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Appellate & Constitutional Law Update

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California Supreme Court Holds That Legibility And Prominence Of Arbitration Provisions Do Not Affect An Agreement's Substantive Fairness

Fuentes v. Empire Nissan, Inc., S280256 – Decided February 2, 2026

The California Supreme Court held today that while the size, placement, and legibility of provisions in an arbitration agreement may affect the agreement's procedural unconscionability, they do not affect the analysis of substantive unconscionability.

“An otherwise fair and mutual term is not made substantively unconscionable by printing it in a manner that makes it difficult to read ... [B]ecause font size does not affect the substance of an agreement’s terms, it cannot render a contractual term substantively unconscionable.”

JUSTICE GROBAN, WRITING FOR THE COURT

Background:

A party seeking to invalidate an arbitration agreement on unconscionability grounds under California law must make two showings. First, the party must show the agreement is procedurally unconscionable: i.e., that the way the contract was formed was one-sided or unfair, often because it involved oppression or surprise and unequal bargaining power. Second, the party must show the agreement was substantively unconscionable: i.e., that its terms are unfair, one-sided, and shocking to the conscience.

When she applied to work at Empire Nissan, Evangelina Yanez Fuentes signed an agreement requiring arbitration of all disputes arising out of her employment. Fuentes later filed a lawsuit alleging wrongful discharge. Empire Nissan sought to compel arbitration, but the trial court denied the motion to compel on the ground that the arbitration agreement was unconscionable. It reasoned that the agreement's fine-print terms and scarcely legible text indicated *substantive* unconscionability. The Court of Appeal reversed, departing from other decisions of the Court of Appeal and holding that arguments about the legibility or prominence of contract provisions affect only *procedural* unconscionability.

Issue Presented:

Do the placement, prominence, or legibility of provisions in an arbitration agreement affect whether the agreement is substantively unconscionable under California law?

Court's Holding:

No. Although small font size and near-illegibility may indicate procedural unconscionability and therefore require a lesser showing of substantive unconscionability, those features of an arbitration agreement do not themselves indicate substantive unconscionability.

What It Means:

- Physical features of contract provisions—font size, placement, prominence, legibility, and the like—do not factor into the analysis of whether an arbitration agreement is substantively unconscionable.
- However, the Court emphasized that, while prominence or legibility issues do not themselves affect substantive unconscionability, courts should “closely scrutinize” the substantive terms set out in small or difficult-to-read text “to ensure they are not manifestly unfair or one-sided.”
- The Court also held that, in assessing whether an arbitration agreement is unconscionably one-sided, courts should not rely “on the policy favoring arbitration as an interpretive presumption.” So if an agreement may be read to require arbitration only as to one side, courts may rule that the agreement is substantively unfair without construing the agreement in a more arbitration-friendly manner.

- The Court declined to resolve a raft of issues left for remand, including whether any arbitration agreement had been formed at all and whether, if validly formed, the agreement was unconscionable and thus unenforceable.

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The Court's opinion is available [here](#).

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the California Supreme Court. Please feel free to contact the following practice group leaders:

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