

Federal Arbitration Act Preempts State Law; Action Stayed Pending Arbitration In Canada Under Canadian Law

January 16, 2012 by [Louis M. Solomon](#)

[Audio Visual Concepts, Inc. v. Smart Technologies, ULC, et al.](#), Civil No. 11-1551 (JAG-CVR) (D. P. R. 2011), addresses the issue of the staging or sequencing the resolution of disputes pending in an international arbitration on the one hand and in courts of law on the other. Plaintiff sought a preliminary injunction to stop its termination as the distributor of Smart Technologies' products in the Puerto Rico. Plaintiff alleged a violation of the Puerto Rico Dealer's Act and sued in federal court. Smart Technologies moved to stay the action in favor of arbitration. The operative agreement provided for mandatory arbitration in Calgary, Canada under Canadian Law. The plaintiff dismissed the arbitration provision as a boilerplate contract of adhesion to circumvent the provision of the Puerto Rican law.

The District Court (delegating the decision to a Magistrate Judge) stayed the litigation in favor of the arbitration route. Noteworthy points for international practice discussed in the decision include:

First, the arbitration clause in the operative agreement could have been described as a broad or general one, providing for arbitration for any and all disputes arising out of or related to the Agreement. The Court rejected the argument that it was mere boilerplate.

Second, the Court found that "federal law preempts the direct application of section 278b-2, the Puerto Rico Dealer's Act as choice of law in the instant case, as well as upon the parties' agreement in the contract executed between them which provides for application of the laws of Canada to the arbitration issues hereunder". In particular, the Court found that the FAA preempted any reading of Puerto Rico's Dealer's Act that would tend to negate or limit as against public policy any arbitration clause that provide for arbitration of controversies outside of Puerto Rico or under foreign law. It is unclear from the decision whether the Court believed the parties' contract was preempted by federal arbitration law.

Third, the Court exercised its sound discretion and directed that the case be stayed pending the outcome of the arbitral proceedings.