

EMPLOYMENT LAW UPDATE

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October 30, 2001

Issue No. 49

California Law

Certain requirements for the enforceability of arbitration agreements under Armendariz do not apply where plaintiff brings non-statutory claims.

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Little v. Auto Stiegler, Inc. (September 17, 2001) 01 C.D.O.S. 8181

As mentioned in previous Employment Law Updates, during the past year both the U.S. Supreme Court and the California Supreme Court have grappled with the issue of whether an employer may condition employment on an employee's agreement to submit his/her claims to binding arbitration. Following the outcomes of *Circuit City Stores Inc. v. Adams* and *Armendariz v. Foundation Health Psychcare Services, Inc.*, California Courts have been applying these seminal decisions in cases dealing with the arbitration of employment claims.

In *Little v. Auto Stiegler, Inc.*, the California Court of Appeal considered the holding in *Armendariz* to decide whether certain minimum standards described in *Armendariz* must be met to enforce an agreement to arbitrate *non-statutory* employment claims.

Plaintiff Alexander Little signed three nearly identical arbitration agreements while employed at defendant Auto Stiegler, Inc., which generally stated:

"I agree that any claim, dispute, or controversy (including, but not limited to, any and all claims of discrimination and harassment) which would otherwise require or allow resort to any court or other governmental dispute resolution forum between myself and the Company (or its owners, directors, and officers, and parties affiliated with its employee benefit and health plans) arising from, related to, or having any relationship or connection whatsoever with my seeking employment with, employment by, or other association with, the Company, whether based on tort, contract, statutory, or equitable law, or otherwise, shall be submitted to and determined exclusively by binding arbitration . . . I understand by agreeing to this binding arbitration provision, both I and the Company give up our rights to trial by jury."

After Little was terminated, he filed an action alleging that he was demoted and subsequently terminated after he reported that certain employees were engaging in warranty fraud. The

complaint alleged non-statutory claims for wrongful demotion and termination in violation of public policy, breach of an implied contract, and breach of the implied covenant of good faith and fair dealing. Little did not file a *statutory* claim of discrimination under the Fair Employment and Housing Act (“FEHA”) or any other statute.

Auto Stiegler filed a motion to compel arbitration based on the agreements signed by Little. The motion was denied on the basis that the arbitration agreement did not meet the standards set out in *Armendariz*. Auto Stiegler appealed.

In ruling that Auto Stiegler’s arbitration agreement was *enforceable*, the Court of Appeal found that the five minimum requirements to enforce an arbitration agreement explained in *Armendariz* were not applicable. Unlike the *Armendariz* case, in this case there was no need for a “vindication in arbitration of plaintiff’s FEHA claims or any other nonwaivable statutory rights, to which the five requirements apply.” Little did not allege any *statutory* claims and thus the failure of Auto Stiegler to comply with the requirements of *Armendariz* was not grounds for invalidating the agreement.

Next, the Court considered whether the arbitration agreement was “unconscionable,” or unfair. An arbitration agreement may be found “unconscionable” if it requires that only the employee, not the employer, must arbitrate his/her claims. The agreement was not “unconscionable” because it required that both Little and Auto Stiegler arbitrate their respective claims, expressly stating that both “give up

[their] rights to trial by jury.”

Further, the agreement was silent about which party, Little or Auto Stiegler, must pay for the arbitrator’s fees. The Court rejected Little’s claim that since he was required to share in the payment of the arbitrator’s fees, the agreement was “unconscionable.” The Court noted that Little did not provide any evidence that the costs would have been prohibitive or that he was unable to pay them. The Court also held that the requirement in *Armendariz* that the employer pay the costs unique to the arbitration applies only to the arbitration of statutory claims (i.e. FEHA), as opposed to the non-statutory claims alleged by Little.

Finally, the Court held that the agreement was fair because it expressly required that the arbitrator follow the law and be a retired California Superior Court judge.

In a decision welcomed by employers, the Court clarified that the requirements imposed by *Armendariz* are not applicable where only non-statutory claims are at issue. In following Federal case law, the Court also clarified that plaintiffs will not be able to avoid an arbitration agreement on the grounds that they must share the costs of arbitration where they fail to provide evidence of prohibitive costs and their inability to pay them. However, prudent employers should expect to bear the costs of the arbitrator’s fees in any event, and should draft their agreements to comply with *Armendariz* since many employee lawsuits involve both statutory and non-statutory claims.

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