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IN THE SUPREME COURT OF CALIFORNIA

SHARON MCGILL, Plaintiff and Respondent; v. CITIBANK, N.A., Defendant and Appellant.	)	S224086 Ct.App. 4/3 G049838 Riverside County Super. Ct. No. RIC1109398

In previous decisions, this court has said that the statutory remedies available for a violation of the Consumers Legal Remedies Act (CLRA; Civ. Code, § 1750 et seq.), the unfair competition law (UCL; Bus. & Prof. Code, § 17200 et seq.), and the false advertising law (*id.*, § 17500 et seq.) include public injunctive relief, i.e., injunctive relief that has the primary purpose and effect of prohibiting unlawful acts that threaten future injury to the general public. (*Cruz v. PacifiCare Health Systems, Inc.* (2003) 30 Cal.4th 303, 315-316 (*Cruz*); *Broughton v. Cigna Healthplans* (1999) 21 Cal.4th 1066, 1077 (*Broughton*).) The question we address in this case is the validity of a provision in a predispute arbitration agreement that waives the right to seek this statutory remedy in any forum. We hold that such a provision is contrary to California public policy and is thus unenforceable under California law. We further hold that the Federal Arbitration Act (FAA; 9 U.S.C. § 1 et seq.) does not preempt this rule of California law or require enforcement of the waiver provision. We therefore reverse the judgment of the Court of Appeal.

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I. FACTUAL BACKGROUND

In 2001, plaintiff Sharon McGill opened a credit card account with defendant Citibank, N.A. (Citibank) and purchased a "credit protector" plan (Plan). Under the Plan, Citibank agreed to defer or to credit certain amounts on McGill's credit card account when a qualifying event occurred, such as long-term disability, unemployment, divorce, military service, or hospitalization. Citibank charged a monthly premium for the Plan based on the amount of McGill's credit card balance.

McGill's original account agreement did not contain an arbitration provision. In October 2001, Citibank sent her a "Notice of Change in Terms Regarding Binding Arbitration to Your Citibank Card Agreement" (2001 Notice), which amended the original agreement by adding the following arbitration provisions: "Either you or we may, without the other's consent, elect mandatory, binding arbitration for any claim, dispute, or controversy between you and us (called 'Claims')." "All Claims relating to your account or a prior related account, or our relationship are subject to arbitration, including Claims regarding the application, enforceability, or interpretation of this Agreement and this arbitration provision. All Claims are subject to arbitration, no matter what legal theory they are based on or what remedy (damages, or injunctive or declaratory relief) they seek. This includes Claims based on contract, tort (including intentional tort), fraud, agency, your or our negligence, statutory or regulatory provisions, or any other sources of law; . . . and Claims made independently or with other claims . . . . Claims and remedies sought as part of a class action, private attorney general or other representative action are subject to arbitration on an individual (non-class, non-representative) basis, and the arbitrator may award relief only on an individual (non-class, non-representative) basis." "This arbitration provision is governed by the Federal Arbitration Act (the 'FAA')." "Claims must be brought in the name of an individual person or entity and must proceed on an individual (non-class, non-representative) basis. The arbitrator will not award relief for or

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against anyone who is not a party. If you or we require arbitration of a Claim, neither you, we, nor any other person may pursue the Claim in arbitration as a class action, private attorney general action or other representative action, nor may such Claim be pursued on your or our behalf in any litigation in any court."

The 2001 Notice stated that McGill had the option to decline the arbitration provision and to continue using her credit card under the existing terms until the "later" of "the end of [her] current membership year or the expiration date on [her] card(s)." McGill did not decline and, according to Citibank, the arbitration provision became effective on November 30, 2001.

In February 2005, Citibank sent McGill a "Notice of Change in Terms, Right to Opt Out, and Information Update" (2005 Notice), which informed her of changes to the arbitration provisions and to several other aspects of her account agreement. The 2005 Notice contained an opt-out provision similar to the opt-out provision in the 2001 Notice. Again, McGill did not opt out and continued using her credit card. In January 2007, Citibank sent McGill a complete copy of her account agreement, which included arbitration provisions identical to those quoted above.

In 2011, McGill filed this class action based on Citibank's marketing of the Plan and the handling of a claim she made under it when she lost her job in 2008. The operative complaint alleges claims under the UCL, the CLRA, and the false advertising law, as well as the Insurance Code. For relief, it requests, among other things, an injunction prohibiting Citibank from continuing to engage in its allegedly illegal and deceptive practices.

Pursuant to the arbitration provision, Citibank petitioned to compel McGill to arbitrate her claims on an individual basis. The trial court granted the petition in part and denied it in part based on *Broughton* and *Cruz*, which together established the following rule: Agreements to arbitrate claims for public injunctive relief under the CLRA, the UCL, or the false advertising law are not enforceable in California. Applying this rule — known as the *Broughton-Cruz*

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rule — the trial court ordered McGill to arbitrate all claims other than those for injunctive relief under the UCL, the false advertising law, and the CLRA. The Court of Appeal reversed and remanded "for the trial court to order all of McGill's claims to arbitration," concluding that the FAA, as recently construed by the United States Supreme Court in *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333 (*Concepcion*), preempts the *Broughton-Cruz* rule.

During oral argument in the Court of Appeal, McGill asserted that the arbitration agreement is unenforceable because it purports to prohibit her from pursuing claims for public injunctive relief, not just in arbitration, but *in any forum*. The Court of Appeal did not mention this argument in its opinion. McGill made the argument again in a petition for rehearing, which the Court of Appeal denied without addressing the merits of the issue.

McGill filed a petition for review in this court, asserting (1) the Court of Appeal erred in finding FAA preemption of the *Broughton-Cruz* rule, and (2) the arbitration provision is invalid and unenforceable because it waives her right to seek public injunctive relief in any forum. For reasons explained below, we agree with her latter claim and we do not address the former.

II. DISCUSSION

We begin by summarizing the California consumer protection laws here at issue. The Legislature enacted the CLRA "to protect consumers against unfair and deceptive business practices and to provide efficient and economical procedures to secure such protection." (Civ. Code, § 1760.) "[T]o promote" these purposes, the Legislature directed that the CLRA "be liberally construed and applied." (*Ibid*.) After setting forth a list of unlawful "methods of competition and unfair or deceptive acts or practices" (*id.*, § 1770), the CLRA authorizes any consumer who has been damaged by an unlawful method, act, or practice to bring an action for various forms of relief, including "[a]n order enjoining the methods, acts, or practices" (*id.*, § 1780, subd. (a)(2)). The CLRA also expressly declares that

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"[a]ny waiver by a consumer" of the CLRA's provisions "is contrary to public policy and shall be unenforceable and void." (*Id.*, § 1751.)

The UCL addresses "unfair competition," which "mean[s] and include[s] any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by [the false advertising law]." (Bus. & Prof. Code, § 17200.) Its purpose "is to protect both consumers and competitors by promoting fair competition in commercial markets for goods and services." (*Kasky v. Nike, Inc.* (2002) 27 Cal.4th 939, 949.) "Actions for relief" under the UCL may be brought by various government officials and "by a person who has suffered injury in fact and has lost money or property as a result of the unfair competition." (Bus. & Prof. Code, § 17204.) "[T]he primary form of relief available under the UCL to protect consumers from unfair business practices is an injunction." (*In re Tobacco II Cases* (2009) 46 Cal.4th 298, 319.) In this regard, the UCL provides: "Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments . . . as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition." (Bus. & Prof. Code, § 17203.)

The false advertising law makes unlawful "untrue or misleading" statements designed to "induce the public to enter into any obligation" to purchase various goods and services. (Bus. & Prof. Code, § 17500.) Like the UCL, the false advertising law allows an action for relief to be brought by specified government officials and "by any person who has suffered injury in fact and has lost money or property as a result of a violation." (Bus. & Prof. Code, § 17535.) It also authorizes injunctive relief, stating: "Any person, corporation, firm, partnership, joint stock company, or any other association or organization which

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