Opinion Analysis: Sanchez v. Valencia Holding Company, LLC

The California Supreme Court has continued its dialogue with the U.S. Supreme Court about arbitration agreements in a recent ruling that affirmed the use of California unconscionability law to determine the validity of arbitration agreements, but declined to invalidate the agreement before it. In the course of this years-long dialogue, the California Supreme Court has tended to apply principles of California law to invalidate arbitration provisions, while the U.S. Supreme Court has tended to invoke the Federal Arbitration Act ("FAA") to uphold arbitration provisions.

Prior Decisions

Over thirty years ago, the U.S. Supreme Court overturned a ban on arbitration imposed by the California Franchise Investment Law, because it violated the FAA. *Southland Corp. v. Keating (1984)*. In doing so, the Court held that the FAA created a substantive rule of federal law that state courts must enforce.

The ensuing years have seen the Supreme Court rebuff various attempts to get around the Act's requirement that state courts must enforce arbitration agreements. *Perry v. Thomas (1987)* (holding California could not refuse to enforce arbitration of wage disputes); *Preston v. Ferrer (2008)* (holding California Labor Commissioner's authority could not supplant that of an arbitrator to decide whether a worker was protected by the Talent Agencies Act); *AT&T Mobility LLC v. Concepcion (2011)* (holding California cannot refuse to enforce arbitration agreements that bar arbitration of class actions).

On either side of the *AT&T Mobility* case, the California Supreme Court issued its two *Sonic* decisions. In *Sonic I (2011)*, the court held that an employer could not invoke an arbitration agreement imposed on an employee as a condition of employment to bar the employee from pursuing a statutory wage claim before the California Labor Commissioner. After being directed to reconsider *Sonic I* in light of *AT&T Mobility*, the California Supreme Court conceded in *Sonic II (2013)* that the statutory right to a hearing before the California Labor Commissioner did not

automatically invalidate the arbitration agreement, but remanded the case to the trial court to determine whether the agreement was so unreasonably one-sided in favor of the employer as to be unconscionable. In its view, California courts may continue to enforce unconscionability rules that do not interfere with "fundamental attributes of arbitration."

A year later, the California Supreme Court refused to enforce an arbitration clause that required the claimant to waive representative claims under the Private Attorneys General Act of 2004 (PAGA), because enforcement would violate public policy. *Iskanian v. CLS Transportation Los Angeles, LLC (2014)*. It distinguished *AT&T Mobility* and *Sonic II* on the grounds that PAGA claims are in the nature of qui tam actions brought on behalf of the State of California. In the court's words: "a PAGA claim lies outside the FAA's coverage because it is not a dispute between an employer and an employee arising out of their contractual relationship. It is a dispute between an employer and the state." The U.S. Supreme Court declined to review the decision.

There the dialogue stood when the California Supreme Court decided *Sanchez v. Valencia Holding Company, LLC* on August 3, 2015.

The *Sanchez* decision

The case arose in a dispute over the sale of a car pursuant to a sales contract with an arbitration clause providing that (1) arbitral awards of $0 or over $100,000, as well as grants, but not denials of injunctive relief may be appealed to a panel of arbitrators; (2) the party appealing the award must front the costs of the appeal; (3) the right of the parties to go to small claims court and to pursue self-help remedies are preserved; (4) the right to class action litigation or arbitration is waived; and (5) the entire agreement would be unenforceable if the class action waiver was deemed unenforceable.

The trial court (ruling before *AT&T Mobility*) determined that the class action waiver was unconscionable, and, on that basis, invalidated the entire agreement. The Second District Court of Appeal passed on the class action waiver, and determined that the arbitration provision was so one-sided as to be unconscionable.

In an opinion by Justice Liu (author of *Sonic II* and *Iskanian*), the California Supreme Court held the arbitration enforceable. Under *AT&T Mobility*, the class action waiver was valid. Although it adhered to the view expressed in *Sonic II* that unconscionability could invalidate an arbitration provision, the court determined that the particular provision before it was not so one-sided as to be unconscionable. The limits on appeals to a panel of arbitrators did not appear on their face to favor one side over the other. Although the allocation of costs under the arbitration provision would have been invalid in an employment context (*see Armendariz v. Foundation Health Psychare Services, Inc. (2000)*), it was not invalid on the face of the provision before the court in *Sanchez*, and the consumer offered no evidence that the fees imposed on him were unaffordable. (He had purchased a Mercedes S500V in 2008 for $53,500, which the court characterized as a "high-end luxury item.") The retention of the self-help remedy of repossession was not unduly one-sided because it was counterbalanced by the retention of the consumer's right to go to small claims court. Further, the unconscionability analysis focuses on the rights and remedies that would have been available if arbitration were not compelled. The repossession remedy would have been available even in the absence of arbitration.

Chief Justice Cantil-Sakauye and Justices Werdegar, Corrigan, Cuéllar, and Kruger joined Justice Liu's opinion. Justice Chin concurred in the result, but would apply a "shock the conscience" standard in determining whether an arbitration provision is unconscionable.

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Calvin House

Calvin House is an experienced California lawyer, with 24 civil jury trials and over 100 appellate matters. He has argued three cases in the California Supreme Court (County of Los Angeles v. Superior Court, 21 Cal.4th 292, 981 P.2d 68 (1999); City of Barstow v. Mojave Water Agency, 23 Cal.4th 1224, 5 P.3d 853 (2000) and County of Los Angeles v. Los Angeles County Emp. Relations Com., 56 Cal. 4th 905, 301 P.3d 1102 (2013).

A graduate of Columbia College and Law School and trained in legal practice at Cravath, Swaine & Moore in New York, and Fulbright & Jaworski in Los Angeles, he has been a partner at Gutierrez, Preciado & House, LLP in Pasadena for the past 20 years, where he emphasizes the defense of public entities in labor and employment, civil rights and general liability litigation.



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