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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

ST. JOHN'S EMERGENCY PHYSICIANS, INC., Plaintiff and Appellant, v. REVCYCLE+, INC., Defendant and Respondent.	B283383 Los Angeles County Super. Ct. No. BC547526

APPEAL from a judgment of the Superior Court of Los Angeles County, Debre Katz Weintraub, Judge. Affirmed.

Richard I. Wideman for Plaintiff and Appellant.

Gordon & Rees, Craig J. Mariam, Matthew J. Kleiner and Hazel Mae B. Pangan for Defendant and Respondent.

INTRODUCTION

Plaintiff and appellant St. John's Emergency Physicians, Inc. (medical group) appeals from a judgment confirming an arbitration award in favor of defendant and respondent RevCycle+, Inc. (RevCycle), the medical group's billing company. The medical group challenges only the court's decision to compel arbitration of the dispute pursuant to the arbitration provision in the parties' medical billing services contract.

The medical group asserts two arguments on appeal. First, the group essentially contends RevCycle does not have standing to enforce the arbitration provision because it was not a party to the original medical billing services contract. We reject this argument because RevCycle is plainly the successor in interest to the original medical billing company, as confirmed in two subsequently-executed contract addenda. Second, the medical group asserts the arbitration provision should not be enforced because it is both procedurally and substantively unconscionable. We reject this argument as well, inasmuch as there is no evidence of procedural unconscionability here. Accordingly, we affirm the judgment.

FACTS AND PROCEDURAL BACKGROUND

The medical group provides emergency medical doctors' services at St. John's Medical Center in Longview, Washington. In early 2006, the medical group hired Marina Medical Billing Service, Inc. (Marina) to perform medical billing and collect its accounts receivables. The medical services billing contract (contract), effective April 2006, included the following provision regarding dispute resolution (arbitration provision):

"All disputes, disagreements or claims arising between the parties concerning this Agreement, its breach, its interpretation, or its specific performance, including related claims in tort, and including claims for general, incidental, consequential, and punitive damages, by an individual physician acting as Client personnel for any medical service performed of whatever kind or by the Client itself, shall be resolved through binding arbitration conducted pursuant to the Commercial Arbitration Rules of the American Arbitration Association or JAMA [*sic*] in Los Angeles County, California. The award of the arbitrator shall be absolutely binding on the Parties and may be entered as a final judgment in any court with jurisdiction, and neither party may appeal any arbitrator's decision, in whole or in part, to any court for any reason. In no case, may the award to either Party for any reason(s), including all legal fees and any expenses of any kind including expert witnesses, court reporters, travel and all other costs of whatever kind, total more than one percent of the total outstanding accounts receivable as of the date of the filing of the grievance. …"

The arbitration provision also required prompt resolution of any dispute between the parties (timing clause):

"Any claim by either Party must be filed within the earlier of 120 days of the alleged occurrence(s) or 120 days after the Termination Date; any claim filed with the court after that date shall be null and void. Any arbitration must be heard and completed in toto and a final judgment rendered within 180 days of the first date of filing of any related claim with any court or it shall be null and void and of no further effect regardless of the reason. The standard of care to be used by the arbitrator with respect to any claim by either Party shall be 'Gross Negligence.' "

In 2012, T-System, Inc. (RevCycle's parent company) acquired Marina and all its active contracts, including the contract with the medical group. As of January 1, 2013, Marina merged into RevCycle. The contract was amended in May 2013 to reflect that RevCycle, rather than Marina, would be performing services for the medical group. The contract was amended again one month later. Representatives of the medical group and RevCycle signed both amendments.

In June 2014, the medical group filed a lawsuit against RevCycle in the Los Angeles County Superior Court alleging breach of contract, negligence, breach of warranty, and fraud. The complaint alleged that in July 2013, RevCycle began using new billing software and assigned new personnel to the medical group's account, resulting in underbilling and other practices costing the medical group more than $1,000,000 in uncollected fees for services that had been provided.

Citing the arbitration provision of the contract, RevCycle filed a motion to compel arbitration which the court granted. The arbitrator eventually dismissed the matter because, according to the timing clause of the arbitration provision, any decision by the arbitrator would have been null and void. The arbitrator explained the medical group filed a lawsuit "rather than timely pursuing an arbitration demand as required by [the] contract among the parties."

The court granted RevCycle's petition to confirm the arbitration award and entered judgment accordingly. This timely appeal followed.

DISCUSSION

The medical group argues RevCycle cannot enforce the arbitration provision because it was not a party to the original contract. In addition, the medical group asserts the court erred in enforcing the arbitration provision because that provision is both procedurally and substantively unconscionable. We reject both contentions.

1. Standard of Review

The applicable standard of review is well established. " ' "[W]e review the arbitration agreement de novo to determine whether it is legally enforceable, applying general principles of California contract law." ' [Citation.] Thus, unconscionability is a question of law we review de novo. [Citation.] To the extent the trial court's determination on the issue turned on the resolution of contested facts, we … review the court's factual determinations for substantial evidence. [Citation.]" (*Carmona v. Lincoln Millennium Car Wash, Inc.* (2014) 226 Cal.App.4th 74, 82; *Baxter v. Genworth North America Corp.* (2017) 16 Cal.App.5th 713, 722 (*Baxter*).) And in keeping with California's strong public policy in favor of arbitration, any doubts regarding the validity of an arbitration agreement are resolved in favor of arbitration. (*Coast Plaza Doctors Hospital v. Blue Cross of California* (2000) 83 Cal.App.4th 677, 686; and see *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 97 (*Armendariz*), abrogated in part by *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 340.)

2. RevCycle may enforce the arbitration provision against the medical group even though it was not the original signatory to the medical services contract.

The medical group's first argument, as we understand it, is that because RevCycle did not sign the original medical billing services contract in 2006, it cannot enforce the contract and the arbitration provision it contains against the medical group. This contention is meritless.

Although the medical group correctly represents that the contract, when originally signed, was an agreement between the medical group and Marina, the contract was subsequently modified. Specifically, effective May 1, 2013, the parties amended the contract so that each reference to Marina was replaced with a reference to RevCycle. This contract amendment formalized what had already taken place: In June 2012, T-System, Inc. (RevCycle's parent company) acquired Marina and all its active contracts, including the contract with the medical group, and in January 2013, Marina was formally merged into RevCycle.

The medical group cites a provision of the contract that states, " 'Any amendments shall be in writing and valid only if executed by all of the parties.' " Citing *Kaneko v. Okuda* (1961) 195 Cal.App.2d 217 (*Kaneko*), the medical group claims Marina was required "to sign the 'Addenda' documents with Plaintiff and RevCycle in order to allow RevCycle to be a beneficiary of the arbitration clause."

In *Kaneko*, four individuals agreed to sell shares of stock to a corporation. (*Kaneko*, *supra*, 195 Cal.App.2d at pp. 221–223.) Three of the individuals signed a contract to that effect, but the fourth individual did not sign the agreement. (*Id*. at p. 223.) When a dispute arose and the corporation demanded specific

performance from all the individual sellers, the sellers claimed the contract was not enforceable against any of them because one seller did not sign the agreement. (*Id*. at p. 224.) The Court of Appeal rejected that argument and held the contract was enforceable against the three individuals who signed the agreement but was not enforceable against the single individual who did not sign it. (*Id*. at p. 228.)

Kaneko is not applicable here. Simply put, *Kaneko* concerned the enforceability of a contract against a party that *did not* sign the contract. We are concerned here with the enforceability of a contract against a party that *did* sign the agreement. Moreover, nothing in *Kaneko* sheds light on the issue presented here, namely the rights and obligations under a contract signed by a corporate entity later acquired and merged into another corporate entity.

We find the medical group's argument suspect because the medical group sued RevCycle (not Marina) for allegedly breaching the contract it now contends RevCycle has no standing to enforce. In any event, given the undisputed evidence that Marina merged into RevCycle, RevCycle indisputably has the right to enforce the contract and the arbitration provision even in the absence of a formal amendment to the contract. (Corp. Code, § 1107, subd. (a) ["Upon merger pursuant to this chapter the separate existence of the disappearing corporations ceases and the surviving corporation shall succeed, without other transfer, to all the rights and property of each of the disappearing corporations and shall be subject to all the debts and liabilities of each in the same manner as if the surviving corporation had itself incurred them"].)

3. The arbitration provision is enforceable.

3.1. A court may refuse to enforce an arbitration agreement that is both procedurally and substantively unconscionable.

California law, like federal law, favors enforcement of valid arbitration agreements. (*Armendariz, supra*, 24 Cal.4th at p. 97.) "Thus, under both federal and California law, arbitration agreements are valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract. (9 U.S.C. § 2; see also, Code Civ. Proc., § 1281.)" (*Id*. at p. 98, fn. omitted.)

Notwithstanding the strong policy favoring arbitration, courts may invalidate or limit agreements to arbitrate that are unconscionable or contrary to public policy. (*Armendariz, supra,* 24 Cal.4th at p. 114; and see *Sanchez v. Valencia Holding Co., LLC* (2015) 61 Cal.4th 899, 910–911 (*Sanchez*); *Sonic-Calabasas A, Inc. v. Moreno* (2013) 57 Cal.4th 1109, 1142; *Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 246 (*Pinnacle*).) Unconscionability " ' "refers to ' "an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party." ' [Citation.] As that formulation implicitly recognizes, the doctrine of unconscionability has both a procedural and a substantive element, the former focusing on oppression or surprise due to unequal bargaining power, the latter on overly harsh or one-sided results." ' " (*Baltazar v. Forever 21, Inc.* (2016) 62 Cal.4th 1237, 1243 (*Baltazar*).) But " '[n]ot all one-sided contract provisions are unconscionable; hence the various intensifiers in our formulations: "*overly* harsh," "*unduly* oppressive," "*unreasonably* favorable." [Citation.] ... [¶] ...

The ultimate issue in every case is whether the terms of the contract are sufficiently unfair, in view of all relevant circumstances, that a court should withhold enforcement.' [Citation.]" (*Id.* at p. 1245.)

Both procedural and substantive unconscionability must be present for a court to refuse to enforce an agreement to arbitrate, although they need not be present in the same degree. (*Baltazar*, *supra*, 62 Cal.4th at p. 1243.) " 'Essentially a sliding scale is invoked which disregards the regularity of the procedural process of the contract formation, that creates the terms, in proportion to the greater harshness or unreasonableness of the substantive terms themselves.' [Citations.] In other words, the more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to come to the conclusion that the term is unenforceable, and vice versa." (*Armendariz, supra*, 24 Cal.4th at p. 114; *Baltazar,* at pp. 1243–1244.) Because unconscionability is a contract defense, the party asserting the defense—here, the medical group—bears the burden of proof. (*Sanchez, supra*, 61 Cal.4th at p. 911.)

3.2. There is no evidence of procedural unconscionability in this case.

"[P]rocedural unconscionability requires oppression or surprise. ' "Oppression occurs where a contract involves lack of negotiation and meaningful choice, surprise where the allegedly unconscionable provision is hidden within a prolix printed form." ' " (*Pinnacle, supra,* 55 Cal.4th at p. 247; *Lane v. Francis Capital Management LLC* (2014) 224 Cal.App.4th 676, 689.) "Unconscionability analysis begins with an inquiry into whether the contract is one of adhesion. [Citation.] 'The term [contract of adhesion] signifies a standardized contract, which, imposed and

drafted by the party of superior bargaining strength, relegates to the subscribing party only the opportunity to adhere to the contract or reject it.' " (*Armendariz*, *supra*, 24 Cal.4th at p. 113.)

Our courts have recognized oppression in a variety of circumstances in which the party with superior bargaining power imposes an arbitration agreement on the other party. Common situations include contracts required by an employer from a current or prospective employee and by large companies from an individual consumer. (See, e.g., *Baxter, supra*, 16 Cal.App.5th at pp. 723–724 [arbitration agreement held procedurally unconscionable where employer presented arbitration agreement on a take-it-or-leave-it basis and agreement was required as a condition of continued employment]; *Sanchez, supra*, 61 Cal.4th at p. 914 [finding procedural unconscionability in consumer class action against car dealer regarding enforceability of provision contained in standard form car purchase agreement].) Our courts have also seen an imbalance of power between landlords and tenants, and mobile home park owners and mobile home residents. (See *Penilla v. Westmont Corp.* (2016) 3 Cal.App.5th 205, 214 (*Penilla*).)

The medical group relies on one such case, *Trivedi v. Curexo Technology Corp.* (2010) 189 Cal.App.4th 387,[1] noting the court there held an arbitration clause in an employment agreement was procedurally unconscionable because the agreement was prepared by the employer, the agreement was never explained to the employee, the arbitration clause was a mandatory part of the agreement, and the employee was not

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[1] Disapproved on another point by *Baltazar, supra*, 62 Cal.4th at p. 1248.

given a copy of the applicable arbitration rules. (*Id.* at p. 393.) But the medical group ignores the fundamental concerns that informed the court's decision. Our courts have emphasized that in the employment setting, oppression results from the substantial imbalance of power that typically exists between an employer and an employee, as well as the inability of an employee to negotiate the terms of employment, which is often present. For example, our Supreme Court has repeatedly recognized, " '[I]n the case of preemployment arbitration contracts, the economic pressure exerted by employers on all but the most sought-after employees may be particularly acute, for the arbitration agreement stands between the employee and necessary employment, and few employees are in a position to refuse a job because of an arbitration requirement.' " (*Little v. Auto Stiegler, Inc.* (2003) 29 Cal.4th 1064, 1071, quoting *Armendariz, supra*, 24 Cal.4th at p. 115.) The analysis applies with equal force where an employer imposes an arbitration policy as a condition of continued employment. (*Baxter, supra*, 16 Cal.App.5th at p. 723 [finding "high degree of oppressiveness" where employee could quit job of over five years or accept employer's new arbitration terms]; *Fitz v. NCR Corp.* (2004) 118 Cal.App.4th 702, 722 ["Few employees are in a position to forfeit a job and the benefits they have accrued … solely to avoid the arbitration terms that are forced upon them by their employer"].) The medical group's other cited cases are similarly inapposite. (See, e.g., *Penilla, supra,* 3 Cal.App.5th at p. 214 [finding imbalance of power between mobile home park owner and its low-income residents, many of whom did not speak English and were not provided with a translation of the arbitration agreement]; *Gutierrez v. Autowest, Inc.* (2003) 114 Cal.App.4th 77, 82, 84 [finding oppressiveness where consumer

presented with standard auto lease agreement had no opportunity to negotiate terms and arbitration clause was inconspicuous, in eight-point typeface and on the back of the signature page].)

In any event, we see no evidence in the record before us to suggest an imbalance of power between the parties which would support a finding of oppressiveness or procedural unconscionability. In fact, if an imbalance of power existed, it appears the medical group was in the superior position. Dr. Holly Liberatore, the current president of the medical group, provided a declaration in support of the medical group's opposition to the motion to compel arbitration. She stated she attended meetings in Los Angeles with the principals of Marina "to see if we would hire them to handle billing for the group." This statement suggests that unlike average employees, who are often somewhat at the mercy of their employers, the medical group was in the driver's seat as it considered whether to do business with Marina or some other billing service.

Moreover, although the medical group claims it had no opportunity to negotiate the terms of the contract, no evidence supports that contention. The medical group asserts the contract was prepared and already signed by Marina when the group received it. But the fact that one party prepares a contract does not render it adhesive. Nor does the fact that Marina signed the contract before sending it to the medical group suggest negotiations were prohibited. The medical group also emphasizes statements by Dr. Liberatore that she did "not recall any negotiations or any discussions about the language in the contract." And the medical group's lawyer, who spent an hour reviewing the contract, stated: "I was not given the name of any

lawyer to contact and I did not contact anyone." Neither of these statements, however, suggests negotiations were not possible or that the medical group was in a "take it or leave it" situation. Instead, this evidence simply indicates no negotiations took place.

In a further attempt to demonstrate an imbalance of power between the parties, the medical group characterizes itself as a "small local" group of physicians in the "small town of Longview, Washington," in purported contrast to RevCycle, which the medical group notes is based in Dallas, Texas and has clients in at least 14 states located throughout the country. And the medical group argues "[t]he Court somehow interpreted the fact that St. Johns [*sic*], an emergency physicians medical group in a small town in Washington state, is somehow equal in bargaining power to a national billing company … ." The point is unpersuasive, however, because neither the location of the medical group nor the geographic diversity of RevCycle's clients suggests an imbalance in the relative bargaining power of the parties here. And as already noted, at the time the parties signed the original contract, it appears the medical group was deciding whether to hire Marina, not the other way around.

The medical group also seems to suggest some degree of surprise is present. In her declaration, Dr. Liberatore stated, "I do not recall the arbitration clause being mentioned at any time during the meetings with Marina," "at no time did anyone at RevCycle+ discuss the arbitration clause with me," and "I was never told that the arbitration clause applied to RevCycle+ or that I was agreeing to it by signing any Amendment." The medical group repeatedly points to these facts in its briefs and notes the absence of evidence from RevCycle concerning the

negotiation of the contract or discussion of the arbitration provision. But it is well established that a party that signs a contract is bound by the contract even if the party did not read it carefully or was unaware of its terms. (See, e.g., *Stewart v. Preston Pipeline Inc.* (2005) 134 Cal.App.4th 1565, 1589 [contracting party is not entitled to relief from contractual obligations based on failure to read the contract before signing it]; *Brookwood v. Bank of America* (1996) 45 Cal.App.4th 1667, 1674 [employee bound by contractual arbitration provision irrespective of whether she was aware of it when she signed contract]; and see Rest.2d Contracts, § 157, com. b, p. 417 ["Generally, one who assents to a writing is presumed to know its contents and cannot escape being bound by its terms merely by contending that he did not read them; his assent is deemed to cover unknown as well as known terms"].) The medical group cites no case suggesting that rule is different with respect to a contract containing an arbitration provision.

The medical group further argues the arbitration provision should not be enforced because the billing services contract did not attach a copy of the applicable arbitration rules. But the cases cited do not stand for the proposition that an arbitration agreement is not enforceable under those circumstances. Instead, those cases hold an agreement may be procedurally unconscionable where arbitration rules impose substantial restrictions on the ability to recover damages and those rules are not readily available at the time the agreement is signed. (See *Harper v. Ultimo* (2003) 113 Cal.App.4th 1402, 1405 [finding oppression where substantial limitation on recoverable damages was imposed by reference to Better Business Bureau arbitration rules, which were not attached]; *Patterson v. ITT Consumer*

Financial Corp. (1993) 14 Cal.App.4th 1659, 1666 [finding procedural unconscionability where arbitration rules were indecipherable and would most likely deny consumer of any remedy against lender].) The medical group does not argue the applicable arbitration rules restrict its ability to recover damages in this case.

Finally, the medical group argues the arbitration provision should not be enforced because it was set forth under the heading "general provisions," and is not set out in a distinctive manner. But the case cited, *Suh v. Superior Court* (2010) 181 Cal.App.4th 1504, 1516, does not impose such a requirement. There, the court concluded the arbitration agreement was procedurally unconscionable mainly because the plaintiffs were required to sign an arbitration agreement binding them to another agreement which provided significant limitations on the recovery of damages—but the other agreement was not ever made available for the plaintiffs to review. As with the cases just discussed, this case is of no assistance to the medical group.

Because we conclude the contract and the arbitration provision are not procedurally unconscionable, we need not consider whether the contract is also substantively unconscionable. (See *Gentry v. Superior Court* (2007) 42 Cal.4th 443, 470 [noting the absence of procedural unconscionability would as a "logical conclusion" mean that "no matter how one-sided the contract terms, a court will not disturb the contract"].)

DISPOSITION

The judgment is affirmed. RevCycle+, Inc. shall recover its costs on appeal.

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LAVIN, Acting P. J.

WE CONCUR:

EGERTON, J.

DHANIDINA, J.