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Posted at 4:38 AM on September 21, 2010 by Sheppard Mullin

California Court of Appeal Holds Class Action Waiver in Commercial Contract Not Unconscionable

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In Walnut Producers of California v. Diamond Foods, Inc., Case No. C060346 (August 16, 2010), the California Court of Appeal for the Third Appellate District held that a class arbitration waiver in an agreement between walnut producers and a walnut processor is not unconscionable. Plaintiffs include Walnut Producers of California, a nonprofit cooperative marketing association whose members are walnut growers, and walnut producer George J. Miller Ranch, Inc. Defendant Diamond Foods is the successor by way of merger to Diamond Walnut Growers, Inc. ("Co-op"), an agricultural cooperative.

When Diamond Foods proposed a merger with the Co-op, it presented the Co-op's members with a Walnut Purchase Agreement ("Agreement") that would replace existing agreements. According to the Agreement, walnut growers would sell their entire crop of walnuts each year to Diamond Foods. Instead of setting a purchase price, the Agreement stated Diamond Foods would establish the price in good faith following each year's harvest. The Agreement also provided that any disputes would proceed to binding arbitration and "[e]ach dispute will be resolved based on its own facts and merits, and no procedure in the nature of class actions will be permitted." The Co-op's members voted and approved the Co-op's merger with Diamond Foods. Ninety-five percent of the members then chose to sign the Agreement.

Plaintiffs filed a class action suit alleging that Diamond Foods breached the Agreement by failing to pay the reasonable market value of their walnuts. Plaintiffs brought the suit on behalf of all California walnut growers who executed the Agreement, a class of over 1,600 person and entities. Diamond Foods moved to strike all class allegations, asserting that the class action waiver was enforceable and Plaintiffs could not prove the waiver was unconscionable. The trial court granted the motion to strike, and Plaintiffs appealed.

Reviewing the case de novo, the Court of Appeal affirmed the trial court's judgment that the class arbitration waiver was not unconscionable. The Court of Appeal analyzed both procedural and substantive unconscionability, finding neither was present in the Agreement.

First, the Court of Appeal held that Plaintiffs did not successfully plead the Agreement was a

contract of adhesion. Plaintiffs' members controlled the Co-op and did not have to approve the merger with Diamond Foods. Plaintiffs also had a chance to review the Agreement before the merger, despite its "take-it or leave-it basis." Importantly, Plaintiffs' members had a choice as to whether to sign the Agreement after the merger. The class action waiver was the same size font as the rest of the Agreement. Accordingly, the Court of Appeal held that the Agreement was not procedurally unconscionable because the parties were of equal bargaining power and there was no unfair surprise.

As for substantive unconscionability, the Court of Appeal found the terms were not one-sided or shocking to the conscience. Plaintiffs' amended complaint showed that the damages sought totaled to "at least $70 million." Divided across 1,600 class members, the award for each individual plaintiff was $43,750. Even if the actual awards were smaller, the Court of Appeal found this amount did not indicate that a class action was the only viable mean of recovering Plaintiffs' damages or enforcing the Agreement against Diamond Foods.

Finally, the Court of Appeal held that the class action waiver did not violate public policy. Plaintiffs claimed they had an unwaivable statutory right to have the purchase price for their walnuts stated in writing in a definite sum. However, Section 62801 of the Food and Agriculture Code expressly states that the parties to a contract could waive that right if they so agreed. Accordingly, the Court of Appeal held the class action waiver was not void as against public policy as it did not affect an unwaivable statutory right.