

Personal Management Contract: Preston V. Ferrer

In PRESTON v. FERRER, (2008) there is a conflict between two individuals that created a contract together. A contract between respondent Ferrer, who comes out as as “Judge Alex” on television, and petitioner Preston, an attorney in the entertainment industry, requires arbitration of “any dispute ... relating to the contract's terms ... or the breach, validity, or legality thereof ... in accordance with the American Arbitration Association rules.” Preston summoned this provision to receive payment owed under the contract.

The issue began when Ferrer decided to deny payment to Preston, when in fact the contract claimed that Ferrer would give commission to Preston. The commission given would be based on Ferrer’s television personality “judge Alex.” However, Ferrer decided that he would not pay Preston, which is why Preston went to court to get everything sorted out. Ferrer petitioned the California Labor Commissioner to conclude that the contract was invalid and unenforceable due to California’s Talent Agencies Act because Preston had executed the contract as a talent agent without the required license. . Soon the main question was whether or not the contract was valid due to Preston acting like a licensed agent when the contract was created. This issue was in violation of Talent Agencies Act rules, causing an argument between the two parties.

In Prima Paint Corp. v. Flood & Conklin Mfg. Co., which originated in federal court, was held that claims on an entire contract's validity, as distinct from claims on the arbitration clause alone, are within the arbitrator's ken. Buckeye held that the same rule must be respected in state court. Because the contract at issue did not address the order of proceedings and included a choice-of-law clause adopting California law, the Volt Court recognized as the gap filler a California statute authorizing the state court to stay either third party court proceedings or arbitration proceedings to avoid the possibility of conflicting rulings on a common issue. Here, in contrast, the arbitration clause delivers to the question in controversy; both parties are engaged by the arbitration agreement. The question of Preston's status as a talent agent is concerning to the legality of the contract. Preston and Ferrer's contract includes a choice-of-law clause, which states that the “agreement shall be governed by the laws of the state of California.” A separate saving clause provides: “If there is any conflict between this agreement and any present or future law,” the law dominates over the contract “to the extent necessary to bring [the contract] within the requirements of said law.” Those constitutional terms, according to Ferrer, call for the application of California procedural law, including a grant of restricted jurisdiction to the Labor Commissioner.

Ultimately, Ferrer relied too much on Volt from Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ., 489 U.S.. Relying on Volt caused another issue since circumstances were different. In this case, the arbitration clause addresses the matter in controversy; it states that “any dispute ... relating to ... the breach, validity, or legality” of the contract should be arbitrated in accordance with the American Arbitration Association (AAA) rules.

