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Surprisingly Good News: California Supreme Court Upholds Arbitration Agreement

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Many companies doing business in California have had difficulty persuading California courts to enforce their arbitration agreements. Those courts often have used the doctrine of unconscionability to deny enforcement on the ground that the agreement was unfairly one-sided. This difficulty has persisted even after the United States Supreme Court, in *AT&T Mobility LLC v. Concepcion*, struck down a California rule that was hostile to the enforcement of arbitration agreements.

Those companies got some good news on August 3, 2015, when the California Supreme Court, in *Sanchez v. Valencia Holding Company, LLC*, issued a long-awaited opinion providing clarity on the standard of unconscionability as applied to arbitration agreements. Although the arbitration agreement was entered into in connection with the sale of a car, the decision will prove useful to employers who have arbitration agreements with their employees.

The *Sanchez* court reversed an appellate ruling that the arbitration agreement was unenforceable. The *Sanchez* court acknowledges that Concepcion requires enforcement of an arbitration agreement's waiver of class actions. And the *Sanchez* court holds that an arbitration agreement must be substantially more than a "simple old-fashioned bad bargain" to be deemed unconscionable.

The Facts

The plaintiff, Gil Sanchez, bought a used Mercedes from the defendant, a car dealer named Valencia Holding Company. Sanchez thought he was misled about the price and sued Valencia under the California Consumer Legal Remedies Act ("CLRA"). The parties' sales contract included an agreement to arbitrate disputes and waive any class action. The arbitration agreement provided that a party could not appeal an award unless the award was $0 or was in excess of $100,000, or included an award of injunctive relief. The agreement required the party appealing from an award to front the costs of the appeal. The agreement also preserved the right of the parties to go to small claims court and to pursue self-help remedies.

When Valencia moved to compel arbitration, the trial court denied the motion on the ground that the CLRA expressly provides for class action litigation and forbids waivers of class actions.

The Court of Appeal affirmed the trial court's decision, but on a different ground: the arbitration clause was procedurally and substantially unconscionable. The Court of Appeal declined to consider whether the agreement's waiver of class actions was enforceable.

The California Supreme Court Decision

The California Supreme Court reversed the Court of Appeal and agreed with Valencia that the Court of Appeal had erred in finding the arbitration agreement unconscionable.

The Supreme Court, rejecting Sanchez's argument that the agreement was unconscionable, held that the agreement's terms were not unreasonably one-sided. As to the provision pertaining to appeal rights, the Supreme Court determined that because the $0-award limit favors the buyer and the in-excess-of-$100,000 award favors Valencia, this provision was reasonably balanced. The Supreme Court also acknowledged that although the injunctive-relief trigger favors Valencia, this provision is commercially justified because of how injunctive relief would affect Valencia's overall business.

The Supreme Court next determined that requiring the appealing party to front the costs of appeal was not unconscionable, because Sanchez (a luxury car buyer) had not shown that appellate fees and costs would be personally unaffordable for him or would have a substantial deterrent effect. Further, the Supreme Court reasoned that the exemption of self-help remedies from arbitration was not unconscionable, because that exemption preserves the ability of the parties to go to small claims court, a provision that favors the buyer.

Finally, the Supreme Court held that finding the class-waiver provision to be unconscionable would run afoul of *Concepcion*: the "CLRA's anti-waiver provision is preempted insofar as it bars class waivers in arbitration agreements covered by the FAA."

What *Sanchez* Means For Employers

Sanchez would strongly support an argument that an arbitration agreement, even if it looks like a "simple, old-fashioned, bad bargain," can still be commercially justifiable and not unreasonably one-sided, and should not be deemed unconscionable. Employers should review their arbitration agreements in light of this decision to ensure that the terms of the agreement are reasonably balanced.

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