Ohio Eighth District Court of Appeals Reverses Enforcement of Employment Arbitration Agreement

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The Ohio Eighth District Court of Appeals reversed enforcement of an employment arbitration agreement on January 23, 2020, holding that the agreement was both substantively and procedurally unconscionable because it required the parties to submit to arbitration all claims arising among them, even those unrelated to the employment relationship. *Thomas v. Hyundai of Bedford*, 8th Dist. Cuyahoga No. 108212, 2020-Ohio-185. The Eighth District is the intermediate appellate court for Cuyahoga County which includes Cleveland and many surrounding northeast Ohio communities. The case serves as an important reminder regarding careful drafting.

In *Thomas*, the plaintiff sued his former employer for race discrimination and retaliation under Ohio's anti-discrimination statute, R.C. Chapter 4112. Mr. Thomas alleged that his employer did not pay him the same as white employees and that his employer retaliated against him by demoting him when he complained.

Mr. Thomas signed an arbitration agreement with his former employer. The agreement provided that "covered disputes" included "any actual or alleged claim or liability, regardless of its nature." The only claims excluded were those related to workers' compensation, violations of the National Labor Relations Act, or any other claim that cannot be the subject of a pre-dispute arbitration agreement by law.

While the trial court granted the employer's motion stay proceedings pending arbitration, the appellate court reversed, noting that although claims of race discrimination and retaliation were ordinarily arbitrable, an unconscionable arbitration clause is not enforceable. The court explained that a finding of unconscionability requires both substantive and procedural unconscionability. The more substantively unconscionable the agreement, the less evidence of procedural unconscionability is required.

Contract terms are substantively unconscionable when they are too harsh, unfair, or unreasonable to one party. Procedural unconscionability exists when one party enjoys such superior bargaining power that it deprives the other party of "meaningful choice" in signing the contract.

The court found the agreement was substantively unconscionable because it "sought to include every possible situation that might arise in an employee's life, [and, therefore] the arbitrator would be resolving disputes unrelated to employment."

In finding procedural unconscionability, the court dismissed the plaintiff's argument that the agreement was procedurally unconscionable because he had no choice but to sign it to keep his job. In fact, the court explained that under Ohio precedent, employers are permitted to condition at will employment on an agreement to arbitrate disputes. Instead, the court found procedural unconscionability largely for the same reason that it found substantive unconscionability: that the scope of the agreement went beyond employment and the agreement did not clearly say so. The court stated, "[e]ven a diligent reading of the 'covered disputes' clause would not inform a reasonable reader of its actual effect. The clause does not explain that disputes arising outside the scope of employment . . . must also proceed to arbitration."

The employer in the Thomas case may seek reconsideration or *en banc* review by the Eighth District and/or petition the Ohio Supreme Court to review this decision, but is not required to do so. Among

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other arguments likely to be raised is that the court's ruling should be preempted by the Federal Arbitration Act. *See AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 341 (2011) ("When state law prohibits outright the arbitration of a particular type of claim, the analysis is straightforward: The conflicting rule is displaced by the FAA.").

If you have questions, would like to discuss the implications of this decision in greater detail, or require assistance in reviewing your arbitration agreements, please contact us or the Jackson Lewis employment lawyer with whom you regularly work.

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