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COA Case No. 79665-8-I

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SUPREME COURT OF THE STATE OF WASHINGTON

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KIRANDEEP CZERWINSKI,

Petitioner,

vs.

PINNACLE PROPERTY MANAGEMENT SERVICES, LLC a Delaware LLC, and HEATHER LAGAT, individually and the marital community comprised thereof,

Respondents.

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# PETITION FOR REVIEW

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## I. IDENTITY OF PETITIONER

Kirandeep Czerwinski asks this Court to accept review of the Court of Appeals decision terminating review designated in Section II of this Petition. Mrs. Czerwinski is the plaintiff in the trial court and the respondent in the Court of Appeals, Division One.

## II. COURT OF APPEALS DECISION

Pursuant to RAP 13.4, Petitioner seeks review of the Court of Appeals' opinion, *Kirandeep Czerwinski v. Pinnacle Property Management Svs., LLC, and Heather Lagat*, No. 79665-8-1 (July 1, 2019) (Appendix A), which: (1) reversed the Pierce County Superior Court's January 12, 2018 order denying Pinnacle's and Lagat's motion to compel arbitration; and (2) remanded to enter an order to compel arbitration. The Court of Appeals' decision is referred to as "the Opinion."

## III. ISSUES PRESENTED

**1.** Whether unconscionable employment arbitration agreements are an issue of substantial public interest when, per a recent study, over half of all U.S. private-sector non-union employees are subject to mandatory arbitration agreements?

**2.** Whether this Court should grant review of a Court of Appeals decision which failed to apply principles espoused by this Court and, as a result, erroneously failed to hold that four challenged arbitration provisions were unconscionable?

## IV. STATEMENT OF THE CASE

On May 3, 2016, Mrs. Czerwinski applied to work for Defendant Pinnacle Property Management Services, LLC (the "employer" or "Pinnacle") as an assistant property manager. Opinion at 1. Pinnacle applications are completed and submitted electronically. *Id*. To be considered for employment, applicants must sign an agreement to arbitrate almost all employment-related claims. *Id.* at 1-2.

In May 2016, Pinnacle hired Mrs. Czerwinski as an assistant property manager, which is an hourly position. CP at 9. In early December 2016, Mrs. Czerwinski suffered a serious head injury while working. CP at 10. Ms. Czerwinski returned to work from this injury in February 2017, but left Pinnacle's employment shortly thereafter. CP at 10 – 11; Opinion at 2.

On November 1, 2017, Mrs. Czerwinski filed a lawsuit against Pinnacle and Lagat. Opinion at 2. Her employment claims include disability discrimination, failure to accommodate, failure to pay for all time she worked, and failure to comply with Washington's meal and rest break laws. CP at 7 – 8.

Pinnacle moved to stay the lawsuit and compel arbitration. Opinion at 3. Mrs. Czerwinski opposed on several grounds, including lack of mutual assent, procedural unconscionability, and substantive unconscionability. CP at 88 – 96.[1]

The trial court denied the employer's motion, finding lack of mutual assent. Opinion at 4. Division One reversed, finding there was mutual assent, no procedural unconscionability, and that only one of the challenged provisions was unconscionable, so severance was appropriate.

## IV. REVIEW SHOULD BE ACCEPTED

### A. Allowing Employers to Enforce Unconscionable Employment Arbitration Agreements of Adhesion is an Issue of Substantial Public Interest.

"Unconscionability is a 'gateway dispute' that courts must resolve because a party cannot be required to fulfill a bargain that should be voided." *Hill v. Garda*, 179 Wn.2d 47, 54, 308 P.3d 635 (2013). This is particularly critical when mandatory employment contracts of adhesion seek to supplant our civil justice system with one-sided and unfair dispute resolution processes.

[1] Regarding the latter argument, Mrs. Czerwinski asserted that, as the agreement is permeated with six unconscionable provisions, severance is not appropriate, and the entire agreement is unenforceable. CP at 96.

Employment is a critical aspect of life. It is how people support themselves and their families. It is a cornerstone of the American economy, and the pursuit of upward mobility. Recognizing this, countless laws have been passed to create rights for employees.

Another cornerstone of American ideology is our fair and neutral civil justice system. The bedrock of this system is our rules of civil procedure. So important are these rules that, at the state level, they are to be amended by this very Court, only after following a stringent process. *See, e.g.*, RCW 2.04.190; GR 9.

Juxtaposed against this backdrop, more and more employees are subject to mandatory arbitration agreements of adhesion.[2] These agreements and their rules for adjudication are not written by legislators or judges. They are written by employers and their lawyers. Which begs the question: whose interests do they represent when drafting these documents? And, do they look to create a process that is fair to each party, or do they look to game the process?

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[2] According to a recent study, in 1992 approximately 2 percent of workers were subject to mandatory arbitration agreements. By 2017, this had risen to 56.2 percent of private-sector nonunion employees – or, extrapolated to the overall workforce, 60.1 million American workers. Alexander J.S. Colvin, *The Growing Use of Mandatory Arbitration*, Economic Policy Institute, pp. 1 - 2 (April 6, 2018) (located at https://www.epi.org/files/pdf/144131.pdf). And, per that study, such agreements are more common in low wage workplaces, and in industries disproportionately composed of female and African American workers. *Id.*

The answers to these questions may depend on the employers involved. But, as legal scholars have recognized, "The ability of corporations to set the rules of mandatory arbitration allows them, and not the workers or consumers, to choose whether to adopt the procedures of a reputable organization with due process protections or rules that violate basic principles of fairness." Katherine V.W Stone & Alexander J.S. Colvin, *The Arbitration Epidemic*, Economic Policy Institute Briefing Paper #414, p. 18 (December 7, 2015) (located at https://www.epi.org/files/2015/arbitration-epidemic.pdf).

It is against this backdrop – protecting the rights of Washingtonians to earn a living, ensuring that whatever forum hears their employment disputes is fair and neutral to both parties, and understanding that employers will be tempted to stack the deck in their favor when drafting arbitration agreements of adhesion – that such agreements must be reviewed when challenged. Otherwise, unchecked by Washington courts, such agreements will invariably unravel the systems that have been put in place protect employees' rights.

**B. Division One's Ruling Conflicts with Supreme Court Precedent.**

Contract terms are substantively unconscionable when they are "one-sided or overly harsh." *Gandee v. LDL Freedom Enterprises*, 176 Wn.2d 598, 603, 293 P.3d 1197 (2013). Applying these principles to contracts of adhesion such as the

one at issue here, substantively unconscionable provisions include those that "unreasonably favor" the employer or give the employer "unfair advantages." *Adler v. Fred Lind Manor*, 153 Wn.2d 331, 357-58, 103 P.3d 773 (2004).

This Court has also established that determining whether a provision is unconscionable is based on how it is drafted, not on how it may apply to a specific case. For example, when confronted with an employer offering to waive unconscionable provisions to avoid having its entire arbitration agreement deemed unenforceable, this Court started with the principle that "[c]ontracts are generally interpreted as of the time of contracting," and went on to explain:

> Parties should not be able to load their arbitration agreements full of unconscionable terms and then, when challenged in court, offer a blanket waiver. This would encourage rather than discourage one-sided agreements and would lead to increased litigation. Any other approach is inconsistent with the principle that contracts--especially the adhesion contracts common today--should be conscionable and fairly drafted.

*Gandee*, 176 Wn.2d at 607-09.

This principle applies with equal force to whether unconscionable terms can be deemed cured by mootness due to the circumstances in a given case. Regardless of the scenario, unconscionability should be assessed based on the provision itself, not on whether the employer offers to waive the provision once challenged, or on whether the circumstances of a given case may moot the issue. Not only would

such an employer-friendly approach result in increased litigation (potentially regarding the very same arbitration agreement with a different set of facts), but it will also lead to inequitable and inconsistent results. Thus, just as an employer's unconscionable arbitration agreement should not survive when the employer waives the offensive provisions once challenged, nor should the agreement survive simply because unconscionable provisions are moot in a given case. In all cases, per *Gandee*, the analysis should be the same: is the provision unconscionable at the time the contract was drafted.

As set forth in greater detail below, Division One's Opinion did not adhere to the principles espoused by this Court. Failure to correct these errors will perpetuate them to the detriment of Washington workers.

**1. Division One Ignored This Court When Failing to Address Whether an Arbitration Provision Substantially Shortening the Applicable Statute of Limitations Was Unconscionable.**

This Court has ruled that provisions within employment arbitration agreements of adhesion which substantially shorten the employee's time to file a claim are substantively unconscionable, as they unreasonably favor the employer. *See Adler*, 153 Wn.2d at 357. *See also McKee v. AT&T Corp.*, 164 Wn.2d 372, 399, 191 P.3d 845 (2008) (provision shortening the statute of limitations from four

to two years, when imposed on a consumer in a contract of adhesion, is unconscionable).

Here, Division One was faced with this precise issue. As in *Adler*, this employment agreement is one of adhesion. And, as in *Adler*, the agreement substantially shortens employees' statutes of limitations.[3]

Instead of finding this provision unconscionable, Division One held the issue is moot because Mrs. Czerwinski filed her lawsuit within the arbitration agreement's one-year deadline, and because "Pinnacle agreed to waive the limitation on 'any of her claims [that] may fall outside of that period.'" Opinion at 14. The court asserted "'An appeal is moot where it presents purely academic issues and where it is not possible for the court to provide effective relief.'" *Id.* (citations omitted).

The court's approach not only fails to adhere to *Adler*, but it also fails to adhere to this Court's guidance in *Gandee*: that unconscionability is determined based on how the provision is written, not on whether the employer waives it once challenged. Similarly, whether Mrs. Czerwinski filed within the one-year deadline

[3] The agreement in this case requires employees to file a claim within one year of when the employee knew or should have known of the facts giving rise to his/her claim. Opinion at 13. By contrast, for example, employees have three years to file a claim under the Washington Law Against Discrimination. *See, e.g.*, *Adler* at 355.

does not make the issue moot. If the court had correctly followed *Adler* and *Gandee* and ruled that this provision and others were unconscionable, then the relief would have been striking the entire agreement, allowing Mrs. Czerwinski to proceed with her claims in court. This is far from being "purely academic." And, as this case demonstrates, if unconscionable provisions are ignored because of mootness or waiver, unconscionable agreements would never be stricken. Such an approach contradicts this Court's decisions.

**2. Division One Applied the Wrong Standard When Erroneously Ruling that a Provision Substantially Limiting Employees' Discovery Was Not Unconscionable.**

This employer drafted its arbitration agreement in a manner that substantially impedes employees' access to critical evidence: an employee can only access those documents upon which the employer relied in support of its answers to interrogatories. Opinion at 15-16. This provides the employer with an unfair advantage. To avoid providing incriminating evidence, the employer simply need not rely on that evidence when responding to interrogatories. And, while the provision gives the arbitrator discretion to permit additional discovery, this is only upon a showing of "**substantial need**," and "only if the Arbitrator finds that such additional discovery is not overly burdensome and will not unduly delay conclusion

of the arbitration." CP 81 (boldface in original); Opinion at 16 (boldface omitted). This glimmer of "discretion" does not save this unconscionable provision.

Division One erroneously ruled that the discovery provision is not unconscionable and failed to follow this Court's direction in the process. Instead of analyzing this provision through the lens of whether it "unreasonably favors" the employer or gives it an "unfair advantage," Division One based its ruling on its conclusion that the discovery provisions "are not unsuited to the nature and complexity of the employment claims." Opinion at 16.

Had Division One used the standard espoused by this Court, it would have reached the inescapable conclusion that the provision gives the employer an unfair advantage and is therefore unconscionable. When suing his/her employer, it is the employee's burden to prove the employer violated the law. Because the employer maintains the employment records, most relevant documents pertaining to such claims are in the employer's sole possession. Access to these records through discovery, then, is critical for the employee to meet his/her burden of proof. [4]

[4] Of course, this issue arises in other cases and, when it does, the same analysis is appropriate. For example, in determining that a discovery provision in an arbitration agreement between an assisted living facility and its former (deceased) patient was unconscionable, a Washington court explained: "And it is not enough to argue, as Emeritus does, that it will be equally disadvantaged by the limitations of the Rules. It is foreseeable that most of the relevant evidence is in the possession

This truism has been recognized by legal scholars and judges alike. As Professors Stone and Colvin have explained, "[i]n certain types of cases, such as employment discrimination claims, it is practically impossible to win without the right to use extensive discovery to find out how others have been treated." *The Arbitration Epidemic, supra,* at p. 4. And, as Judge Lasnik explained when sanctioning an employer for spoliation, employers have a duty to preserve documents relevant to an employee's claim and which may aid the employee in meeting his burden of proof. *EEOC v. Fry's Electronics, Inc.*, 874 F.Supp.2d 1042, 1044, fn.2 (W.D. Wash. 2012). The employer "gained an unfair advantage through the destruction of evidence it knew or should have known was relevant to [the employee's] claims." *Id.* at 1047. Just as employers gain an unfair advantage by destroying relevant documents, so too do they gain an unfair advantage by drafting arbitration rules that hinder an employee's access to such documents.

The case at hand exemplifies this unfair advantage. Mrs. Czerwinski alleges violations of the Washington Law Against Discrimination, the Washington Minimum Wage Act, and Washington's Industrial Welfare Act. *See* Opinion at 2. Mrs. Czerwinski has the burden to prove her claims. Her ability to obtain

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of Emeritus . . ., not the estate. And the estate bears the burden of proof." *Woodward v. Emeritus Corp.*, 192 Wn.App. 584, 610, 368 P.3d 487 (2016).

documents in the employer's sole possession is critical. For example, the employer may well have internal communications establishing discriminatory intent or pretext, as well as documents establishing wage violations. Per the agreement, however, the employer can simply withhold any such evidence by not relying on it when responding to Mrs. Czerwinski's interrogatories.

As this case also exemplifies, unconscionable provisions should not be "saved" by the arbitrator having some discretion to potentially override the employer's unfair advantage. This would be tantamount to assessing unconscionability on the mere possibility that an arbitrator will rule in a manner that makes the provision moot. Here, for example, the discovery provision gives the arbitrator discretion to allow for additional discovery if the arbitrator determines there is a substantial need, and the additional discovery is not overly burdensome, and that allowing the additional discovery will not delay the conclusion of the arbitration. This unconscionable provision cannot be salvaged by the hope that the employee will clear these hurdles, especially when the employee may have no idea whether such evidence even exists.

Because the provision, as drafted, gives the employer an unfair advantage, it is unconscionable.

### 3. Division One Erroneously Determined that the Disparity Between the Parties' Ability to Withdraw from the Agreement is Not Unconscionable.

The arbitration agreement gives applicants only three days from signing to withdraw from it. By contrast, it allows the employer to "alter or terminate the Agreement and [its] Rules on December 31st of any year upon giving 30 calendar days written notice to Employees . . ." Opinion at 12, 18.

In erroneously ruling that this dichotomy is not unconscionable, Division One cited the 30-day notice provision, and that, "[c]ritically, the agreement provides that any claim be subject to the terms of the Arbitration Agreement. . . 'in effect at the time the Arbitration Request Form is submitted.'" Opinion at 18-19. Thus, Division One based its ruling on the narrow point that the employer cannot use this provision as a shield, by withdrawing from the agreement to impact an arbitration already filed. This focus is too narrow, as it fails to address the fact that the employer may use this provision as a sword, gaining an unfair advantage.

By giving applicants only three days from signing to withdraw, the employer is shielding itself from virtually all employment-related claims being filed in court. This allows it to, among other things, hide such claims under the

cloak of confidentiality,[5] and limit the employee's ability to discover evidence critical to proving his/her claims. But, at the same time, the employer allows itself to decide, every year, whether it wants to file a lawsuit against an employee or former employee. If so, it can simply provide 30 days' notice and withdraw from the agreement with that individual, and file its claim in court. In doing so, the employer creates a public record showing it will sue employees and, as the party with the burden of proof, not be prejudiced by the agreement's substantial limitations on discovery.

Thus, this provision is overly one-sided and unreasonably favors the employer, making it substantively unconscionable.

**4. Division One Erroneously Ruled That the Agreement's Sanctions Provision is Not Unconscionable.**

Per the agreement's Issue Resolution Rules ("Rules"), employees must file almost all employment-related claims in arbitration, not in court. *See* CP 55-56. The arbitrator may sanction a party for failing to comply with the Rules. Opinion at 17. Such sanctions may include assessment of costs or, "if justified by a Party's wanton or willful disregard of these [Rules], an adverse ruling . . . against the

[5] Though, in this case, Division One did rule that the agreement's confidentiality agreement is unconscionable. Opinion at 14-15.

[noncompliant Party]." *Id.* Thus, an employee who files a claim in court is at risk of sanctions, including an adverse ruling.

Division One erroneously ruled that this provision is not unconscionable:

> The sanctions provision does not favor one party over the other or allow the arbitrator to 'sanction a party for filing a lawsuit in the first instance.' The provision states the arbitrator may award sanctions against either party for 'failure to comply with these Issue Resolution Rules or with an order of the Arbitrator.' The provision does not benefit only Pinnacle but serves to ensure both parties engage in the arbitration process in accordance with the rules.

Opinion at 17. The court, then, ignored the fact that the Rules explicitly require employees to file claims in arbitration, and that the arbitrator can therefore sanction an employee for filing a claim in court.

Had the court not ignored these facts, presumably it would have correctly ruled that the sanctions provision does give the employer an unfair advantage. Indeed, what better way to guard against an unconscionable arbitration agreement being stricken than by threatening employees with sanctions for filing a claim in court to challenge the agreement? The provision also benefits the employer because the Rules overwhelmingly favor the employer. The employer, therefore, would not fail to comply with them – let alone in a "wanton or willful" manner.

Thus, the sanctions provision, written by the employer, unreasonably favors

the employer. Much like the bilateral "loser pays" provision struck down in *Gandee*, a provision allowing an arbitrator to sanction an employee for filing a claim in court "serves to benefit only [the employer] and, contrary to the legislature's intent, effectively chills [an employee's] ability to bring suit under [employment laws]." 176 Wn.2d at 606.[6]

**5. Severance of the Unconscionable Provisions Is Not Appropriate.**

Per the above, and including the confidentiality provision Division One struck down, unconscionable terms permeate this agreement. As such, severing them is inappropriate. Rather, the entire agreement should be stricken. As this Court explained in striking an agreement with four unconscionable terms,

> [p]ermitting severability. . . in the face of a contract that is permeated with unconscionability only encourages those who draft contracts of adhesion to overreach. If the worst that can happen is the offensive provisions are severed and the balance enforced, the dominant party has nothing to lose by inserting one-sided, unconscionable provisions.

*McKee*, 164 Wn.2d at 402; *see also Hill*, 179 Wn.2d at 58 (denying severability because three unconscionable provisions pervade the agreement"); *Ferguson*, 298

[6] Even if the provision standing alone is not unconscionable, its inclusion "in the context of an arbitration agreement which unduly favors [the drafter] at every turn" should reaffirm "that the arbitration agreement as a whole is substantively unconscionable." *Ferguson v. Countrywide Credit Industries*, 298 F.3d 778, 786-87 (9th Cir. 2002).

F.3d at 788 (same, concerning an agreement with three objectionable provisions). Indeed, in *Adler*, though this Court elected to sever the unconscionable provisions since there were only two, it also warned employers that, "in instances where an employer engages in an 'insidious pattern' of seeking to tip the scales in its favor in employment disputes by inserting numerous unconscionable provisions in an arbitration agreement, courts may decline to sever the unconscionable provisions." 153 Wn.2d at 359. This is one of those instances.

## V. CONCLUSION

Washington workers are increasingly being forced into employment arbitration agreements of adhesion. No longer can they avoid these agreements by "voting with their feet."

Given this steady march from the courthouse into arbitration, it is paramount that Washington courts critically review such agreements when they are challenged, and strike down those that are unconscionable. This case shines a spotlight on these issues, and on how far lower courts have strayed from this Court's principles set forth in *Adler*, *McKee* and *Gandee*.

For all of these reasons, Mrs. Czerwinski respectfully requests granting this Petition for Review.

RESPECTFULLY SUBMITTED this 31st day of July, 2019.

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## CERTIFICATE OF SERVICE

I, Jeff Mead, certify that a copy of the foregoing **PETITION FOR REVIEW** was caused to be electronically served (through the consent of opposing counsel) on July 31st, 2019, to the following counsel of record at the following email addresses:

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The foregoing statement is made under the penalty of perjury under the laws of the United States of America and the State of Washington and is true and correct.

DATED this 31st day of July, 2019.

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# APPENDIX

FILED
7/1/2019
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

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|---|---|---|
| KIRANDEEP CZERWINSKI,<br><br>Respondent,<br><br>v.<br><br>PINNACLE PROPERTY MANAGEMENT SERVICES, LLC, a Delaware LLC; and HEATHER LAGAT, individually and the marital community comprised thereof,<br><br>Appellants. | ) | No. 79665-8-I<br><br>DIVISION ONE<br><br><br><br>UNPUBLISHED OPINION<br><br><br><br>FILED: July 1, 2019 |

SCHINDLER, J. — Kirandeep Czerwinski filed a lawsuit against Pinnacle Property Management Services LLC. Pinnacle filed a motion to compel arbitration. The court denied the motion to compel arbitration on the grounds of lack of mutual assent. We reverse and remand to enter an order to compel arbitration.

Employment with Pinnacle

On May 3, 2016, Kirandeep Czerwinski applied for an assistant property manager position with Pinnacle Property Management Services LLC. Applicants submit the employment application to Pinnacle electronically. The employment application requires an applicant to sign an agreement to arbitrate "employment-related legal

claims," the "Issue Resolution Agreement." The employment application states, in pertinent part:

> Dear Pinnacle Property Management Services, LLC Applicant:
>
> Thank you for considering employment with Pinnacle Property Management Services, LLC. . . .
>
> . . . .
>
> We appreciate your interest in Pinnacle Property Management Services, LLC and hope you decide to start the application process by signing the Issue Resolution Agreement and completing the employment application.
>
> **If you wish to be considered for employment you must read and sign the following Issue Resolution Agreement. This Agreement requires you to arbitrate any legal dispute related to your application for employment, employment with, or termination from Pinnacle Property Management Services, LLC. You will not be considered as an applicant until you have signed the Agreement. By signing this Issue Resolution Agreement, you acknowledge receipt of this ISSUE RESOLUTION RULES. . . . . You will note that if you sign at this time, you do have three (3) days to withdraw your consent. You may, of course, take the package with you and return with it signed, if you wish to continue your application process.**[1]

Czerwinski completed and submitted the application electronically. Czerwinski accepted the assistant property manager job and worked for Pinnacle from May 23, 2016 until February 24, 2017.

Motion To Compel Arbitration

On November 1, 2017, Czerwinski filed a lawsuit against Pinnacle. Czerwinski alleged she suffered an on-the-job head injury. Czerwinski alleged violations of the Washington law against discrimination, chapter 49.60 RCW; the Washington Minimum Wage Act, chapter 49.46 RCW; and the Washington industrial welfare act, chapter 49.12 RCW.

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[1] Boldface in original.

Pinnacle filed a motion to stay the lawsuit and compel arbitration. Pinnacle argued the agreement required submitting the claims to binding arbitration. Pinnacle submitted the declaration of Pinnacle Human Resources Vice President Erinn Cassidy and the 15-page Issue Resolution Agreement (Arbitration Agreement) that Czerwinski signed on April 8, 2016. The signature page of the Arbitration Agreement shows the name "Kirandeep Czerwinski" typed in the signature line and the last four digits of her Social Security number. The box to check "Agreed" is blank. The signature line for a Pinnacle representative is blank.

Czerwinski argued the Arbitration Agreement was not enforceable because she did not sign or agree to it. Czerwinski also argued the agreement is procedurally and substantively unconscionable. Czerwinski filed a declaration. Czerwinski's attorney asserted the personnel file produced by Pinnacle does not contain a copy of the Arbitration Agreement. The personnel file contains "[s]creening answers" for the online application. For the "Universal Application – Arbitration Clause" section, the online questions are in quotation marks and the applicant's answers follow. The notation states:

> "By checking the box, I agree to the statements on the previous page." I Agree
> "Signature:" Kirandeep Czerwinski
> "Date:" 03/13/2016.

In reply, Pinnacle argued that the record established Czerwinski signed the Arbitration Agreement and accepted the job and that not checking the "Agreed" box on the employment application did not show a failure of mutual assent. Pinnacle also argued the Arbitration Agreement was not procedurally or substantively unconscionable. Cassidy submitted a copy of an Arbitration Agreement Czerwinski signed and dated

March 13, 2016 and again on April 8, 2016. The March 13 Arbitration Agreement shows Czerwinski's name typed in the signature line and the last four digits of her Social Security number. The "Agreed" box is unchecked and the signature line for a Pinnacle representative is blank.

The court denied the motion to compel arbitration. The court concluded the Arbitration Agreement was unenforceable because Pinnacle did not sign and agree to be bound by its terms.

Mutual Assent

Pinnacle appeals, asserting the court erred by denying the motion to compel arbitration for lack of mutual assent because Pinnacle did not sign the Arbitration Agreement.

We review a trial court's decision to compel or deny arbitration de novo. Satomi Owners Ass'n v. Satomi, LLC, 167 Wn.2d 781, 797, 225 P.3d 213 (2009). " '[A]rbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed to so submit.' " Hill v. Garda CL Nw., Inc., 179 Wn.2d 47, 53, 308 P.3d 635 (2013)[2] (quoting Satomi, 167 Wn.2d at 810). "These types of disputes go to the validity of the contract and are preserved for judicial determination, as opposed to arbitrator determination, unless the parties' agreement clearly and unmistakably provides otherwise." Hill, 179 Wn.2d at 53.

A valid contract requires mutual assent. Yakima County (W. Valley) Fire Prot. Dist. No. 12 v. City of Yakima, 122 Wn.2d 371, 388, 858 P.2d 245 (1993). " 'It is essential to the formation of a contract that the parties manifest to each other their

[2] Internal quotation marks omitted.

mutual assent to the same bargain at the same time. Mutual assent generally takes the form of an offer and an acceptance.' " Fire Prot. Dist. No. 12, 122 Wn.2d at 388 (quoting Pac. Cascade Corp. v. Nimmer, 25 Wn. App. 552, 555-56, 608 P.2d 266 (1980)).

We conclude the court erred by concluding the Arbitration Agreement was not enforceable without Pinnacle's signature. Washington courts have consistently rejected the argument that a written agreement lacked mutual assent if the agreement is not signed by the party seeking to enforce it. See, e.g., Shelcon Constr. Grp., LLC v. Haymond, 187 Wn. App. 878, 894, 351 P.3d 895 (2015) (holding that a "valid written agreement can exist without one party's signature"); Marcus & Millichap Real Estate Inv. Servs. of Seattle, Inc. v. Yates, Wood & MacDonald, Inc., 192 Wn. App. 465, 474, 369 P.3d 503 (2016) (a party may consent to arbitration without signing an arbitration clause).

Czerwinski's Electronic Signature

We also conclude Czerwinski did not meet her burden to present evidence showing she did not sign and enter into the agreement to arbitrate.

If the parties to a lawsuit dispute the validity of an agreement to arbitrate, "the court shall proceed to summarily decide the issue." RCW 7.04A.070(1); Marcus & Millichap, 192 Wn. App. at 472. In summarily deciding the validity of an agreement, the trial court applies the summary judgment standard and views the evidence in the light most favorable to the nonmoving party. Marcus & Millichap, 192 Wn. App. at 473. We review a motion to compel arbitration and summary judgment de novo. Marcus & Millichap, 192 Wn. App. at 473.

Summary judgment is proper if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." CR 56(c); see also Owen v. Burlington N. & Santa Fe R.R., 153 Wn.2d 780, 787, 108 P.3d 1220 (2005). The moving party has the burden of proving there is no genuine issue of material fact. Balise v. Underwood, 62 Wn.2d 195, 199, 381 P.2d 966 (1963). If the moving party meets this burden, the nonmoving party must set forth specific facts showing there is a genuine issue for trial. Young v. Key Pharm., Inc., 112 Wn.2d 216, 225, 770 P.2d 182 (1989). Summary judgment is appropriate where there is no genuine issue of material fact and reasonable minds could reach but one conclusion. Barrie v. Hosts of Am., Inc., 94 Wn.2d 640, 642, 618 P.2d 96 (1980). " '[M]ere allegations, denials, opinions, or conclusory statements' do not establish a genuine issue of material fact." Strauss v. Premera Blue Cross, 1 Wn. App. 2d 661, 681, 408 P.3d 699 (2017)[3] (quoting Int'l Ultimate, Inc. v. St. Paul Fire & Marine Ins. Co., 122 Wn. App. 736, 744, 87 P.3d 774 (2004)), review granted, 190 Wn.2d 1025, 419 P.3d 409 (2018). "Lack of recall is not sufficient to controvert clear opposing evidence on a summary judgment motion." Overton v. Consol. Ins. Co., 145 Wn.2d 417, 431, 38 P.3d 322 (2002).

As the party seeking to enforce the contract, Pinnacle must prove the existence of a contract and the objective manifestation of the intent of the other party to be bound by the contract. Retail Clerks Health & Welfare Trust Funds v. Shopland Supermarket, Inc., 96 Wn.2d 939, 944, 640 P.2d 1051 (1982). If Pinnacle meets its burden, the

[3] Alteration in original.

burden then shifts to "the party seeking to avoid the contract to prove a defense to the contract's enforcement." Shopland Supermarket, 96 Wn.2d at 944.

In support of the motion to compel arbitration, Pinnacle Human Resources Vice President Cassidy testified that to "be considered for hire" and "as a condition of employment," "all applicants to Pinnacle are asked to review and sign the [Arbitration] Agreement." Cassidy testified:

> In 2016, when Ms. Czerwinski applied for employment at Pinnacle, all Pinnacle applicants accessed application documents, including the [Arbitration] Agreement, on an electronic application tracking system called PeopleAnswers, which is operated by a vendor named Infor. Applicants do not physically sign the [Arbitration] Agreement and other application documents. Instead, applicants type in their names to acknowledge acceptance of the document. They also type in the last four digits of their Social Security Number to authenticate their electronic signature. Pinnacle does not require applicants to check a box to agree to the [Arbitration] Agreement. Signing the document is sufficient for them to agree to the Agreement and proceed with the application process.

Cassidy testified that "the personnel file of Kirandeep Czerwinski . . . contains a 15-page [Arbitration] Agreement that is dated and signed on April 8, 2016" with Czerwinski's typed name and the last four digits of her Social Security number. Cassidy submitted the Arbitration Agreement showing Czerwinski "authenticate[d] her electronic signature" by typing "the last four digits of her Social Security Number."

Czerwinski admitted she "completed my employment application with Pinnacle electronically." Czerwinski testified, "I recall logging onto Pinnacle's website from home, looking through job posts, clicking on the position I was interested in, and completing an on-line application, which included attaching my resume." Czerwinski said she received an e-mail "thanking me for my application, and providing me a link to PeopleAnswers. When I went to the PeopleAnswers site, I was required to complete a few tests,"

including "what appeared to be some kind of personality test, a math test, and a series of questions about how I would handle certain situations."

Czerwinski testified she did not recall seeing the Arbitration Agreement:

> I do not recall ever seeing those materials — the Agreement nor the Rules — prior to or while applying to work for Pinnacle, or at any time during my employment with Pinnacle. I do not recall seeing those materials before my attorney showed them to me, well after my employment with Pinnacle ended. Nor do I recall completing the "signature" page to the Agreement, or otherwise agreeing to be bound by the Agreement.

Cassidy submitted a reply declaration, stating, "Due to an administrative error, Ms. Czerwinski's 15-page [Arbitration] Agreement signed on April 8, 2016, was inadvertently omitted when her personnel file was originally collected for transmittal to her attorney." Cassidy testified Czerwinski signed the Arbitration Agreement two times—first on March 13, 2016 and again on April 8, 2016.

> I understand that Ms. Czerwinski's counsel has questioned why her [Arbitration] Agreement shows an execution date of April 8, 2016, while another page of her personnel file (PNCL000002 in Exhibit 1 to [Czerwinski's attorney]'s declaration) states a different date, March 13, 2016. That is because she electronically signed the arbitration agreement twice. Attached hereto as Exhibit 2 is a true and correct copy of Ms. Czerwinski's [Arbitration] Agreement signed on March 13, 2016. I believe this happened because Ms. Czerwinski actually created two application profiles in the PeopleAnswers application tracking system, which have some slight variations, including a different spelling of her first name, source of referral, and desired work location. We discovered the second arbitration agreement in the course of reviewing Ms. Czerwinski's opposition brief and in preparing to reply to her arguments. I have provided these newly discovered documents to counsel, and I understand they will be produced to Ms. Czerwinski's lawyer today.[4]

The record establishes Pinnacle met its burden to prove the existence of the contract and Czerwinski's objective manifestation to be bound by the contract. Pinnacle submitted a copy of the Arbitration Agreement. Czerwinski signed the Arbitration

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[4] Boldface omitted.

Agreement electronically with her full name and the last four digits of her Social Security number. Shopland Supermarket, 96 Wn.2d at 944 (a voluntary signature on a contract establishes an objective manifestation of the intent to be bound).

"The party opposing arbitration bears the burden of showing that the agreement is not enforceable." Zuver v. Airtouch Commc'ns, Inc., 153 Wn.2d 293, 302, 103 P.3d 753 (2004). A party may assert standard contract defenses to challenge enforceability of an arbitration agreement. McKee v. AT&T Corp., 164 Wn.2d 372, 383, 191 P.3d 845 (2008).

Czerwinski did not meet her burden to prove a defense to enforcement of the Arbitration Agreement. Czerwinski asserts she "has no recollection of reviewing the Agreement or completing its signature block." But her lack of recall is not sufficient to controvert the evidence that she signed the Arbitration Agreement during the application process. Overton, 145 Wn.2d at 431. Czerwinski also did not present any evidence of fraud. Shopland Supermarket, 96 Wn.2d at 944 ("A party to a contract which [s]he has voluntarily signed cannot, in the absence of fraud, deceit, or coercion be heard to repudiate h[er] own signature.").

Czerwinski claims that because she did not check the box marked "Agreed," she did not "agree to be bound by the Agreement." But Cassidy testified that Pinnacle "does not require applicants to check a box to agree" and "[s]igning the document is sufficient for them to agree to the Agreement and proceed with the application process." Further, the signature page unequivocally states:

> I recognize that if I sign the Agreement and do not withdraw within three (3) days of signing, I will be required to arbitrate any and all employment-related claims I may have against Pinnacle Property Management

> Services, LLC, whether or not I become employed by Pinnacle Property Management Services, LLC.[5]

Because we conclude the parties agreed to arbitrate, we address whether the Arbitration Agreement is procedurally or substantively unconscionable.

Procedural and Substantive Unconscionability

The Pinnacle Arbitration Agreement states the Federal Arbitration Act (FAA), 9 U.S.C. §§ 1 through 16, governs. Section 2 of the FAA provides 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. Courts must indulge every presumption in favor of arbitration under the FAA. Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24-25, 103 S. Ct. 927, 74 L. Ed. 2d 765 (1983), superseded on other grounds by 9 U.S.C. § 16(b)(1). Washington also has a strong public policy favoring arbitration. Adler v. Fred Lind Manor, 153 Wn.2d 331, 341 n.4, 103 P.3d 773 (2004).

The existence of an unconscionable agreement is a question of law. Zuver, 153 Wn.2d at 302-03. Washington recognizes two categories of unconscionability—procedural and substantive. Zuver, 153 Wn.2d at 303. Procedural unconscionability is " 'the lack of [a] meaningful choice, considering all the circumstances surrounding the transaction.' " Zuver, 153 Wn.2d at 303 (quoting Nelson v. McGoldrick, 127 Wn.2d 124, 131, 896 P.2d 1258 (1995)). Substantive unconscionability " 'involves those cases where a clause or term in the contract is alleged to be one-sided or overly harsh.' " Zuver, 153 Wn.2d at 303 (quoting Schroeder v. Fageol Motors, Inc., 86 Wn.2d 256, 260, 544 P.2d 20 (1975)).

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[5] Emphasis added.

Procedural Unconscionability

Czerwinski contends the Arbitration Agreement is procedurally unconscionable because she did not have a reasonable opportunity to understand the terms and the terms are unclear. To determine whether an agreement is procedurally unconscionable, we examine the following circumstances surrounding the parties' transaction to determine whether the party claiming unconscionability lacked a meaningful choice: (1) The manner in which the contract was entered, (2) whether the party claiming procedural unconscionability had a reasonable opportunity to understand the terms of the contract, and (3) whether the important terms were hidden in a maze of fine print. Zuver, 153 Wn.2d at 303. " '[T]hese three factors [should] not be applied mechanically without regard to whether in truth a meaningful choice existed.' " Zuver, 153 Wn.2d at 303[6] (quoting Nelson, 127 Wn.2d at 131).

Czerwinski contends she did not have a reasonable opportunity to understand the terms of the Arbitration Agreement because it is "fifteen pages long" and "does not provide applicants with contact information for a Pinnacle representative to whom they may direct questions about the Agreement."

The record shows Pinnacle provided the Arbitration Agreement to Czerwinski in an online portal for her to read and sign before she was hired. Pinnacle did not require Czerwinski to return the Arbitration Agreement immediately. See Zuver, 153 Wn.2d at 306 (applicant who signed agreement 15 days after offer of employment had "ample opportunity" to address "any concerns or questions she might have had about the terms of the agreement"). The Arbitration Agreement includes the address of Pinnacle's

[6] Alteration in original.

human resources department. The Arbitration Agreement states, in bold print, "**You will note that if you sign at this time, you do have three (3) days to withdraw your consent. You may, of course, take the package with you and return with it signed, if you wish to continue your application process.**" The Arbitration Agreement also states, in bold print, "**The Issue Resolution Agreement and the Issue Resolution Rules affect your legal rights. You may wish to seek legal advice before signing this Issue Resolution Agreement.**"

Czerwinski contends the Arbitration Agreement is unconscionable because it has "unclear terms" and the average person could not understand them. We disagree. The first 4 pages of the Arbitration Agreement explain Pinnacle's arbitration procedure and states that by signing the agreement, the applicant "further agree[s] that if I commence arbitration, it will be conducted in accordance with the 'Issue Resolution Rules.' " The Arbitration Agreement includes 10 pages of Issue Resolution Rules in regular font for the applicant to review.

Czerwinski argues an average person would not understand that by signing the Arbitration Agreement, the applicant was agreeing to the terms of the Arbitration Agreement or the Issue Resolution Rules. But the agreement gives the applicant a meaningful choice to decide whether to sign. The Arbitration Agreement clearly states that by signing, the applicant agrees she "will be required to arbitrate any and all employment-related claims." Further, the agreement makes clear that an applicant who does not agree to arbitrate "no longer will be eligible for employment at Pinnacle." When read as a whole, the terms of the Arbitration Agreement are clear and not "set forth in such a way that an average person could not understand them." Zuver, 153

Wn.2d at 306-07. We conclude the Arbitration Agreement is not procedurally unconscionable.

Substantive Unconscionability

Czerwinski contends the terms of the Arbitration Agreement are substantively unconscionable. " 'Substantive unconscionability involves those cases where a clause or term in the contract is alleged to be one-sided or overly harsh.' " Zuver, 153 Wn.2d at 303 (quoting Schroeder, 86 Wn.2d at 260). " 'Shocking to the conscience', 'monstrously harsh', and 'exceedingly calloused' are terms sometimes used to define substantive unconscionability." Nelson, 127 Wn.2d at 131 (quoting Montgomery Ward & Co. v. Annuity Bd. of S. Baptist Convention, 16 Wn. App. 439, 444, 556 P.2d 552 (1976)).

(1) Time Limit To File Claim

Czerwinski contends the one-year time limitation to file a claim is substantively unconscionable. The Arbitration Agreement states:

> The "Arbitration Request Form" shall be submitted not later than **one year** after the date on which the Employee knew, or through reasonable diligence should have known, of the facts giving rise to the Employee's claim(s). The failure of an Employee to initiate an arbitration within the one-year time limit shall constitute a **waiver** with respect to that dispute relative to that Employee. Notwithstanding anything stated herein to the contrary, this clause will not affect tolling doctrines under applicable state laws or the employee's ability to arbitrate continuing violations.[7]

"Generally, a private statute of limitations will control over general statutes of limitation, 'unless prohibited by statute or public policy, or unless [it is] unreasonable.' " Gandee v.

[7] Boldface in original.

LDL Freedom Enters., Inc., 176 Wn.2d 598, 606, 293 P.3d 1197 (2013)[8] (quoting Adler, 153 Wn.2d at 356).

Pinnacle argues that because Czerwinski filed her lawsuit within the one-year limitation and Pinnacle agreed to waive the limitation on "any of her claims [that] may fall outside of that period," her challenge to the one-year limitation is moot. We agree. "An appeal is moot where it presents purely academic issues and where it is not possible for the court to provide effective relief." Klickitat County Citizens Against Imported Waste v. Klickitat County, 122 Wn.2d 619, 631, 860 P.2d 390, 866 P.2d 1256 (1993).

(2) Confidentiality

Czerwinski contends the provision requiring confidentiality is substantively unconscionable. The Arbitration Agreement states:

> Unless otherwise disallowed by statute, all aspects of an arbitration pursuant to these Issue Resolution Rules, including the hearing and record of the proceeding, shall be confidential and shall not be open to the public, except (i) to the extent both Parties agree otherwise in writing; (ii) as may be appropriate in any subsequent proceeding between the parties, or (iii) as may otherwise be appropriate in response to a governmental agency or legal process.
>
> All settlement negotiations, mediations, and the results thereof shall be confidential.

In Zuver, the Washington Supreme Court held that a provision in an employee arbitration agreement that required " '[a]ll arbitration proceedings, including settlements and awards, under the Agreement will be confidential' " is substantively unconscionable. Zuver, 153 Wn.2d at 312 n.9, 315. The court stated, " '[I]n the context of individual

[8] Alteration in original; internal quotations omitted.

statutory claims, a lack of public disclosure may systematically favor companies over individuals.' " Zuver, 153 Wn.2d at 314-15 (quoting Cole v. Burns Int'l Sec. Servs., 105 F.3d 1465, 1477 (D.C. Cir. 1997)). The court concluded the confidentiality provision in the employee arbitration agreement "benefits only" the employer, "hampers an employee's ability to prove a pattern of discrimination or to take advantage of findings in past arbitrations," and "undermines an employee's confidence in the fairness and honesty of the arbitration process." Zuver, 153 Wn.2d at 315.

Pinnacle contends that unlike Zuver, the confidentiality provision here contains "meaningful exceptions to confidentiality," including that the parties may agree to release information from the arbitration. But Pinnacle does not explain how the exceptions resolve the concerns articulated in Zuver. We conclude that under Zuver, the confidentiality provision is substantively unconscionable.

(3) Discovery Limitations

Czerwinski argues that the provisions limiting discovery are substantively unconscionable. "It is well recognized that discovery generally is more limited in arbitration than in litigation." Schuster v. Prestige Senior Mgmt., LLC, 193 Wn. App. 616, 644, 376 P.3d 412 (2016). Here, the Arbitration Agreement limits the number of interrogatories, document requests, and depositions. Issue Resolution Rule 7, "Discovery," states, in pertinent part:

> a. INTERROGATORIES/DOCUMENT REQUESTS
>
> Each Party may propound one set of 20 interrogatories (including subparts) to the opposing Party. Interrogatories are written questions asked by one party to the other, who must answer under oath. Such interrogatories may include a request for all documents upon which the responding party relies in support of its answers to

> the interrogatories. Answers to interrogatories must be served within 21 calendar days of receipt of the interrogatories.
>
> b. DEPOSITIONS
>
> A deposition is a statement under oath that is given by one party in response to specific questions from the other party, and usually is recorded or transcribed by a court reporter. Each Party shall be entitled to take the deposition of up to three (3) individuals of the Party's choosing. The Party taking the deposition shall be responsible for all costs associated therewith, such as the cost of a court reporter and the cost of a transcript.

However, the Arbitration Agreement also allows the arbitrator to permit additional discovery upon "a showing of substantial need":

> Upon the request of any Party and a showing of substantial need, the Arbitrator may permit additional discovery, but only if the Arbitrator finds that such additional discovery is not overly burdensome, and will not unduly delay conclusion of the arbitration.[9]

Czerwinski cites Woodward v. Emeritus Corp., 192 Wn. App. 584, 368 P.3d 487 (2016), to argue the discovery limitation "presents an overwhelming advantage to the employer." In Woodward, the estate filed a lawsuit against their mother's assisted living facility alleging negligence, elder abuse, and wrongful death. Woodward, 192 Wn. App. 589-90. We affirmed denial of the motion to compel arbitration and held that the arbitration agreement was "substantively unconscionable given the nature of the claims." Woodward, 192 Wn. App. at 589, 607. We concluded the arbitration rules in the arbitration agreement were "inherently unsuited to the nature and complexity of the estate's claims." Woodward, 192 Wn. App. at 607. Here, unlike in Woodward, the discovery provisions are not unsuited to the nature and complexity of the employment claims.

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[9] Boldface omitted.

(4) Sanctions

Czerwinski contends that the provision allowing the arbitrator to award sanctions is substantively unconscionable. The Arbitration Agreement provides:

> The Arbitrator shall have the power to award sanctions against a Party for the Party's failure to comply with these Issue Resolution Rules or with an order of the Arbitrator. These sanctions may include assessment of costs, prohibitions of evidence, or, if justified by a Party's wanton or willful disregard of these Issue Resolution Rules, an adverse ruling in the arbitration against the Party who has failed to comply.

Czerwinski contends the sanctions provision is similar to the unconscionable "loser pays" provision in Gandee. In Gandee, the arbitration agreement provided that the " 'prevailing party in any action or proceeding related to this Agreement shall be entitled to recover reasonable legal fees and costs, including attorney's fees which may be incurred.' " Gandee, 176 Wn.2d at 602. The Washington Supreme Court concluded the "loser pays" provision was "one sided and overly harsh" because it "serves to benefit only [the lender] and, contrary to the legislature's intent, effectively chills [the borrower]'s ability to bring suit under the CPA."[10] Gandee, 176 Wn.2d at 606.

We conclude the sanctions provision in the Arbitration Agreement is not substantively unconscionable. Unlike in Gandee, the sanctions provision is not one-sided or overly harsh. The sanctions provision does not favor one party over the other or allow the arbitrator to "sanction a party for filing a lawsuit in the first instance." The provision states the arbitrator may award sanctions against either party for "failure to comply with these Issue Resolution Rules or with an order of the Arbitrator." The provision does not benefit only Pinnacle but serves to ensure both parties engage in the arbitration process in accordance with the rules.

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[10] Consumer Protection Act, chapter 19.86 RCW.

Czerwinski argues the arbitrator could sanction her for challenging the "enforceability of the Agreement" in court. But the effect of the sanctions provision is "at this point, purely speculative." Zuver 153 Wn.2d at 312.

(5) Termination or Modification by Pinnacle

Czerwinski contends that the provision allowing Pinnacle to terminate or modify the Arbitration Agreement is substantively unconscionable. Issue Resolution Rule 19, "Termination or Modification of Issue Resolution Agreement or Issue Resolution Rules," states:

> In general, the parties agree that the Company may alter or terminate the Agreement and these Issue Resolution Rules on December 31st of any year upon giving 30 calendar days written notice to Employees, provided that all claims arising shall be subject to the Agreement and corresponding Issue Resolution Rules in effect at the time the Arbitration Request Form is submitted and filing fee paid. In addition, any party may elect to waive enforcement of any of these Rules, so long as that waiver works to benefit the other party or parties in the arbitration.

"A unilateral provision in an arbitration agreement is substantively unconscionable only if it is shown that 'the disputed provision is so 'one-sided' and 'overly harsh' as to render it unconscionable.' " Satomi, 167 Wn.2d at 815 (quoting Zuver, 153 Wn.2d at 319 n.18). Here, the provision is unilateral, giving Pinnacle the sole ability to modify or terminate the Arbitration Agreement. However, Czerwinski has not shown that the clause is so "one-sided" and "overly harsh" as to render it substantively unconscionable. The provision requires Pinnacle to give 30 days' written notice to employees if it decides to alter or terminate the Arbitration Agreement. Critically, the agreement provides that any claim be subject to the terms of the Arbitration Agreement and Issue Resolution Rules "in effect at the time the Arbitration

Request Form is submitted." We conclude the modification and termination provision is not substantively unconscionable.

Severance

Pinnacle argues that if the provision to terminate or modify the Arbitration Agreement and the confidentiality provision are substantively unconscionable, they do not pervade the Arbitration Agreement and are severable. Pinnacle asserts the court may strike unconscionable provisions under the severability clause of the Arbitration Agreement. Czerwinski contends the unconscionable provisions render the Arbitration Agreement unenforceable.

" 'Severance is the usual remedy for substantively unconscionable terms' " unless " 'such terms pervade an arbitration agreement.' " Woodward, 192 Wn. App. at 602[11] (quoting Gandee, 176 Wn.2d at 603). "Courts are generally loath to upset the terms of an agreement and strive to give effect to the intent of the parties." Zuver, 153 Wn.2d at 320. Where parties have agreed to a severability clause, "courts often strike the offending unconscionable provisions to preserve the contract's essential term of arbitration." Zuver, 153 Wn.2d at 320. We conclude the confidentiality provision does not pervade the Arbitration Agreement. We strike the provision of the Arbitration Agreement on confidentiality but conclude the Arbitration Agreement is enforceable,

[11] Internal quotation marks omitted.

reverse denial of the motion to compel arbitration, and remand to enter an order to compel arbitration.

WE CONCUR:

# RCW 2.04.190

## Rules of pleading, practice, and procedure generally.

The supreme court shall have the power to prescribe, from time to time, the forms of writs and all other process, the mode and manner of framing and filing proceedings and pleadings; of giving notice and serving writs and process of all kinds; of taking and obtaining evidence; of drawing up, entering and enrolling orders and judgments; and generally to regulate and prescribe by rule the forms for and the kind and character of the entire pleading, practice and procedure to be used in all suits, actions, appeals and proceedings of whatever nature by the supreme court, superior courts, and district courts of the state. In prescribing such rules the supreme court shall have regard to the simplification of the system of pleading, practice and procedure in said courts to promote the speedy determination of litigation on the merits.

[ **1987 c 202 § 101; 1925 ex.s. c 118 § 1;** RRS § 13-1.]

## NOTES:

***Rules of court:*** *Cf. Title 1 RAP.*

**Intent—1987 c 202:** "The legislature intends to:

(1) Make the statutes of the state consistent with rules adopted by the supreme court governing district courts; and

(2) Delete or modify archaic, outdated, and superseded language and nomenclature in statutes related to the district courts." [ **1987 c 202 § 1.**]

*Court of appeals—Rules of administration and procedure: RCW **2.06.030**.*

**REKHI AND WOLK, P.S.**

**July 31, 2019 - 2:02 PM**

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| **Appellate Court Case Number:** | 79665-8 |
| **Appellate Court Case Title:** | Pinnacle Property Management, et al, Appellant v. Kirandeep Czerwinski, Respondent |
| **Superior Court Case Number:** | 17-2-12728-6 |

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