

Arbitration Agreement Not Unconscionable, California Court Orders Arbitration

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Sending a former employee's wrongful termination claim to an arbitrator, the California Court of Appeal has ruled that his employment arbitration agreement was not unconscionable and deserved to be enforced. *Sanchez v. CarMax Auto Superstores of California, LLC*, No. B244772 (Cal. Ct. App. Mar. 4, 2014). The Court found that the agreement's limitations on discovery and on "just cause" terminations, among others, were not substantively unconscionable, and so reversed a lower court order denying arbitration.

Background

Michael Sanchez began working for CarMax Auto Superstores California, LLC, as a service manager in 2006. When he was hired, Sanchez signed an arbitration agreement, the "Dispute Resolution Rules and Procedures." The agreement provided that both the company and Sanchez would settle all claims "by final and binding arbitration before a neutral Arbitrator." The agreement also included a limitation on discovery to 20 interrogatories and three depositions for each party, a "full force and effect" clause, a "just cause" provision, and a findings of fact, confidentiality and joinder provision. The company terminated Sanchez for unsatisfactory performance on February 4, 2011.

Following his termination, Sanchez sued the company for wrongful termination, among other things. The company moved to compel arbitration based on the agreement. The trial court denied the company's motion, finding the agreement was procedurally and substantively unconscionable. The company appealed.

Applicable Law

In deciding whether to enforce an arbitration agreement, California courts examine whether its terms are both procedurally and substantively unconscionable. A sliding scale is used to assess procedural unconscionability in relation to substantive unconscionability: the more substantively oppressive a contract term, the less evidence of procedural unconscionability is required to conclude that the term is unenforceable, and vice versa.

A procedural unconscionability inquiry requires a court to examine two factors: oppression and surprise. "Oppression arises from an inequality of bargaining power that results in no real negotiation and an absence of meaningful choice," while "[s]urprise involves the extent to which the supposedly agreed-upon terms are hidden in a prolix printed form drafted by the party seeking to enforce them."

Substantive unconscionability occurs when an arbitration agreement is "one-sided" in favor of the employer without sufficient justification.

Agreement Enforceable

Sanchez argued the agreement was procedurally unconscionable because it was presented on a "take it or leave it" basis. The appellate court agreed. It said the agreement was a "standard contract of adhesion imposed and drafted by CarMax, who had superior bargaining power," and Sanchez had no real choice whether to sign.

However, that did not render the agreement unenforceable, the Court emphasized, noting the agreement was not oppressive or surprising.

Sanchez then argued the agreement was substantively unconscionable because it contained overly one-sided provisions. The Court addressed each provision in turn, concluding the agreement was not substantively unconscionable.

First, the Court rejected Sanchez's argument that an aggrieved former employee has a greater need for discovery than does the employer and so the limitation on discovery, even if it applied to both parties, is unfair. The Court found Sanchez failed to present any evidence the discovery limitations would prevent him from vindicating his rights.

Sanchez next argued the provision giving full force and effect to the arbitrator's decision, including any determinations as to disputed issues of fact or law, was unconscionable. The Court again disagreed, determining the arbitration agreement was "consistent with California law and not unconscionable."

Sanchez further contended the provision limiting the arbitrator's authority to require "just cause" for his termination was unconscionable because it prevented him from asserting common law wrongful termination claims. The Court found the provision was not unconscionable because under California law, an arbitration agreement's provision that "the arbitrator shall rely on governing law and not informal principles of 'just cause'" is not "unconscionably one-sided." Moreover, Sanchez was employed at-will, and the company informed him of this fact.

Lastly, Sanchez argued a provision giving the arbitrator discretion to issue findings of fact and conclusions of law, requiring confidentiality of proceedings and prohibiting joinder was unconscionable because these limitations did not exist in a court action. The Court did not find the provision unconscionable. The provision on findings of fact satisfied the minimum requirement for lawful arbitration of employment claims under California law. The Court also ruled that there was "nothing unreasonable or prejudicial" about the confidentiality provision. Finally, observing that the U.S. Supreme Court had enforced an arbitration agreement prohibiting the joinder of claims, the Court did not find the one in this case unconscionable. Accordingly, the Court reversed the order denying arbitration.

This case is a positive development for California employers, confirming that provisions often included in an arbitration agreement do not necessarily render it unconscionable. For additional information regarding this case or arbitration agreements, please contact Mark S. Askanas, at AskanasM@jacksonlewis.com, in our San Francisco office, (415) 394-9400, or the Jackson Lewis attorney with whom you regularly work with any questions about this and other workplace developments.

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practices

Alternative Dispute Resolution

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