Tillman v. Commercial Credit Loans, Inc., 362 N.C. 93

655 S.E.2d 362 (2008) · No. No. 360A06 · Decided January 25, 2008

SUMMARY

The North Carolina Supreme Court considers whether an arbitration clause in consumer loan agreements is unconscionable and unenforceable. The court upholds the trial court's factual findings and concludes that the clause's cost-shifting provisions, de novo appeal process, restrictions on joinder and class actions, and one-sided structure, combined with unequal bargaining power, support a finding of procedural and substantive unconscionability.

CASE DETAILS

COURT	Supreme Court of North Carolina
WRITING FOR THE COURT	Timmons-Goodson, Justice; Edmunds; Martin; Newby; Parker; Timmons-Goodson
JURISDICTION	North Carolina
DECIDED	January 25, 2008
DOCKET	No. 360A06
DISPOSITION	reversed
PROCEDURAL POSTURE	Plaintiffs appealed as of right from a divided Court of Appeals decision reversing the trial court's denial of defendants' motion to compel arbitration. The Supreme Court reviewed whether the arbitration clause in plaintiffs' loan agreements was unconscionable and unenforceable.
STANDARD OF REVIEW	Findings of fact are conclusive on appeal if supported by competent evidence, even if contrary evidence exists; conclusions of law are reviewed de novo. Unconscionability is a question of law reviewed de novo.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Fannie Lee Tillman, Shirley Richardson, all others similarly situated v. Commercial Credit Loans, Inc., Commercial Credit Corporation, Citigroup, Inc., Citicorp, Inc., Citifinancial, Inc., Citifinancial Services, Inc.

TOPICS

arbitration | unconscionability | consumer protection | appellate procedure | contracts

PRACTICE AREAS

Arbitration | Consumer protection | Contracts | Appellate procedure | Unfair and deceptive trade practices

QUESTIONS PRESENTED

1. Whether the arbitration clause in plaintiffs' loan agreements was unconscionable and therefore unenforceable.
2. Whether plaintiffs established both procedural and substantive unconscionability under North Carolina law.
3. Whether the arbitration clause's cost-shifting provisions, one-sided court-access provisions, and prohibitions on joinder and class actions collectively prevented plaintiffs from effectively vindicating their rights.
4. Whether the court could sever or rewrite the challenged provisions to save the arbitration agreement.
5. What standard of review applied to the trial court's factual findings and legal conclusion concerning unconscionability.

HOLDINGS

1. A party challenging a contract as unconscionable must prove both procedural and substantive unconscionability, although the analysis operates on a sliding scale and a pronounced degree of one type may require less of the other.
2. The arbitration clause was procedurally unconscionable because plaintiffs were relatively unsophisticated consumers with unequal bargaining power, the clause was imposed as boilerplate in a standard-form adhesion contract, defendants would not negotiate its terms, and the loan closings were rushed without discussion of the arbitration provision.
3. The arbitration clause was substantively unconscionable because, considered collectively, its potentially prohibitive arbitration costs, loser-pays provisions, de novo appeal costs, one-sided access to court, and prohibitions on joinder and class actions prevented plaintiffs from effectively vindicating their rights.
4. A prohibition on joinder of claims and class actions may be considered as one factor in determining whether an arbitration agreement is unconscionable; here, those prohibitions contributed to both the financial inaccessibility and one-sidedness of the arbitration clause.
5. The court would not sever or rewrite the arbitration clause because doing so would require rewriting the entire clause, and defendants' after-the-fact offer to proceed under later AAA consumer rules could not cure the unconscionability of the agreement as drafted.
6. The Court of Appeals erred in reversing the trial court's order denying the motion to compel arbitration because the arbitration clause was unconscionable and unenforceable.

KEY QUOTATIONS

> *"A party asserting that a contract is unconscionable must prove both procedural and substantive unconscionability."* (362 N.C. at 103)

> *"The harsher the clause, the less 'bargaining naughtiness' that is required to establish unconscionability."* (362 N.C. at 104)

> *"Ultimately, based on the facts and circumstances of this case, we hold that the arbitration clause in plaintiffs' loan agreements is unconscionable and therefore unenforceable."* (362 N.C. at 113)

> *"This particular arbitration clause simply does not allow for meaningful redress of grievances and therefore, under Green Tree, must be held unenforceable."* (362 N.C. at 114)

FACTUAL BACKGROUND

Plaintiffs obtained consumer loans from Commercial Credit and were charged financed single-premium credit-insurance premiums. Their loan agreements contained standard-form arbitration clauses drafted by defendants, including a $125 initiation fee, loser-pays provisions for arbitration exceeding eight hours and for appeals, a de novo appeal process, exclusions for foreclosure and claims of $15,000 or less, and prohibitions on joinder and class actions. Plaintiffs had limited financial resources, could not afford hourly counsel, and alleged that the insurance was unnecessary, not disclosed as optional, and charged through deceptive and unlawful practices. The trial court found that defendants had used the clause in more than 68,000 loans, had pursued thousands of collection and foreclosure actions in court, and had never initiated or faced arbitration under the clause in North Carolina.

PROCEDURAL HISTORY

Plaintiffs filed a putative class action asserting North Carolina unfair and deceptive trade practices, unjust enrichment, and breach-of-duty claims arising from the sale and financing of single-premium credit insurance. The trial court denied defendants' motion to compel arbitration, finding the arbitration clause unconscionable and unenforceable. The Court of Appeals reversed and remanded for an order compelling arbitration. The Supreme Court reversed the Court of Appeals and upheld the trial court's denial of the motion to compel arbitration.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The Supreme Court reversed the Court of Appeals decision that had ordered the trial court to compel arbitration, thereby reinstating the trial court's denial of defendants' motion to compel arbitration. No further remand instructions were stated.

CASES CITED

- Lumbee River Elec. Membership Corp. v. City of Fayetteville, 309 N.C. 726, 309 S.E.2d 209 (1983)
- Carolina Power & Light Co. v. City of Asheville, 358 N.C. 512, 597 S.E.2d 717 (2004)

- Cyclone Roofing Co. v. David M. LaFave Co., 312 N.C. 224, 321 S.E.2d 872 (1984)
- Brenner v. Little Red School House, Ltd., 302 N.C. 207, 274 S.E.2d 206 (1981)
- Rite Color Chem. Co. v. Velvet Textile Co., 105 N.C. App. 14, 411 S.E.2d 645 (1992)
- Green Tree Fin. Corp.-Ala. v. Randolph, 531 U.S. 79, 121 S. Ct. 513, 148 L. Ed. 2d 373 (2000)
- Bradford v. Rockwell Semiconductor Sys., Inc., 238 F.3d 549 (4th Cir. 2001)
- Murray v. United Food & Commercial Workers Int'l Union, 289 F.3d 297 (4th Cir. 2002)
- Morrison v. Circuit City Stores, Inc., 317 F.3d 646 (6th Cir. 2003)
- Whittaker Gen. Med. Corp. v. Daniel, 324 N.C. 523, 379 S.E.2d 824 (1989)
- Vasquez-Lopez v. Beneficial Oregon, Inc., 210 Or. App. 553, 152 P.3d 940 (2007)
- Arnold v. United Cos. Lending Corp., 204 W. Va. 229, 511 S.E.2d 854 (1998)
- Adkins v. Labor Ready, Inc., 303 F.3d 496 (4th Cir. 2002)
- Kristian v. Comcast Corp., 446 F.3d 25 (1st Cir. 2006)
- Ting v. AT&T, 319 F.3d 1126 (9th Cir. 2003)
- Szetela v. Discover Bank, 97 Cal. App. 4th 1094, 118 Cal. Rptr. 2d 862 (2002)
- Tillman v. Commercial Credit Loans, Inc., 177 N.C. App. 568, 629 S.E.2d 865 (2006)
