

RECENT DEVELOPMENTS

*Hall Street Associates, L.L.C. v. Mattel, Inc.*¹

I. INTRODUCTION

Sections 10 and 11 of the Federal Arbitration Act (FAA) set forth grounds for vacatur, modification, and correction of arbitration awards.² In *Hall Street Associates, L.L.C. v. Mattel, Inc.*, Hall Street Associates asked the United States Supreme Court to determine whether the FAA options for review are exclusive.³ In particular, Hall Street asked whether a particular provision in its arbitration agreement was enforceable.⁴ The provision allowed for judicial review of arbitration awards in the case of legal error.⁵ Hall Street argued that the court should allow this contractual provision to supplement the grounds for review set forth in the FAA.⁶ The circuit courts were split on the exclusivity of the FAA provisions, and the Supreme Court granted certiorari.⁷

The Supreme Court held that the grounds for review set forth in the FAA are exclusive;⁸ however, the Court went on to state that parties may be eligible for greater review if they moved to arbitration under some legal authority other than the FAA.⁹ The Court specifically said that parties might seek review under state and common law theories, and remanded the case to

¹ *Hall St. Assocs., L.L.C. v. Mattel Inc.*, 128 S. Ct. 1396 (2008).

² *See* Federal Arbitration Act, 9 U.S.C. §1, §§10, 11 (2000 ed. & Supp. V 2005).

³ *Hall St.*, 128 S. Ct. at 1396.

⁴ *Id.* at 1401.

⁵ *Id.*

⁶ *See id.* at 1403–05.

⁷ *Id.* at 1403. A small majority of Federal Circuit Courts have held that the grounds for review listed in the FAA may be supplemented by contractual provisions. *See* *Puerto Rico Tel. Co. v. U.S. Phone Mfg. Corp.*, 427 F.3d 21, 31 (1st Cir. 2005), *Jacada, Ltd. v. Int'l Mktg. Strategies, Inc.*, 401 F.3d 701, 710 (6th Cir. 2005), *Roadway Package Sys., Inc. v. Kayser*, 257 F.3d 287, 288 (3d Cir. 2001), *Gateway Techs., Inc. v. MCI Telecomms. Corp.*, 64 F.3d 993, 997 (5th Cir. 1995), and *Syncor Int'l Corp. v. McLeland*, No. 96-2261, 1997 WL 452245, at *7 (C.A. 4 W.Va. Aug. 11, 1997). The Ninth and Tenth Circuits held that the provisions of the FAA were exclusive. *See* *Kyocera Corp. v. Prudential-Bache Trade Servs., Inc.*, 341 F.3d 987, 1000 (9th Cir. 2003) and *Bowen v. Amoco Pipeline Co.*, 254 F.3d 925, 936 (10th Cir. 2001).

⁸ *Hall St.*, 128 S. Ct. at 1403.

⁹ *Id.* at 1406.

the district court to determine the availability of alternative means of review when parties submitted to arbitration under the authority of Rule 16 of the Federal Rules of Civil Procedure.¹⁰

II. FACTUAL AND PROCEDURAL BACKGROUND

Mattel, Inc. (Mattel) is a former tenant of Hall Street Associates (Hall Street).¹¹ Mattel rented an Oregon manufacturing site from Hall Street and, under the terms of the lease agreement, Mattel agreed to indemnify Hall Street against any environmental liabilities incurred at the facility.¹² In 1998, the Oregon Department of Environmental Quality (DEQ) found high levels of trichloroethylene (TCE) in the well water at the site, which was in violation of the Oregon Safe Drinking Water Quality Act.¹³ As required by its lease agreement, Mattel entered into a consent decree with the DEQ for cleanup of the facility.¹⁴ Three years later, Mattel notified Hall Street of its intent to terminate its lease, and Hall Street filed suit, arguing Mattel could not terminate the lease and further, that Mattel had to continue its indemnification of Hall Street for the costs of cleanup.¹⁵

The case went to a bench trial in the United States District Court for the District of Oregon.¹⁶ The court held that Mattel could terminate its lease.¹⁷ Thereafter, the parties attempted to mediate the indemnification issue; however, they were unable to do so and moved to enter arbitration.¹⁸ The district court granted the motion and the parties drafted an arbitration agreement.¹⁹ The parties included in the agreement a provision allowing for court review of the arbitration award in case of legal error.²⁰ The district court approved the agreement and entered it as an order.²¹

¹⁰ *Id.* at 1404, 1406–08.

¹¹ *Id.* at 1400.

¹² *Id.*

¹³ *Id.* at 1400–01.

¹⁴ *Hall St.*, 128 S. Ct. at 1400.

¹⁵ *Id.*

¹⁶ *Id.* at 1400–01.

¹⁷ *Id.* at 1400.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Hall St.* 128 S. Ct. at 1401.

²¹ *Id.* at 1400.

Mattel and Hall Street presented their cases to the arbitrator, and the arbitrator found that Mattel did not have to indemnify Hall Street.²² However, the arbitrator based its decision on its understanding of the Oregon Drinking Water Quality Act as a human health act rather than an environmental statute.²³ Hall Street believed this was a legal error and submitted the award to the district court for vacatur, modification, or correction.²⁴

The district court permitted review based on the parties' arbitration agreement, which allowed for review of the arbitration award for legal error.²⁵ The district court agreed with Hall Street, stating that the Oregon Drinking Water Act was an environmental law, and remanded to the arbitrator, who then changed its decision in favor of Hall Street.²⁶ Both parties then sought modification.²⁷ The district court upheld the second decision of the arbitrator (minus some revisions to its calculation of interest).²⁸ Both parties appealed and Mattel now argued that the court should not be allowed to review for legal error.²⁹ The Ninth Circuit agreed with Mattel and remanded to the district court, which again upheld the arbitrator's second decision.³⁰ The Ninth Circuit again reversed, and the Supreme Court granted certiorari.³¹

III. HOLDING AND REASONING

The Supreme Court held that the grounds for review under the FAA are exclusive.³² When the FAA is the source of law, parties may not contract for the ability to obtain review based on legal error or otherwise.³³ The Court remanded the case to the court of appeals to decide whether or not a court may grant review outside the FAA provisions if it granted the motion to

²² *Id.* at 1401.

²³ *Id.* The indemnification provision provided that the lessee, Mattel, would have to indemnify for any environmental liability. *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Hall St.*, 128 S. Ct. at 1401.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* at 1401.

³² *Hall St.*, 128 S. Ct. at 1400.

³³ *Id.*

move to arbitration based on its Rule 16 authority.³⁴ Four justices joined Justice Souter's majority opinion.³⁵ Justice Scalia joined all but footnote 7.³⁶ Justice Stevens wrote a dissenting opinion in which Justice Kennedy joined, and Justice Breyer wrote a separate dissenting opinion.³⁷

A. *The Grounds for Review under the FAA are Exclusive.*

Hall Street gave two main arguments as to why the "enhanced" judicial review of its arbitration agreement should be allowed. Hall Street argued that *Wilko v. Swan*³⁸ allows judges to add additional grounds for vacatur and therefore parties should be allowed to contract to do the same.³⁹ However, the Court held that the *Wilko* holding does not generally expand judicial review authority as Hall Street argued.⁴⁰ The Court did not agree that a judge's ability should be transposed onto parties to a proceeding.⁴¹ Further, it pointed out that the case "expressly rejects . . . general review for an arbitrator's legal errors."⁴²

Hall Street's second major argument was that its arbitration agreement is a contract that the FAA allows the parties to create.⁴³ While the Court agreed that the arbitration agreement is a contract, it found that § 9 of the FAA is at odds with this general policy, making the policy unenforceable.⁴⁴ The Court held that the wording of § 9 is incompatible with a party's ability to shape the arbitration agreement in whatever manner it chooses.⁴⁵ Specifically, the Court found that the words "must grant" in §9 do not allow for this kind of flexibility.⁴⁶ Further, §§ 10 and 11 set forth a list of specific reasons for vacatur, modification, and correction.⁴⁷ The doctrine of *ejusdem generis* would not allow for something so unrelated as legal error to be grouped in

³⁴ *Id.* at 1407–08. Rule 16 of the Federal Rules of Civil Procedure gives federal courts the ability to manage their cases. *See* FED. R. CIV. P. 16.

³⁵ *Hall St.*, 128 S. Ct. at 1399.

³⁶ *Id.*

³⁷ *Id.* at 1408, 1410.

³⁸ *Hall St.*, 128 S. Ct. at 1403.

³⁹ *Id.*

⁴⁰ *Id.* at 1403–04.

⁴¹ *Id.* at 1404.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Hall St.*, 128 S. Ct. at 1404–05.

⁴⁵ *Id.*

⁴⁶ *Id.* at 1405.

⁴⁷ *Id.* at 1404.

with Congress' explicit grounds for review.⁴⁸ When the FAA provides the legal authority to submit to arbitration, the FAA provisions are the exclusive means for arbitral award review.

B. Review under Rule 16.

The Court's holding about the exclusivity of grounds for review only applies when the FAA is the source for case management.⁴⁹ It is possible that other means for review may be available when a court permits arbitration through other sources of law.⁵⁰ In this case, the Court questions the potential applicability of Rule 16 of the Federal Rules of Civil Procedure.⁵¹ Because the district court agreed to arbitration during the course of litigation, the majority's holding questioned whether arbitration could be "an exercise of the district court's authority to manage its cases under Federal Rules of Civil Procedure 16."⁵² The Court did not attempt to address this issue in this case—making note of the fact that it was not originally briefed on the issue; further, it believed that the parties and the lower courts all assumed it was an FAA case.⁵³ The Court allowed for the Court of Appeals to determine whether it wished to rule on the applicability of Rule 16.⁵⁴

IV. THE IMPACT OF THE COURT'S DECISION

The Court's holding in this case may impact the popularity of arbitration.⁵⁵ On one hand, Hall Street argued that a party's inability to establish separate grounds for review will cause parties to avoid arbitration.⁵⁶ On the other hand, Mattel argued that the courts will lose influence and arbitration will be the common starting point for lots of litigation.⁵⁷ Courts would then be forced to act primarily as reviewing bodies.⁵⁸

⁴⁸ *Id.* at 1404.

⁴⁹ *Id.* at 1407 (meaning the FAA may be a source of case management because it allows the District Court to allow the parties to submit to arbitration.)

⁵⁰ *Hall St.*, 128 S.Ct. at 1406.

⁵¹ *Id.* at 1407.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.* at 1407–08.

⁵⁵ *Id.* at 1406.

⁵⁶ *Hall St.*, 128 S. Ct. at 1406.

⁵⁷ *Id.*

⁵⁸ *Id.*

The holding in *Hall Street* will at least encourage parties to become more creative in how they approach review of arbitration agreements. The Court stated specifically that the FAA is not the sole legal authority for entering arbitration.⁵⁹ As mentioned above, in certain circumstances (where the court is already involved in the case), Rule 16 of the Federal Rules of Civil Procedure may apply.⁶⁰ When parties submit to arbitration under this rule, the provisions of the FAA may not apply. Further, the Court explicitly stated that parties may “contemplate enforcement under state statutory or common law, where judicial review of a different scope is arguable.”⁶¹ The FAA provisions for vacatur, modification, and correction are exclusive when the FAA was the legal authority used to submit to arbitration. However, the Court held that §§ 10 and 11 are not exclusive when the parties have submitted to arbitration under different legal authority.


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⁵⁹ *Id.*

⁶⁰ *Id.* at 1407.

⁶¹ *Id.* at 1406.