IN THE SUPREME COURT OF THE STATE OF NEVADA

THE NATIONAL FOOTBALL LEAGUE; AND ROGER GOODELL,
Appellants,
vs.
JON GRUDEN,
Respondent.

No. 85527

FILED

AUG 11 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a motion to compel arbitration. Eighth Judicial District Court, Clark County; Nancy L. Allf, Judge.

Appellant National Football League is the premier professional American football league in the world and Appellant Roger Goodell serves as the league commissioner. Respondent John Gruden began coaching in the NFL in 1990. After coaching with the San Francisco 49ers, Oakland Raiders, and Tampa Bay Buccaneers, Gruden took a position hosting ESPN's Monday Night Football where he remained for almost a decade. Gruden was rehired as coach of the Raiders in 2018 and signed a 10-year contract.

In 2020, the Washington Football Team (the Washington Commanders since 2022) began an internal investigation into reports of sexual harassment and verbal abuse within the organization. The NFL took over the investigation, which concluded in 2021. During the investigation, the NFL obtained emails between Gruden and Bruce Allen, then-president and general manager of the Washington Football Team. The emails were sent during Gruden's time at ESPN, and included sexist, racist,

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transphobic, and homophobic comments. The NFL never publicly released the results of its investigation into the Washington Football Team, but several of Gruden's emails recovered during the investigation were given to and published by press outlets. Gruden resigned from the Las Vegas Raiders after the New York Times published details of his emails. Gruden and the Raiders resolved any outstanding issues between them in a confidential settlement.

Gruden sued Goodell and the NFL (the NFL Parties) alleging his emails were leaked to force him to step down as head coach of the Raiders. He sought damages for tortious interference with his contract with the Raiders, negligence, and civil conspiracy. The NFL Parties moved to compel arbitration based on two arbitration clauses.

The first is in the NFL Constitution, which was incorporated into Gruden's coaching contract with the Raiders by reference. Article VIII of the NFL Constitution defines the Commissioner's powers as arbitrator.

> 8.3 The Commissioner shall have full, complete, and final jurisdiction and authority to arbitrate: . . .
>
> (E) Any dispute involving a member or members in the League or any players or employees of the members of the League or any combination thereof that in the opinion of the Commissioner constitutes conduct detrimental to the best interests of the League or professional football.

The second is contained in Gruden's coaching contract with the Raiders requiring Gruden to arbitrate any dispute arising out of his employment contract. The district court denied the NFL Parties' motion to compel arbitration and this appeal followed.

We review de novo the district court's denial of a motion to compel arbitration. *RUAG Ammotec GmbH v. Archon Firearms, Inc.*, 139 Nev., Adv. Op. 48, 538 P.3d 428, 432 (2023). The parties agree that the Federal Arbitration Act, 9 U.S.C. § 1 et seq., and California law control. Thus, we will apply California law where not preempted by the FAA. As the parties seeking arbitration, the NFL Parties bear the burden to show an agreement to arbitrate exists. *Johnson v. Walmart Inc.*, 57 F.4th 677, 681 (9th Cir. 2023); 4 Am. Jur. 2d *Alternative Dispute Resolution* § 100 (2018). The presence of an arbitration clause does not bind a party to arbitrate any claim, with any other party, at any time. *See, e.g.*, *McCarthy v. Azure*, 22 F.3d 351, 355-56 (1st Cir. 1994) (holding a company could not compel a former executive to arbitrate claims brought by him as an individual). While the FAA creates a presumption in favor of arbitrability, that presumption is constrained by general principles of contract law. *Granite Rock Co. v. Int'l Bhd. of Teamsters*, 561 U.S. 287, 302 (2010).

We begin our analysis with the NFL Constitution's arbitration clause and conclude it does not apply to Gruden as a former employee and is unconscionable.

The NFL Parties argue the NFL Constitution's arbitration clause still binds Gruden despite the fact he no longer coaches in the NFL. To determine whether the arbitration clause applies to former employees, we look to the terms of the agreement. *See* Thomas H. Oehmke with Joan M. Brovins, 1 *Commercial Arbitration* § 15:40 (2024). The Commissioner may arbitrate disputes "involving a member or members in the League or any players or employees of the members of the League." The Constitution defines "members" as "the thirty-two (32) member clubs." This language

unambiguously restricts the Commissioner's power to arbitrate to current members of the league and their employees or players. Different from a typical employment arbitration clause, this provision in the NFL Constitution is one delineating the powers of the Commissioner, including the power to arbitrate intra-agency disputes. Gruden commenced this suit after resigning from the Raiders and was no longer associated with any NFL team. By its own unambiguous language, the NFL Constitution no longer applies to Gruden.

We also endeavor to read contract terms in harmony with the contract as a whole, "rather than interpret a provision in isolation." *Emps. Reinsurance Co. v. Superior Ct.*, 74 Cal. Rptr. 3d 733, 744 (Ct. App. 2008). Article VIII § 8.6 of the NFL Constitution outlines the Commissioner's authority to hire outside counsel and take legal action when a nonmember engages in conduct detrimental to the NFL. Further, the Commissioner has discretion to decide whether conduct is detrimental to the NFL and is therefore subject to arbitration. If the NFL Constitution were to bind former employees, the Commissioner could essentially pick and choose which disputes to arbitrate. Logic also dictates that the clause would apply to current NFL members and employees because Gruden would have limited ability to take action against a former employee, but is given significant authority through the NFL Constitution to take disciplinary action against members and employees. We conclude Gruden, as a former employee, is not bound by the arbitration clause in the NFL Constitution.

The NFL Parties also assert the district court erred in concluding the arbitration clause in the NFL constitution was unconscionable. We disagree and affirm. "Unconscionability analysis

begins with an inquiry into whether the contract is one of adhesion." *Armendariz v. Found. Health Psychcare Servs., Inc.*, 6 P.3d 669, 689 (Cal. 2000). An adhesive contract is "imposed and drafted by the party of superior bargaining strength, [and] relegates to the subscribing party only the opportunity to adhere to the contract or reject it." *Id.* (quoting *Neal v. State Farm Ins. Cos.*, 10 Cal. Rptr. 781, 784 (Dist. Ct. App. 1961)). We do not question whether Gruden could have negotiated his contract with the Raiders. But the same does not apply to the NFL Constitution. By its own terms, teams "shall include in every contract between any member club and its employees, including coaches[,] . . . a clause wherein the parties to such contract agree to be bound by the Constitution and Bylaws of the League." Gruden had no opportunity nor ability to negotiate the contents of the NFL Constitution or its incorporation into his coaching contract.

We now look to whether there are "other factors" which render the NFL Constitution's arbitration clause unconscionable. *Armendariz*, 6 P.3d at 689 (internal quotation marks omitted). In doing so, we look for both procedural and substantive unconscionability, and while both must be present, "they need not be present in the same degree." *Id.* at 690. We apply a sliding scale, thus "the more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to come to the conclusion that the term is unenforceable, and vise versa." *Id.*

Adhesion alone is sufficient to establish at least "a low degree of procedural unconscionability." *Davis v. Kozak*, 267 Cal. Rptr. 3d 927, 938 (Ct. App. 2020), *disapproved of on other grounds by Ramirez v. Charter Commc'ns, Inc.*, 551 P.3d 520, 534 (2024). Procedural unconscionability is also present when "circumstances of the contract's formation created such

oppression or surprise that closer scrutiny of its overall fairness is required." *OTO, LLC v. Kho*, 447 P.3d 680, 690 (Cal. 2019). Gruden had a seven-page employment contract with the Raiders, which he could freely negotiate. The contract incorporates the 447-page NFL Constitution by reference. In essence, Gruden had a 454-page contract, only seven pages of which he could actually negotiate. And it does not matter that Gruden was a sophisticated party. *See Stirlen v. Supercuts, Inc.*, 60 Cal. Rptr. 2d 138, 146 (Ct. App. 1997). He still had no opportunity to negotiate away the provisions of the NFL Constitution or its incorporation into his employment contract, and we conclude at least some procedural unconscionability was present.

As discussed, procedural unconscionability alone is not enough; there must also be substantive unconscionability. We conclude the NFL Constitution's arbitration clause is substantively unconscionable for two reasons. First, the NFL Constitution would allow Goodell, as Commissioner, to arbitrate disputes about his own conduct—exactly what is at issue here. The ability of the stronger party to select a biased arbitrator is unconscionable, even if the stronger party may ultimately choose a neutral arbitrator. *See Beltran v. AuPairCare, Inc.*, 907 F.3d 1240, 1257-58 (10th Cir. 2018) (holding a party's discretion to choose which arbitration agency to use rendered the arbitration clause unconscionable). Additionally, because the provision in the NFL Constitution is not an independent employment arbitration clause, but rather one delegating powers to the Commissioner and giving the Commissioner the sole power to arbitrate intra-agency disputes, severance would render the provision meaningless.

Second, the NFL has the power to amend the NFL Constitution, including the arbitration clause, at any time, and without notice. The NFL Parties' control over the NFL Constitution also renders the NFL Constitution's arbitration clause substantively unconscionable. *See Al-Safin v. Cir. City Stores, Inc.*, 394 F.3d 1254, 1261 (9th Cir. 2005) (identifying a party's unilateral authority to amend an arbitration provision as substantively unconscionable). Applying California's sliding scale test, we conclude the NFL Constitution's arbitration clause is unenforceable having identified at least nominal procedural unconscionability and extreme substantive unconscionability.

The NFL Parties also seek to compel arbitration based on the independent arbitration clause in Gruden's contract with the Raiders. The NFL Parties are not signatories to the coaching contract and seek to compel arbitration based on equitable estoppel. Equitable estoppel allows a nonsignatory to a contract to enforce an arbitration clause in that contract when the signatory's claims are "dependent upon, or founded in and inextricably intertwined with, the underlying contractual obligations of the agreement containing the arbitration clause." *Soltero v. Precise Distrib., Inc.*, 322 Cal. Rptr. 3d 133, 138 (Ct. App. 2024) (quoting *Goldman v. KPMG, LLP*, 92 Cal. Rptr. 3d 534, 540 (Ct. App. 2009)). Gruden's claims here are not intertwined with his contract. He does not argue any breach of a contractual duty. Instead, the gravamen of Gruden's complaint is the NFL Parties' alleged actions external to the contract—namely, the unauthorized release of his emails. While Gruden relies on his coaching contract as evidence of damages, the claims themselves do not arise out of any

contractual relationship between Gruden and the Raiders and equitable estoppel does not apply.

We conclude the arbitration clause in the NFL Constitution is unconscionable and does not apply to Gruden as a former employee. Nor, in the circumstances presented here, can the NFL Parties claim equitable estoppel to enforce the arbitration clause in Gruden's coaching contract with the Raiders. Because the NFL Parties cannot compel Gruden to arbitrate, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Herndon

_____, J.
Parraguirre

_____, J.
Bell

_____, J.
Stiglich

_____, J.
Lee

PICKERING, J., with whom CADISH, J., agrees, dissenting:

Jon Gruden entered into a 10-year, $100 million coaching contract with the Raiders, making him the highest paid head coach in NFL history. Three years into the Raiders contract, Gruden resigned. He then sued the NFL and its Commissioner Roger Goodell (the NFL Parties), claiming the balance due on his $100 million contract as damages. In his

complaint, Gruden alleges that the NFL Parties tortiously interfered with his Raiders contract, pressuring the Raiders to force him to resign.

Gruden's contract with the Raiders included a specific arbitration provision and also incorporated the NFL Constitution and its arbitration provision by reference. The question presented is whether these arbitration provisions require Gruden to arbitrate his claims against the NFL Parties. The majority holds that the arbitration provision in the NFL Constitution does not apply to former employees like Gruden and is unconscionable and so unenforceable in any event. I disagree and would compel arbitration, addressing the majority's unconscionability finding through severance.

Arbitration is a matter of contract. *GE Energy Power Conversion France SAS, Corp. v. Outokumpu Stainless USA, LLC*, 590 U.S. 432, 437 (2020); *Cable Connection, Inc. v. DIRECTV, Inc.*, 190 P.3d 586, 598 (Cal. 2008). The Federal Arbitration Act (FAA), 9 U.S.C. § 1 et seq., and California Arbitration Act, Cal. Civ. Proc. Code § 1280 et seq. (West 2020), govern this dispute. Both favor enforcement of a valid arbitration clause as a matter of public policy. *Granite Rock Co. v. Int'l Bhd. of Teamsters*, 561 U.S. 287, 302-03 (2010); *OTO, LLC v. Kho*, 447 P.3d 680, 689 (Cal. 2019); *accord Tallman v. Eighth Jud. Dist. Ct.*, 131 Nev. 713, 720, 359 P.3d 113, 118-19 (2015). If a valid arbitration agreement exists but its scope is ambiguous, the FAA presumes that disputes between the parties are covered "unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute." *Granite Rock*, 561 U.S. at 314 (Sotomayor, J., concurring in part and dissenting in part) (internal quotation marks omitted).

The majority first concludes that section 8.3(E) of the NFL Constitution only applies to current employees, not former employees like Gruden. But section 8.3(E) does not make this distinction. By its terms, the provision applies to "employees" generally and does not distinguish between current and former employees. Arbitration clauses ordinarily survive contract termination when the dispute "involves facts and occurrences that arose before expiration." *Litton Fin. Printing Div. v. NLRB*, 501 U.S. 190, 205-06 (1991). Section 8.3(E)'s silence as to its post-termination application thus does not limit it to current employees:

> Arbitration clauses are generally silent as to arbitrability after the contract ends. Such post-termination references are unnecessary because contractual provisions are, by their very nature, a future disputes clause. Under principles of contract interpretation, a disputed right survives expiration of an agreement.

1 Thomas H. Oehmke & Joan M. Bovins, *Commercial Arbitration* § 15.40 (3rd ed. 2024). As the Ninth Circuit has explained, "the need for an arbitration provision to have post-expiration effect is intuitive, because if the duty to arbitrate automatically terminated upon expiration of the contract, a party could avoid his contractual duty to arbitrate by simply waiting until the day after the contract expired to bring an action regarding a dispute that arose while the contract was in effect." *Shivkov v. Artex Risk Sols., Inc.*, 974 F.3d 1051, 1061 (2020).

This does not make employment arbitration clauses binding indefinitely, as Gruden suggests. On the contrary, an arbitration clause presumptively survives termination of a contract where the "dispute involves facts that arose before the contract expiration, or . . . the

complained of action infringes on basic rights and obligations arising out of the contract." *Oehmke, supra*, at § 15.40 (footnote omitted). And that is plainly the case here. Gruden claims that, while he was employed by the Raiders, the NFL Parties improperly leaked his emails to the press and that this interfered with his employment agreement, forcing him to resign. But for Gruden's employment by the Raiders and, by extension, his relationship with the NFL Parties, the leaking of the emails would not have been tortious. That Gruden thereafter lost his coaching job and is now suing as a former employee for the contract benefits the tortious conduct allegedly deprived him of falls within the scope of section 8.3(E).

The majority also concludes that the NFL Constitution's arbitration provision is unconscionable and so unenforceable. Unconscionability may invalidate an agreement to arbitrate, provided the defense is not applied in a way that singles out arbitration or applies special rules unique to the arbitration setting. *See AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011) (citing *Dr.'s Assocs., Inc. v. Casarotto*, 517 U.S. 681, 687 (1996)). Importantly, California law requires both procedural and substantive unconscionability. *Armendariz v. Found. Health Psychcare Servs.*, Inc., 6 P.3d 669, 690 (Cal. 2000). No matter how significant or obvious a contract's substantive unconscionability, California courts will not find it unenforceable for unconscionability without at least a nominal showing of procedural unconscionability. *Id.*

A contract is procedurally unconscionable when surprise or oppression at formation requires added scrutiny of its fairness. *OTO*, 447 P.3d at 690. A contract is oppressive if it is one of adhesion, imposed on a take-it-or leave-it basis by the party with superior bargaining power. *See*

Lim v. TForce Logistics, LLC, 8 F.4th 992, 1000 (9th Cir. 2021); *Armendariz*, 6 P.3d at 689-90. But the inclusion of take-it-or leave-it provisions in a mutually negotiated contract does not make the contract one of adhesion. *Grand Prospect Partners, LP v. Ross Dress for Less, Inc.*, 182 Cal. Rptr. 3d 235, 250-51 (Ct. App. 2015). The test for adhesion is not whether parts of a contract are non-negotiable, but whether the contract as a whole is a take-it-or-leave-it proposition, offered by a party with superior bargaining power. *Id.* at 251.

In his contract with the Raiders, Gruden expressly acknowledged that he had read the NFL Constitution, understood its terms, and agreed to its incorporation by reference into the contract. That assent is binding on Gruden, *see B.D. v. Blizzard Ent., Inc.*, 292 Cal. Rptr. 3d 47, 65 (Ct. App. 2022), and he cannot now claim surprise at its contents. As a former Super Bowl champion coach and long-time media personality signing the most lucrative NFL coaching contract in history, while being represented by one of the country's leading sports agents, Gruden was the very definition of a sophisticated party. Though Gruden could not negotiate the terms of the NFL Constitution, he had the ability to negotiate the contract as a whole—such as for more pay, a longer contract, added control over team decisions, or its other terms. This is not a case of unequal bargaining power or a take-it-or-leave-it offer. Gruden's privileged bargaining position makes this case fundamentally different from other arbitration cases questioning consumer or low-pay employment contracts—indeed, a finding of procedural unconscionability here would lower the bar so far as to make it nonexistent. Because Gruden did not establish

procedural unconscionability, I would hold that his unconscionability challenge fails under California law.

My colleagues find "at least some procedural unconscionability," maj. ord. at 6, so they address substantive unconscionability. Because section 8.3(E) designates Commissioner Goodell as the arbitrator, even though he is a named defendant, they find substantive unconscionability and invalidate the entire arbitration provision as unconscionable. *Id.* at 6-7; *cf. Graham v. Scissor-Tail, Inc.*, 623 P.2d 165, 177 (Cal. 1981) (finding substantively unconscionable a provision designating a party to the contract as arbitrator). It seems unlikely that Goodell would serve as the arbitrator over a dispute that names him as a defendant, but if he did, Gruden would be entitled to post-arbitration relief for arbitrator bias. *See* NRS 38.241(1)(b)(1) (providing that "the court shall vacate an" arbitration award if there was "[e]vident partiality by an arbitrator appointed as a neutral arbitrator"); 9 U.S.C. § 10(a)(3) (providing that the court may vacate an award "where there was evident partiality or corruption in the arbitrators").[1]

More important, the majority does not meaningfully address the NFL Parties' request to sever the arbitrator-selection clause from the arbitration provision. California law allows a court to sever an unconscionable clause from an otherwise enforceable contract, Cal. Civ.

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[1]The only other basis on which the majority finds substantive unconscionability is the provision allowing the NFL Constitution to be amended. Since that provision requires a supermajority vote from the 32 member teams, I disagree that this provision gives rise to substantive unconscionability.

Code § 1670.5(a) (West 1979), and "the strong preference is to sever unless the agreement is permeated by unconscionability." *Beltran v. AuPairCare, Inc.*, 907 F.3d 1240, 1262-63 (10th Cir. 2018) (applying California law); *see Ramirez v. Charter Commc'ns, Inc.*, 551 P.3d 520, 513 (2024). In *Beltran*, the court considered an unconscionability challenge to an arbitration provision in an agreement to which California law applied. 907 F.3d at 1252. While the court found the arbitrator-selection clause in the arbitration provision unconscionable, it did not find the contract as a whole unconscionable. *Id.* at 1257-58, 1263. It therefore severed the arbitrator-selection clause and otherwise enforced the contract's arbitration provision. *Id.* at 1262-63 (noting that severing the arbitrator-selection clause did not require the court to add new provisions to the contract "because both California and federal law provide a default method for appointing an arbitrator"). Because the clause selecting Goodell as arbitrator is readily severable, it is error, I submit, to refuse to compel arbitration based on NFL Constitution's arbitrator-selection provision.

For these reasons, I would enforce the NFL Constitution's arbitration provision and reverse and remand for the district court to compel arbitration.

Pickering, J.
Pickering

I concur:

Cadish, J.
Cadish

cc: Hon. Nancy L. Allf, District Judge
Lansford W. Levitt, Settlement Judge
Paul, Weiss, Rifkind, Wharton & Garrison, LLP/Wash DC
Brownstein Hyatt Farber Schreck, LLP/Las Vegas
McDonald Carano LLP/Reno
McDonald Carano LLP/Las Vegas
Eighth District Court Clerk