

**GIBSON DUNN**

**Appellate & Constitutional Law and  
Labor & Employment Update**

July 15, 2024

## **California Supreme Court Holds That Courts Must Conduct A Qualitative Severance Analysis Even If They Find Multiple Unconscionable Provisions In An Arbitration Agreement**

*Ramirez v. Charter Communications, Inc.*, S273802 – Decided July 15, 2024

**The California Supreme Court held today that an arbitration agreement may be unconscionable if it requires a party resisting arbitration to pay the other party’s attorney’s fees, requires arbitration of claims commonly brought by employees but not those commonly brought by employers, or unreasonably shortens a statute of limitations. Yet even if an agreement contains unconscionable provisions, a court must analyze whether they may be severed and the rest of the agreement enforced.**

*“[T]he decision whether to sever unconscionable provisions and enforce the balance is a qualitative one, based on the totality of the circumstances. The court cannot refuse to enforce an*

*agreement simply by finding that two or more collateral provisions are unconscionable as written and eschewing any further inquiry.”*

**JUSTICE CORRIGAN, WRITING FOR THE COURT**

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### **Background:**

Angelica Ramirez, a former employee of Charter Communications, filed a lawsuit alleging discrimination, harassment, retaliation, and wrongful discharge under California’s Fair Employment and Housing Act. Charter sought to compel arbitration under the arbitration agreement Ramirez signed as a condition of her employment. The trial court found the arbitration agreement procedurally and substantively unconscionable, determined that severance of those provisions was improper, and denied the motion to compel arbitration. The Court of Appeal affirmed.

The California Supreme Court granted review to determine whether various provisions of the arbitration agreement were in fact unconscionable and, if so, whether they could be severed from the agreement.

### **Issues:**

1. Is an arbitration agreement unconscionable when it lacks mutuality in terms of the claims subject to and excluded from arbitration, shortens the period for filing claims, truncates discovery, or requires a party resisting arbitration to pay the other side’s attorney’s fees?
2. Is severance improper when an arbitration agreement contains more than one unconscionable provision?

### **Court's Holdings:**

1. While the lack of mutuality, shortening of the period for filing claims, and requirement that a party resisting arbitration pay the other side’s attorney’s fees may be unconscionable, a provision limiting discovery is not unconscionable when an arbitrator can order additional discovery.
2. No. Even if an arbitration agreement contains more than one unconscionable provision, courts must conduct a qualitative analysis to determine, under the totality of the circumstances, whether the unconscionable provisions may be severed from the agreement.

### **What It Means:**

- The Court clarified that, when analyzing whether a provision limiting discovery renders an arbitration agreement unconscionable, courts must focus on circumstances known at the time the agreement was made and should not consider post-contract formation circumstances.

- When drafting arbitration agreements, employers should ensure mutuality in terms to prevent a finding of unconscionability. An agreement may not, for example, compel arbitration of claims more likely to be brought by an employee but exclude arbitration of claims likely to be brought by an employer.
- There is no bright line rule prohibiting severance when an arbitration agreement contains more than one unconscionable provision. Regardless of how many unconscionable provisions an agreement contains, courts must conduct a qualitative analysis to determine whether the agreement's unconscionability can be cured by severing the unconscionable provisions.
- The Court concluded that enforcing the rules of unconscionability does not violate the Federal Arbitration Act.

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### Gibson Dunn Appellate Honors



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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:

**Appellate and Constitutional Law**

Thomas H. Dupree Jr.  
+1 202.955.8547  
[tdupree@gibsondunn.com](mailto:tdupree@gibsondunn.com)

Allyson N. Ho  
+1 214.698.3233  
[aho@gibsondunn.com](mailto:aho@gibsondunn.com)

Julian W. Poon  
+1 213.229.7758  
[jpoon@gibsondunn.com](mailto:jpoon@gibsondunn.com)

Lucas C. Townsend  
+1 202.887.3731  
[ltownsend@gibsondunn.com](mailto:ltownsend@gibsondunn.com)

Bradley J. Hamburger  
+1 213.229.7658  
[bhamburger@gibsondunn.com](mailto:bhamburger@gibsondunn.com)

Michael J. Holecek  
+1 213.229.7018  
[mholecek@gibsondunn.com](mailto:mholecek@gibsondunn.com)

### **Related Practice: Labor and Employment**

Jason C. Schwartz  
+1 202.955.8242  
[jschwartz@gibsondunn.com](mailto:jschwartz@gibsondunn.com)

Katherine V.A. Smith  
+1 213.229.7107  
[ksmith@gibsondunn.com](mailto:ksmith@gibsondunn.com)

Jesse A. Cripps  
+1 213.229.7792  
[jcripps@gibsondunn.com](mailto:jcripps@gibsondunn.com)

### **Related Practice: Litigation**

Theodore J. Boutrous, Jr.  
+1 213.229.7804  
[tboutrous@gibsondunn.com](mailto:tboutrous@gibsondunn.com)

Theane Evangelis  
+1 213.229.7726  
[tevangelis@gibsondunn.com](mailto:tevangelis@gibsondunn.com)

*This alert was prepared by Michael Holecek, Ryan Azad, and Thomas Cochrane.*

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