

OHIO COURT OF APPEALS

Fortune v. Castle Nursing Homes, Inc.

07 Ca 001 (11-30- 2007), 2007 Ohio 6447 (Ohio Ct. App. 2007) · No. 07 CA 001 · Decided November 30, 2007

SUMMARY

The plaintiff appealed the trial court's decision to grant the defendant nursing home's motion to stay proceedings pending arbitration. The appellate court affirmed, holding that the plaintiff failed to establish procedural unconscionability of the arbitration clause in the admission agreement, despite having a second opportunity to present evidence on the issue.

CASE DETAILS

COURT	Ohio Court of Appeals
WRITING FOR THE COURT	Delaney, J.; Edwards, J.; Hoffman, P.J.
JURISDICTION	Ohio
DECIDED	November 30, 2007
DOCKET	07 CA 001
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the Holmes County Court of Common Pleas granting a motion to stay proceedings pending arbitration.
STANDARD OF REVIEW	de novo
PRECEDENTIAL VALUE	published
PARTIES	Idamay Fortune v. Castle Nursing Homes, Inc.

TOPICS

[arbitration](#)[unconscionability](#)[contracts](#)[civil procedure](#)[nursing home liability](#)[health law](#)[negligence](#)

PRACTICE AREAS

[Arbitration](#)[Health Care](#)[Contracts](#)[Civil Procedure](#)

QUESTIONS PRESENTED

1. Whether the appellant established procedural unconscionability sufficient to render the arbitration clause unenforceable.

HOLDINGS

1. Appellant failed to establish procedural unconscionability; the arbitration clause is enforceable.

KEY QUOTATIONS

“Unconscionability refers to the absence of a meaningful choice on the part of one of the parties to a contract, combined with contract terms that are unreasonably favorable to one party. Accordingly, unconscionability consists of two separate concepts: (1) substantive unconscionability, which refers to the commercial reasonableness of the contract terms themselves, and (2) procedural unconscionability, which refers to the bargaining positions of the parties.” (¶ 9)

“Substantive unconscionability involves those factors which relate to the contract terms themselves and whether they are commercially reasonable. Because the determination of commercial reasonableness varies with the content of the contract terms at issue in any given case, no generally accepted list of factors has been developed for this category of unconscionability. However, courts examining whether a particular limitations clause is substantively unconscionable have considered the following factors: the fairness of the terms, the charge for the service rendered, the standard in the industry, and the ability to accurately predict the extent of future liability. See [Fotomat Corp. of Florida v.] Chanda [(Fla.App. 1985) 464 So.2d 626]; [Richard A.] Berjian [D.O., Inc. v. Ohio Bell Tel. Co. (1978), 54 Ohio St.2d 147, 8 O.O.3d 149, 375 N.E.2d 410].” (¶ 10)

“Procedural unconscionability;’ involves those factors bearing on the relative bargaining position of the contracting parties, e.g., “age, education, intelligence, business acumen and experience, relative bargaining power, who drafted the contract, whether the terms were explained to the weaker party, whether alterations in the printed terms were possible, whether there were alternative sources of supply for the goods in question.” Johnson v. Mobil Oil Corp. (E.D.Mich.1976), 415 F.Supp. 264, 268.” (¶ 11)

“In order to negate an arbitration clause, a party must establish a quantum of both substantive and procedural unconscionability.” (¶ 12)

FACTUAL BACKGROUND

Appellant Idamay Fortune, a former resident of Castle Nursing Homes, sued for negligence after an aide allegedly allowed her to fall in the shower, injuring her right leg. The admission agreement she signed on April 23, 2003 contained an arbitration clause. At the time of signing, appellant was 70 years old, had a high school education, had worked as a short order cook and in factories, and handled her own business affairs, including purchasing a home and vehicles. She received the agreement two days before signing, had an employee highlight some terms, and was in the presence of her son. She made no alterations and presented no evidence that she was under stress or lacked time to comprehend the agreement.

PROCEDURAL HISTORY

On July 6, 2004, appellant filed a negligence lawsuit against Castle Nursing Homes, Inc. Castle filed an amended answer asserting arbitration pursuant to the admission agreement and moved to stay. The trial court

denied the motion on December 3, 2004. Castle appealed, and in *Fortune v. Castle Nursing Homes, Inc.*, 164 Ohio App.3d 689, 843 N.E.2d 1216, 2005-Ohio-6195, this Court found the arbitration clause substantively unconscionable but remanded for a determination of procedural unconscionability. On remand, the trial court held another hearing, found no procedural unconscionability, and granted the stay. Appellant appealed.

DISPOSITION

affirmed

CASES CITED

- *Collins v. ClickCamera Video, Inc.*, 86 Ohio App.3d 826, 834, 621 N.E.2d 1294 (1993)
- *Fortune v. Castle Nursing Homes, Inc.*, 164 Ohio App.3d 689, 843 N.E.2d 1216, 2005-Ohio-6195
- *Eagle v. Fred Martin Motor Co.*, 157 Ohio App.3d, 809 N.E.2d 1161, 2004-Ohio-829
- *Johnson v. Mobil Oil Corp.*, 415 F. Supp. 264, 268 (E.D. Mich. 1976)
- *Fotomat Corp. of Florida v. Chanda*, 464 So. 2d 626 (Fla. App. 1985)
- *Richard A. Berjian, D.O., Inc. v. Ohio Bell Tel. Co.*, 54 Ohio St.2d 147, 8 O.O.3d 149, 375 N.E.2d 410 (1978)