

SUPREME COURT OF CALIFORNIA

Oto, L.L.C. v. Kho

8 Cal. 5th 111, 251 Cal. Rptr. 3d 714, 447 P.3d 680 (Cal. 2019) · Decided August 29, 2019

SUMMARY

The California Supreme Court held that an employment arbitration agreement requiring an employee to waive the Labor Code's Berman wage-claim procedures was unenforceable because it was unconscionable. The court emphasized the unusually oppressive and misleading circumstances under which the agreement was presented, including requiring the employee to sign immediately without an opportunity to read or obtain a copy. The court concluded that the agreement's procedural unconscionability, considered with its substantive terms, warranted denial of enforcement.

CASE DETAILS

COURT	Supreme Court of California
WRITING FOR THE COURT	Corrigan, J.; CantíI-Sakauye, C. J.; Liu, J.; CuéIlar, J.; Kruger, J.; Groban, J.
JURISDICTION	California
DECIDED	August 29, 2019
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	One Toyota petitioned to compel arbitration of Kho's wage claims and sought to vacate a Labor Commissioner's award. The trial court vacated the award but declined to compel arbitration, finding the arbitration agreement procedurally and substantively unconscionable. The Court of Appeal reversed and held the agreement enforceable. The California Supreme Court granted review.
STANDARD OF REVIEW	De novo review applies to the denial of arbitration when the evidence is undisputed. The Supreme Court also reviewed the trial court's handling of the Labor Commissioner's award and the availability of relief from that award under the governing statutes.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Oto, L.L.C., One Toyota of Oakland v. Ken Kho

TOPICS

- employment arbitration
- unconscionability
- wage and hour
- arbitration
- civil procedure

PRACTICE AREAS

employment law

arbitration

contracts

civil procedure

wage and hour

QUESTIONS PRESENTED

1. Whether the employment arbitration agreement was unconscionable and unenforceable under generally applicable California contract law.
2. Whether an arbitration agreement requiring an employee to surrender Berman wage-claim procedures was substantively unconscionable when the substitute arbitration process was formal, litigation-like, and insufficiently accessible and affordable.
3. Whether the trial court properly vacated the Labor Commissioner's award when One Toyota had not petitioned for administrative mandate, had not exhausted the statutory administrative remedy, and had not obtained a stay of the Berman hearing.
4. Whether One Toyota's petition to compel arbitration automatically stayed the pending Berman proceedings.

HOLDINGS

1. The arbitration agreement was unconscionable and therefore unenforceable because it was imposed under extraordinarily oppressive and surprising circumstances and required Kho to exchange accessible Berman procedures for a complex arbitration process that created substantial barriers to pursuing unpaid-wage claims.
2. The trial court erred in vacating the Labor Commissioner's award because One Toyota did not proceed by administrative mandate, failed to exhaust the statutory remedy requiring an application to the Labor Commissioner for relief, and was not entitled to vacatur merely because it chose not to participate in the scheduled hearing.
3. Filing a petition to compel arbitration did not automatically stay the pending Berman proceedings; the party seeking arbitration had to obtain a stay.

KEY QUOTATIONS

“Even if a litigation-like arbitration procedure may be an acceptable substitute for the Berman process in other circumstances, an employee may not be coerced or misled into accepting this trade.” (251 Cal. Rptr. 3d at 719)

“An agreement to arbitrate wage disputes can be enforceable so long as it provides an accessible and affordable process for resolving those disputes.” (251 Cal. Rptr. 3d at 724)

“Ultimately, the question is whether Kho, through oppression and surprise, was coerced or misled into making an unfair bargain.” (251 Cal. Rptr. 3d at 735)

“One Toyota did not obtain a stay, but simply refused to participate in a hearing that had been set months before.” (251 Cal. Rptr. 3d at 739)

FACTUAL BACKGROUND

Ken Kho worked as a service technician for One Toyota of Oakland for approximately three years. One Toyota required him to sign several employment documents immediately at his workstation, including a dense arbitration agreement, without giving him time to read the documents, explaining their contents, providing copies, or accommodating his status as a Chinese-speaking employee. The agreement required litigation-like arbitration of wage disputes and did not clearly explain how to initiate arbitration or allocate arbitration costs. After Kho filed an unpaid-wage claim, One Toyota sought arbitration immediately before the Berman hearing but did not obtain a stay or participate in the hearing, resulting in a Labor Commissioner award of \$102,912 in unpaid wages and \$55,634 in additional damages, interest, and penalties.

PROCEDURAL HISTORY

Kho filed an unpaid-wage claim with the Labor Commissioner and requested a Berman hearing. One Toyota filed a petition to compel arbitration shortly before the scheduled hearing, did not obtain a stay, and did not participate in the hearing; the Labor Commissioner awarded Kho unpaid wages, liquidated damages, interest, and penalties. The trial court vacated the award and declined to compel arbitration. The Court of Appeal reversed, and the Supreme Court reversed the Court of Appeal, reinstating the enforceability ruling against arbitration and directing further proceedings on One Toyota's de novo appeal from the Labor Commissioner's award.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Court of Appeal's decision was reversed. The matter was remanded to the trial court for proceedings on One Toyota's de novo appeal from the Labor Commissioner's award. The Labor Commissioner's award was not to be vacated on the basis of One Toyota's motion.

CASES CITED

- Sonic-Calabasas A, Inc. v. Moreno, 51 Cal. 4th 659, 121 Cal. Rptr. 3d 58, 247 P.3d 130 (2011)
- Sonic-Calabasas A, Inc. v. Moreno, 57 Cal. 4th 1109, 163 Cal. Rptr. 3d 269, 311 P.3d 184 (2013)
- AT&T Mobility LLC v. Concepcion, AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 131 S. Ct. 1740, 179 L. Ed. 2d 742 (2011)
- Armendariz v. Foundation Health Psychcare Services, Inc., 24 Cal. 4th 83, 99 Cal. Rptr. 2d 745, 6 P.3d 669 (2000)
- Sanchez v. Valencia Holding Co., LLC, 61 Cal. 4th 899, 190 Cal. Rptr. 3d 812, 353 P.3d 741 (2015)
- Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC, 55 Cal. 4th 223, 145 Cal. Rptr. 3d 514, 282 P.3d 1217 (2012)
- Cuadra v. Millan, 17 Cal. 4th 855, 72 Cal. Rptr. 2d 687, 952 P.2d 704 (1998)
- Moncharsh v. Heily & Blase, 3 Cal. 4th 1, 10 Cal. Rptr. 2d 183, 832 P.2d 899 (1992)
- Engalla v. Permanente Medical Group, Inc., 15 Cal. 4th 951, 64 Cal. Rptr. 2d 843, 938 P.2d 903 (1997)

- Stolt-Nielsen S.A. v. AnimalFeeds International Corp., 559 U.S. 662, 130 S. Ct. 1758, 176 L. Ed. 2d 605 (2010)
- Gentry v. Superior Court, 42 Cal. 4th 443, 64 Cal. Rptr. 3d 773, 165 P.3d 556 (2007)
- Little v. Auto Stiegler, Inc., 29 Cal. 4th 1064, 130 Cal. Rptr. 2d 892, 63 P.3d 979 (2003)
- Lolley v. Campbell, 28 Cal. 4th 367, 121 Cal. Rptr. 2d 571, 48 P.3d 1128 (2002)
- Kirby v. Immoos Fire Protection, Inc., 53 Cal. 4th 1244, 140 Cal. Rptr. 3d 173, 274 P.3d 1160 (2012)
- Murphy v. Kenneth Cole Productions, Inc., 40 Cal. 4th 1094, 56 Cal. Rptr. 3d 880, 155 P.3d 284 (2007)
- Brock v. Kaiser Foundation Hospitals, 10 Cal. App. 4th 1790, 13 Cal. Rptr. 2d 678 (1992)
- Gonzalez v. Beck, 158 Cal. App. 4th 598, 69 Cal. Rptr. 3d 843 (2007)
- Landis v. North American Co., 299 U.S. 248, 254, 57 S. Ct. 163, 81 L. Ed. 2d 153 (1936)