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Digest: Bouton v. USAA Casualty Insurance Co.

Ryan McIntire

Opinion by Moreno, J., expressing the unanimous view of the Court.

Issue

(1) Is the issue whether a claimant is covered by an uninsured motorist provision a jurisdictional issue subject to arbitration under the uninsured motorist statute, California Insurance Code section 11580.2(f)?

(2) Is the issue whether a default judgment obtained by the insured against the underinsured tortfeasor binds the insurer arbitrable under Section 11580.2(f)?

Facts

In the first of two consolidated cases, plaintiff Lloyd Bouton settled a claim for injuries in an automobile accident against the driver for \$15,000.¹ USAA Casualty Insurance Co. denied coverage exceeding the policy limit available under the uninsured motorist provision of his sister's policy, on the grounds that Bouton was not a resident of his sister's household and thus not covered by the policy.² The arbitration agreement under the policy provided that only the issues of the uninsured motorist's liability and the amount of damages shall be arbitrated.³

The trial court denied Bouton's motion to compel arbitration, concluding that California Insurance Code section 11580.2(f) required the parties to arbitrate only liability and damages.⁴ The Court of Appeal reversed, concluding that the parties were required to arbitrate whether Bouton was covered by the policy under *Van Tassel v. Superior Court*.⁵ The Supreme Court of California granted review.⁶

In the second case, plaintiff Charles O'Hanesian recovered nearly three million dollars in a default judgment obtained against a driver in an auto accident.⁷ After receiving \$100,000 from the driver's insurer, he was

¹ *Bouton v. USAA Casualty Ins. Co.*, 186 P.3d 1, 3 (Cal. 2008).

² *Id.*

³ *Id.* at 3-4.

⁴ *Id.* at 4.

⁵ *Id.*; *Van Tassel v. Superior Court*, 526 P.2d 969 (Cal. 1974).

⁶ *Id.*

⁷ *Id.*

denied the \$900,000 in coverage available under the uninsured motorist provision in his policy with State Farm Mutual Automobile Insurance Co.⁸ The arbitration agreement in the policy provided that liability and damages were subject to arbitration.⁹ O'Hanesian filed suit against State Farm, arguing that the default judgment "conclusively established his damages."¹⁰

The trial court granted State Farm's demurrer and dismissed the action.¹¹ The Court of Appeal affirmed on the basis that O'Hanesian must arbitrate the issues of liability and damages.¹² The Supreme Court of California granted review.¹³

Analysis

The Court noted that a line of its cases established that only issues of liability and damages may be arbitrated under Section 11580.2(f), unless the parties agree to arbitrate other issues.¹⁴ In *Orpustan v. State Farm Mutual Automobile Insurance Co.*,¹⁵ the Court held that the arbitration provision of an insurance policy was sufficiently broad to require arbitration of whether the driver was uninsured under the meaning of Section 11580.2.¹⁶ The Court reasoned that allowing a court to decide "jurisdictional facts" which the parties had agreed to arbitrate would cause delay and uncertainty.¹⁷

In *Van Tassel*, the Court, relying on its reasoning in *Orpustan*, held that whether a claimant was covered under an uninsured motorist policy was a "jurisdictional fact" subject to arbitration.¹⁸ However, the arbitration provision of the insurance policy in *Van Tassel* provided only that the issues of liability and damages were arbitrable.¹⁹

*Freeman v. State Farm Mutual Automobile Insurance Co.*²⁰ held that a court should determine the jurisdictional issue of whether the right to compel arbitration was forfeited by failure to comply with the statute of limitations under section 11580.2(i).²¹ The Court reasoned that subdivision (f) requires the parties to arbitrate only the issues of liability and amount of damages and that "there is no policy compelling persons to accept an arbitration of controversies which they have not agreed to arbitrate and

8 *Id.*

9 *Id.*

10 *Id.*

11 *Id.* at 5.

12 *Id.*

13 *Id.*

14 *Id.* at 5.

15 *Orpustan v. State Farm Mut. Auto. Ins. Co.*, 500 P.2d 1119 (Cal. 1972).

16 *Bouton*, 186 P.3d at 5.

17 *Id.* at 5-6.

18 *Id.* at 6.

19 *Id.*

20 *Freeman v. State Farm Mutual Auto. Ins. Co.*, 535 P.2d 341 (Cal. 1975).

21 *Bouton*, 186 P.3d at 6.

which no statute has made arbitrable.”²² The Court in *Freeman* limited the broad interpretation of “jurisdictional facts” expressed in *Orpustan* and relied upon in *Van Tassel*.²³

The Court concluded that its holding in *Freeman* could not be reconciled with its earlier holding in *Van Tassel*.²⁴ The Court noted that *Freeman* disapproved of *Van Tassel*’s broad interpretation of *Orpustan*’s finding that whether an individual was covered under an uninsured motorist policy was a “jurisdictional fact.”²⁵ The Court overruled *Van Tassel* to the extent that it allowed arbitration of issues beyond liability and damages that the parties did not agree to arbitrate.²⁶

Applying this rule to the *Bouton* case, the Court reasoned that the parties agreed to arbitrate only liability and damages, and questions of coverage must be resolved before an arbitrator reaches these two issues.²⁷ With respect to the *O’Hanesian* case, the Court reasoned that the default judgment “pertains directly” to the issues of liability and damages, which the parties agreed to arbitrate.²⁸

Holding

The Court held that whether Bouton was covered under his sister’s insurance policy must be determined by a court and not by an arbitrator.²⁹ The Court also held that, on the other hand, whether State Farm was subject to the default judgment obtained by O’Hanesian was arbitrable.³⁰

Legal Significance

This decision limits the scope of the uninsured motorist statute by limiting the statutorily mandated issues that must be arbitrated whenever an insurer and an insured agree to arbitrate. This decision more closely follows the actual language of the statute. It also increases the freedom individual parties have to select specific issues that they wish to arbitrate.

²² *Id.* at 7 (quoting 526 P.2d 969 (Cal. 1974)).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 8.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*