

One Minute Memo®



Court OKs Arbitration Agreement Permitting Injunctive Relief

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Seyfarth Synopsis in a Second: A clause in an employment arbitration agreement that authorizes preliminary injunctive relief in court does not make the agreement unenforceable.

As a general proposition, arbitration agreements between employers and employees will be enforced unless the agreement is both procedurally and substantively unconscionable. In *Baltazar v. Forever 21, Inc.*, the Supreme Court of California considered whether a clause authorizing preliminary injunctive relief in court rendered an agreement substantively unconscionable, on the ground that the employer was far more likely to use that procedure than was the employee. The Supreme Court held that this clause does no more than restate existing statutory law and, therefore, does not render the agreement unconscionable. The Supreme Court also rejected challenges to other parts of the agreement, finding none of them to be unconscionable.

The Facts

When Maribel Baltazar applied for a job with Forever 21, in 2007, she completed an 11-page job application. Within the application was a two-page arbitration agreement, which Baltazar initially refused to sign. She ultimately signed the agreement when a Forever 21 employee told her, “[S]ign it or no job.” Baltazar worked for Forever 21 for about three years. She resigned and then sued for race and sex discrimination, and retaliation, in violation of the Fair Employment and Housing Act.

Forever 21 moved to compel enforcement of the arbitration agreement. The agreement provides that the parties “mutually agree” to arbitrate “any claim or action arising out of or in any way related to the hire, employment, remuneration, separation or termination of Employee.” The agreement further provides that if the parties proceed to arbitration, then, “[p]ursuant to California Code of Civil Procedure 1281.8(b) either party hereto may apply to a California court for any provisional remedy, including a temporary restraining order or preliminary injunction.”

Baltazar opposed the motion, arguing that the agreement was unenforceable as unconscionable.

Trial and Appellate Court Decisions

The trial court, agreeing with Baltazar that the agreement was procedurally and substantively unconscionable, denied Forever 21’s motion to compel arbitration.

The Court of Appeal reversed. The Court of Appeal rejected Baltazar's argument that the clause permitting the parties to seek provisional relief in superior court was "substantively unconscionable because such relief serves the interests of employers than employees."

The California Supreme Court Decision

The primary question before the Supreme Court was whether the clause in the arbitration agreement authorizing the parties to seek preliminary injunctive relief in superior court during the pendency of an arbitration is unconscionable, and therefore unenforceable, because that clause unreasonably favors the employer. The Supreme Court ruled that the clause does not render the agreement unconscionable, and found no other basis to support Baltazar's claims of unconscionability.

The Supreme Court rejected Baltazar's argument that the provisional relief clause in the arbitration agreement unfairly favored Forever 21 in that the employer is more likely than the employee to seek such relief. The Supreme Court held that even if employers would be more likely to seek provisional relief, the clause "merely confirms, rather than expands" rights already provided under Code of Civil Procedure section 1281.8(b), which expressly permits parties to an arbitration to seek preliminary injunctive relief during the pendency of an arbitration. The Supreme Court explained that it is not substantively unconscionable to simply confirm a statutory right. The Supreme Court noted that Baltazar did not contend that Section 1281.8 itself unfairly advantages one party, but rather took issue only with Forever 21's express reference to the section. The Supreme Court further rejected Baltazar's reliance on, and disapproved of, *Trivedi v. Curexo Technology Corp.* 189 Cal. App. 4th 387 (2010), to the that extent *Trivedi* suggests that provisional relief clauses unfairly disadvantage the employer.

In finding there were no other bases to support Baltazar's claim of unconscionability, the Supreme Court additionally rejected the following arguments: (1) the arbitration agreement is unfairly one-sided because it specifically lists only employee claims, and not employer claims, in giving examples of the types of claims subject to arbitration, (2) the arbitration agreement is unduly one-sided because it states "all necessary steps" will be taken to protect Forever 21's trade secrets and other confidential information during the course of the arbitration without defining the steps and without identifying what is protected, and (3) Forever 21's failure to provide a copy of the AAA's rules rendered the agreement procedurally unconscionable.

What *Baltazar* Means for Employers

Baltazar is a favorable ruling for employers. *Baltazar* not only validates provisional relief clauses, but also rejects various other arguments that plaintiffs traditionally raised in their efforts to evade arbitration. As plaintiffs seek new ways to attack employment arbitration agreements, *Baltazar* provides a guide to the Supreme Court's view on some arguments that plaintiffs commonly make, and thus provides insight for the drafting of enforceable agreements.

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