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This opinion shall not "constitute precedent or be binding upon any court."  
Although it is posted on the internet, this opinion is binding only on the  
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3831-15T2

ALLISON DAVIS,

Plaintiff-Appellant,

v.

MICHAEL ANTHONY AUTO SALES  
INC., d/b/a MICHAEL ANTHONY  
MOTORS, d/b/a MICHAEL ANTHONY  
AUTO SALES,

Defendant-Respondent.

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Submitted February 27, 2017 — Decided March 17, 2017

Before Judges Sabatino, Haas, and Currier.

On appeal from the Superior Court of New  
Jersey, Law Division, Union County, Docket No.  
L-4194-15.

Lessie Hill, attorney for appellant.

Eckert Seamans Cherin & Mellott, LLC,  
attorneys for respondent (Anthony E. Bush, of  
counsel and on the brief; Jill R. Cohen, on  
the briefs).

PER CURIAM

In a class action complaint, plaintiff Allison Davis asserts  
that she was overcharged for title and registration fees by

defendant, Michael Anthony Auto Sales, Inc., when she purchased a used car. The Motor Vehicle Retail Order includes an arbitration clause on page three that is contained within a box and delineated in bold capital font. The clause states:

**14. ARBITRATION CLAUSE: PLEASE REVIEW-  
IMPORTANT-AFFECTS YOUR LEGAL RIGHTS**

1. EITHER YOU OR WE MAY CHOOSE TO HAVE ANY DISPUTE BETWEEN US DECIDED BY ARBITRATION AND NOT IN COURT OR BY JURY TRIAL.

2. IF A DISPUTE IS ARBITRATED, YOU WILL GIVE UP YOUR RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR CLASS MEMBER ON ANY CLASS CLAIM YOU MAY HAVE AGAINST US INCLUDING ANY RIGHT TO CLASS ARBITRATION OR ANY CONSOLIDATION OF INDIVIDUAL ARBITRATIONS.

3. DISCOVERY AND RIGHTS TO APPEAL IN ARBITRATION ARE GENERALLY MORE LIMITED THAN IN A LAWSUIT, AND OTHER RIGHTS THAT YOU AND WE WOULD HAVE IN COURT MAY NOT BE AVAILABLE IN ARBITRATION.

**Any claim or dispute, whether in contract, tort, statute or otherwise (including the interpretation and scope of this clause, and the arbitrability of the claim or dispute), between you and us or our employees, agents, successors or assigns, which arise out or relate to your credit application, purchase or condition of this vehicle, this contract or any resulting transaction or relationship (including any such relationship with third parties who do not sign this contract) shall, at your or our election, be solved by neutral, binding arbitration and not by a court action. Any claim or dispute is to be arbitrated by a single arbitrator on an individual basis and not as a class action. You expressly waive**

**any right you may have to arbitrate a class action.<sup>[1]</sup>**

Three subsequent paragraphs contain details such as to how to choose an arbitration organization, who may serve as an arbitrator, where the arbitration will be held and other information concerning the process.

Defendant moved to compel arbitration and dismiss the complaint; the motion judge granted the motion in April 2016, ordering that the matter proceed to arbitration and dismissing the complaint. On appeal, we remanded to the motion judge for a statement of reasons, see Rule 1:7-4, which was issued on November 18, 2016.

In the thorough statement of reasons, the judge noted New Jersey's strong presumption in favor of arbitration. He referred to Atalese v. U.S. Legal Services Group, L.P., 219 N.J. 430 (2014) and Morgan v. Sanford Brown Institution, 225 N.J. 289 (2016), requiring that in a contract containing a waiver of rights, the waiver "must be clearly and unmistakably established." Morgan, supra, 225 N.J. at 308-09.

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<sup>1</sup> On page two of the contract, just above the signature line, it states: "PURCHASER ACKNOWLEDGES THAT IF THIS BOX IS CHECKED, THIS CONTRACT CONTAINS AN ARBITRATION CLAUSE." The box has an "x" in it.

In concluding that the contract language "indisputably demonstrates that the parties have agreed to arbitrate all disputes between them if requested by either Plaintiff or Defendant," the judge stated:

The Arbitration Clause comports with the requirements of Atalese because it conspicuously warns [of] the section "AFFECTS YOUR LEGAL RIGHTS," and repeatedly expounds that disputes would be decided by arbitrators, and not by court action. The section also explains that arbitrators will be retired judges or attorneys and details the basics of the process. In Morgan, the provision was struck down because it did "not explain, in broadly worded language or any other manner, that plaintiffs are waiving their right to seek relief in court for a breach of the enrollment agreement or for a statutory violation." Here, the language is clear, and properly explains the effect of arbitration. An average consumer could read this section and understand that either party may elect to have the dispute heard in arbitration and not by court action, and this is applicable to both individual and claims brought on behalf of a class.

On appeal, plaintiff argues that the arbitration clause is unenforceable as it is not the product of mutual assent, and it is not clearly written. As the determination of the existence of a valid and enforceable arbitration agreement poses a question of law, we review the matter de novo. Hirsch v. Amper Fin. Servs., LLC, 215 N.J. 174 (2013).

Mindful of that standard, and based on our review of the record and applicable law, plaintiff's arguments lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We affirm substantially for the reasons expressed by the motion judge in his well-reasoned written statement of reasons and add only the following brief comments.

The presence of this arbitration clause was denoted by the title – **ARBITRATION CLAUSE**– capitalized and in bold font. The first three paragraphs are also in bold and capitalized. The first paragraph advises that either party may elect to proceed to arbitration, thereby according the parties equal rights. It also explains that if either party chooses arbitration, the matter will NOT be decided in court or by a jury trial. The second paragraph clearly states that if a dispute is arbitrated, there is no right to proceed as a class action member or representative. We are satisfied of the clarity of the language and the explanation of a party's waiver of certain rights. See Atalese, supra, 219 N.J. at 446 (finding that the arbitration provision must be grounded in "plain language that would be clear and understandable to the average consumer").

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.



CLERK OF THE APPELLATE DIVISION