



Arbitration Law Alert: One Harassment Claim Keeps the Whole Case in Court, According to Federal Appellate Court in New York

In *Diaz-Roa v. Hermes Law, P.C.*¹, the U.S. Court of Appeals for the Second Circuit held that once an employee alleges a single sexual harassment claim and invokes the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act (EFAA), an arbitration agreement is unenforceable as to the entire case, including claims that have nothing to do with harassment. The Second Circuit is the third federal appeals court to say so this year.

The Court Refused to Sever a Stock-Option Fight from a Harassment Claim

The plaintiff signed an arbitration agreement in February 2018, shortly after she began working for the law firm Hermes Law as an intern. Over the ensuing years, the plaintiff rose through the ranks in operations roles, and she helped establish a spinoff litigation management company, ClaimDeck. She was awarded stock options amounting to approximately 10% of ClaimDeck's shares. By 2023, the plaintiff's stock options fully vested at a value exceeding \$1 million. The plaintiff alleged that, a few months later when she expressed her intention to exercise the options, she was fired purportedly for cause.

The plaintiff sued, alleging that her employer unlawfully terminated her to prevent her from exercising the options. Alongside her options claims, she alleged sexual harassment under both New York state and city human rights laws. The lower court denied the employer's motion to compel arbitration, and the only question on appeal was whether, pursuant to the EFAA, a plaintiff can invalidate an arbitration agreement as to all of the claims within the plaintiff's lawsuit, or only as to sexual

harassment claims. On September 30, 2026, the Second Circuit affirmed, holding: “[W]hen it is applicable, the EFAA enables a plaintiff to invalidate a pre-dispute arbitration agreement as to the entire lawsuit, rather than only the sexual harassment or sexual assault claims contained within that lawsuit.”

One Statutory Word – “Case” – Decided the Appeal

President Joe Biden signed the EFAA into law in 2022 in the wake of the #MeToo movement. It provides that, at the election of a person alleging sexual assault or sexual harassment, no pre-dispute arbitration agreement “shall be valid or enforceable with respect to a case which is filed under Federal, Tribal, or State law and relates to the sexual assault dispute or the sexual harassment dispute.” 9 U.S.C. § 402(a). A court, not an arbitrator, decides whether the EFAA applies. The EFAA governs any dispute or claim that arises or accrues on or after March 3, 2022.

Based on the statutory language, the Second Circuit rejected the employer’s argument that the EFAA requires a claim-by-claim analysis to determine whether a particular claim “relates to” sexual harassment. The court held that the word “case” in Section 402(a) “plainly refers to a lawsuit as a whole.” Therefore, the court held that it is a “case,” not “claim,” that must relate to the sexual harassment dispute.

The law governing this issue in New York is now consistent with the Ninth Circuit (California, Arizona, Nevada, and others) and the Sixth Circuit (Michigan, Ohio, Kentucky, and Tennessee), where the courts similarly adopted an “all or none” approach earlier this year.²

Practical Stakes: Assess the Whole Complaint

In *Diaz-Roa* itself, the fight arose from a dispute about equity, but such compensation or contract-related claims now travel to court with any properly invoked sexual harassment claim in the same filing. Businesses that utilize arbitration agreements should keep the *Diaz-Roa* rule in mind when evaluating strategy and risks starting as early as when they receive a demand letter outlining threatened claims.

- **The forum changes the risks and economics.** Court means publicity. It also means broader discovery, motion practice on a busy court’s timetable, an

appealable judgment, and a jury.

- **Arbitration agreements are limited, not dead.** *Diaz-Roa* is not a reason to abandon arbitration clauses. They still govern the large run of disputes with no sexual harassment or sexual assault claim (and disputes arising before March 3, 2022).
- **Open questions remain to be litigated.** The Second Circuit expressly declined to resolve other important issues regarding the scope of the EFAA that may provide a basis to argue that the case, or portions thereof, belong in arbitration. First, the court noted that there is a split of authority on whether, to trigger the EFAA, a plaintiff needs to allege a sexual harassment claim with sufficient factual basis to withstand a motion to dismiss (*i.e.*, a “plausible” claim) or rather need only meet the lower threshold of pleading a nonfrivolous claim. The Second Circuit had no occasion to resolve this disagreement because the plaintiff’s sexual harassment claim already survived a motion to dismiss. Second, the court left open the issue of how the EFAA applies in the context of class or collective actions or where one plaintiff properly invokes the EFAA but another plaintiff in the same case does not allege sexual harassment or sexual assault. Indeed, in *Mera v. SA Hospitality Group, LLC*³, a magistrate judge split the plaintiff’s case – his hostile work environment claims stayed in court pursuant to the EFAA, while his wage and hour claims brought on behalf of a putative class and on a collective basis were sent to arbitration. The district judge in the same case reversed that aspect of the holding, but the treatment of such class or collective cases remains an open question.
- **Be wary of strategic pleading.** Because one claim generally controls the forum for everything, it is important to evaluate at the threshold whether an alleged sexual harassment claim is properly asserted alongside other claims. The Second Circuit admonished that the Federal Rules of Civil Procedure contain limitations on the types of claims and defendants that may be joined in a single action and “[t]hese procedural limits ensure that a ‘case’ refers to a coherent, legally cognizable judicial proceeding comprised of related claims and parties – not an aggregation of unrelated disputes.” The joinder rules may provide some protection against strategic pleading designed to circumvent arbitration clauses in their entirety.

This blog was drafted by [Matthew Daly](#) and [Martin Hyman](#), attorneys in the Spencer Fane Litigation and Dispute Resolution group. For more information, visit www.spencerfane.com.

¹
— F.4th —, No. 24-3223-cv (2d Cir. Sep. 30, 2026).

² See *Ding v. Structure Therapeutics, Inc.*, 187 F.4th 1231 (9th Cir. 2026); *Bruce v. Adams & Reese, LLP*, 168 F.4th 367 (6th Cir. 2026).

³
675 F. Supp. 3d 442 (S.D.N.Y. 2023).

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