NO. 91686-1 E CRF

SUPREME COURT OF THE STATE OF WASHINGTON

(Court of Appeals No. 71625-5-I)
(King County Superior Court Docket No. 13-2-38634-8 KNT)

MICHAEL ROMNEY; FARON BAUER; and KRISTEN CHILDRESS, individually and on behalf of all others similarly situated,

Petitioners,

v.

FRANCISCAN MEDICAL GROUP, a Washington Corporation; FRANCISCAN HEALTH SYSTEM, a Washington Corporation; FRANCISCAN HEALTH VENTURES, a Washington Corporation; FRANCISCAN NORTHWEST PHYSICIANS HEALTH NETWORK, LLC, a Washington Corporation; and CATHOLIC HEALTH INITIATIVES, a Colorado Corporation,

Respondents.

ANSWER TO PETITION FOR REVIEW

Michael Madden, WSBA #8747
Bennett Bigelow & Leedom, P.S.
601 Union Street, Suite 1500
Seattle WA 98101
(206) 622-5511

Karen R. Glickstein, MO Bar #37083
(*pro hac vice*)
Polsinelli, P.C.
900 W. 48t Place, Suite 900
Kansas City, MO 64112-1895
(816) 753-1000
ATTORNEYS FOR RESPONDENTS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

I. INTRODUCTION

This Court has well-settled standards for evaluating whether arbitration agreements are enforceable. As relevant here, the standards are whether the agreements are "'[s]hocking to the conscience,' 'monstrously harsh,' and 'exceedingly calloused.'" *Adler v. Fred Lind Manor*, 153 Wn.2d 331, 344-45, 103 P.3d 773 (2004) (quoting *Nelson v. McGoldrick*, 127 Wn.2d 124, 896 P.2d 1258 (1995)). Because of the strong public policy favoring arbitration, the party challenging an arbitration agreement must make these showings. *See Zuver v. Airtouch Commc'ns, Inc.*, 153 Wn.2d 293, 302, 103 P.3d 753 (2004). In this case, the Court of Appeals faithfully applied this Court's precedents and determined that Petitioners failed to discharge their burden. The Court of Appeals also noted, again consistent with this Court's precedents, that even if certain provisions were assumed to be invalid, they are properly severable from the remainder of the arbitration agreement, which remains enforceable. Review of the agreements and other undisputed portions of the record demonstrate that there is no reason for the Supreme Court to review this decision.

Petitioners—two physicians[1] and a nurse practitioner—were employed by Franciscan Medical Group ("FMG") from 2007 to 2013 under detailed written contracts, which included arbitration agreements (hereinafter "the Agreements"). Although Petitioners torture the contractual language in efforts to show otherwise, the Agreements mutually obligate the parties to arbitrate certain employment-related claims. The Agreements also allow Petitioners to recover all damages, attorneys' fees, and costs available to them under Washington law, and shift the cost of arbitration to FMG if they cannot afford it.

In their efforts to obtain Supreme Court review, Petitioners attempt to conjure up hypothetical scenarios whereby they would be bound to arbitrate, but FMG would not. None of these scenarios has any actual—even conceivable—application to this case. Petitioners' principal hypothetical—that provisions of their employment contracts permitting FMG to seek injunctive relief from a court also would allow FMG to obtain a jury trial by joining otherwise arbitrable legal claims in the same action—is not supported by the language of the contract runs counter to the strong Washington policy favoring arbitration.

The provisions relied upon by Petitioners involve two narrow "carve-outs" from the requirement to arbitrate; one for injunctive relief

[1] Dr. Romney recently died.

against violations of non-competition and non-solicitation clauses, and a second allowing FMG to seek specific performance in the event of a breach of "all the provisions" of the contract.[2] Of course, trial by jury is not available when equitable relief is sought. *See, e.g., Kim v. Dean*, 133 Wn. App. 338, 341, 135 P.3d 978 (2006). Petitioners theorize, nonetheless, that provisions permitting FMG to ask a court for equitable relief in addition to other available remedies would permit FMG to join claims for damages in a single court action, and thereby avoid arbitration and have a jury trial. This imaginative interpretation of contractual terms, which FMG has never endorsed, does not create an issue warranting Supreme Court review. Further, if such a scenario was ever to arise, and a person with standing objected, this provision could (as the Court of Appeals recognized) be stricken without invalidating the Agreements. The same is true with respect to Petitioners' claim that someone—not them—might be compelled by American Arbitration Association rules, which are the default procedures under the Agreements, to arbitrate on a confidential basis. As noted in more detail below, this "argument" is also insufficient to warrant review by this Court under the appropriate standards.

[2] These provisions are, however, outside of the arbitration addendum at issue here.

II. COUNTERSTATEMENT OF THE ISSUES

A. Does the Court of Appeals' holding that the Agreements are not substantively or procedurally unconscionable conflict with Supreme Court precedent?

B. Where Petitioners' claims of unconscionability are based entirely on a disputed interpretation of terms in their individual contracts and hypothetical scenarios unlikely to actually occur, have they established that their petition presents a substantial issue of public importance requiring Supreme Court review?

III. COUNTER STATEMENT OF THE CASE

Petitioners' statement contains an argumentative recitation of substantive allegations that are both contested and not germane to the issues. The relevant facts are simple and undisputed: Petitioners were hired by FMG in 2007; Drs. Romney and Bauer as prompt care physicians and Ms. Childress as a nurse practitioner. CP 39, ¶ 2; CP 75, ¶ 2; CP 111, ¶ 2. Each signed an Agreement, attached as addenda to their respective employment contracts, in which they agreed to arbitrate "all disputes arising out of or related to the Employment Agreement, [their] employment by FMG, and/or [their] separation from employment with FMG." CP 289-90, 407-08, 502-03.

Petitioners' employment contracts were for fixed terms and did not renew automatically. From 2007 to 2013, Petitioners renewed their contracts near to or following expiration of prior agreements: Dr. Romney agreed to arbitrate employment claims on five occasions, Dr. Bauer on four occasions, and Ms. Childress on three occasions. CP 266-67, ¶¶ 3-5. Before Petitioners entered into the employment contracts at issue in this case, which included the Agreements, they were provided an opportunity to review the terms, ask questions, and negotiate the compensation provisions. CP 248-59, ¶¶ 4-6; 252-53, ¶¶ 3-4. Each time, Petitioners initialed and signed the Agreements without incident or comment. CP 289-90, 309-10, 333-34, 354-55, 378-79 (Romney); 407-08, 428-29, 450-51, 475-76 (Bauer); 502-03, 526-27, 548-49 (Childress). During this time, the provisions of the Agreements remained, in all material respects, identical. Petitioners never objected to the Agreements as a whole or to any individual provision. *See* CP 266-67, ¶¶ 3-5.

Petitioners' characterization of the Agreements' terms is, as the Court of Appeals recognized,[3] highly distorted.

A. Obligations are Mutual.

Petitioners' claim that the Agreements are not mutual lacks any factual support. The obligation to arbitrate is mutual: Section 2 of the

[3] App. A at 9-10.

Agreements expressly states, "*You and FMG each agree* that all Claims between You and FMG . . . shall be exclusively decided by arbitration governed by the Federal Arbitration Act." CP 63, 99, 135. (emphasis added).[4] Recognizing as much, Petitioners complain that exclusions to the arbitration requirement render it unfairly one-sided.[5] Specifically, they say it is unfair to exclude disputes relating to workers' compensation, FMG's peer review process, or health benefits from mandatory arbitration. This complaint makes no sense because these exclusions are unquestionably mutual, and each of these subjects has its own free-standing statutory or contractual dispute resolution mechanism,[6] which both parties are free, if not obligated by statute, to utilize.

Next, Petitioners argue that two provisions of their employment contracts, separate from the Agreements, render the Agreements unenforceable because, in certain circumstances, they allow FMG to seek equitable relief in court. Neither is "hidden;" they are clearly stated in

---

[4] "Claims" is defined as "all disputes arising out of or related to the Employment Agreement, your employment by FMG, and/or your separation from employment with FMG," including claims for unpaid wages and wrongful discharge. CP 63, 99, 135.

[5] Petition at 5-6.

[6] Review of workers' compensation claims, including judicial review and jury trial, is provided under Ch. 51.52 RCW; medical staff matters are reviewable under institutional bylaws, as required by Ch. 70.43 RCW, and are subject to judicial review (with remedies limited by statute) under Ch. 7.71 RCW; and health plan actions similarly are subject to statutory and contractual dispute resolution mechanisms, *e.g.*, RCW 48.46.100 (Health Maintenance Organizations required to have grievance procedure approved by Insurance Commissioner).

exhibits to the employment contracts.[7] The first provision is in the part of contract governing non-competition and non-solicitation and provides that, "in addition to any other remedy it may have," FMG may ask a court to issue an injunction to prevent a breach. CP 66, 102. Although this exception to the arbitration requirement is inapplicable to this case, it does apply where an arbitral remedy would be inadequate; *e.g.*, an imminent breach of the non-competition agreement where no adequate legal remedy is available and an arbitrator lacks ability to compel compliance.

Similarly, Petitioners complain that a provision allowing FMG to seek specific performance as a remedy for "any breach or attempted breach of all the provisions of this Agreement," not only allows FMG access to courts, but also to a jury trial.[8] The latter assertion is based on language stating that such equitable relief shall be "in addition to such other remedies as may exist at law." However, the narrow purpose of this exception is to provide for equitable relief in the rare circumstance where specific performance of a personal services contract is permitted, such as if a doctor refused to show up to perform surgeries that could not be performed by anyone else and could not be rescheduled without prejudice

---

[7] These provisions are contained in Exhibits F and G to Romney's and Bauer's employment contracts. *See* CP 66, 102. Childress' employment contract also contains a provision analogous to that in Romney's and Bauer's Exhibit F. *See* CP 123.

[8] Petition at 6.

to the patient.[9] Because this action was commenced after Petitioners' employment ended, there is (as the Court of Appeals recognized[10]) no set of circumstances where this exception can apply to them. Further, Petitioners provide no support for their key assumption, that by allowing for equitable relief in these limited circumstances, the entire Arbitration Agreement becomes inapplicable to FMG. A more sensible reading of the plain language in the Agreements is that they require all other relief related to employment claims to be obtained through arbitration.

B. Available Relief is Not Limited.

The Agreements provide, "Unless otherwise required by law, the Arbitrator shall not have the authority to award you or FMG any punitive, consequential or incidental damages." CP 63, § 2; 99, § 2; 135, § 2. Petitioners seize on this negative phrasing to argue that it limits their relief, while ignoring the Court of Appeals holding that, if they prove a willful violation of the wage statutes, double damages are required by statute and, therefore, available to them in arbitration.[11] The Agreements contain similar provision regarding attorneys' fees and costs. CP 63, § 3;

---

[9] *See, e.g. Columbia Coll. of Music & Sch. of Dramatic Art v. Tunberg*, 64 Wn. 19, 21, 116 P. 280 (1911) ("The rule is well settled that a court will not enjoin the breach of a contract for personal services, unless it is alleged and proven that the services of the contracting party are special, unique, or extraordinary, or the services are of such a character that they cannot be supplied elsewhere with reasonable effort, or the act is such that it cannot be done by another.").

[10] App. A at 10.

[11] App. A at 11.

99, § 3; 135, § 3. The statutes under which Petitioners bring their claims also contain mandatory fee-shifting provisions. *See* RCW 49.48.030; RCW 49.52.070. Therefore, if Petitioners prevail on these claims, an arbitrator would be required to award their attorneys' fees and costs.

C. Arbitration Costs are Fairly Allocated.

The Agreements provide for equal apportionment of arbitration costs, subject to an exception that requires FMG to "bear all costs" if Petitioners establish that arbitration costs "would effectively prevent [them] from pursuing [their] Claim[s]." CP 63, § 3; 99, § 3; 135 § 3. When employees contend they cannot pay their share, FMG must "bear the costs of the arbitration pending the Arbitrator's determination." CP 63, § 3; 99, § 3; 135 § 3. FMG will do so, although it is notable that Petitioners have not said they are unable to bear the costs of arbitration; instead, stating only that they may be "deterred" from bringing their claims if required to bear hypothetical costs described by their attorney. CP 40, ¶ 11; 77, ¶ 13; 112, ¶ 8.

D. Confidential Arbitration is Not Required.

The Agreements themselves do not require that arbitration proceedings be confidential. They do, however, provide that arbitration of employment disputes will be governed by the "American Arbitration Association's ["AAA"] National Rules for the Resolution of Employment

Disputes." CP 63, § 2; 99, § 2; 135, § 2. Those rules provide that "an arbitrator shall maintain the confidentiality of the arbitration . . . unless the parties agree otherwise or the law provides to the contrary." CP 160. The AAA permits the parties, when a matter is assigned to an arbitrator, to agree to waive confidentiality. As the Court of Appeals found, although FMG would prefer to arbitrate on a confidential basis, it has agreed to waive confidentiality if that is what Petitioners want.[12]

E. Severance of Invalid Provisions is Required.

The Agreements provide that if "any portion of this Addendum is adjudged by any court to be void or unenforceable in whole or in part, such adjudication shall not affect the validity and enforceability of the remainder of the Addendum." CP 63-64, § 4; 99-100, § 4; 136, § 4.

IV. ARGUMENT WHY REVIEW SHOULD BE DENIED

Petitioners' claim that the decision below conflicts with this Court's precedents is long on rhetoric and short on analysis. In the end, their argument depends on hypothetical scenarios and distortions of the Agreements, both regarding the actual text and the relevant context. The Court of Appeals appropriately rejected these arguments and properly applied this Court's precedents to the facts presented. *See Gandee v. LDL Freedom Enters., Inc.,* 176 Wn.2d 598, 610, 293 P.3d 1197 (2013) (courts

[12] App. A at 13.

determine unconscionability "based on the specific facts at issue in the current case").

Petitioners' argument that the case presents an issue of substantial public interest rests on a mischaracterization of the Court of Appeals' decision as a broad rejection of previously-announced limitations on arbitration agreements in the employment context. Review of the decision, however, shows it is based on specific analysis of the particular contracts and circumstances at issue. No doubt for this reason, the petition fails to address the criteria for review under RAP 13.4(b)(4), the most important of which is impact extending beyond the parties to the case. *State v. Watson*, 155 Wn. 2d 574, 577, 122 P.3d 903, 904 (2005). The rulings by the Court of Appeals here have no such impact.

A. The Court of Appeals Followed Washington Law and Policy Favoring Arbitration.

Arbitration agreements in the employment context are governed by the FAA. *See Zuver*, 153 Wn.2d at 301 (citing *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 119, 121 S. Ct. 1302 (2001)). The FAA establishes a "liberal federal policy favoring Arbitration Agreements." *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 25, 111 S. Ct. 1647, 114 L. Ed. 2d 26 (1991) (quoting *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24, 103 S. Ct. 927, 74 L. Ed. 2d 765 (1983)).

Washington law also strongly favors arbitration. *Zuver*, 153 Wn.2d at 301 n.2 (citing *Int'l Ass'n of Fire Fighters, Local 46 v. City of Everett*, 146 Wn.2d 29, 51, 42 P.3d 1265 (2002); *Mendez v. Palm Harbor Homes, Inc.*, 111 Wn. App. 446, 454, 45 P.3d 594 (2002); *Perez v. Mid-Century Ins. Co.*, 85 Wn. App. 760, 765, 934 P.2d 731 (1997)).

The Agreements specifically provide that they are subject to the FAA, *see* CP 73, 99, 135, which mandates that written arbitration agreements "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. The Court of Appeals appropriately followed this directive, which requires federal and state courts to "indulge *every* presumption 'in favor of arbitration, whether the problem at hand is construction of the contract language itself . . . or a like defense to arbitrability."[13]

B. The Court of Appeals Appropriately Determined that the Agreements are not Substantively Unconscionable.

After identifying the appropriate standard of review—which Petitioners do not contest—the Court of Appeals held "the terms of the agreement here are not so one-sided as to be labelled substantively unconscionable. In fact, the terms contained within the four corners of the

[13] App. A at 3 (citing *Moses H. Cone*, 460 U.S. at 24-25).

arbitration agreement itself are mutual."[14] Examination of Petitioners' individual claims demonstrates that this conclusion is correct.

1. Mutuality

Petitioners claim this aspect of the Court of Appeals' decision violates this Court's precedents by disregarding other provisions of the employment contract, located outside of the Agreements, which allow FMG to seek equitable relief in court in limited situations. In fact, the Court of Appeals carefully analyzed the provisions in question in light of this Court's holdings in *Zuver*.[15] It correctly noted that *Zuver* does not require identical obligations in order to avoid a finding of unconscionablity and that, with respect to those claims the parties agreed to arbitrate, the Agreements apply mutually.[16] It also noted that equitable exceptions for non-compete/non-solicitation and specific performance have no bearing on the dispute between the parties.[17] Therefore, it found it unnecessary to determine the substantive issue but, applying this Court's decision in *McKee v. AT & T Corp.*, 164 Wn.2d 372, 191 P.3d 845 (2008), held that if the equitable exclusions are unconscionable, "we can easily

[14] *Id.* at 7-8.
[15] *Id.* at 9-10.
[16] *Id.* at 10.
[17] *Id.*

give effect to the provisions of the arbitration agreement if the offending clauses were excised."[18]

Petitioners do not address why this holding warrants Supreme Court review. Instead, they would have the Court assume each challenged provision is invalid, lump them all together, and assume that collectively they warrant invalidating the Agreements.[19] This is not the approach described in *McKee,* which requires analysis of how each allegedly unconscionable provision applies to the particular case and whether it impacts plaintiffs' "realistic chances of relief." 164 Wn.2d at 402.

2. Punitive Damages and Attorneys' Fees

Contrary to Petitioners' claims, the Court of Appeal's decision does not conflict with *Hill v. Garda CL Nw., Inc.*, 179 Wn.2d 47, 308 P.3d 635, 639 (2013). In *Hill*, the arbitrator was prohibited from awarding more than two or four months of back pay (depending on which agreement the employee signed). *Id.* at 55. The agreement also provided that this limitation could be "disregarded if recovery is 'specifically mandated by federal or state statute or law.'" *Id.* at 56 n.4. The Court held that, because "[a] specific 'period of recovery' is not contemplated by the applicable statutes . . . there is not a satisfactory backstop to the damages limitation provision that renders it substantively fair." *Id.* Nor is this a

[18] *Id.* at 11.
[19] Petition at 18-19.

case like *McKee*, which involved a "one-way" fee limitation that allowed the product seller to recover fees whenever it prevailed against a consumer, but did not grant the consumer reciprocal rights. 164 Wn.2d at 400. The Court's concern was that this "lopsided" agreement created a too great a risk of discouraging consumers from pursuing their rights in arbitration. *Id.*; *see also Gandee,* 176 Wn.2d at 605-06.

There is no such disparity here, and no disadvantage to Petitioners. As the Court of Appeals noted, the applicable statutes provide that if Petitioners prove their wage claims, they "shall" receive an award of punitive damages and attorneys' fees. Unlike in *Hill*, where the arbitration agreement limited recovery to less than would be available in court, the Agreements here specifically require an arbitrator to award damages and fees as required under the law. Therefore, a "satisfactory backstop" exists. Petitioners' speculation that an arbitrator *might* disregard case law cannot support a finding of unconscionability. *See Zuver*, 153 Wn.2d at 312.

3. Arbitration Costs

A cost-sharing provision is unconscionable if the objecting party can demonstrate that it is unable to share the costs of arbitration. *See Hill*, 179 Wn.2d at 56-57. The Court of Appeals found that, because Petitioners have claimed that they are unable to bear the costs of arbitration, the

Agreements require FMG to bear the costs of Arbitration.[20] Because the language in this Agreement requires FMG to pay the cost of arbitration if Petitioners are unable to do so, this provision is not unconscionable. Further, it bears mention that Petitioners are seeking millions in individual and class relief; the cost of arbitration is not unreasonable relative to these claims, nor would the cost of litigation in court be insubstantial.

4. Confidentiality

The issue of confidentiality arises because the AAA's rules require arbitrators to maintain the confidentiality of proceedings, unless the parties agree otherwise. *See* CP 187. In criticizing the Court of Appeals for accepting what they regard as a belated stipulation by FMG that it will agree to waive confidentiality, Petitioners ignore the fact that the Arbitration Agreements themselves do not require confidentiality[21] and that, of necessity under the AAA rules, an agreement to waive confidentiality necessarily must be made after a matter is assigned to an arbitrator. These facts distinguish *Gandee,* where confidentiality was mandated in the agreements at issue, and the employer apparently insisted on confidentiality until it received an adverse appellate ruling. 176 Wn.2d at 607-08. An additional distinction is that Petitioners are not willing to

[20] *See* App. A at p. 14.
[21] App. A at 13 ("[T]he arbitration clause is not objectionable.").

accept arbitration on any terms; therefore, the timing of FMG's offer to arbitrate openly, pursuant to the terms of the Agreement, is irrelevant.

These key factors aside, there is nothing inherently objectionable about confidential arbitrations. *Zuver,* 153 Wn.2d at 314 (citing *Barnett v. Hicks,* 119 Wn.2d 151, 159, 829 P.2d. 1087 (1992)). Rather, some form of prejudice must be demonstrated. *Id.* at 315. Petitioners make no claim of prejudice to themselves as a result of confidentiality; there is no prior similar proceeding cloaked in secrecy, and their own arbitration will be public if they so choose. Rather, their argument is that if their arbitration takes place in private (which it will not unless they want it to), others who may sue FMG in the future would be unable to take advantage of whatever relevant information can be derived from the proceedings in this case.[22] This speculation fails to establish grounds for Supreme Court review.

5. Application of Agreements to Third Parties

Petitioners complain that the Court of Appeals erroneously compelled them to arbitrate claims against parties not signatory to the Agreements. This issue arose—but was not decided—in the trial court because Petitioners sued FMG affiliates with whom they had no employment relationship. FMG and its affiliates asserted that Petitioners should be compelled to arbitrate all of their employment-related claims,

[22] Petition at 16.

citing, *inter alia, Townsend v. Quadrant Corp.*, 153 Wn. App. 870, 889 (2009), *aff'd on other grounds by* 173 Wn.2d 451, 268 P.3d 917 (2012), which held that when claims against a parent company and its subsidiary are "based on the same facts . . . and are inherently inseparable, a court may order arbitration of claims against the parent even though the parent is not a party to the arbitration agreement." CP 185. Petitioners responded by arguing that the relationship between the defendants had not been sufficiently established. CP 210.

On appeal, Petitioners changed their argument to suggest that it would be improper to compel them to arbitrate claims they may have—but have not made—against former co-workers.[23] The Court of Appeals addressed this argument "for the sake of judicial economy" and held that it is permissible to require arbitration of claims against agents of the employer that are inseparable from claims against the employer.[24] Petitioners cite no authority contradicting this common-sense proposition.

6. Severability

The parties expressly agreed to severance of any invalid provisions of their contract. CP 64, 100, 136. This Court has said it will enforce such agreements because "[c]ourts are generally loath to upset the terms of

[23] Respondents' COA Brf. at 41.

[24] App. A. at 15.

an agreement and strive to give effect to the intent of the parties." Accordingly, a court should excise invalid provisions if it is possible to do so without essentially rewriting the contract. *Zuver*, 153 Wn.2d at 320. Unconscionable terms "pervade" a contract when they "operate in concert to eliminate any realistic possibility of relief." *McKee,* 164 Wn.2d at 402.

Contrary to Petitioner's implication, the Court of Appeals here did not determine that six provisions in the Agreements were unconscionable. Instead, it *assumed without deciding* that if two provisions—those which permit FMG to seek equitable relief from a court in certain circumstances—are unconscionable, they do not permeate the Agreements and can easily and appropriately be excised.[25] Further, Petitioners make no showing—because they cannot—that their rights or ability to recover would be impacted in any way if the objected-to provisions were excised.

C. The Agreements are not Procedurally Unconscionable.

Petitioners' procedural unconscionability argument ignores the relevant law, facts, and the lower court's analysis. As the Court of Appeals correctly stated, the "key inquiry under Washington law is whether the employee lacked a meaningful choice."[26] It also observed that Petitioners were unquestionably familiar with the Agreements, and other terms of their employment contracts, and obviously had ample opportunity

[25] *See* App. A at 10-11.
[26] *Id.* at 5 (citing *Zuver*. 153 Wn.2d at 305).

to consider the terms, given that each of them renewed the arrangements on multiple occasions over several years. On this basis, it correctly found that the Petitioners were provided a "meaningful choice," and there was no procedural unconscionability under Washington law.[27]

Petitioners' claim that the exceptions for equitable relief are "hidden" is untenable; those provisions are equally prominent in the documents. It is also undisputed that Petitioners are highly educated, sophisticated people with ample opportunity to read their employment contracts. The Agreements also advised them to consult counsel before signing. CP 63, 99, 135. Under the law, Petitioners are presumed to have read and understood the contracts, and they chose to sign them with knowledge of the limited exceptions to arbitration under the Agreements. *See Michak v. Transnation Title Ins. Co.*, 148 Wn.2d 788, 799, 64 P.3d 22 (2003) ("[A] party to a contract which he has voluntarily signed will not be heard to declare that he did not read it, or was ignorant of its contents.").

V. CONCLUSION

For the foregoing reasons, the petition should be denied.

[27] *Id.* at 8.

Respectfully submitted this 18th day of May, 2015.

BENNETT BIGELOW & LEEDOM, P.S.

By: _____
Michael Madden, WSBA #8747

POLSINELLI, P.C.
Karen R. Glickstein, MO Bar #37083

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify under penalty of perjury under the laws of the State of Washington, that I am now, and at all times material hereto, a resident of the State of Washington, over the age of 18 years, not a party to, nor interested in, the above-entitled action, and competent to be a witness herein. I caused a true and correct copy of the foregoing pleading to be served this date, in the manner indicated, to the parties listed below:

Scott C.G. Blankenship, WSBA #21431	☑	Hand Delivered
Paul S. Woods, WSBA #42976	☐	Facsimile
Attorneys for Petitioners	☐	U.S. Mail
The Blankenship Law Firm, P.S.	☑	Email
1000 Second Ave, Ste. 3250		
Seattle, WA 98104		
Fax: (206) 343-2704		

email: sblankenship@blankenshiplawfirm.com
pwoods@blankenshiplawfirm.com

Attorneys for Plaintiff

Dated this 18th day of May 2015, at Seattle, Washington.

Gerri Downs
Legal Assistant

{*1852.00059/M1259919.DOCX; 1}

OFFICE RECEPTIONIST, CLERK

To: Gerri E. Downs
Cc: Mike Madden; Karen Glickstein; Katharine Sangha; Paul Woods; Erica Brunette
Subject: RE: Romney v, Franciscan Medical Group

Received 5-18-2015

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Gerri E. Downs [mailto:gdowns@bbllaw.com]
Sent: Monday, May 18, 2015 2:17 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: Mike Madden; Karen Glickstein; Katharine Sangha; Paul Woods; Erica Brunette
Subject: Romney v, Franciscan Medical Group

Attached for filing please find Respondents Answer to Petition for Review. We have not yet received anything that has a Supreme Court Cause number for this case.

Filer: Michael Madden
Bar #: 8747
Phone: 206-622-5511
Email: mmadden@bbllaw.com

A hard copy is being delivered to Mr. Blankenship's office this afternoon, as well.

GERRI DOWNS
Legal Assistant to Michael Madden and Jenny M. Churas
Firm Docketing

BENNETT BIGELOW & LEEDOM P.S. | BBLLAW.COM

601 Union Street, Suite 1500
Seattle, Washington 98101-1363
T 206.622.5511 **F** 206.622.8986