

Baker v osborne
development corp.
essay sample



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When Thomas Baker and other homebuyers purchased their properties from Osborne Development Corp., they may not have known that if there were defects on the property they would have to go into arbitration for restitution. From what I understand of the reading, Osborne Development Corp. purchased the home warranties after the purchase of the properties then gave the documents to the new owners.

The federal arbitration act allows the courts to automatically hold up any and all arbitration clauses that are included in the purchase of goods and services without any question as long as the contract was developed in a proper format. The first thing that the retailer has to make sure of when selling goods and services on a contract with an arbitration clause is that the consumer has the ability to negotiate the terms of the arbitration clause that is held within the contract. If this part of the contract were negotiable to Mr. Baker and the others then they would have had the ability to negotiate the arbitration clause out of the contract and would be able to sue HBW and Osborne Development. If the Osborne Development Corp. did not allow, or inform the homeowner of the right for negotiation then the purchasers would be able to enter this fact into testimony and have a strong chance of getting the arbitration agreement stricken from the contract.

Not all states use the federal arbitration act, for example, California allows the arbitration clause to be removed from any contract as long as the two parties are agreeable to this action and as of April 20, 2010 a published decision by " the Ninth Circuit Court of Appeals affirmed a district court decision holding that a mandatory Arbitration Agreement was both procedurally and substantively unconscionable and therefore unenforceable

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under California law” (Wachtell & Willner, 2010). New York will not allow any arbitration clause to be used in any contract.

From what I can tell by the reading, Osborne Development Corp. paid the fee to HBW and signed the documents entering the properties into contract. This was done without the homeowners’ ability to negotiate the contract, and because the contract is binding in the state of California the insurance company had to allow the plaintiff to negotiate the contract as to whether or not the arbitration clause was going to stay in the contract. Furthermore with the ruling from the Ninth Circuit Court, HBW cannot force or require their clients to sign such a document. The plaintiffs will be able to argue in a court of law that mandatory arbitration contracts are illegal, and if the contract that they signed is grandfathered in to the law, they would be able to show that they were unable to enter into negotiations in regards to the contract and the insertion of the arbitration clause is therefore invalid and would give the plaintiffs an ability to forgo ADR and sue the companies for full restitution.

References

Miller, R. L. and Jentz, G. A. (2010). *Fundamentals of Business Law: Summarized Cases*. Eighth Edition. Mason, OH: Cengage Learning

Wachtell M. & Willner R. (2010). *Mandatory arbitration agreement held unenforceable under California law*. Viewed on 13 Dec 2012.

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