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## HALL STREET ASSOCIATES, LLC v MATTEL INC

### **Challenge, modification and review of awards by the Courts**

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*Challenging awards; terms of arbitration clauses; limiting or expanding grounds for challenge, review or modification; the Federal Arbitration Act*

Hall Street Associates LLC v Mattel Inc / The Federal Arbitration Act's provisions containing grounds for vacatur, modification and correction of arbitration awards are exclusive and may not be expanded by the parties to an arbitration agreement.

US Supreme Court, 552 US (2008), WL 762537 (March 25, 2008)

### **Introduction**

#### *Hall Street Associates, LLC v Mattel Inc*

The United States Supreme Court held that the Federal Arbitration Act's provisions containing grounds for vacatur, modification, and correction of arbitration awards are exclusive and may not be expanded by the parties to an arbitration agreement.

552 US (2008), WL 762537 (US March 25, 2008).

### **Facts and Background**

This litigation began as a dispute between a landlord (Hall Street Associates) and a tenant (Mattel). The lease provided that Mattel would indemnify Hall Street for any costs relating to the failure of Mattel or prior tenants to comply with applicable environmental laws. In 1998, environmental tests revealed high levels of pollutants, which were likely the result of manufacturing practices of Mattel's predecessors.

In 2001, Mattel notified Hall Street that it intended to terminate the lease. Hall Street filed suit in the United States District Court for the District of Oregon, claiming that the contract obligated Mattel to indemnify Hall Street for costs relating to clean up of the pollutants.

After an unsuccessful attempt at mediating the indemnification claim, Mattel and Hall Street decided to submit the dispute to arbitration. The parties drafted an arbitration agreement, which the court approved and entered as an order. The agreement/order provided that:

The United States District Court for the District of Oregon may enter judgment upon any award, either by confirming the award or by vacating, modifying or correcting the award. The Court shall vacate, modify or correct any award: (i) where the arbitrator's findings of facts are not supported by substantial evidence, or (ii) where the arbitrator's conclusions of law are erroneous.

At the arbitration, the arbitrator decided that Mattel had no contractual obligation to indemnify Hall Street. Subsequently, Hall Street filed a motion to vacate, modify, and/or correct the arbitration decision, on the ground that the decision constituted a legal error. The District Court, agreeing that the arbitrator's decision was based upon legal error, remanded the case to the arbitrator for further consideration. In reaching this decision, the District Court expressly relied on the standard of review contained in the parties' arbitration agreement.

During this second trip to the arbitrator, a different decision was reached, and the arbitrator amended the decision in favour of Hall Street. And again the dispute ended up before the District Court—this time on the parties'

motions to modify the award. The District Court, relying on the standard set forth the parties' arbitration agreement, corrected the arbitrator's calculation of interest but left the rest of the award unaltered.

The parties appealed to the US Court of Appeals for the Ninth Circuit. At issue was whether the Federal Arbitration Act's (FAA) grounds for vacatur and modification of an arbitration decision rendered in the United States are exclusive, or whether the parties to an arbitration agreement are free to draft an agreement containing standards of review that are different than those contained in the FAA. There are three pertinent sections of the FAA.

Section 9 provides, in relevant part, that a party to an arbitration "may apply to the court so specified for an order confirming the award, and thereupon the court *must grant* such an order unless the award is vacated, modified, or corrected" as prescribed in sections 10 and 11 of this title." (emphasis added).

Section 10 provides that, upon application by a party to the arbitration, a federal court may vacate the arbitral award for any of these reasons:

- (1) where the award was procured by corruption, fraud, or undue means;
- (2) where there was evident partiality or corruption in the arbitrators, or either of them;
- (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
- (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

Section 11 of the FAA provides that, upon application by a party to the arbitration, a federal court may issue an order modifying or correcting the arbitral award upon the application:

- (1) where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award;
- (2) where the arbitrators have dealt with a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted; or
- (3) where the award is imperfect in matter of form not affecting the merits of the controversy.

The Ninth Circuit held that the FAA's grounds for vacatur, modification, and correction are exclusive and courts cannot vacate, modify, or correct arbitral awards on other grounds—even if the parties' arbitration agreement contains an alternative standard of review.

Given the divergent views adopted by the US Circuit Courts of Appeals, the US Supreme Court granted certiorari to resolve the question of whether the FAA's grounds for vacatur, modification, and correction are exclusive.

### **Held**

The Supreme Court held that the FAA's grounds for vacatur and modification are exclusive and may not be supplemented by contract. In reaching this result, the Supreme Court considered two primary arguments.

First, the Court rejected Hall Street's argument that because arbitration is simply a creature of contract, a court should review an arbitration decision

according to the will of the parties. The Court noted that the FAA allows parties to tailor some features of arbitration, including the number and qualifications of arbitrators and the choice of applicable law. However, the Supreme Court found that the plain language of s.9 of the FAA weighs strongly in favour of an exclusive reading of the grounds set forth in ss.10 and 11. In particular, the Court held that the "must grant" language in the statute instructs courts to confirm the arbitral award, unless one of the enumerated exceptions applies. This statutory framework, according to the Court, is not "malleable" and is not structured as a default provision that simply fills any gaps remaining in a parties' arbitration agreement.

Second, the Court rejected Hall Street's argument that a previous Supreme Court decision, *Wilko v Swan*, 346 US 427 (1953), accepted expansive judicial review of arbitration awards. Hall Street interpreted language in *Wilko* regarding "manifest disregard" of the law as a further ground for vacatur in addition to those listed in s.10. Therefore, according to Hall Street, s.10 is not exclusive and the parties are free to incorporate alternative standards of review into an arbitration agreement that a court will then follow. The Supreme Court disagreed and explained that Hall Street takes *Wilko* too far, because, inter alia, "manifest disregard" is likely a collective reference to all of the grounds set forth in s.10, rather than a reference to an additional standard of review.

#### **Comment**

This decision marks a narrowing for judicial review of arbitration decisions. The Supreme Court held that parties to arbitration agreements cannot extend judicial review beyond the specific grounds set forth in ss.10 and 11 of the FAA. In addition, the Court's discussion of "manifest disregard" indicates that any review undertaken pursuant to this language is constrained by the language in ss.10 and 11, i.e. "manifest disregard" is not an independent standard of review.

The Court raised two additional issues, but left their resolution for another day. Somewhat cryptically the Court writes that the "FAA is not the only way to court for parties wanting review of arbitration awards: they may contemplate enforcement under state, statutory or common law, for example, where judicial review of different scope is arguable." This suggests that the Court might embrace a more searching review of arbitration decisions, if parties can find a mechanism other than the FAA under which to seek a review of the award.

In the litigation underlying this case, the District Court entered the parties' arbitration agreement as part of its order. The Court remanded the case to resolve the question of whether this agreement/order (and the standard of review contained therein) should be treated as an exercise of the District Court's authority to manage its docket. Depending on how this issue is resolved, parties and the courts may have a new apparatus to craft standards of review, even if those standards are not encompassed by ss.10 and 11 of the FAA.

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