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PIZZA HUT L.L.C. V. PANDYA:
EXPLORING THE VALIDITY OF PRE-DISPUTE JURY WAIVERS

*by: Logan Allen**

I. INTRODUCTION

This Note analyzes a 2023 Fifth Circuit opinion concerning whether a contractual pre-dispute jury waiver is enforceable utilizing the knowing and voluntary factors and when challenged under general fraud allegations. In *Pizza Hut L.L.C. v. Pandya*, the Fifth Circuit held that the parties agreed to the jury waiver knowingly and voluntarily.¹ Additionally, the Fifth Circuit held that, like arbitration clauses, general fraud allegations are insufficient to render a jury waiver unenforceable and that fraud needs to be alleged to the specific jury waiver provision.²

The Fifth Circuit incorrectly weighed two of the voluntary and knowing factors—conspicuousness and unequal bargaining power—to be in favor of enforcing the jury waiver when the facts of the case and prior case law prove otherwise. The Fifth Circuit should have first applied a historical analysis in analyzing a constitutional right, but the court was reasonable in applying the arbitration rule to jury waiver provisions because waiving a jury right compromises fewer constitutional rights than an arbitration clause.

This Note begins by providing a background of the facts and procedural history of *Pandya*. It then provides a background of the prior case law, analyzes *Pandya* based on that case law, and concludes with a summary of the argument.

II. BACKGROUND OF *PIZZA HUT L.L.C. V. PANDYA*

Jignesh Pandya operated 43 Pizza Hut restaurants in Pennsylvania and one in Connecticut, which made him one of Pizza Hut L.L.C.’s largest franchisees.³ However, in October 2018, Pizza Hut terminated the parties’ franchise agreements, claiming that Pandya violated operational and brand standards and failed to pay franchise fees.⁴ To salvage the restaurants, Pizza Hut and Pandya entered into two post-termination agreements.⁵ The first was unsuccessful, and the second, the Transfer Agreement, ended in litigation.⁶ The Transfer Agreement contained a “miscellaneous” paragraph that stated: “The parties to this Agreement explicitly waive their respective rights to a jury trial in any litigation between or among them and hereby stipulate that any such trial shall occur without a jury.”⁷

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¹ *Pizza Hut L.L.C. v. Pandya*, 79 F.4th 535, 546 (5th Cir. 2023).

² *Id.* at 538.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 538–39.

⁷ *Id.* at 539.

Pizza Hut eventually terminated the Transfer Agreement and sued Pandya, alleging various breach of contract claims, and Pandya counterclaimed.⁸ Both parties amended their respective claims, and Pandya demanded a jury trial.⁹ Pizza Hut moved to strike the jury demand because of the Transfer Agreement's jury waiver.¹⁰ In response, Pandya argued that the Transfer Agreement's waiver did not apply to disputes resulting from the other agreements, the jury demand was proper, and the jury waiver was invalid because the Transfer Agreement and its provisions were procured by fraud.¹¹ The district court rejected each of Pandya's arguments and granted Pizza Hut's motion to strike the jury waiver.¹² After a bench trial on the remaining claims, Pizza Hut prevailed and was awarded \$6,688,751.14 in damages.¹³ Pandya timely filed an appeal.¹⁴

The sole issue considered by the Fifth Circuit on appeal was whether the district court properly granted the motion to strike Pandya's jury demand.¹⁵ Pandya challenged the waiver's enforceability and scope.¹⁶ As for enforceability, Pandya argued that the waiver provision was unenforceable because the Transfer Agreement was procured by fraud and that the knowing and voluntary factors weighed in his favor.¹⁷ As a matter of first impression, the Fifth Circuit held that, similar to arbitration provisions, a jury waiver cannot be struck down for general allegations of fraud, and Pandya failed to allege fraud specific to the jury waiver.¹⁸ Second, the Fifth Circuit held that each knowing and voluntary factor supported upholding the jury waiver provision.¹⁹ The court reasoned that Pandya had the opportunity to negotiate, the provision was conspicuous, there was not an extreme inequality of bargaining power, and Pandya had business acumen.²⁰

As for scope, Pandya argued that the waiver did not apply to all claims arising out of the initial franchise agreements and post-termination agreements.²¹ The Fifth Circuit held that the plain language of the term applied to all litigation between the parties.²² In sum, the Fifth Circuit upheld the district court's decision to strike Pandya's jury demand.²³

III. BACKGROUND OF PRIOR LAW

A. *Waiving the Right to a Jury Trial—The Knowing and Voluntary Standard*

In civil lawsuits, parties have the right to a jury trial as provided by the Seventh Amendment to the Constitution.²⁴ Additionally, Rule 38 of the Federal Rules of Civil Procedure requires a party

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 539–40.

¹² *Id.* at 540.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 538.

¹⁶ *Id.* at 542.

¹⁷ *Id.*

¹⁸ *Id.* at 543–44.

¹⁹ *Id.* at 544.

²⁰ *Id.* at 545–46.

²¹ *Id.* at 546.

²² *Id.*

²³ *Id.* at 547.

²⁴ U.S. CONST. amend. VII.

to demand the right to a jury trial.²⁵ But if a party fails to properly demand a jury trial, the right is waived under Rule 39 of the Federal Rules of Civil Procedure.²⁶ In pre-dispute matters, while there is a presumption against waiving the jury trial right,²⁷ courts have long honored parties' written agreements to waive their jury rights so long as "the waiver is knowing and voluntary."²⁸

However, courts are split on which party carries the burden of either negating or upholding the waiver's enforceability.²⁹ The Second and Fourth Circuits have placed the burden on the party seeking enforcement of the jury waiver to show that it was agreed to knowingly and voluntarily.³⁰ But the Sixth Circuit has put the burden on the party seeking to avoid the waiver.³¹ The Sixth Circuit reasons that there should be a presumption of contract validity, and the burden should be on the party seeking to avoid its enforceability.³²

The circuit courts have also applied different approaches for analyzing the knowing and voluntary standard.³³ In general, however, courts typically use a non-exhaustive list of the following four factors to determine knowing and voluntary: "(1) whether both parties had an opportunity to negotiate the terms of the agreement, (2) whether the provision waiving jury trial was conspicuous, (3) the relative bargaining power of the parties, and (4) the business acumen or professional experience of the party opposing the waiver."³⁴

For the opportunity to negotiate factor, courts look for whether there were actual negotiations over contract terms or, in general, the opportunity for negotiation.³⁵ For example, in *Servicios*, there was a lack of any real opportunity to negotiate because there were last-minute changes made at the time of closing.³⁶

As for the conspicuousness factor, courts consider the typeface, length of the document, and the clause's location.³⁷ For example, in *Crane*, the court addressed the conspicuousness factor by stating that the document was only two pages long.³⁸ Further, in *Servicios*, the jury waivers were conspicuous because they were in bold and capital letters.³⁹

For the third factor, relative bargaining power, courts look at whether there was an "extreme bargaining disadvantage."⁴⁰ For example, in *Hendrix*, a party badly needed funds, so he had no choice but to accept the contract.⁴¹ In *Servicios*, there was a disparity in bargaining power because

²⁵ FED. R. CIV. P. 38.

²⁶ FED. R. CIV. P. 39(b).

²⁷ *Servicios*, 328 F. Supp. 3d at 619.

²⁸ *Pandya*, 79 F.4th at 538.

²⁹ *Id.* at 541.

³⁰ *Id.*; see, e.g., *Nat'l Equip. Rental, Ltd. v. Hendrix*, 565 F.2d 255, 258 (2d Cir. 1977); *Leasing Serv. Corp. v. Crane*, 804 F.2d 828, 833 (4th Cir. 1986).

³¹ *Pandya*, 79 F.4th at 541; see, e.g., *K.M.C. Co. v. Irving Tr. Co.*, 757 F.2d 752, 758 (6th Cir. 1985).

³² *Irving*, 757 F.2d at 758.

³³ *Pandya*, 79 F.4th at 544 n.31.

³⁴ *Id.* at 544; see also *Servicios Comerciales Lamosa, S.A. de C.V. v. De La Rosa*, 328 F. Supp. 3d 598, 619–20 (N.D. Tex. 2018).

³⁵ *Servicios*, 328 F. Supp. 3d at 621–22.

³⁶ *Id.* at 622.

³⁷ *Pandya*, 79 F.4th at 545 (citing *Zavala v. Aaron's Inc.*, No. 4:15-CV-123, 2015 WL 5604766, at *2 (E.D. Tex. Sep. 23, 2015)).

³⁸ *Leasing Serv. Corp. v. Crane*, 804 F.2d 828, 833 (4th Cir. 1986).

³⁹ *Servicios*, 328 F. Supp. 3d at 622.

⁴⁰ *Id.*

⁴¹ *Nat'l Equip. Rental, Ltd. v. Hendrix*, 565 F.2d 255, 258 (2d Cir. 1977).

the opposing party's business relied entirely on the other party's stock to remain operational, and most of the jury waiver provisions between the parties were unilateral.⁴²

Fourth, the business acumen factor is determined by looking at the business or professional experience of the parties.⁴³ For example, in *Crane*, a party's business acumen was shown through their success in running a business for sixteen years and their licenses for the sale of equipment.⁴⁴

B. *Fraud Allegations and Jury Waiver Provisions*

No Supreme Court cases have decided whether a fraud claim must specifically target the jury waiver provision to invalidate the waiver.⁴⁵ However, in *Telum, Inc. v. E.F. Hutton Credit Corp.*, the Tenth Circuit applied the arbitration rule by analogy to jury waiver provisions.⁴⁶ The arbitration rule provides that general allegations of fraud do not affect the arbitration agreement.⁴⁷ Applying that same standard, the Tenth Circuit held that general allegations of fraud are insufficient to invalidate jury waiver provisions.⁴⁸ The court's reasoning behind applying the arbitration rule is that arbitration clauses compromise greater procedural protections than the right to a jury trial.⁴⁹

IV. CASE ANALYSIS

A. *Which Party Bears the Burden of Proof?*

The Fifth Circuit was correct to follow the Sixth Circuit and hold that the party seeking to avoid a jury waiver's enforcement should have the burden to prove that it was agreed to unknowingly and involuntarily.⁵⁰ As a policy matter, this reasoning is more appropriate than having a party object to the enforcement of a jury waiver provision and then require the non-opposing party to prove why it is enforceable. The objecting party is in a better position to prove that they agreed to the jury waiver unknowingly and involuntarily, which leads to fairer outcomes and clearer evidentiary standards.

B. *Knowing and Voluntary Factors*

The Fifth Circuit incorrectly held that Pandya knowingly and voluntarily agreed to the jury waiver. While the Fifth Circuit correctly held that the opportunity to negotiate factor and the business acumen factor both weighed in favor of enforcing the jury waiver, the court was incorrect to weigh the conspicuousness factor and the relative bargaining power factor in favor of enforcing the jury waiver. Each factor is analyzed in turn.

First, the Fifth Circuit was accurate in concluding that Pandya had the opportunity to negotiate because Pandya questioned terms in the paragraph with the waiver on the last review

⁴² *Servicios*, 328 F. Supp. 3d at 623.

⁴³ *Id.*

⁴⁴ *Leasing Serv. Corp. v. Crane*, 804 F.2d 828, 833 (4th Cir. 1986).

⁴⁵ *Pizza Hut L.L.C. v. Pandya*, 79 F.4th 535, 543 (5th Cir. 2023).

⁴⁶ *Telum, Inc. v. E.F. Hutton Credit Corp.*, 859 F.2d 835, 837–38 (10th Cir. 1988).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at 838.

⁵⁰ *K.M.C. Co. v. Irving Tr. Co.*, 757 F.2d 752, 758 (6th Cir. 1985).

before signing.⁵¹ Second, like the party in *Crane* who had business acumen for running a successful business, the court accurately determined that Pandya had business acumen because he too was a successful businessman with multiple companies.⁵²

Third, as for the conspicuousness factor, the Fifth Circuit's reasoning incorrectly applied prior case law to the facts. Pandya argued that the jury waiver was "inconspicuously placed because it was not bolded, highlighted, or otherwise set apart."⁵³ The Fifth Circuit addressed this argument by stating that a "waiver provision does not have to be set apart to be conspicuous," but does not cite any authority to support this contention.⁵⁴ Further, the Fifth Circuit failed to address the argument about the term not being in bold or highlighted.⁵⁵ In *Servicios*, the court concluded that capital lettering and bold-faced font is what made the waiver conspicuous.⁵⁶ But here, there is nothing that brings the term to the party's attention. The Fifth Circuit also reasons that because Pandya circled the paragraph with the waiver, he was aware of the term, and thus it was conspicuous.⁵⁷ This reasoning is flawed because it assumes that Pandya knew of the term just because he knew of the paragraph. Additionally, the court states that the clause was not placed in the middle of an easily skippable paragraph.⁵⁸ However, that is exactly where it was placed. The paragraph was the last in the agreement, was titled "Miscellaneous," and the term was directly in the middle of the paragraph.⁵⁹ Thus, the Fifth Circuit's reasoning is flawed, and this factor should have weighed in favor of Pandya.

Fourth, as for the unequal bargaining factor, the Fifth Circuit was incorrect to conclude that there was not an "extreme" or "gross disparity" in bargaining power. The court reasoned that there was only a slight disparity in bargaining power because Pizza Hut had a strong interest in keeping the stores open, and Pandya was one of their largest franchisees.⁶⁰ However, the Fifth Circuit wrongly dismissed Pandya's allegations of being pressured to sign the agreement. The Fifth Circuit states that there was not a similar bargaining chip for Pandya like there was in *Servicios*, where a party was forced to agree to the jury waiver or risk halting his business operations.⁶¹ However, that is the exact type of bargaining chip that was present for Pandya. This was their second post-termination agreement, and if the parties had not reached an agreement, Pandya would have been on the hook for millions of dollars and lost all 44 of his restaurants.⁶² The court seemingly glossed over the pressure that this situation would have had on Pandya.⁶³ Further supporting Pandya's position was that of *Hendrix*, where a party felt compelled to sign an agreement because he badly needed the funds.⁶⁴ Thus, the Fifth Circuit should have weighed this factor in favor of Pandya.

Overall, the Fifth Circuit should have more accurately applied the facts to prior case law for the conspicuous and unequal bargaining power factors and should have concluded that there was not enough proof to overcome the presumption against waiving a jury trial.

⁵¹ *Pizza Hut L.L.C. v. Pandya*, 79 F.4th 535, 545 (5th Cir. 2023).

⁵² *Id.* at 546.

⁵³ *Id.* at 545.

⁵⁴ *Id.*

⁵⁵ *See id.*

⁵⁶ *Servicios Comerciales Lamosa, S.A. de C.V. v. De La Rosa*, 328 F. Supp. 3d 598, 622 (N.D. Tex. 2018).

⁵⁷ *Pandya*, 79 F.4th at 545.

⁵⁸ *Id.*

⁵⁹ *Id.* at 539.

⁶⁰ *Id.* at 545.

⁶¹ *Id.* at 546.

⁶² *Id.* at 538–39.

⁶³ *See id.* at 545–46.

⁶⁴ *Nat'l Equip. Rental, Ltd. v. Hendrix*, 565 F.2d 255, 258 (2d Cir. 1977).

C. *Invalidation of a Jury Waiver and General Fraud Allegations*

The Fifth Circuit should have analyzed the fraud allegations in *Pandya* under the “constitutional framework” set out by *New York State Rifle & Pistol Ass’n v. Bruen*, in which constitutional rights are assessed through their historical context.⁶⁵ *Pandya* argued that the historical record showed that pre-dispute jury waivers were unenforceable if fraudulently induced.⁶⁶ The Fifth Circuit reasoned that the historical analysis standard did not apply because the “Supreme Court has never backtracked on the jury right’s waivability,” and courts have long allowed jury waivers “if they are knowing and voluntary.”⁶⁷ However, this reasoning fails to address the historical analysis in regard to the fraud claim. The Fifth Circuit should have used the historical analysis outlined in *Bruen* to determine whether allegations of fraud must be toward the jury waiver specifically, or if the historical record allowed fraud allegations to target the agreement as a whole.

While the Fifth Circuit should have first applied the historical context analysis, the court was reasonable to follow the Tenth Circuit’s approach in *Tellum* and apply the arbitration rule by analogy to general fraud allegations against a jury waiver.⁶⁸ The Fifth Circuit appropriately reasoned that if parties can waive the right to an entire trial through an arbitration clause, then a jury waiver provision, which only waives a certain type of trial, should be treated in the same manner.⁶⁹ Further, the Fifth Circuit was correct to conclude that *Pandya*’s fraud claim did not invalidate the jury waiver provision because *Pandya* did not allege fraud for the jury waiver provision specifically but rather the agreement as a whole.⁷⁰ In sum, future cases should apply the *Bruen* historical context analysis before applying the arbitration rule by analogy.

D. *Scope of the Agreement*

The Fifth Circuit was correct in holding that the scope of the jury waiver clause applied to all litigation between the parties. The waiver term states that it covers “any litigation between or among” the parties.⁷¹ The court correctly determined that this broad language applies to all litigation between *Pandya* and Pizza Hut.

V. CONCLUSION

While the Fifth Circuit correctly placed the burden on *Pandya* to prove that he did not agree to the contractual jury waiver knowingly or voluntarily, the Fifth Circuit incorrectly applied the arguments and facts to prior case law for two of the knowing and voluntary factors—conspicuousness and unequal bargaining power. Because those two factors should have weighed in favor of *Pandya* and against enforcing the waiver, there was not enough proof to overcome the presumption against waiving the right to a jury trial.

⁶⁵ *Pandya*, 79 F.4th at 542; see also *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111, 2135 (2022).

⁶⁶ *Pandya*, 79 F.4th at 542.

⁶⁷ *Id.*

⁶⁸ *Id.* at 543; see also *Telum, Inc. v. E.F. Hutton Credit Corp.*, 859 F.2d 835, 837–38 (10th Cir. 1988).

⁶⁹ *Pandya*, 79 F.4th at 543.

⁷⁰ *Id.* at 544.

⁷¹ *Id.* at 546.

As for the fraud claim, the Fifth Circuit should have first applied the *Bruen* historical context analysis; but the court reasonably and accurately applied the arbitration rule by analogy, requiring fraud allegations to specifically target the jury waiver provision rather than the whole agreement. Finally, the Fifth Circuit accurately applied the plain meaning of the waiver provision to apply to all litigation between Pizza Hut and Pandya.