here](#).

Howell v. Howell, No. 15-1031: Under the Uniformed Services Former Spouses’ Protection Act, states are authorized to treat veterans’ “disposable retired pay” as community property divisible upon divorce. 10 U.S.C. §1408. But the definition of “disposable retired pay” specifically excludes amounts deducted from that pay “as a result of a waiver . . . required by law in order to receive” disability benefits. Here, the divorce decree between petitioner John Howell and respondent Sandra Howell treated John’s military retirement pay as community property, and called for a 50/50 split. When over a decade later John was found to be partially disabled due to a service injury, John elected to receive disability benefits, which required under federal law that he waive approximately \$250 per month of his retirement pay – \$125 per month each for John and Sandra. Sandra succeeded in having an Arizona family court issue an order requiring that John ensure Sandra receive her full 50%, and the Arizona Supreme Court affirmed, finding that there was no preemption issue because John was simply ordered to reimburse Sandra for reducing her share of military retirement pay. Today, the Court reversed, holding that Supreme Court precedent and the statute make clear that a state cannot subsequently increase, pro rata, the amount the divorced spouse received each month from the veteran’s retirement pay in order to indemnify the divorced spouse for the loss caused by the veteran’s waiver.

The Court's decision is available [here](#).