

Arbitration Clause in Attorney-Client Agreement Deemed Unenforceable Due to Lack of Informed Consent

Bryan Dick-Ipsen v. Humphrey, Farrington & McClain, P.C., et al., 2024 IL App (1st) 241043

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Brief Summary

The First District Appellate Court in Illinois affirmed the trial court's denial of a defendant law firm's motion to compel arbitration on the basis that the arbitration provision in the "Attorney-Client Agreement" entered into with plaintiff in the underlying personal injury action was procedurally unconscionable. The court ruled that plaintiff could not be held to an agreement to arbitrate a legal malpractice claim "without being informed about the scope and effect of the agreement."

Complete Summary

This case arose from an underlying action in which plaintiff and his wife (collectively the "plaintiffs") retained the defendant to represent them in a toxic tort action against chemical manufacturers and suppliers after plaintiff developed Parkinson's disease from years of working as a dry cleaner.

Plaintiffs signed and returned the Attorney-Client Agreement (the "Agreement") on May 7th and 8th, 2018, respectively, and the representation commenced soon thereafter. The Agreement described the nature and scope of the work that defendant would perform and the fees for such work. The Agreement also contained language that defined the parties' rights and obligations, which included an arbitration clause. The Agreement provided that any claims between plaintiffs and defendant must be resolved via mediation or arbitration.

Plaintiffs alleged that the defendant failed to identify all relevant chemical manufacturers in a timely manner and instead only sought recovery from the chemical suppliers. When defendant later tried to amend to add additional

manufacturers, the claims were ultimately dismissed because they were time-barred. After several motions, plaintiffs were left with claims against just three defendants in the underlying action. Plaintiffs settled the claims with two of the defendants in the underlying action, and only one of the three claims remained pending by the time this legal malpractice action was commenced.

Plaintiffs alleged numerous failures in the underlying case, including defendant's failure to timely appeal decisions on dispositive motions. Defendant also allegedly failed to add the plaintiff's wife's claim for loss of consortium. Defendants filed a motion to compel mediation or binding arbitration, arguing that the arbitration provision in the Agreement required the parties to mediate the dispute "and, if no agreement could be reached, submit to arbitration." Plaintiffs argued the provision should not be enforced because it was procedurally and substantively unconscionable.

Plaintiffs argued that no one at the defendant law firm ever informed them that any disputes were required to be mediated or arbitrated or that they would be giving up significant rights by signing the Agreement, such as the right to a jury trial, the right to appeal, and the right to a discovery process typically available in judicial proceedings.

Plaintiffs further stated (in an affidavit) that defendant also did not inform them that they would be required to travel over 500 miles to Missouri to arbitrate, or that arbitration in Missouri would be decided by a single arbitrator and that plaintiffs would have to pay half of the costs. According to plaintiffs, no one from the defendant law firm ever discussed or explained any portion of the arbitration provisions.

The trial court found the arbitration agreement to be procedurally but not substantively unconscionable and thus denied defendant's motion to compel arbitration. The trial court concluded that plaintiffs could not be required to arbitrate without being fully informed about the scope and effect of the agreement. Therefore, the trial court found the arbitration provision to be unenforceable.

The appellate court noted that defendant did not file any counter-affidavits or otherwise contest the evidence submitted by plaintiff, further supporting plaintiffs' positions. See *Piser v. State Farm Mutual Automobile Insurance Co.*, 405 Ill.App.3d 341, 352 (2010). The general rule is that where there is a valid arbitration agreement, and the parties' dispute falls within the scope of that agreement, arbitration is mandatory, and the trial court must compel it. See *Hollingshead v. A.G. Edwards & Sons, Inc.*, 396 Ill.App.3d 1095, 1101 (2009). The court stated, however, that an arbitration agreement may be invalidated by state law contract defenses of general applicability, such as fraud, duress, or unconscionability. See *Carter v. SSC Odin Operating Co.*, 2012 IL 113204, ¶18.

The court relied, in part, on Rule 1.4(b) of the Illinois Supreme Court Rules of Professional Conduct, which states that: "[a] lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Ill. R. Prof'l Conduct (2010) R. 1.4(b). The court further noted that according to the comment to the Rule, there is no general prohibition on a lawyer entering into an agreement to arbitrate legal malpractice claims but that the client must be fully informed of the scope and effect of the agreement. See Ill. R. Prof'l Conduct (2010) R. 18 cmt. 14 (eff. Jan 1, 2010).

The court also rejected defendant's argument that the Federal Arbitration Act (9 U.S.C. § 1 et seq. (2012)) (the "Act") preempts a state's rules of professional conduct if there is any conflict between the two because, under the Act, an arbitration agreement may be set aside upon such grounds as exist in law or equity for the revocation of any contract such as fraud, duress or unconscionability. See 9 U.S.C. § 2 (West 2012); see also *AT&T Mobility LLC v. Conception*, 563 U.S. 333, 339 (2011).

The court upheld the trial court's finding of procedural unconscionability. Defendant failed to present any evidence to show that plaintiffs knew or should have known the implications of the arbitration clause.

Significance of Case

This decision is important because it shows that for an attorney-client agreement to be enforceable, a client must be fully informed about its scope and effect, including the forfeiture of the right to a jury trial, the right to appeal, and the right to a discovery process available in judicial proceedings.

It would also be prudent to inform the client that they have the right to consult with independent counsel before signing the attorney-client agreement.

Related People



Ian A. King II

Associate

📞 415-743-3706



Terrence P. McAvoy

Of Counsel

📞 312-704-3281

