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BLOGS

Class Actions

California Appellate Court Upholds Class Action Waiver Provision Despite Unconscionability Arguments

A California appeals court recently upheld a trial court's decision to strike all class allegations contained in a complaint brought by members of a walnut producing cooperative marketing association against a walnut processor. The court relied upon a class action waiver contained in the arbitration agreements between the parties, rejecting the argument that the waiver was unconscionable. The case is *Walnut Producers of California et al. v. Diamond Foods, Inc.*, No. C060346, 2010 Ca. App. LEXIS 1419 (Ca. Ct. App. 3d Div. Aug. 16, 2010). This nonfranchise decision is notable for franchisors because the analysis is relevant to the class action waivers frequently found in franchise agreements.

In California, the doctrine of unconscionability applies to all contracts, rather than being limited to those sales transactions governed by the UCC. The defendant argued that courts apply a different standard for determining unconscionability to consumer and employment contracts than they do to commercial contracts, but the court rejected this argument and found that the same standard applies. It found that unconscionability depends upon the factual circumstances involved. Here, the defendant was a successor by way of merger to the processing co-op. The majority of the plaintiff co-op's members had voted to approve the merger, and the waiver provision was clearly stated in the contract. This proved critical to the court's holding that the contract was not unconscionable.

The court also held that the plaintiffs had not pled sufficient facts to show that the class action waivers were unconscionable. California courts evaluate arbitration clauses in adhesion contracts to determine whether they are procedurally and substantively unconscionable. The plaintiffs failed to overcome the motion to strike because, although they had argued the existence of a contract of adhesion, they had failed to allege that the defendant had superior bargaining strength or that the plaintiffs had no real alternatives to signing the contract available to them. Because the class action waiver was printed in the same sized text as the rest of the agreement, they could not sustain claims that the class action waiver was a surprise to them. Finally, the court found that the plaintiffs had failed to allege adequately that a class action was the only effective means of enforcing the plaintiffs' rights under the agreement, and was not, therefore, substantively unconscionable.