

Appellate Reports and Cases in Brief

Sanchez v. Valencia Holding Co.

Decision by the California Supreme Court on the State's power, in the wake of AT&T Mobility LLC v. Concepcion *to declare arbitration agreements unenforceable because they are unconscionable*

By Jeffrey I. Ehrlich

Sanchez v. Valencia Holding Co.

(2015) __ Cal.4th __ (Cal Supreme)

Who needs to know about this case? Lawyers attempting to avoid arbitration agreements on the ground that they are unconscionable.

Why it's important. Long-awaited decision by the California Supreme Court on the State's power, in the wake of *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. __ [131 S.Ct. 1740] (*Concepcion*) to declare arbitration agreements unenforceable because they are unconscionable.

Synopsis: Sanchez purchased a used Mercedes from Valencia for $54,498. The sales contract included an arbitration clause agreement that provides, among other things, that 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. The arbitration agreement also has provisions that require the party appealing the award to front the costs of the appeal, preserve the right of the parties to go to small claims court and to pursue self-help remedies, and waive the right to class-action litigation or arbitration. The agreement further provides that if the class waiver is deemed unenforceable, then the entire arbitration agreement shall be unenforceable.

Sanchez sued Valencia alleging, inter alia, that it violated the Consumer Legal Remedies Act (CLRA) by making false representations about the condition of the automobile. Sanchez also alleged that Valencia violated several other California laws by (1) failing to separately itemize the amount of the down payment that is deferred to a date after the execution of the sale contract, (2) failing to distinguish registration, transfer, and titling fees from license fees, (3) charging the optional Department of Motor Vehicles electronic filing fee without discussing it or asking if he wanted to pay it, (4) charging new tire fees for used tires, and (5) requiring him to pay $3,700 to have the vehicle certified so he could qualify for the 4.99 percent interest rate, when that payment was actually for an optional extended warranty unrelated to the interest rate. Valencia moved to compel arbitration. The trial court denied arbitration, finding that the class waiver was unenforceable under the CRLA.

After the trial court's decision but before the Court of Appeal's opinion in this case was filed, the U.S. Supreme Court issued its ruling in *Concepcion*, *supra*, 563 U.S. __ [131 S.Ct. 1740], which held that the Federal Arbitration Act ("FAA") requires enforcement of class waivers in consumer arbitration agreements and preempts state law to the contrary. The Court of Appeal declined to decide whether the class waiver at issue was enforceable and instead affirmed the trial court's decision on different grounds. It held that the arbitration agreement was unconscionable. Affirmed, in part, and reversed, in part.

In describing the doctrine of unconscionability, the Court noted, "The unconscionability doctrine ensures that contracts, particularly contracts of adhesion, do not impose terms that have been variously described as 'overly harsh'; 'unduly oppressive'; so one-sided as to 'shock the conscience'; and 'unfairly one-sided'. "All of these formulations point to the central idea that unconscionability doctrine is concerned not with 'a simple old-fashioned bad bargain' . . . but with terms that are 'unreasonably favorable to the more powerful party'." "We clarify today that these formulations, used throughout our case law, all mean the same thing"

While Sanchez evidently did not read the entire contract, Valencia "was under no obligation to highlight the arbitration clause of its contract, nor was it required to specifically call that clause to Sanchez's attention. Any state law imposing such an obligation would be preempted by the FAA."

Here the adhesive nature of Valencia's contract is sufficient to establish some degree of procedural unconscionability. The court did not find that the contract was substantively unconscionable, however. The provision allowing appeals for awards of $0 and greater than $100,000 does not, on its face, favor Valencia. "It may be reasonable to assume that the ability to appeal a $0 award will favor the buyer, while the ability to appeal a $100,000 or greater award will favor the seller. But nothing in the record indicates that the latter provision

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is substantially more likely to be invoked than the former. We cannot say that the risks imposed on the parties are one-sided, much less unreasonably so."

The arbitration agreement provided that Valencia will advance the car buyer's filing, administration, service, and case management fees and arbitrator or hearing fees "up to a maximum of $2,500, which may be reimbursed" at the arbitrator's discretion. The clause also provides that in case of an appeal to a three-arbitrator panel, the appealing party "shall be responsible for the filing fee and other arbitration costs subject to a final determination by the arbitrators of a fair apportionment of costs." The Court of Appeal held that this provision was unconscionable. The Supreme Court agreed that, in a given case, a party resisting arbitration could succeed by showing that the fees and costs were unaffordable and would have a deterrent effect on the plaintiff's case. No showing to that effect was made in this case, particularly since the dispute concerns a high-end luxury item, and Sanchez did not claim that the cost of the arbitration was unaffordable for him.

"The arbitration agreement further provides: "You and we retain any rights to self-help remedies, such as repossession." The Court of Appeal held that this provision also contributed to the unconscionability of the arbitration agreement. We disagree. . . . We see nothing unconscionable about exempting the self-help remedy of repossession from arbitration." The court held that although this provision was favorable to Valencia, it was not unconscionable.



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