



Would your private contracts survive N.J. Supreme Court review?

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Marcus Rayner, president, New Jersey Civil Justice Institute. - (N.J. CIVIL JUSTICE INSTITUTE)

Last week, the New Jersey Supreme Court released two opinions that should alarm New Jersey's business community. In both cases, the high court refused to honor private contracts because they felt the terms were unfair. The opinion in each of these cases is disappointing, but when viewed together, they suggest our court system has developed a dangerous disrespect for private contracts.

On June 14, the New Jersey Supreme Court released its highly anticipated opinion in the arbitration-related case *Morgan v. Sanford Brown Inst.* The court voided the arbitration provisions in a contract students attending a for-

profit college had signed when they registered for classes because the agreement did not explain that agreeing to arbitration means agreeing to resolve any disputes that arise outside of court. Never mind the fact that that is the very definition of arbitration.

The New Jersey courts have been experimenting with reining in arbitration since 2014, but the *Morgan* decision affirms that the court is steering us in the opposite direction of the United States Supreme Court and federal law, which respects, and in many ways even favors, arbitration because it is cheaper, faster, and just as fair as going to court to resolve a dispute.

The next day, in *Sergio Rodriguez v. Raymours Furniture*, the court unanimously struck down an employment contract that set its own time limit for bringing lawsuits against the employer instead of relying on the default rules in the statutes as a limit. The high court decided to ignore the contract and allow the employee to bring a lawsuit well after the time limit he had agreed to when he was hired.

Contract provisions limiting the time for parties to bring suit have previously been upheld in New Jersey, and the very same contract provision at issue in this case was recently upheld in New York. The court is making a strong statement by making such an unprecedented ruling in this case.

Hopefully these two cases are an anomaly rather than the start of a trend. Freedom to contract is one of the foundational principles that made our country a global economic powerhouse in an era when the rule of law in other countries bent to the will of the sovereign. To see the court stepping in and claiming that public policy demands a different result than the one the parties agreed to makes the court something of a third party to all contracts rather than a neutral arbiter of disputes.

Businesses will now find it hard to know whether contracts that are valid in every other state are enforceable here, and that will make it harder for them to control costs for consumers. New Jersey law is now less predictable, and that is not going to help economic development and job growth in our state.

Marcus Rayner, president, New Jersey Civil Justice Institute. Since helping to found the Institute in 2007, Rayner has established the group as the state's leading business organization dedicated to civil justice reform and sound legal policy. Under his leadership, the organization has grown from a start-up to an association representing over 100 of New Jersey's leading companies, professional associations, business trade groups, and defense lawyers.

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