

EMPLOYMENT LAW UPDATE

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State Law

A Court Will Enforce a Class Action Waiver In A Pre-employment Arbitration Agreement Provided That The Provision Is Not Procedurally Or Substantively Unconscionable, According To A Recent Decision By The 2nd District Court of Appeal.

Gentry v. Superior Court (Circuit City Stores, Inc.) 06 C.D.O.S. 552 (January 20, 2006)

By Douglas J. Melton and John B. Sullivan

Robert Gentry filed a class action lawsuit in superior court against Circuit City alleging that Circuit City had “illegally misclassified” him and other salaried customer service managers as “exempt managerial/executive employees” who were not entitled to overtime pay.

During his employment at Circuit City, Gentry received a packet that included documents that afforded employees various options, including arbitration, for resolving employment-related disputes. The agreement to arbitrate contained a class action waiver. This packet also included a form that gave the employee 30 days to opt out of the arbitration agreement.

In this mandate petition action regarding the enforceability of the class action waiver, the Court addressed whether the class action waiver in the arbitration agreement is an unconscionable provision that renders the provision unenforceable. The Court declined to

extend *Discover Bank v. Sup. Ct.*, a 2003 decision that rendered a bank’s class action waiver unenforceable under principles of unconscionability applicable to contracts of adhesion, to the class action waiver in this case.

The Court found that this agreement lacked an adhesive element because it was not made a condition of Gentry’s employment. Further, Circuit City allowed Gentry 30 days to decide whether to opt out of the agreement, and he chose not to do so. The Court also noted that Circuit City provided Gentry with a handbook that explained the provision in straightforward language, and pointed out the advantages and disadvantages of arbitration to the employee.

The Court also found that the class action waiver was not substantively unconscionable. In the *Discover Bank* case, the Court found the contract to be one of adhesion because the consumer did not have an opportunity to reject the

agreement, and the individual disputes involved small amounts of damages. The Court found that such a waiver becomes, in practice, the exemption of the party from responsibility for its own fraud or willful injury to another. In this case, Gentry had alleged statutory violations that could result in substantial damages and penalties should he prevail on his individual claims. Thus, the contract was not unconscionable.

This case is significant to California employers because it provides guidance on how to draft class action waivers into dispute resolution agreements. In order to be enforceable, it remains clear that such a waiver may not be a condition of employment. It also appears that providing straightforward information regarding the advantages and disadvantages of arbitration, as well as providing an opt out period, will make it more likely that a court will enforce the waiver.

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