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Summary of Picardi v. Eighth Judicial District Court, 127 Nev. Adv. Op. No. 9

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Picardi v. Eighth Judicial Dist. Court, 127 Nev. Adv. Op. No. 9 (March 31, 2011)¹
Contracts-Class Action Waiver and Arbitration

Summary

Petition for writ of mandamus challenging Eighth Judicial District Court's order compelling arbitration in a contract action.

Disposition/Outcome

Petition for writ of mandamus granted. The district court directed to set aside United Hyundai's motion to compel arbitration because the arbitration agreement violated Nevada's public policy favoring class actions by prohibiting class status in both litigation and arbitration.

Factual and Procedural History

Petitioners William and Beth Ann Picardi (Picardis) purchased a new vehicle from United Hyundai in 2008. The Picardis signed an addendum to their installment sales contract that integrated an agreement regarding binding arbitration. Per the addendum, either party could choose to arbitrate any dispute. However, if they elected to arbitrate, the Picardis would forfeit their right to participate in a class action on any claim against United Hyundai. Additionally, if any part of the arbitration clause "other than the waivers of class action rights" was found unenforceable for any reason, the remainder shall remain enforceable. Furthermore, the Federal Arbitration Act (FAA) governed any arbitration conducted under the agreement.

After purchasing the vehicle, the Picardis filed in the district court a proposed class action complaint against United Hyundai alleging, among other things, fraud and deceptive practices. After the Picardis refused United Hyundai's request to arbitrate, United Hyundai filed a motion to compel arbitration. The Picardis opposed the motion and filed a countermotion for a declaratory judgment that the arbitration agreement was unenforceable as procedurally and substantively unconscionable and contrary to public policy. The Picardis further argued that because their claims were so small, it was almost impossible to secure legal representation unless their claims were aggregated with the claims of other similarly situated individuals. The district court disagreed and granted United Hyundai's motion to compel arbitration. The Picardis then filed a petition with the Supreme Court of Nevada, seeking a writ of mandamus directing the district court to vacate its order, and United Hyundai timely answered.

In their petition for mandamus relief, the Picardis argued the arbitration agreement's class action waiver was procedurally unconscionable because it was adhesive. Additionally, United Hyundai failed to disclose that in situations where the potential recovery is modest, the class action ban would prevent them from recovering on such claims, effectively leaving them with no remedy. The Picardis also argued the class action waiver was substantively unconscionable because it relieves United Hyundai of any liability for its wrongdoing in cases where the potential recovery is small.

¹ By Cristen Thayer.

United Hyundai argued the Court should decline to hear any procedurally unconscionable claims because the Picardis failed to raise this argument below. Moreover, the class action waiver was not substantively unconscionable because the Picardis never presented any evidence that they would be unable to recover against United Hyundai without a class action suit.

Discussion

Justice Hardesty, writing for the Court, reviewed this case de novo, because the enforceability of contracts is generally a mixed question of law and fact. The Court first noted a split of authority concerning the enforcement of class action waivers in arbitration agreements, noting the Eleventh, Fifth, Seventh, Fourth, and Third Circuits, two district courts (Western District of Missouri and Middle District of Alabama), and two state appellate courts (Florida and New York) have found such waivers enforceable. However, the First and Ninth Circuits, and many state courts (Alabama, California, Illinois, New Mexico, Oregon, Pennsylvania and Washington) have found class action waivers in arbitration agreements unenforceable.

The Court further elaborated on the Illinois and Washington state court decisions. The Supreme Court of Illinois determined a class action within an arbitration agreement was unenforceable because the consumer's "only reasonable, costs effective means of obtaining a complete remedy [was] as either the representative or member of a class."² The Supreme Court of Washington also struck down a waiver of this type based on the public policy favoring efficiency, deterrence and access to justice, which is especially important when consumers' claims are "small but numerous" and a class action is the only effective way to vindicate the public's rights.³ The Court then discussed that while the FAA supports the strong public policy favoring arbitration as an efficient method of resolving disputes, it does not require the enforcement of arbitration agreements. Thus, the enforceability of a class action waiver rooted in an arbitration agreement must be determined by applicable state contract law.

When a provision of a contract violates public policy, Nevada contract law principles allow the court to refuse to enforce that provision. While Nevada public policy favors enforcement of arbitration clauses, this policy arises only after an enforceable agreement to arbitrate is found.⁴ However, because the Court found the arbitration agreement in this case unenforceable based on the terms of the contract, it did not need to address the public policy that favors enforcement of valid arbitration agreements. Nevada's strong public policy in favor of class action suits was the controlling public policy in this matter.

Nev. R. Civ. P. 23(b)(3) authorizes class actions and demonstrates a state policy favoring class actions where class members present common questions of law or fact. Nevada case law also demonstrates the importance of class actions in cases where individuals would be otherwise unable to obtain redress because their claims are too small.⁵ Furthermore, class actions serve a valuable function in cases where a litany of cases stem from one incident by encouraging

² Kinkel v. Cingular Wireless LLC, 857 N.E.2d 250, 275 (Ill. 2006).

³ Scott v. Cingular Wireless, 161 P.3d 1000, 1005 (Wash. 2007).

⁴ Gonski v. Second Judicial Dist. Court, 126 Nev. ___, ___, 245 P.3d 1164, 1168-69 (2010).

⁵ Shuette v. Beazer Homes Holdings Corp., 121 Nev. 837, 846, 124 P.3d 530, 537 (2005).

efficiency. Recent Nevada case law supports this policy, especially when providing multiple plaintiffs, who individually have valid but small claims, with an adequate remedy.⁶

Therefore, the Court held the class action waiver in this case unenforceable because it violated Nevada's public policy favoring class actions by prohibiting class status in both litigation and arbitration. Furthermore, because United Hyundai did not argue for severability and the contract provides the arbitration agreement is void if the class waiver is found unenforceable, there was no basis on which to compel arbitration.⁷

Conclusion

Nevada public policy favors allowing consumer class action lawsuits when the class members present common legal or factual questions but each individual claim may be too small to litigate on an individual basis. Therefore, a contract clause that prohibits a consumer from pursuing claims by a class action, through litigation or arbitration, violates Nevada public policy. Here, because the contract provided the arbitration agreement is void if the class action waiver is unenforceable, there was no basis to compel arbitration, therefore the district court abused its discretion and writ relief was warranted.

⁶ D.R. Horton v. Eighth Judicial Dist. Court, 125 Nev. ___, ___, 215 P.3d 697, 703 (2009).

⁷ This opinion had no concurring or dissenting opinions.