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Allowing Minors to Repudiate Their Agreements to Arbitrate

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When an otherwise valid contract purports to bind a minor, the minor may be permitted to repudiate the contract. Under New York's infancy doctrine, "[c]ontracts signed by minors are voidable" under most circumstances, but not when the minor seeks to void the contract while also retaining the benefits of it. *Doe #1 v. College Bd.*, 440 F. Supp. 3d 349, 355 (S.D.N.Y. 2020).

In the case of a minor seeking to repudiate a contract containing an arbitration provision, which like any other contract, is voidable, two threshold questions arise: first, whether the arbitrator or the court makes the voidability determination; second, whether under the circumstances, the minor is permitted to repudiate the contract, thereby relieving her of the obligation to arbitrate disputes arising from the contract.

In *Melendez v. Ethical Culture Fieldston School*, 2025 WL 1777887 (S.D.N.Y. June 27, 2025), Southern District Judge J. Paul Oetken addressed these relatively new questions to the Second Circuit in a case involving claims of race discrimination brought by two minors and their mother against the minors' former school, Ethical Culture Fieldston School (Fieldston), and several of its employees.

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All three sought to void their obligation to arbitrate under the minors' enrollment contracts with Fieldston, which the mother had signed on the minors' behalf.

Applying the Supreme Court's holding in *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440 (2006), Oetken determined that he rather than an arbitrator was the appropriate adjudicatory body to decide whether the minors should be permitted to repudiate their enrollment contracts, and thus free them of what would have been an obligation to arbitrate their claims.

Oetken then went on to find that, under the circumstances of this case, the minors could repudiate their enrollment contracts, despite having received the benefit of several months of schooling under one of the two relevant contracts.

Accordingly, Oetken denied defendants' motion to compel arbitration as to the minor plaintiffs.

He did, however, grant the motion as to the minors' mother, finding that she could not avail herself of the minors' repudiation and rejecting her argument that defendants had waived their right to compel arbitration through their litigation conduct.

'Melendez v. Fieldston'

In *Melendez*, a mother, Cristina Melendez, and her two minor daughters, sixteen-year-old Y.A. and ten-year-old Y.S., brought claims of race discrimination and retaliation against defendants following (i) accusations that Y.A. cheated on a math test and Y.A.'s subsequent decision to voluntarily withdraw from Fieldston, and (ii) Y.S.'s expulsion after she refused to withdraw.

During the time period relevant to the claims, Melendez signed two enrollment contracts on her daughters' behalf (enrollment contracts).

The enrollment contracts contained arbitration clauses requiring arbitration of any claims arising under them. Despite these clauses, plaintiffs filed suit in federal court, and following a series of settlement conferences, defendants (except for one individual) moved to compel arbitration.

Plaintiffs raised three principal arguments in response to the motion.

First, plaintiffs argued that the Federal Arbitration Act (FAA) did not apply to the case—and therefore did not preempt New York state laws restrictive of arbitration—because the enrollment contracts allegedly did not involve interstate commerce.

Second, and alternatively, plaintiffs argued that the arbitration clauses were not unenforceable on account of Y.A.'s and Y.S.'s election to void the enrollment contracts on the basis of their infancy at the time of the contracts' execution.

Third, plaintiffs argued that, even if they otherwise could be compelled to arbitrate, defendants had waived the right to compel arbitration through their litigation conduct.

The FAA Governs the Case

Oetken first found that the FAA—which provides for the enforcement of "a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction"—governs the case, rejecting plaintiffs' argument that the enrollment contracts do not involve interstate commerce. *Melendez*, 2025 WL 1777887, at *4.

He explained that the FAA's use of "involving commerce" "sweeps broadly" such that a contract "must simply *affect* interstate commerce" even if the parties did not "'contemplate an interstate commerce connection.'" *Melendez*, 2025 WL 1777887, at *4.

Upon reviewing the enrollment contracts, Oetken determined that they contain "provisions [that] affect interstate commerce, such as the interstate market for university recommendations and admission,... field trips using the channels of interstate travel,... and the use of internet services." *Melendez*, 2025 WL 1777887, at *4.

The Arbitration Clauses Are Not Enforceable Against the Minors

Next Oetken turned to whether the enrollment contracts—with their arbitration clauses—were enforceable against plaintiffs, and whether he or an arbitrator was the appropriate adjudicatory body to decide the question.

With respect to who decides, Oetken observed that challenges to the enforceability of a contract typically are left to the arbitrator, but only if the arbitration provision is severable from and capable of being enforced independent of an otherwise potentially unenforceable agreement.

Applying that standard here, Oetken determined that the arbitration clauses did not meet the standard because whether the arbitration clauses were enforceable against the minors was dependent on whether the enrollment contracts themselves were enforceable against the minors. *Melendez*, 2025 WL 1777887, at *5.

If the minors could repudiate the enrollment contracts on account of their infancy, then the arbitration clauses in them would not be severable and independently enforceable against the minors. Accordingly, Oetken concluded that he rather than an arbitrator should decide the challenge to the enforceability of the enrollment contracts.

Oetken then looked to New York law to determine enforceability, in particular its infancy doctrine, which instructs that (i) "[c]ontracts signed by minors are voidable, not void," and (ii) to be voidable, a minor must disaffirm the contract within a reasonable time after becoming of age and cannot retain the benefits afforded by the contract. *Melendez*, 2025 WL 1777887, at *5 (quoting *Doe #1*, 440 F. Supp. 3d at 355). With respect to the retaining-the-benefits analysis, Oetken explained that "a minor cannot disaffirm a contract where doing so would put her in a better position than she otherwise would have been absent the contract." *Melendez*, 2025 WL 1777887, at *6.

Here, defendants had argued that plaintiffs should not be permitted to void the enrollment contracts because they allegedly were seeking to retain benefits afforded by the contracts by raising discrimination claims through which (defendants argued) plaintiffs were seeking to enforce the enrollment contracts.

Oetken rejected this argument, finding that plaintiffs' discrimination claims do "not seek[] to enforce the enrollment contracts, but instead to impose statutory liability on Defendants for withholding the benefits of contracts—that *once existed*—on the basis of race." *Melendez*, 2025 WL 1777887, at *6.

Defendants also argued that by "accept[ing] the benefits of several months of schooling following the execution of the [e]nrollment [c]ontracts," Y.A. and Y.S. were "precluded from now voiding those [c]ontracts." *Melendez*, 2025 WL 1777887, at *7.

Oetken also rejected this argument, characterizing it as "incorrect, as a matter of both timing and substance." *Melendez*, 2025 WL 1777887, at *7.

For one of the two enrollment contracts, Oetken noted that neither child had attended Fieldston for any part of the applicable school year. Accordingly, for that contract, the minors could not possibly have retained a benefit.

For the other enrollment contract, Oetken acknowledged that the minors had attended the school during the applicable year, but he noted that, "as a substantive matter, the fact that both parties to a contract have completed performance does not prevent a minor from voiding it, though at that point, if the minor 'reaped a benefit he must return it or its value.'" *Melendez*, 2025 WL 1777887, at *7.

Oetken also acknowledged that courts have precluded minors from repudiating contracts when the minors received a benefit that was (i) incapable of being returned and (ii) akin to a trade secret.

Oetken concluded that the circumstances here, however, did not rise to the level of precluding Y.A. and Y.S. from repudiating the enrollment contracts, including because they had received nothing akin to a trade secret through their schooling. *See Melendez*, 2025 WL 1777887, at *7 (comparing *Kamil v. New York College of Dentistry*, 168 N.Y.S. 527, 528 (1st Dep't 1918) (finding minor who received dentistry lessons for three days could void a contract) with *Mutual Milk & Cream Co. v. Prigge*, 98 N.Y.S. 458, 459 (1st Dep't 1906) (upholding enforcement of restrictive covenant in employment contract because minor could not surrender trade secrets and customer relationships accrued as benefit of contract)).

Accordingly, Oetken denied defendants' motion to compel arbitration as to Y.A. and Y.S.

As for Melendez, Y.A.'s and Y.S.'s mother, Oetken arrived at a different conclusion, finding that she did not share in the minors' rights to repudiate the Enrollment contracts. He also rejected the mother's other arguments as to why the arbitration clauses should not be applied to her.

Specifically, he found her speculative argument that the arbitrator might construe the enrollment contracts against her in a way that interferes with her statutory rights to attorney's fees and costs as a civil-rights plaintiff.

Defendants Did Not Waive Their Right to Compel Arbitration

Having found that Melendez was subject to valid arbitration agreements, Oetken addressed her claim that defendants had waived their right to compel arbitration under those agreements through their litigation conduct. As an initial matter, Oetken explained that the court rather than an arbitrator decides the waiver question.

Without binding precedent imposing a test for assessing waiver, Oetken looked to the district courts in the Second Circuit, which he observed have taken varying approaches, as well as to a summary order from the Second Circuit in which it described the analysis as asking "whether a party knowingly relinquished the right to arbitrate by acting inconsistently with that right." *Melendez*, 2025 WL 1777887, at *9 (citing *Brown v. Peregrine Enters., Inc.*, 2023 WL 8800728, at *3 (2d Cir. Dec. 20, 2023) (summary order)).

Oetken explained that to answer that question, courts have often considered "'the time elapsed from when litigation was commenced until the request for arbitration' and 'the amount of litigation to date, including motion practice and discovery.'" *Melendez*, 2025 WL 1777887, at *9.

Here, Oetken found it unnecessary to "determine the precise formulation of the waiver-by-litigation test… because [defendants'] conduct f[ell] far short of anything resembling acting inconsistently with their right to arbitrate." *Melendez*, 2025 WL 1777887, at *9.

He rejected Melendez's arguments that defendants' attempts to settle the case before and after it was filed constitute a waiver. Oetken also emphasized the lack of any "significant motion practice" prior to defendants' motion to compel arbitration. *Melendez*, 2025 WL 1777887, at *9.

Although 18 months had elapsed between the commencement of the lawsuit and the filing of the motion to compel arbitration, Oetken explained that the delay was due to the case having been stayed as a result of the settlement efforts, and that at no point during that period had defendants "evinced an intent for the court, rather than arbitrator, to adjudicate the merits of the case." *Melendez*, 2025 WL 1777887, at *9.

Conclusion

Oetken's decision in *Melendez* addresses the intersection between the strong public policy favoring arbitration agreements and the equally strong policy that generally allows minors to repudiate contracts that others enter into on their behalf.

Vindicating both policies, Oetken held the minors' mother to her contractual agreement to arbitrate, but found that this case did not present one of the unique circumstances in which minors are precluded from repudiating contracts entered into on their behalf.

The Second Circuit is set to weigh in on the issues as the defendants have filed an appeal of Oetken's decision denying their motion to compel arbitration as to Y.A. and Y.S., and over defendants' objection, Oetken has also certified for interlocutory appeal the portion of his opinion compelling arbitration of Melendez's claims.

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