BARNES & THORNBURG LLP

California Supreme Court Throws Down The Gauntlet On Arbitration Waivers

April 24, 2017 | | Employment Lessons,Labor And Employment

The California Supreme Court is no stranger to invalidating mandatory arbitration provisions. Recently, however, the court lay down yet another challenge to the U.S. Supreme Court's *AT&T Mobility LLC v. Concepcion* case, holding that an arbitration agreement that waives the right to public injunctive relief is unenforceable under California law. In the case, *McGill v. Citibank, N.A.*, Sharon McGill alleged that Citbank engaged in illegal and deceptive practices in marketing a credit insurance plan she purchased. She filed a class action suit under California's Consumer Legal Remedies Act (CLRA), unfair competition law (UCL) and false advertising law. As relief, she sought an injunction prohibiting Citibank from continuing to engage in its allegedly deceptive practices. However, McGill had earlier signed an account agreement with Citibank containing a mandatory arbitration provision that waived her right to seek public injunctive relief in any forum. In accordance with the arbitration provision, Citibank petitioned to compel McGill to arbitrate her claims on an individual basis. This petition was granted in part, but reversed on appeal. On review, the California Supreme Court held that the arbitration provision at issue was invalid and unenforceable under California law. In making this determination, the court relied on two California Supreme Court cases, *Broughton v. Cigna Healthplans* and *Cruz v. PacifiCare Health Sys., Inc.*, which established that agreements to arbitrate claims for public injunctive relief under the CLRA, UCL or the false advertising law are unenforceable in California. The court reasoned that public injunctive relief available under these consumer protection laws are primarily "for the benefit of the general public." Thus, waiver of such a right in any forum would "seriously compromise the public purposes the statutes were intended to serve." Moreover, the California high court contradicted the U.S. Supreme Court's ruling in *Concepcion*, which provides that the Federal Arbitration Act (FAA) preempts all state-law rules that prohibit arbitration of a particular type of claim, and found the FAA did not preempt California's policy. It remains to be seen whether the U.S. Supreme Court will invalidate this recent decision. In the meantime, however, employers should make note of the ways courts are dealing with injunctive relief for claims made under California protection laws despite the existence of mandatory arbitration provisions.

RELATED PRACTICE AREAS

Labor and Employment
Management and Employee Training
Workplace Counseling
Workplace Culture 2.0

RELATED TOPICS

Arbitration
California
Injunctive Relief