



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**

CASE SUMMARY

**NORTH VALLEY EMERGENCY SPECIALISTS, L.L.C., et al. v. HON. MARK
R. SANTANA; TEAM PHYSICIANS OF ARIZONA, P.C. dba EMERGENCY PHYSICIANS,
EPI,
CV-03-0279-PR**

Parties and Counsel:

Petitioners : North Valley Emergency Specialists, L.L.C. and individual physicians Scott Kurbat, Trina Bogart, Marc Brown, Bradley Butler, David Connor, Frank Contursi, Kurt Dickson, Michael Egan, Freeman Favors, Garth Gemar, Samuel Johnson, Stephen Johnson, Steven Johnsson, James Kurbat, Willie Lansden, Kathryn Perkins, William Schneider and Thomas Wills, represented by Stanley Lubin and Nicholas J. Enoch, Lubin & Enoch.

Respondent: Real Party in Interest Team Physicians of Arizona, P.C. doing business as Emergency Physicians, EPI, represented by Philip A. Robbins, Janet B. Hutchison and James O. Ehringer, Robbins & Green, P.A.

Facts:

Respondent (ATPA@) provides physician and related services to hospital emergency departments. It enters into employment agreements with individuals, and arranges for them to provide medical services to hospitals. This case involves a TPA contract to provide physician services at the Thunderbird Samaritan Hospital emergency department. During the summer of 2002, some of the physicians formed North Valley Emergency Specialists (ANVES@) to provide these emergency room medical personnel services in competition with TPA. All of them had entered into written employment agreements with TPA (or its predecessor, EPI). They each resigned from TPA effective October 1, 2002, to work at Thunderbird Samaritan's emergency room through NVES. Their TPA contracts contained a covenant not to work at Thunderbird Samaritan for a year after leaving TPA. Each agreement contained this provision:

Any and all disputes arising out of ... this Agreement, or the breach or any alleged breach thereof, shall be settled by arbitration in the City of Phoenix, Arizona, before the American Arbitration Association in accordance with its rules then obtaining, and judgment upon the award rendered may be entered in any court having jurisdiction thereof. This provision for arbitration shall be in addition to, but shall not prevent any party from applying for and obtaining injunctive relief by showing that in the absence thereof, the rights of such party under this Agreement cannot be adequately protected by the arbitration award.

NVES, as a separate legal entity, was not a party to any of these agreements.

TPA filed a complaint on August 12, 2002 for damages against NVES and injunctive relief against both NVES and the individual physicians. TPA claimed the defendants engaged in a variety of wrongful acts that constituted a breach of their employment contracts with it, as well as related torts. In February 2003, after NVES had succeeded in getting part of the case dismissed, TPA moved to stay judicial proceedings and to compel arbitration under Arizona Revised Statutes Section (“A.R.S. ’”) 12-1502. NVES argued that the trial court lacked authority to grant the motion because of the express limitation in A.R.S. ’ 12-1517:

This article shall have no application to arbitration agreements between employers and employees or their respective representatives.

The trial court stayed the proceedings pending arbitration, finding that § 12-1517’s limitation applies only to arbitration agreements contained in collective bargaining agreements. It ordered the parties to arbitrate the damage claims. NVES and the individual defendants petitioned the court of appeals for special action, claiming the decision improperly diverted the individual defendants into arbitration, and unnecessarily and prejudicially delayed NVES’s right to a prompt disposition. The court of appeals concluded the Legislature intended § 12-1517 to apply only to collective bargaining agreements, not every employment relationship; arbitration should proceed.

Issue:

Whether A.R.S. ’ 12-1517 specifically exempts arbitration agreements between an employer and its employees from the provisions of the Arizona Arbitration Act, A.R.S. ’ 12-1502 *et seq.*

Definitions:

arbitration means of alternative dispute resolution, not involving trial before a judge or jury. The dispute is heard by an arbitrator, whose decision is generally binding on the parties.

breach of contract breaking of a promise made in an agreement, covenant or contract.

collective bargaining agreement contract between employer and employees represented, typically, by a union.

complaint legal document that formally accuses another party of having acted wrongly. Its filing and formal service on the defendant starts a legal action.

injunctive relief remedy provided by a court that stops the opposing party from acting, or compels the party to act, rather than requiring the party to pay money.

jurisdiction power or authority of a court to hear and to decide a case.

special action extraordinary request to a court to act quickly because the party cannot get a remedy by ordinary appeal fast enough, or without undue harm.

stay stop. A stay pending arbitration halts the court trial proceedings until the arbitration is finished.

tort wrongful act that causes harm to another, for example, negligent driving that causes a collision and damage to another.

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