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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

RICHARD FAVARA, Plaintiff and Respondent, v. REGENT AEROSPACE CORPORATION, Defendant and Appellant.	B246718 (Los Angeles County Super. Ct. No. BC487685)

APPEAL from a judgment of the Superior Court of Los Angeles County. Steven J. Kleifield, Judge. Affirmed.

Littler Mendelson, Tony R. Skogen for Defendant and Appellant.

Barritt Smith, Perry G. Smith for Plaintiff and Respondent.

The trial court denied an employer's motion to compel arbitration of an employee's lawsuit alleging Labor Code violations and unfair business practices, finding that the dispute is not arbitrable under the California Arbitration Act. (Code Civ. Proc., § 1280 et seq.) We affirm. Individuals may enforce unpaid wage claims in court, regardless of any arbitration agreement. (Lab. Code, § 229.) Because the employer did not prove that the employment involved interstate commerce, the employee may not be compelled to arbitrate his wage claims.

FACTS

In July 2012, Richard Favara filed a lawsuit against his former employer, Regent Aerospace Corporation. Favara's complaint alleges that Regent violated state law by failing to pay overtime wages; refusing to compensate him when he demanded payment; and refusing to provide timely, accurate wage statements showing the total number of hours he worked. (Lab. Code, §§ 203, 226, 510.) The complaint alleges that Regent engaged in unlawful, unfair and fraudulent business practices by failing to pay overtime wages. (Bus. & Prof. Code, § 17200.)

Regent moved to compel arbitration of Favara's claims on the grounds that the parties' employment agreement requires that his personal claims be submitted to arbitration.[1] Regent claimed, without explanation, that the arbitration clause "covers the claims at issue here."

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[1] The "dispute resolution" provision of the employment contract reads, in capitals, "*(a) Mediation*. Before the institution of any litigation between or among any parties to this agreement, relating to this agreement, but other than in connection with any emergency or immediate equitable relief, any dispute must first be submitted to mediation in accordance with the provisions of the Commercial Mediation Rules of the American Arbitration Association ('AAA') before resorting to arbitration. The parties agree to conduct the mediation in good faith and make reasonable efforts to resolve their dispute by mediation. The Commercial Mediation Rules of the AAA are incorporated by reference. The parties agree to conduct the mediation in a mutually agreed upon location. "*(b) Arbitration*. If the dispute is not resolved by the mediation required under the preceding subsection, such dispute must then be submitted to binding arbitration in accordance with the provisions of the Commercial Arbitration Rules of the AAA, and

Favara opposed the motion to compel, arguing that arbitration is limited to claims relating to the terms of the employment contract, and does not apply to Labor Code violations. Favara also maintained that the arbitration clause is unconscionable and unenforceable. He declares that when he was hired by Regent, he was told he had to sign the agreement as a condition of employment.

THE TRIAL COURT'S RULING

The trial court denied Regent's motion to compel. The court found that there is an agreement to arbitrate covering disputes "relating to" the employment contract. The arbitration agreement does not require the parties to arbitrate statutory claims, "as opposed to disputes 'relating to this agreement.'" The court did not reach the issue of unconscionability because it found that "the instant dispute does not fall within the scope of the arbitration provision."

DISCUSSION

California law favors enforcement of valid arbitration agreements. (*Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 97.) On petition by a party to an arbitration agreement, the trial court generally stays a pending action and orders the parties to arbitrate their dispute. (Code Civ. Proc., §§ 1281.2, 1281.4.) Appeal may be taken from an order denying a petition to compel arbitration. (Code Civ. Proc., § 1294, subd. (a).)

State law provides that "Actions to enforce the provisions of this article for the collection of due and unpaid wages claimed by an individual may be maintained *without regard to the existence of any private agreement to arbitrate*." (Lab. Code, § 229, italics added.) Favara's wage claims fall within the scope of Labor Code section 229. Thus, an arbitration clause to resolve disputes "relating to this agreement" does not allow an employer to compel arbitration of a civil complaint alleging the employer's violation of Labor Code wage statutes. (*Hoover v. American Income Life Ins. Co.* (2012) 206

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judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. . . ."

Cal.App.4th 1193, 1206-1207 (*Hoover*); *Ware v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1972) 24 Cal.App.3d 35, 43, affd. *Merrill Lynch, Pierce, Fenner & Smith v. Ware* (1973) 414 U.S. 117; *Elijahjuan v. Superior Court* (2012) 210 Cal.App.4th 15, 20-24.)[2]

Labor Code section 229 prevents Regent from compelling arbitration of Favara's wage claims unless it shows that the statute is preempted by the Federal Arbitration Act (FAA). (9 U.S.C. § 1 et seq.) "The party claiming a state law is preempted by federal legislation has the burden of demonstrating preemption." (*Shepard v. Edward Mackay Enterprises, Inc.* (2007) 148 Cal.App.4th 1092, 1101.) We review preemption issues de novo. (*Choate v. Celite Corp.* (2013) 215 Cal.App.4th 1460, 1468-1469.)

The FAA preempts state law if the parties' contract evidences that their transaction involves or affects interstate commerce. (9 U.S.C. § 2; *Allied-Bruce Terminix Cos. v. Dobson* (1995) 513 U.S. 265, 281; *Hoover*, *supra*, 206 Cal.App.4th at p. 1207, citing *Perry v. Thomas* (1987) 482 U.S. 483, 490.) The defendant employer bears the burden of proving applicability of the FAA through "declarations and other evidence" showing that its activities constitute interstate commerce. (*Hoover*, at pp. 1207-1208; *Shepard v. Edward Mackay Enterprises, Inc.*, *supra*, 148 Cal.App.4th at pp. 1100-1101; *Steele v. American Mortgage Management Services* (E.D.Cal. 2012) 19 Wage & Hour Cas.2d (BNA) 1473 [2012 U.S. Dist. LEXIS 154271 at p. *10, fn. 2.)

Regent's motion to compel arbitration did not advise the trial court that the FAA governs; instead, Regent referenced only the California Arbitration Act. The arbitration clause does not refer to the FAA. The trial court did not address the FAA in its decision. The record on appeal contains no declarations or other evidence showing that the contract involves interstate commerce.

In the "Conclusion" section of its brief, Regent acknowledges Labor Code section 229. It then states, without citation to the record, that "Plaintiff's job involved the

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[2] Labor Code section 229 (and all statutes in Lab. Code, §§ 200-243) cannot "in any way be contravened or set aside by private agreement, whether written, oral, or implied." (Lab. Code, § 219, subd. (a); *Schachter v. Citigroup, Inc.* (2009) 47 Cal.4th 610, 619.)

responsibility to manage the designing and maintaining of computer and telephone networks and systems in California, other states, and other countries." No evidence in the record supports Regent's belated attempt to claim that Favara's employment is covered by the FAA because his work involved interstate commerce.

Regent did not carry its burden of showing that the FAA preempts state law. Federal law embodies "a clear federal policy of requiring arbitration unless the agreement to arbitrate is not part of a contract evidencing interstate commerce." (*Perry v. Thomas*, *supra*, 482 U.S. at p. 489.) Absent a showing that interstate commerce is involved in this particular contract, Favara is entitled to pursue his claims for overtime wages and waiting penalties in court, without being obliged to arbitrate. (Lab. Code, § 229.)[3]

DISPOSITION

The judgment is affirmed.

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BOREN, P.J.

We concur:

CHAVEZ, J.

FERNS, J.*

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[3] In light of our determination that state law allows Favara to maintain his lawsuit for unpaid wages, we need not reach issues of unconscionability.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.