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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

GUY BEAUDOIN et al., Plaintiffs and Respondents, v. WESTSTAR TRANSPORTATION, INC. et al., Defendants and Appellants.	2d Civil No.B271072 (Super. Ct. No. 56-2014-00454073-CU-OE-VTA) (Ventura County)

Plaintiff employees bring a class action against their employer in which they allege employment law violations.

The employer moves to compel arbitration of the dispute. The company requires its employees to sign an arbitration agreement when they are hired. We conclude the agreement is not enforceable because it does not correctly name the employer, and because it is unconscionable.

We also conclude that the company's methods to induce employees to opt out of the class action are unconscionable. We affirm.

FACTS

Weststar Partnership (Weststar) is engaged in the business of transporting pipe and related materials to various locations in California.

Guy Beaudoin, a former employee of Weststar, brought a class action alleging illegal employment practices resulting in the violation of various Labor Code sections and corresponding wage and hour regulations and for unfair business practices.

Weststar moved to stay the proceedings and compel arbitration. The motion was based on arbitration agreements Weststar required employees to sign as a condition of employment.

The arbitration agreement signed by each employee provided in part:

"WESTSTAR INC.

"*DISPUTE RESOLUTION AGREEMENT*

"This Dispute Resolution Agreement ('Agreement') is entered into by Weststar Inc. ('Weststar') and *Joram Cortez* ('Employee') and is effective as of *3-5, 2012* and continuing. The term 'Weststar' includes Weststar itself and all of Weststar's shareholders, members, agents, representatives, and employees. Weststar and Employee are referred to collectively as the 'Parties.'" (Italicized portions handwritten in original.)

The agreement was not signed by anyone from Weststar. Nor is there a place on the agreement for a signature by a Weststar official.

Beaudoin opposed the motion for arbitration on the grounds: (1) the arbitration agreement is with "Weststar, Inc." and not with the employer, Weststar Partnership; (2) Weststar breached the agreement and acted in bad faith by coercing employees to sign agreements opting out of the lawsuit; and (3) the arbitration agreement is unconscionable.

In response, Weststar submitted a declaration by its managing partner, Daniel Corriea. Corriea declared in part:

"Weststar has a policy and practice of asking newly hired employees to sign a Dispute Resolution Agreement with Weststar when they start their employment. . . .

"The Dispute Resolution Agreement contains a typographical error that was just recently called to my attention. The document erroneously identified Weststar as 'Weststar, Inc.' in one place, but otherwise correctly referred to the Company by its correct name of 'Weststar.' Weststar is not affiliated with any company or corporation called 'Weststar, Inc.' To my knowledge, none of Weststar's employees ever interact with anyone from any company called 'Weststar, Inc.'

"The Dispute Resolution Agreement is presented to all new hires when they receive their initial paperwork upon being hired by Weststar. To my knowledge, no other paperwork is ever given to new hires with the term 'Weststar, Inc.' on it. Moreover, no applicant, new hire, or existing employee is ever told that they are being employed by 'Weststar, Inc.'

"No current employee or new hire has ever expressed [any] confusion to me that the term 'Weststar, Inc.' in the Dispute Resolution Agreement relates to Weststar, who is their employer.

"After discovering the typographical error, we revised our form Dispute Resolution Agreement to eliminate any reference to 'Weststar, Inc.'" (Paragraph numbers omitted.)

The trial court did not rule on Weststar's motion to compel arbitration. Instead, it granted Beaudoin leave to amend his complaint by adding another Weststar former employee, Joram Cortez, as plaintiff.

Weststar made a second motion to compel arbitration. It claimed its original motion was rendered moot by the filing of the amended complaint. Weststar did not include a declaration from Corriea similar to that submitted in the first motion claiming "Weststar, Inc." was a typographical error.

Beaudoin reiterated his objections to the motion to compel arbitration. The objections included a declaration from Cortez as follows:

"I was employed by Weststar as a Crane Operator from approximately March 2013 to April 2015.

"Before I could begin working for Weststar I had to sign several documents. One such document was called 'Dispute Resolution Agreement.' I had no part in drafting the Dispute Resolution Agreement, nor was I allowed to negotiate its terms. Weststar further made no effort to explain the significance of the Dispute Resolution Agreement to me or how it would operate. I also found the Dispute Resolution Agreement difficult to comprehend because, although I consider myself a proficient English speaker, English is my second language and it can be difficult to read at times. I signed the Dispute Resolution Agreement believing that if I did not, I would not be allowed to work for Weststar.

"Furthermore, on or about October 2014, I was informed that I had to attend a mandatory meeting around 5:30 a.m. in the safety trailer at Weststar's office. No one informed me about the nature of the mandatory meeting.

"Approximately 40 current Weststar employees were called into the mandatory meeting. The General Manager of Weststar, Matt Melnyk, and the CEO of Weststar, Daniel A. Corriea, presided over the meeting.

"At that meeting they handed out some documents about a lawsuit that had been filed by someone. The plaintiff's name was not mentioned. They never told me exactly what the lawsuit was about and they did not state who represented the Plaintiff. They never provided us with the copy of the lawsuit.

"During the meeting, Weststar represented that if we did not want to get involved, we could sign the opt-out document and we would be provided $200.00. In fact, Weststar already had $200.00 dollar checks pre-printed with the employees' names on them.

"Weststar never fully disclosed that the significance of signing the opt-out agreement. It was explained to us that by opting out, we are agreeing not to provide our contact information to Plaintiff and his lawyer. They never explained that by opting out that we would be releasing any potential claim in the matter.

"Although they stated that if we decided not to opt-out, they 'would not hold it against us' and that we could 'think about it', it was generally understood that if we did not sign the document, we would be retaliated against later.

"At the time, I signed the opt-out agreement because I felt pressured and feared that if I did not sign, there would be repercussions against me. I was expected [to] sign the document

on the spot and turn it in at the front of the meeting, where they handed me my prepared $200.00 check. They never provided me a copy of the documents that I was given to read and sign. To this day, I am not exactly sure about the content of the document I signed." (Paragraph numbers omitted.)

Beaudoin submitted declarations of other employees declaring they felt intimidated into signing the agreement opting out of the lawsuit.

Weststar submitted declarations from managers denying anyone was intimidated into signing the agreement.

Ruling

The trial court denied Weststar's motion to compel arbitration. Weststar did not request a statement of decision.

DISCUSSION

I

Weststar contends the trial court erred in finding that the arbitration agreement is unenforceable for lack of mutuality.

The party seeking arbitration has the burden of proving the existence of an arbitration agreement. (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 236 (*Pinnacle*).) Thus Weststar bears the burden of proving the agreement is between Weststar Partnership and its employees, and not Weststar, Inc.

Weststar argues it is undisputed that "Weststar, Inc." is a mere typographical error. But the face of the agreement itself disputes it. The agreement is headed "WESTSTAR INC." in bold capital letters. Not only does the body of the agreement state it is entered into by "Weststar Inc.," it states "'Weststar' includes Weststar itself and all of Weststar's shareholders." Nowhere does the agreement mention partners or partnership. Nor is the

agreement signed by anyone from Weststar Partnership. This is not surprising because there is no line on the printed form reserved for a partner's signature let alone any employer.

As against this evidence Weststar presents nothing more than the declaration of Weststar's managing partner, Corriea, stating in conclusory terms that "Weststar, Inc." is a typographical error. The declaration is manifestly self-serving. Weststar presents no reason why the trial court would be compelled to find it credible.

In viewing the evidence, we look only to the evidence supporting the prevailing party. (*GHK Associates v. Mayer Group, Inc.* (1990) 224 Cal.App.3d 856, 872.) We discard evidence unfavorable to the prevailing party as not having sufficient verity to be accepted by the trier of fact. (*Ibid.*) The trier of fact is not required to believe even uncontradicted testimony. (*Sprague v. Equifax, Inc.* (1985) 166 Cal.App.3d 1012, 1028.)

Weststar argues the trial court did not consider Corriea's declaration. Weststar points to nothing in the record to show the trial court did not consider all of the appropriate evidence.

Weststar did not request a statement of decision. A statement of decision is required for the denial of a motion to compel arbitration upon a timely request. (*Metis Development LLC v. Bohacek* (2011) 200 Cal.App.4th 679, 687.) But no statement of decision is required if a party fails to request one. (*Acquire II, Ltd. v. Colton Real Estate Group* (2013) 213 Cal.App.4th 959, 970.) In the absence of a statement of decision, we indulge in all intendments and presumptions in favor of the judgment or order. (*Ibid.*) Thus we presume the trial court

considered Corriea's declaration and rejected it for lack of sufficient verity.

II

Weststar contends the trial court erred in finding the arbitration agreement unconscionable.

The burden is on the party objecting to the agreement to show unconscionability. (*Pinnacle*, *supra*, 55 Cal.4th at p. 236.) Where, as here, the trial court's unconscionability determination is based on the court's resolution of conflicts in the evidence or the factual inferences that may be drawn from the evidence, we apply the substantial evidence rule and consider the evidence in a light most favorable to the trial court's order. (*Lhotka v. Geographic Expeditions, Inc.* (2010) 181 Cal.App.4th 816, 820-821.)

Unconscionability has both a procedural and substantive element. (*Baltazar v. Forever 21, Inc.* (2016) 62 Cal.4th 1237, 1243.) The procedural part focuses on oppression or surprise due to unequal bargaining power. (*Ibid.*) The substantive element focuses on overly harsh or one-sided results. (*Ibid.*) Both procedural and substantive unconscionability must be present in order for a court to refuse to enforce a contract or clause. (*Ibid.*)

Weststar concedes its arbitration agreement is one of adhesion. It acknowledges that such an adhesive employment arbitration agreement contains at least some degree of procedural unconscionability, but claims that the adhesive nature of the agreement establishes only a "modest" degree of procedural unconscionability. (Citing *Nguyen v. Applied Medical Resources Corp.* (2016) 4 Cal.App.5th 232, 248.) Here the concept of a modest degree of unconscionability amounts to an immodest oxymoron.

In any event, there is more here that militates against the enforcement of the agreement than the "modest" degree of unconscionability that Weststar acknowledges.

First, the employer identified in the arbitration agreement, Weststar, Inc., is not the plaintiffs' employer. The trial court found it was not a typographical error. Assuming that "Weststar, Inc." is a typographical error, it would be unconscionable to enforce the agreement. Weststar claims it did not know the contents of its own agreement. Yet it expects its employees to know the contents of the agreement and abide by its terms.

Second, Weststar also breached its own arbitration agreement. The agreement provides in part:

"*Purpose*. The purpose of this Agreement is to put in place a procedure for resolving employment-related disputes in a fair and efficient manner that emphasizes working through issues as early and as informal as possible. The procedure consists of following the Steps below, sequentially.

"*Step One: Informal Discussions*. If either Weststar or Employee has any employment-related dispute or grievance of any kind against the other, either during or after the Employee's employment has ended, that Party must present to the other in writing a clear and concise statement of the dispute or grievance. The Parties must then meet with in private (typically in a conference room or office) to discuss the dispute or grievance and attempt to resolve it informally. . . ."

The paragraphs contemplate prior written notice, a reasonable period to consider the matter, a private meeting and good faith discussions aimed at reaching a resolution of the dispute by consensus of both parties. None of that happened.

Instead, employees were summoned without prior notice to a meeting with their superior and handed preprinted settlement agreements. The settlement checks were available at the meeting and contained the employee's name preprinted on the check, thus making it obvious that Weststar not only expected the employee to sign the settlement agreement, but to sign it right then and there. The notion that the employees were not intimidated strains credulity. Far from a good faith effort to reach a consensus, Weststar simply dictated the result.

Principles of equity also provide an independent basis for denying relief. In *Discover Bank v. Superior Court* (2005) 36 Cal.4th 148, 163, our Supreme Court reviewed "basic principles pertaining to the enforcement of arbitration agreements. 'California law, like federal law, favors enforcement of valid arbitration agreements. [Citation.] . . . . 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.' [Citations.] In other words, although under federal and California law, arbitration agreements are enforced 'in accordance with their terms' [citation], such enforcement is limited by certain general principles '"at law or in equity for the revocation of any contract."'" A party who has been guilty of conduct in violation of the fundamental concepts of equity will be refused relief. (*Womack v. Womack* (1966) 242 Cal.App.2d 572, 576.) It would be inequitable to compel Weststar's employees to perform the very contract Weststar itself breached.

Weststar argues Cortez's claims of bad faith are self-serving and unreliable. But questions of credibility are for the trial court. (See *Kroopf v. Guffey* (1986) 183 Cal.App.3d 1351,

1356.) The same rule applies to declarations submitted in support of a motion. (*Ibid.*) We presume the trial court found Cortez's declaration credible.

Finally, the arbitration agreement provides, in part, that in the event the dispute goes to binding arbitration, "either Party has the right to an award of attorneys' fees as the prevailing party, as may be provided by law." In light of our discussion of the agreement's unconscionable provisions, we need not dwell on the attorney fee clause.

The judgment (order) is affirmed. Costs are awarded to respondents.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Kent M. Kellegrew, Judge

Superior Court County of Ventura

Call & Jensen, John T. Egley and Jamin S. Soderstrom, for Defendants and Appellants Weststar Transportation, Inc. and Weststar Partnership.

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