

Labor Day Hypo 2018
Caroline Bradley

Bee is a really successful garden designer based in Arcadia. She books design appointments months ahead of time, and the fact that customers have to book her services a long time in advance is part of what allows her to charge large fees. Bee's customers apply for her services through Bee's website, but Bee does not accept all requests for bookings. There are parts of the country she does not like to work in and she has other reasons for declining opportunities. She can afford to be picky because her work is so well regarded. And she thinks it is important to manage the projects she accepts to reinforce her reputation. Bee has a small team of gardeners who help her. She is very particular about who she hires—her gardeners all have to be highly trained and have significant experience. She pays them well.

Bee's website is designed to look attractive, and as an advertisement for Bee's work. So it has a lot of pictures and videos of Bee's designs, together with links to evaluations of her work by others. The home page has a link to an "application page," which has as a large and noticeable link to information about Bee's fees and, right at the bottom of the page a very small link which states "Bee garden design terms." There is no language on the application page to suggest that it is important to click on the link before applying to become a customer. The garden design terms include an arbitration agreement with a class action waiver, and provides that any arbitration will be carried out by an arbitrator of Bee's choice. There is no indication what rules would apply to an arbitration.

At the beginning of October in 2017 Cee applied on Bee's website to become a customer for work on Cee's garden in Arcadia City. Bee accepted the application, and they arranged that the work would be done in August 2018 for a price of \$40,000 including \$20,000 of plants and decorative stonework to be installed in the garden. The stonework is specially designed according to Cee's instructions.

Cee told Bee in July 2018 that she could not have the work done in August because she would need to travel at that time for her own work. Bee said that Cee would still have to pay the \$40,000. Cee disagrees. Bee's garden design terms do not contain any provisions about cancellation.