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To: Martin Chan

From: Jessie Parker

RE: Western Insurance Comapny v. Secure Trade Inc.

Dear Mr. Martin Chan

This is a response to your letter requesting that Western voluntarily submit its fraud claim to arbitration as part of Assurance-Secure Trade arbitration. Although you claim that arbitration will avoid wasting time and the Superior Court would "doubtless"ly grant, we decline to do so.

The Columbia Supreme Court, on which this trial and appellate courts are bound by, has provided general guidelines on the following issues 1. a party who is not a signatory to a contract with an arbitration clause may compel a party who is a signatory to arbitrate under the Columbia Arbitration Act via the equitable estoppel under specific situations; and 2. a party who is not a signatory to a contract with an arbitration clause may compel another party who is not a signatory to a contract with an arbitration clause compel another party who is not a signatory to arbitrate under the doctrine of equitable estoppel unless an exception applies. (Tuscany Builders).

Despite these general guidelines, based on the exceptions and the contrasting facts with Tuscany and our case, my client declines to voluntarily submit its fraud claim to arbitration and declines to meet your other demands.

1. Western will not voluntarily submit its fraud claim to arbitration because Western has never agreed to arbitrate in its contract with SecureTrade.

While the Columbia Arbitration Act reflects a strong policy in favor of arbitration, arbitration is generally a matter of contract. A party cannot be compelled to arbitrate any dispute that he or she has not agreed to arbitrate. (Tuscany Builders).

Under the doctrine of equitable estoppel, the signatory should not be permitted to avoid arbitrating claims that he agreed to arbitrate simply because a non signatory seeks to arbitrate such claims. The Columbia Supreme Court has ruled that a non signatory may compel a signatory to arbitrate when the claims the nonsignatory is seeking to arbitrate are intertwined with the contract containing the arbitration issue. In other words, the equitable estoppel allows a nonsignatory to compel a signatory to arbitrate when the claims raised are intertwined with thte arbitration clause (i.e. dependent on rights or duties under the contracts). (Tuscany Builders).

In Tuscany Builders, the court held that the breach of contract subjected them to injury, and hence entitled them to damages. As such, the court held that they were dependent on the right sgranted to the signatory plaintiffs.

However, our case is in stark contract with the Tuscany Builders case. It should be clearly noted that the Western Insurance Company and Secure Trade were simply parties to the commercial insurance product that covered the contractual obligations of the insured to consumers on extended warranties. As stated under the general allegations of the Complaint for Fraud, Western and Secure trade were the sole signatories of the Policy, in which the Policy did NOT contain an arbitration clause.

Furthermore, the extended warranties that were the focus of the contract between Western and Secure Trade had existed between Secure Trade and Individual consumers. They were not insurance policies, which means that they were not a part of the Contractual Liability Insurance Policy (Insurance Policy) between Western and Secure Trade.

Although you argue that the Columbia Arbitration Act ("CAA") strongly favors compelling arbitration, it only does so when there is a specific arbitration clause that is contained. Here, the Insurance Policy clearly does not contain an arbitration clause.

As stated in our complaint, the fraud is clear. SecureTrade represented to Western that it had made false representations on Insurance Policy, and created more than $36 million in damages. It knew that its representations were false when it made them. It intended to induce Western to rely on its representation and Western did in fact rely on the representation. This meets the prima facie case of misrepresentation and fraud. As such, the fraud claim is viable on its own and my client has high likelihood of prevailing on its own claim. These are not dependent on the rights that were formed with Assurance.

Thus, Western will not submit its fraud claim because they are not dependent on the rights or duties under the contract.

2. Any motion by SecureTrade to compel arbitration would be denied because there was no foreseeability.

Although you argue that because there is an preexisting relationship between the Western and Assurance as they are affiliates and that they they intertwined, that the CAA will compel arbitration, that is simply not the case in our case.

When a non signatory to a contract with an arbitration clause compels another party who is also not a signatory to arbitrate under the doctrine of equitable estoppel, the court has used foreseeability as a factor. It is foreseeable and reasonable that a party who has chosen to become a signatory to a contract with an arbitration clause might be compelled to arbitrate with both signatories but also with non-signatories. (Tuscany Builders).

However, it is not at all foreseeable or reasonable that a party who has not chosen to become a signatory to any contract to arbitrate to be compelled to arbitrate with anyone. (Tuscany Builders).

As such, in Tuscany Builders, the court held that the breach of a Purchase and Sale Contract subjected the plaintiff signatory to injury, which entitled them to damages. This intertwined nature allowed the claims to be brought because they were dependent on the rights granted to the signatory plaintiffs. There, it was foreseeable that the breach would lead to injury, and the injury would lead to damages.

However, here, the facts are in stark contrast as there was very little foreseeability. As stated in the complaint, the extended warranties provided consumers with the right to seek reimbursement directly from Western, NOT Assurance. The conditions imposed by Secure Trade required the consumers to determine whether Western was responsible for satisfying any such claim. Furthermore, Secure Time over time intended to induce its reliance through the representation to Western. Consumers were most likely induced reliance on believing that WEstern was responsible for satisfying the claims. None of the transactions that were listed above mention the existence of Assurance.

It is unlikely that there was any foreseeablity that arose based on the affiliation between Western and Assurance because they were most likely a completely separate entity to the eyes of consumers. While it is true that Assurance is an affiliate of Western, there was no foreseeability based on the affiliation alone.

Despite the arbitration agreement between Assurance, SecureTrade did not provide any foreseeability that the arbitration would also bind Western.

As I have emphasized, this is in contrary with Tuscany where the breach, injury, and damages were so intertwined that it was easily foreseeable. Unlike in Tuscany, here, no foreseeability existed.

Thus, CAA will not compel arbitration simply because of the preexisting relationship.

3. SecureTrade's argument regarding benefit is unsound because the direct benefit may be used to compel only when the direct benefit was contained in the arbitration clause; here, there was no direct benefit.

Whether a nonsignatory has sought or determined a direct benefit from the contract should turn ultimately on what the nonsignatory has done (such as suing on the contract), rather than what the nonsignatory may be (factually or legally related to one of the signatories). (Tuscany Builders). Thus, only when there was a direct benefit from the contract containing the arbitration clause, will CAA compel another nonsignatory to arbitrate via equitable estoppel.

In Tuscany Builders, the court held that a signatory may compel a nonsignatory to arbitrate only when the nonsignatory has sought or obtained such a direct benefit from the contract containing the arbitration clause.

However, here, there is unlikely to have been a direct benefit that was contained in the arbitration clause. The arbitration clause simply allowed SecureTrade to review consumer claims prior to approval or rejection, and to obligate itself to provide Assurance with timely and accurate reports to enable it to approve or reject consumer claims.

It should be worth noting that Secure Trade even failed to provide Assurance with timely or accurate notice.

There was no direct benefit that Western truly acquired from the contract containing the arbitration clause because Secure Trade failed to provide assurance.

Thus, SecureTrade's argument regarding compelling arbitration in an action to obtain a direct benefit will not prevail.

For the foregoing reasons, Western will not voluntarily submit its fraud claim to arbitration. Please let me know if you have any questions.

Sincerely,

/s

Jessie Parker

Question #6 Final Word Count = 1422

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