

Publications

Oil and Gas Alert: Oil and Gas Lease Provisions – Arbitration Clause**Related Professionals**

Timothy B. McGranor

CLIENT ALERT | 3.6.2014

Two appellate cases were recently decided by the Seventh District Court of Appeals enforcing arbitration clauses within oil and gas leases. There are two major questions Ohio courts must answer when they evaluate arbitration clauses and their applicability to disputes involving parties to an oil and gas lease. The first question is whether the claim is exempt from arbitration by Ohio's Arbitration Act, (the Act);¹ the second is a two-prong test to determine whether the arbitration clause is unconscionable both procedurally and substantively.

***Riggs v. Patriot Energy Partners, LLC*²**

In *Riggs*, the plaintiffs first argued their claims involving the validity of the lease should not be subject to the arbitration clause. They argued the arbitration clause was part of the lease in question and therefore unenforceable if the lease itself was invalid. Second, the plaintiffs argued the arbitration clause contained in the lease was unconscionable. The court disagreed on both counts, reasoning that under Ohio law the arbitration clause is, in essence, a contract within a contract. Therefore, a challenge to the validity of the lease would not allow the parties to bypass the contractual remedy of arbitration contained within the lease. Further, the court held that the arbitration clause was valid and enforceable because the plaintiffs failed to prove both procedural and substantive unconscionability.

***New Hope Community Church v. Patriot Energy Partners, LLC*³**

In *New Hope*, the case centered on the question whether both procedural and substantive unconscionability existed to invalidate the arbitration clause. The plaintiffs argued several points to prove substantive and procedural unconscionability, including the financial burden of bringing a claim to arbitration as required under the Rules of the American Arbitration Association (AAA). The court in a 2-1 decision held that the arbitration clause was valid and enforceable. While the court stated that the upfront cost of bringing a claim under the AAA rules and the vague nature of the clause might be enough to prove substantive unconscionability, the court held that the plaintiffs failed to prove the clause was procedurally unconscionable. Thus, the court

enforced the arbitration provision.

Take-Away Points

- Both *procedural* and *substantive* unconscionability must be proven by the party claiming unconscionability in order to invalidate the arbitration clause in a lease.
 - In determining *substantive* unconscionability, courts will look to the arbitration clause and consider many factors, including whether rules and fees are disclosed; the cost of arbitration; and the prominence, clarity and specificity of the clause, including font size and type.
 - In determining *procedural* unconscionability, courts will consider a variety of circumstances, including evidence of duress in addition to the parties' negotiating power, education and experience.
 - Generally, claims arising from the formation or validity of the lease (e.g. failure to timely tender delay rentals, notary fraud, slander of title, violation of consent to assign provisions, etc.) are subject to arbitration under the Act; however, claims involving title or the possession of real estate (e.g. quiet title actions) are exempt and must be stayed pending resolution of the claims subject to arbitration.
-

¹ R.C. 2711.01, et seq.

² *Riggs v. Patriot EnergyPartners, LLC*, 2014-Ohio-558, 2014 Ohio App. LEXIS 541 (Ohio Ct. App., Carroll County Feb. 13, 2014)

³ *New Hope Cmty. Church v. Patriot Energy Partners, LLC*, 2013-Ohio-5882, 2013 Ohio App. LEXIS 6193, 2013 WL 6921490 (Ohio Ct. App., Columbiana County Dec. 20, 2013)