

September, 2023

Compelling Arbitration for Non-Signatories

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Non-signatories may be compelled to arbitrate claims arising from a contract dispute if they were direct beneficiaries of the agreement with the arbitration provision. In *Lojewski, Garcia, Garcia, Acevedo, Delacruz, on behalf of themselves & all others similarly situated v. Group Solar USA, LLC, Solar Mosaic, Inc., Salal Credit Union, Daniel Yomtobian Corp. D/B/A Solar Program*, No. 22 CIV. 10816 (PAE), 2023 WL 5301423 (S.D.N.Y. Aug. 17, 2023), plaintiff Danielle Garcia signed an agreement containing an arbitration clause for the purchase and installation of solar panels for her home. Her husband, Smith Garcia, was not a signatory to the agreement. After installation, the Garcias found the solar panels to be defective. The panels finally began to generate energy 9 months after installation.

The Garcias sued for deceptive business practices, false advertising, and breach of contract, among other causes of action. Defendant Solar Mosaic moved to compel arbitration, arguing that the Garcias were bound by the arbitration provision – Ms. Garcia through her signature, and Mr. Garcia because he directly benefitted from the agreement even though he is a nonsignatory.

The Second Circuit has recognized multiple principles of contract law under which a non-signatory may be compelled to arbitrate a claim with a signatory to an agreement containing an arbitration clause. These include incorporation by reference, assumption, agency, veil-piercing/alter-ego, and estoppel. Solar Mosaic claims Mr. Garcia was bound by the direct benefits theory of estoppel. The key inquiry was into whether Mr. Garcia was a “direct beneficiary”. Under New York law, the benefit gained by the nonsignatory must “flow directly” from the agreement. Here, the court found that Mr. Garcia received direct benefits from the agreement – namely, the installation of solar panels at his residence and the loan enabling the purchase of those panels, which were benefits that would not have existed but for the agreement. Thus, the court estopped him from avoiding arbitration.

This extension to Mr. Garcia differs from the standard held in *Trina Solar US, Inc. v. Jasmin Solar Pty Ltd.*, 954 F.3d 567 (2d Cir. 2020). In *Trina*, Trina Solar US, Inc. and JRC Services LLC signed a contract for the purchase and installation of solar panels. Jasmin Solar Pty Ltd. was the parent company, guarantor, and principal of JRC Services, but was not a signatory to the contract. Jasmin dictated the delivery schedule and paid Trina’s invoices for the panels. The panels were delivered directly to Jasmin for Jasmin’s commercial use and benefit in Australia. Yet, the Second Circuit held that Jasmin was not bound by the arbitration agreement. The Second Circuit adopted a strictly textualistic approach in determining that the Trina-JRC contract “explicitly excluded” Jasmin as a party based on specific definitions of “Buyer” and “Seller”, the structure of the contract as a whole, the arbitration clause’s express limitation to disputes between the parties, and the history of the Jasmin’s negotiations with Trina. The Second Circuit found that the Contract itself did not provide Jasmin any direct benefit.

The inquiry into whether nonsignatories can be compelled to arbitrate is highly fact specific. The *Trina* matter highlights that this inquiry begins with whether the language of the contract is broad enough to cover beneficiaries or so specific as to only cover named parties or certain types of disputes. The *Garcia* matter follows well-founded principles of contract law and is a good reminder that if you reap the benefits of a contractual arrangement, you may be bound by the underlying terms and conditions despite being a nonsignatory.