California Appellate Court Holds that FAA Preempts CLRA Prohibition Against Class Action Waivers

Recently, the California Court of Appeal (Fourth Appellate District, Division Three) in *Caron v. Mercedes-Benz Financial Services USA LLC* (filed June 29, 2012, published July 30, 2012) held that the Federal Arbitration Act ("FAA") preempts the California Consumer Legal Remedy Act ("CLRA") prohibition against class action waivers (Cal. Civ. Code section 1751) in arbitration agreements. The Court of Appeal relied on the United States Supreme Court's decision in *AT&T Mobility v. Concepcion*, --- U.S. ----, 131 S. Ct. 1740 (2011), in reversing the Superior Court, which found itself bound by an earlier California Court of Appeal decision reaching the opposite conclusion in *Fisher v. DCH Temecula Imports LLC*, 187 Cal. App. 4th 601 (2010). The *Caron* opinion, thus, creates a split in authority with *Fisher* that may warrant later resolution by the California Supreme Court.

The Arbitration Agreement

In addition to a class action waiver (set forth in three places within the agreement), the arbitration agreement at issue in *Caron* provided that the FAA would govern any arbitration under the parties' arbitration clause. The arbitration agreement also included a severability provision that required enforcement of the remainder of the arbitration agreement in the event that any part thereof was found unenforceable, *unless* the class action waiver were found to be unenforceable, in which case the entire arbitration agreement would be deemed unenforceable.

The FAA Preempts the CLRA's Anti-Waiver Rule

Reviewing the issue of preemption *de novo*, the Court of Appeal set forth the governing principles regarding FAA preemption.

- The FAA codifies a "liberal federal policy favoring arbitration agreements" (quoting *Perry v. Thomas*, 482 U.S. 483, 489 (1987));
- "That national policy . . . 'appli[es] in state as well as federal courts' and 'foreclose[s] state legislative attempts to undercut the enforceability of arbitration agreements'" (quoting *Preston v. Ferrer*, 552 U.S. 346, 353 (2008);
- "The 'principle purpose' of the FAA is to 'ensur[e] that private arbitration agreements are enforced according to their terms'" (quoting *Concepcion*, 131 S. Ct. at 1748);
- "The FAA's displacement of conflicting state law is 'now well-established,' … and has been repeatedly reaffirmed …" (quoting *Preston*, 552 U.S. at 353);
- The FAA preempts "'state-law rules that stand as an obstacle to the accomplishment of the FAA's objective[]' of enforcing agreements according to their specific terms" (quoting *Concepcion*, 131 S. Ct. at 1748)

After discussing the rationale set forth in *Concepcion* for its conclusion that the FAA preempted California's *Discover Bank* rule (holding that class action waivers in arbitration agreements were unconscionable), the Court of Appeal found that "[n]o meaningful difference exists between the CLRA's class action [waiver] prohibition and the *Discover Bank* rule. Both are state-law rules that prevent enforcement of an arbitration agreement according to its terms." The Court of Appeal noted that the *Fisher* court did not have the opportunity to apply the reasoning of the later-decided *Concepcion* case to its case and thus had impermissibly "applied the CLRA's anti-waiver provision in a manner that discriminates against arbitration." It also rejected plaintiff's argument that requiring her to arbitrate her claims would prevent her from vindicating her substantive rights under the CLRA, finding that "[p]reventing Caron from obtaining relief on behalf of other consumers or the general public does not prevent Caron from vindicating her rights under the CLRA based on the injuries she suffered" and that "[t]here is nothing inherently improper about requiring a party to arbitrate on an individual basis if the party agreed to that procedure." The Court of Appeal remanded the case to the trial court for consideration of plaintiff's other unconscionability arguments, which the trial court found mooted by its holding that the CLRA anti-waiver provision precluded arbitration of plaintiff's claims.

———

This *GT Alert* was prepared by **Jeff Scott** and **Joe Wetzel**. Questions about this information can be directed to:

- Jeff Scott | 310.586.7715 | scottj@gtlaw.com
- Joe Wetzel | 415.655.1317 | wetzelj@gtlaw.com
- Or your Greenberg Traurig attorney

Albany 518.689.1400	**Delaware** 302.661.7000	**Mexico City+** +52 55 5029.0000	**Palm Beach County S.** 561.955.7600	**Tallahassee** 850.222.6891
Amsterdam + 31 20 301 7300	**Denver** 303.572.6500	**Miami** 305.579.0500	**Philadelphia** 215.988.7800	**Tampa** 813.318.5700
Atlanta 678.553.2100	**Fort Lauderdale** 954.765.0500	**New Jersey** 973.360.7900	**Phoenix** 602.445.8000	**Tel Aviv^** +03.636.6000
Austin 512.320.7200	**Houston** 713.374.3500	**New York** 212.801.9200	**Sacramento** 916.442.1111	**Tysons Corner** 703.749.1300
Boston 617.310.6000	**Las Vegas** 702.792.3773	**Orange County** 949.732.6500	**San Francisco** 415.655.1300	**Warsaw~** +48 22 690 6100
Chicago 312.456.8400	**London*** +44 (0)203 349 8700	**Orlando** 407.420.1000	**Shanghai** +86 21 6391 6633	**Washington, D.C.** 202.331.3100
Dallas 214.665.3600	**Los Angeles** 310.586.7700	**Palm Beach County N.** 561.650.7900	**Silicon Valley** 650.328.8500	**White Plains** 914.286.2900