IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-2930
Summary Calendar

V. M. WHEELER, III,

Plaintiff-Appellant,

VERSUS

KIDDER PEABODY & COMPANY, INC.,
and GENERAL ELECTRIC COMPANY,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
(CA H 92 1696)

(October 26, 1993)

Before GARWOOD, SMITH, and DeMOSS, Circuit Judges.

JERRY E. SMITH, Circuit Judge:[*]

V.M. Wheeler, III, a former employee of Kidder Peabody & Company, Inc. ("Kidder"), appeals the district court's dismissal of his suit against Kidder and General Electric Company ("GE") for alleged civil Racketeer Influenced and Corrupt Organizations Act

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[*] Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, the court has determined that this opinion should not be published.

("RICO") and antitrust violations. Concluding that Wheeler's claims are barred by a prior state court ruling compelling arbitration of these claims, we affirm.

I.

Wheeler was a vice-president of Kidder, hired in April 1990 to work in the areas of investment banking, mergers, acquisitions, and corporate finance. Although he was not a stockbroker, as a condition of employment Wheeler was required to sign a "Form U-4" Uniform Application of Registration with the New York Stock Exchange. The U-4 contains an arbitration clause, which provides,

> I agree to arbitrate any dispute, claim or controversy, that may arise between me and my firm, or a customer, or any other person, that is required to be arbitrated under the rules, constitutions, or by-laws of the organizations with which I register . . . .

Wheeler became dissatisfied with Kidder's policies and expressed his intention to leave the firm. Kidder allegedly made an oral agreement with Wheeler that if he would complete a major project that he was working on, Kidder would treat him fairly in the future and not discharge him until a reasonable time after the completion of the deal. Immediately following the close of the deal, however, Kidder terminated Wheeler's employment, allegedly depriving him of the bonus he would have received from his work on that deal.

II.

A.

On September 17, 1991, Wheeler filed suit in state court against Kidder and Nancy Quinn, a corporate officer, alleging fraud, defamation, intentional infliction of emotional distress, and quantum meruit. The defendants filed a motion to stay the proceedings and to compel arbitration. A hearing was held on January 31, 1992, in which the court denied Wheeler's motion to compel discovery, which he claimed would prove the invalidity of the arbitration agreement. The court also indicated that it would sign an interlocutory order staying the proceedings.

The defendants contend that the court actually issued its order at that hearing and did not merely express an intent to do so in the future. The docket indicates a January 31, 1992, order to compel arbitration. On February 6, 1992, Wheeler moved to dismiss his suit voluntarily without prejudice pursuant to TEX. R. CIV. P. 162. Despite the nonsuit, the state judge signed an order on March 3, 1992, ordering arbitration. The docket indicates, "3-2-92 Order re 1-31-92 Order."

B.

On June 8, 1992, Wheeler filed this action in federal court against Kidder and GE, alleging fraud in the inducement of the arbitration agreement, antitrust violations, RICO violations, defamation, intentional infliction of emotional distress, debt, and quantum meruit. The defendants moved to compel arbitration, and GE

moved to dismiss the RICO claim for failure to plead with particularity.[1] On October 13, 1992, the district court sua sponte dismissed Wheeler's suit on the grounds of comity and judicial economy, stating that the "spirit of the order entered in state court must be respected."

III.

We review an order enforcing a state order compelling arbitration for abuse of discretion. C.G. Dillard v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 961 F.2d 1148, 1161 (5th Cir. 1992). We need not reach the merits of the arbitrability of the claims, however; since the claims were dismissed on the grounds of comity and judicial economy, the only issue presented is whether Wheeler was entitled to pursue his claims in federal court.

A.

An order of a state court compelling arbitration must be given full faith and credit by a federal court. Allen v. McCurry, 449 U.S. 90 (1980). In determining the preclusive effect of a prior state court judgment, federal courts must apply the law of the state from which the judgment emerged. Migra v. Warren City Sch. Dist. Bd. of Educ., 465 U.S. 75 (1984); J.M. Muniz, Inc. v. Mercantile Tex. Credit Corp., 833 F.2d 541, 543 (5th Cir. 1987).

The doctrine of collateral estoppel has the purposes of

[1] Kidder was not named as a defendant in one of the RICO claims against GE, as Wheeler alleged that Kidder was the enterprise through which GE engaged in acts of racketeering.

protecting litigants "from the burden of relitigating an identical issue with the same party or his privy, and of promoting judicial economy by preventing needless litigation." Parklane Hosiery Co. v. Shore, 439 U.S. 322, 326 (1979). This circuit requires "judicial finality" before collateral estoppel can be invoked; nevertheless, "finality" does not require a final judgment, but only that the issue has been "fully litigated." Chemetron Corp. v. Business Funds, Inc., 682 F.2d 1149, 1190-91 (5th Cir. 1982), vacated on other grounds, 460 U.S. 1007 (1983).

The controlling issue is whether the state court's order compelling arbitration was effective at that January 31, 1992, hearing, or not until March 3, 1992, the date of the signed order.[2] For the order to have been effective on January 31, the judge must have made a specific order, not merely expressed his intention to make the order at some future time.

> The judge's intention to render judgment in the future cannot be a present rendition of judgment. The rendition of judgment is a present act, either by spoken word or signed memorandum, which decides the issues upon which the ruling is made. The opportunities for error and

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[2] Had Wheeler dismissed his claim before the state court order was entered, and if the motion to compel arbitration were not a claim for affirmative relief, the state court would have been divested of jurisdiction and the order would have been invalid. According to TEX. R. CIV. P. 162, a party who voluntarily dismisses his suit does not prejudice his right to bring suit again on the same issues. Thomas v. Texas State Bd. of Medical Examiners, 807 F.2d 453, 457 (5th Cir. 1987). A plaintiff has an absolute, unqualified right to take a nonsuit upon timely motion as long as the defendant has not made a claim for affirmative relief. McQuillen v. Hughes, 626 S.W.2d 495, 496 (Tex. 1981) (per curiam).

Since Wheeler asserted federal questions in his complaint, namely violations of the Sherman Act, 15 U.S.C. § 1, and RICO, 18 U.S.C. § 1961, the federal district court would have jurisdiction over his action pursuant to 28 U.S.C. § 1331. Furthermore, the federal district court would have jurisdiction over the state claims through supplemental jurisdiction. As Wheeler correctly notes, a federal court has "no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given." Thomas, 807 F.2d at 454 (citation omitted).

> confusion may be minimized if judgments will be rendered only in writing and signed by the trial judge after careful examination. Oral rendition is proper under the present rules, but orderly administration requires that form of rendition to be in and by spoken words . . . and to have effect only insofar as those words state the pronouncement to be a present rendition of judgment.

Reese v. Piperi, 534 S.W.2d 329, 330 (Tex. 1976).

The January 31 hearing was not transcribed. Nevertheless, the docket entry indicates that an order was issued at that hearing, compelling arbitration. Although a docket entry may not take the place of a separate order of judgment, see First Nat'l Bank v. Birnbaum, 826 S.W.2d 189, 190 (Tex. App.))Austin 1992, no writ) (per curiam), here the docket entry reflected a valid order of the court made at the hearing. Thus, Wheeler's attempted nonsuit cannot abrogate the effect of the state court's order compelling arbitration. Nor are we convinced that the state court motion to compel arbitration was not properly regarded as a claim for affirmative relief.

B.

For the doctrine of collateral estoppel to apply, a party must establish that (1) the facts sought to be litigated in the second action were fully and fairly litigated in the prior action, (2) those facts were essential to the judgment in the first case, and (3) the parties were cast as adversaries in the first action. Bonniwell v. Beech Aircraft Corp., 663 S.W.2d 816, 818 (Tex. 1984). The issue that Wheeler has been collaterally estopped from relitigating is the validity of the arbitration agreement. First,

this issue was fully litigated in state court: A motion to compel arbitration was made by Kidder; Wheeler filed a response opposing the motion; and a hearing was held. Second, the validity of the arbitration agreement was obviously the only issue relevant to the motion to compel arbitration. And third, the parties were identical and, therefore, cast as adversaries.

Wheeler claims that even if collateral estoppel precludes claims against Kidder on issues raised in state court, dismissal was inappropriate for new causes of action brought in federal court and for claims against GE, which was neither a party to the prior lawsuit nor a party to the arbitration agreement. The fact that Wheeler now asserts new causes of action is irrelevant, however. Collateral estoppel precludes relitigation of issues, not claims. The validity of the arbitration agreement has been fully litigated; new causes of action arising out of the same set of operative facts will also be precluded. Wilhite v. Adams, 640 S.W.2d 875, 876 (Tex. 1982); Benson v. Wanda Petroleum Co., 468 S.W.2d 361, 362 (Tex. 1971).

Wheeler cannot complain of GE's use of collateral estoppel. The only party that may object to collateral estoppel is one who (1) is being collaterally estoppel from litigating an issue and (2) has not already litigated the issue. But Wheeler has already litigated the issue. Any party sharing Kidder's interest in the issue could defensively estop Wheeler from relitigating it. See RESTATEMENT (SECOND) OF JUDGMENTS § 27 cmt. c (1982).

Furthermore, the fact that GE was not technically a party to

the arbitration agreement is not fatal. As another court said in J.J. Ryan & Sons, Inc. v. Rhone Poulenc Textile, S.A., 863 F.2d 315, 320-21 (4th Cir. 1988), "[w]hen the charges against a parent company and its subsidiary are based on the same facts and are inherently inseparable, a court may refer claims against the parent to arbitration even though the parent is not formally a party to the arbitration agreement." See also Sam Reisfeld & Son Import Co. v. S.A. Eteco, 530 F.2d 679, 681 (5th Cir. 1976).

Therefore, Wheeler is precluded from relitigating the issue of the validity of the arbitration agreement. The effect of this preclusion is that Wheeler may not sue Kidder or GE, or anybody else for that matter, in state or federal court for any claims arising out of his employment with Kidder. He must arbitrate his claims.

IV.

The parties have already litigated the issue of arbitrability in state court. That court entered a valid order compelling arbitration. A federal court must give full faith and credit to state court orders; therefore, the district court did not err in dismissing Wheeler's suit.

AFFIRMED.