CALIFORNIA
EMPLOYMENT LAW LETTER
Part of your California Employment Law Service

Vol. 26, No. 22
August 22, 2016

CLASS ACTION ARBITRATION

CA Supreme Court: Arbitrator decides availability of classwide arbitration

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An African-American car salesman filed a class action lawsuit charging discrimination, harassment, and retaliation against his employer. The dealership asked the court to compel arbitration based on arbitration agreements signed by the employee. The trial court decided that the agreements did not permit class claims. The California Court of Appeal reversed, finding that it was for the arbitrator, not the court, to decide if class claims could be asserted. The California Supreme Court agreed, concluding that allowing the arbitrator to decide the class claim issue did not conflict with federal arbitration law.

Dealership employee files discrimination class action

Timothy Sandquist worked as a salesman at an auto dealership owned by Lebo Automotive. On his first day on the job, he signed 100 pages of employment documents, including three separate arbitration agreements. He finished the paperwork quickly, without review or discussion.

Sandquist, who is African-American, later sued Lebo, alleging that he and other non-Caucasian employees were subjected to workplace discrimination, harassment, and retaliation. The complaint sought to bring these claims on behalf of a class of current and former employees of color. Lebo asked the court to compel arbitration. The trial court found that the arbitration agreements signed by Sandquist were enforceable and granted the request. The court struck the class claims because Lebo's arbitration agreements did not expressly permit them.

The California Court of Appeal reversed in part, finding that the availability of class proceedings under arbitration agreements was a question of contract interpretation for the arbitrator, not for the trial court. The California Supreme Court granted review of the case, and a four-justice majority affirmed the court of appeal's decision.

California law allocates decision to arbitrator

The issue before the California Supreme Court was not whether class arbitration was permissible in this case but rather who should decide whether it was permissible—a court or an arbitrator. No universal "one-size-fits-all" rule allocates the power to decide the availability of class arbitration. Rather, courts must look to the parties' agreement and determine whether the parties allocated the power to decide arbitrability to the arbitrator or to a court. Further, since

this issue is a matter of contract interpretation, it is governed by state law. In this case, the arbitration agreements were entered into in California and governed an employment relationship between a California resident and a California company. As a result, the court applied California law.

Sandquist signed three very similar arbitration agreements. They contained language mandating that "any claim, dispute, and/or controversy," including claims of discrimination and harassment "arising from, related to, or having any relationship or connection whatsoever" with Sandquist's employment, be determined exclusively by binding arbitration. Sandquist's lawsuit arose from his employment with Lebo. The procedural question presented—whether he could pursue his claims as a class action—arose directly from those underlying claims. Further, two of the arbitration agreements expressly excluded claims involving the National Labor Relations Act (NLRA), state disability law, unemployment, and workers' compensation. The court concluded that because the drafter did not expressly exclude the issue of arbitrability from the scope of arbitrable issues, it suggested the issue was to be decided by the arbitrator.

Nevertheless, because the agreements did not include an express class action waiver, the court deemed it necessary to examine principles of California contract law, with the goal of trying to determine the parties' intent on this issue. First, parties that enter into arbitration agreements typically expect their disputes will be resolved without the need for any contact with the court. This is consistent with both state and federal law requiring courts to resolve all doubts in favor of arbitration.

Second, to the extent the three arbitration agreements were ambiguous, they should be construed against Lebo, which had drafted them. Lebo could have prepared an arbitration provision requiring that a court resolve the issue of whether class claims are arbitrable, but it did not. To the extent the omission created an ambiguity, California law requires that the contract be interpreted in favor of the employee's position and that the availability of classwide arbitration should be decided by an arbitrator.

Federal law does not require contrary result

The court next examined whether the Federal Arbitration Act (FAA) preempts state rules of contract interpretation, which could alter the conclusion that the issue of whether class claims are available is for the arbitrator to decide. The court found that the FAA does not impose a presumption that overrides the state-law reading of the arbitration clause. Importantly, under federal law, courts decide the threshold, or "gateway," issue of whether arbitration agreements are enforceable. By contrast, federal law presumes that arbitrators decide procedural issues affecting the manner in which arbitrations are conducted.

In Sandquist's case, the trial court decided the threshold issue by determining that Lebo's arbitration agreements were enforceable. The issue of class availability was not a threshold issue of whether the parties entered into an enforceable arbitration agreement, but it established what kind of proceeding the parties agreed to. Thus, the class question involved issues of contract interpretation and arbitration procedures, matters that arbitrators are well situated to decide.

Two other FAA principles also weighed in favor of allocating the class action question to the arbitrator. First, arbitration is more expeditious, which is a factor that motivates parties to enter into arbitration agreements. Second, any doubts involving the scope of arbitrable issues should be resolved in favor of arbitration.

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The California Supreme Court rejected Lebo's argument that the high stakes of class claims should make them subject to appellate review. The court noted that forsaking broad appellate review is a routine part of the trade-off involved in a decision to arbitrate. Further, the procedural shift from multiple bilateral arbitrations involving Lebo employees to a single class claim did not alter Lebo's potential aggregate liability, nor would it subject the dealership to arbitration with anyone with whom it had not already agreed to arbitrate. It would simply consolidate multiple actual or potential arbitrations into a single proceeding. *Sandquist v. Lebo Automotive, Inc.* (California Supreme Court, 7/28/16).

Bottom line

This ruling reinforces the idea that the issue of whether an arbitration agreement is enforceable is reserved for the courts. Once that threshold issue is decided in favor of arbitration, the remaining procedural issues—even major structural matters like the availability of class claims—are left to the arbitrator. Given that arbitration agreements in the employment context are invariably drafted by employers, with any ambiguities construed against them, it is critical that issues such as the availability of classwide claims be addressed with clarity.

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