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New Jersey Supreme Court Confirms the Enforceability of Class Action Waivers

The New Jersey Supreme Court issued a unanimous opinion on July 10, 2024, holding that class action waivers in consumer contracts are not *per se* contrary to public policy. While such waivers may be unenforceable if they are unconscionable or violate other tenets of state contract law, the opinion confirms that there is no blanket prohibition on them – a positive development for businesses in New Jersey.

[*Pace v. Hamilton Cove*](#) concerned a putative class action filed by residential tenants of Hamilton Cove Apartments, a luxury apartment complex in a high crime area. In its advertisements, brochures, and oral statements to prospective tenants during tours, Hamilton Cove Apartments promised that the complex would have “elevated, 24/7 security,” with security personnel stationed round-the-clock near each building’s entrance. The plaintiffs alleged that the promises were knowingly false when made, and that they relied on those representations in deciding to sign the lease. The lease contained a “Class Action Waiver” Addendum, by which the lessee “expressly waive[d] any right and/or ability to bring, represent, join, or otherwise maintain a Class Action.”

The defendants moved to dismiss the plaintiffs’ Consumer Fraud Act (CFA) claim, arguing in pertinent part that a class action was not necessary to vindicate the plaintiffs’ interests and, in any event, that the leases contained class action waivers that were valid and enforceable. The trial court denied the motion and the Appellate Division affirmed, holding that “a class action waiver in a contract that does not contain a mandatory arbitration provision” is unenforceable as a matter of law and public policy.

The New Jersey Supreme Court considered both (1) the specific class action waiver at issue; and (2) the Appellate Division’s holding that class action waivers in consumer contracts lacking mandatory arbitration provisions are contrary to public policy and thus

unenforceable. Reversing the Appellate Division, the Supreme Court held that class action waivers untethered to a mandatory arbitration provision are not *per se* unenforceable. That class action waivers are frequently paired with arbitration provisions to prevent class arbitration did not mean that the two distinct provisions must appear together. Instead, a particular class action waiver is evaluated the same, whether the contract contains an arbitration provision or not: it may be unenforceable if found to be unconscionable or otherwise invalid under general contract principles.

As to whether the specific class action waiver in *Pace* was unconscionable, the court found that the lease was a contract of adhesion but that the waiver provision was nonetheless enforceable upon considering the factors articulated in *Rudbart v. North Jersey District Water Supply Comm'n*, 127 N.J. 344, 356 (1992): (1) the subject matter of the agreement was a consumer contract for housing subject to the CFA; (2) the parties' relative bargaining power did not particularly favor the plaintiffs or defendants; (3) the record contained no indicia of economic compulsion; and (4) the class action waiver did not impermissibly act as an exculpatory clause, and thus was not contrary to the public interest, because the plaintiffs could individually vindicate their statutory rights under the CFA. The court ultimately held that the plaintiffs knowingly and voluntarily waived their right to bring a class action by assenting to their respective leases.

By encouraging a case-by-case analysis, the *Pace* court declined to adopt the Appellate Division's bright-line rule that a waiver of the right to maintain a class action is unenforceable absent a mandatory arbitration agreement. Instead, class action waivers will be enforced, regardless of whether they are paired with mandatory arbitration provisions, as long as they are entered into knowingly and voluntarily and the language of the waiver complies with basic contract principles.

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