

California Court Dismisses Dealer's Second Attempt to Invalidate Arbitration Clause

In *Kayne v. Thomas Kinkade Company*, 2007 WL 4287364 (N.D. Cal. Dec. 5, 2007), the court issued another ruling in the long-standing battle between former dealer David Kayne against the Thomas Kinkade Company ("Thomas Kinkade"). Prior to the present action, Thomas Kinkade obtained an arbitration award against Kayne's Georgia corporation in excess of \$631,000. Thomas Kinkade initiated a new action to collect the outstanding balance against Kayne individually under the terms of an Application for Credit and Personal Guaranty he signed. In response, Kayne filed a lawsuit in the Northern District of Georgia seeking to invalidate the arbitration agreement contained in the credit application and guaranty. Kayne lost that action. Kayne then filed the present action in the Northern District of California in a second attempt to invalidate the arbitration agreement. Kayne claimed that the arbitration clause was unconscionable and violated California's unfair competition laws.

The court granted Thomas Kinkade's Motion to Dismiss Kayne's claims on two principle grounds. First, the court held that Kayne's claims were barred under the doctrine of res judicata based upon the prior Georgia action in which Kayne's challenges to the arbitration clause were rejected. The court found that Kayne challenged the existence and enforceability of the arbitration agreement in the prior action. The prior ruling precluded Kayne from re-litigating that issue again, despite his efforts to "re-name" the challenge under the banner of unconscionability. Kayne also argued that the decision in *Nagrampa v. Mailcoups, Inc.*, 469 F.3d 1257 (9th Cir. 2006), provided him with "a new legal avenue to relief in this case." The court disagreed, noting that the *Nagrampa* decision was published over three months prior to the Georgia court's ruling, giving Kayne sufficient time to bring the *Nagrampa* decision to that court's attention.

The court went on to rule that, even if Kayne's claims were not barred by res judicata, his claim of unconscionability failed as a matter of law. Although the court held that the Application for Credit and Personal Guaranty were contracts of adhesion, the court found no procedural or substantive unconscionability in the terms of the contracts, or in the manner they were presented to Kayne. The arbitration clause at issue appeared at the top of a two-page application under the heading "Disputes". It was not "buried" in a multiple page document, as Kayne suggested. In addition, the court found that both parties were equally bound by the arbitration agreement, the chosen rules, the chosen forum and the award. As such, the court found that the arbitration agreement was not substantively unconscionable.