

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Dan Ryan Builders, Inc. v. Nelson, 230 W. Va. 281

737 S.E.2d 550 (2012) · Decided November 15, 2012

SUMMARY

The Supreme Court of Appeals of West Virginia answers a certified question concerning whether an arbitration clause in a broader contract requires separate mutual consideration. The court holds that contract formation requires adequate consideration for the contract as a whole, not for each individual clause. It further holds that a lack of mutuality may support a finding that an arbitration provision is substantively unconscionable, subject to a case-specific analysis under the Federal Arbitration Act.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Ketchum, Chief Justice
JURISDICTION	West Virginia
DECIDED	November 15, 2012
DISPOSITION	other
PROCEDURAL POSTURE	The United States Court of Appeals for the Fourth Circuit certified a question of West Virginia law concerning whether an arbitration clause in a multi-clause contract requires separate mutual consideration and whether lack of mutuality may support an unconscionability finding.
STANDARD OF REVIEW	De novo; the court applies plenary review to legal issues presented by a certified question from a federal district or appellate court.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Appeals of West Virginia answering a certified question and announcing rules of state contract law.
PARTIES	Dan Ryan Builders, Inc. v. Norman Nelson, Angelia Nelson

TOPICS

arbitration unconscionability contract formation consideration construction law

PRACTICE AREAS

contract law arbitration construction law real estate civil procedure

QUESTIONS PRESENTED

1. Whether West Virginia contract law requires an arbitration provision appearing as one clause in a multi-clause contract to be supported by separate mutual consideration when the contract as a whole is supported by adequate consideration.
2. Whether lack of mutuality of obligation is relevant to determining whether a contractual arbitration provision is substantively unconscionable.
3. Whether a per se rule invalidating one-sided arbitration provisions is preempted by the Federal Arbitration Act.

HOLDINGS

1. West Virginia contract formation requires consideration for the contract as a whole, not separate consideration or mutuality of obligation for each individual clause. An arbitration provision within a multi-clause contract is supported by the consideration supporting the entire contract.
2. A court may consider lack of mutuality of obligation when determining whether a contract provision is substantively unconscionable. A provision may be substantively unconscionable when it creates a disparity in the parties' rights and is one-sided and unreasonably favorable to one party.
3. To the extent Syllabus Point 5 of *Arnold* may be read as creating a per se rule that specifically disfavors arbitration provisions, it is overruled because the Federal Arbitration Act preempts rules that target arbitration for disfavored treatment rather than applying generally applicable contract principles.

KEY QUOTATIONS

“We conclude that West Virginia’s law of contract formation only requires that a contract as a whole be supported by adequate consideration. Hence, a single clause within a multi-clause contract does not require separate consideration.” (283)

“We conclude that in assessing whether a contract provision is substantively unconscionable, a court may consider whether the provision lacks mutuality of obligation.” (291)

“Certified Question Answered.” (291)

FACTUAL BACKGROUND

Dan Ryan Builders constructed a new home in Berkeley County, West Virginia, and Norman Nelson signed a 56-page agreement to purchase it for \$385,000. The agreement required the buyers to arbitrate disputes and barred court proceedings, but allowed Dan Ryan Builders to arbitrate or sue in court for damages if the buyers defaulted by failing to close. After the purchase, the Nelsons alleged substantial construction and septic-system defects, prior flooding, concealment, property damage, and bodily injury, and sued Dan Ryan Builders and related contractors.

PROCEDURAL HISTORY

The Nelsons sued Dan Ryan Builders in the Circuit Court of Berkeley County alleging construction defects, concealment, negligence, property damage, and bodily injury. Dan Ryan Builders petitioned the United States

District Court for the Northern District of West Virginia under the Federal Arbitration Act to compel arbitration, and the district court stayed the state litigation and dismissed the petition after finding that the arbitration clause lacked mutual consideration. Dan Ryan Builders appealed, and the Fourth Circuit certified the question to the Supreme Court of Appeals of West Virginia.

DISPOSITION

other

CASES CITED

- Dan Ryan Builders, Inc. v. Nelson, 682 F.3d 327 (4th Cir. 2012)
- Light v. Allstate Ins. Co., 203 W. Va. 27, 506 S.E.2d 64 (1998)
- Bower v. Westinghouse Elec. Corp., 206 W. Va. 133, 522 S.E.2d 424 (1999)
- Brown v. Genesis Healthcare Corp., 228 W. Va. 646, 724 S.E.2d 250 (2011)
- First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 115 S. Ct. 1920, 131 L. Ed. 2d 985 (1995)
- Cutright v. Metropolitan Life Ins. Co., 201 W. Va. 50, 491 S.E.2d 308 (1997)
- First Nat. Bank of Gallipolis v. Marietta Mfg. Co., 151 W. Va. 636, 153 S.E.2d 172 (1967)
- Virginian Export Coal Co. v. Rowland Land Co., 100 W. Va. 559, 131 S.E. 253 (1926)
- Cook v. Heck's Inc., 176 W. Va. 368, 342 S.E.2d 453 (1986)
- Thomas v. Mott, 74 W. Va. 493, 82 S.E. 325 (1914)
- Sturm v. Parish, 1 W. Va. 125 (1865)
- Tabler v. Hoult, 110 W. Va. 542, 158 S.E. 782 (1931)
- State ex rel. Saylor v. Wilkes, 216 W. Va. 766, 613 S.E.2d 914 (2005)
- Brown v. Genesis Healthcare Corp., 229 W. Va. 382, 729 S.E.2d 217 (2012)
- State ex rel. Johnson Controls, Inc. v. Tucker, 229 W. Va. 486, 729 S.E.2d 808 (2012)
- State ex rel. Richmond American Homes of West Virginia, Inc. v. Sanders, 228 W. Va. 125, 717 S.E.2d 909 (2011)
- Arnold v. United Companies Lending Corp., 204 W. Va. 229, 511 S.E.2d 854 (1998)
- Marmet Health Care Center, Inc. v. Brown, 565 U.S. 530, 132 S. Ct. 1201, 182 L. Ed. 2d 42 (2012)
- Mercuro v. Superior Court, 96 Cal. App. 4th 167, 116 Cal. Rptr. 2d 671 (2002)
- Abramson v. Juniper Networks, Inc., 115 Cal. App. 4th 638, 9 Cal. Rptr. 3d 422 (2004)