



October 25, 2018

OHIO COURT FINDS CONSUMER FAILED TO ESTABLISH ARBITRATION PROVISION PROCEDURALLY UNCONSCIONABLE

A recent Ohio case explored the standards for unconscionability in the context of an arbitration provision. The case started when consumers filed a complaint against a construction company alleging causes of action for breach of contract, fraudulent inducement, misappropriation of funds and violation of the Ohio Consumer Sales Practices Act. The company filed a motion to dismiss the complaint, or in the alternative, to stay the case pending arbitration. The Common Pleas Court stayed proceedings and enforced the arbitration provision and the consumers appealed.

The Court of Appeals held that the consumers failed to establish that the arbitration provision in the sales contract was procedurally unconscionable. The court explained that when a party challenges an arbitration provision on the basis that it is unconscionable, the party must show that the arbitration provision itself is unconscionable, rather than that the entire contract is unconscionable. The court explained that the party seeking to avoid an agreement on the grounds of unconscionability bears the burden of proving that the agreement at issue is not only procedurally unconscionable, but also substantively unconscionable. The concept of procedural unconscionability implicates the circumstances in which an agreement is negotiated, including factors such as the parties' business experience and intelligence, and in some cases, factors such as the availability of alternative suppliers of the goods and services. The concept of substantive unconscionability involves consideration of the terms of the agreement and whether the terms are commercially reasonable.

The court found that the consumer's contention that the trial court should have declined to enforce the arbitration provision failed on the lack of procedural unconscionability alone. The court noted that although the consumers alleged that the arbitration provision was "substantially one-sided" in favor of the business inasmuch as enforcement of the provision would potentially deny them the right to a trial by jury, the court found the allegation did not suffice to demonstrate substantive unconscionability in light of Ohio's unequivocal public policy, embodied in the Ohio Revised Code, favoring the arbitration of contractual disputes.

Thus, the case illustrates Ohio's strong public policy favoring arbitration.

If you have question regarding arbitration provisions in consumer agreements, do not hesitate to contact us.

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