SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1927-21

MATTHEW GORDNER,

Plaintiff-Respondent,

v.

LICCARDI FORD, TIMOTHY KOCHAR, and JPMORGAN CHASE BANK, N.A.,

Defendants-Appellants.

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Submitted September 28, 2022 - Decided November 1, 2022

Before Judges Currier and Mayer.

On appeal from the Superior Court of New Jersey, Law Division, Somerset County, Docket No. L-1572-21.

Schiller, Pittenger & Galvin, PC, attorneys for appellants (Thomas G. Russomano, of counsel; Jay B. Bohn and Kieran M. Dowling, on the briefs).

Michael F. Niznik, attorney for respondent.

PER CURIAM

This matter arises out of plaintiff's purchase of a car from defendant Liccardi Ford.[1] When plaintiff learned the car had been modified and damaged in an undisclosed accident, he attempted to return it. Defendants refused to cancel the sale and plaintiff filed suit, alleging violations of the Consumer Fraud Act, N.J.S.A. 56:8-2, and the Motor Vehicle Advertising Practices Regulations, N.J.A.C. 13:45A-26A.1 to -26A.10, and other related claims. Defendants moved to compel arbitration. The court denied the motion. Because the Motor Vehicle Retail Order (MVRO) had a clear and unambiguous arbitration agreement, we reverse.

In purchasing the vehicle, plaintiff and a representative of Liccardi executed a MVRO that included an arbitration provision set in its own section divided by a thick black line above and below it. The arbitration clause read as follows:

> **AGREEMENT TO ARBITRATE ALL CLAIMS. READ THE FOLLOWING ARBITRATION PROVISION CAREFULLY, IT LIMITS YOUR RIGHTS, AND WAIVES THE RIGHT TO MAINTAIN A COURT ACTION, OR TO PURSUE A CLASS ACTION IN COURT AND IN ARBITRATION.**

[1] Defendant Timothy Kochar worked as a salesman for Liccardi. Liccardi assigned the Retail Installment Sales Contract (RISC) to defendant JP Morgan Chase Bank, N.A.

The parties to this agreement agree to arbitrate all claims, disputes, or controversies, including all statutory claims and any state or federal claims ("claims"), that may arise out of or relating to this agreement and the sale or lease identified in this agreement. **By agreeing to arbitrate, the parties understand and agree that they are giving up their rights to use other available resolution processes, such as court action or administrative proceeding, to resolve their disputes.** Further, the parties understand that they may not pursue any claim, even in arbitration, on behalf of a class or to consolidate their claim with those of other persons or entities. Consumer Fraud, Used Car Lemon Law, and Truth-in-Lending claims are just three examples of the various types of statutory claims subject to arbitration under this agreement. The arbitration shall be administered by the American Arbitration Association under its Commercial Arbitration Rules, and the Consumer Related Disputes Supplementary Procedures to the extent applicable, before a single arbitrator who shall be a retired judge or an attorney. Dealership shall advance both party's filing, service, administration, arbitrator, hearing, and other fees, subject to reimbursement by decision of the arbitrator. Each party shall bear his or her own attorney, expert, and other fees and costs, except when awarded by the arbitrator under applicable law. The arbitration shall take place in New Jersey at a mutually convenient place agreed upon by the parties or selected by the arbitrator. The decision of the arbitrator shall be binding upon the parties. Any further relief sought by either party will be subject to the decision of the arbitrator. [If any part of this agreement, other than the waivers of class actions, and consolidation, is found to be unenforceable for any reason, the remaining provisions shall remain enforceable. If the waiver of class actions or consolidation is found unenforceable, this entire

> agreement shall be void.] In the event that any claims are based on a lease, finance, or other agreement between the parties related to this sale or lease as well as this agreement, and if such lease, finance or other agreement contains a provision for arbitration of claims which conflicts with or is inconsistent with this arbitration provision, the terms of such other arbitration provision shall govern and control. **THIS ARBITRATION PROVISION IS GOVERNED BY THE FEDERAL ARBITRATION ACT. THIS ARBITRATION PROVISION LIMITS YOUR RIGHTS, AND WAIVES THE RIGHT TO MAINTAIN A COURT ACTION OR PURSUE A CLASS ACTION IN COURT OR IN ARBITRATION. PLEASE READ IT CAREFULLY, PRIOR TO SIGNING.**

Plaintiff signed on the designated signature line immediately below this provision and within the black lines dividing the arbitration clause from the remainder of the contract. He also signed a second signature line immediately below the section containing the arbitration clause, indicating he had read all the terms and conditions and intended to be bound by the contract.

Because plaintiff financed the purchase of the car, he was required to sign a RISC. The document was entitled: "**RETAIL INSTALLMENT SALE CONTRACT—SIMPLE FINANCE CHARGE (WITH ARBITRATION PROVISION)**." The document detailed the financing terms regarding the car, including the total sales price, amount to be financed, the annual percentage rate, the payment terms, and the monthly payment amount. Directly below the

financing information was a boxed-out area, separated by black lines on all four sides, containing the following text:

> **Agreement to Arbitrate**: By signing below, you agree that, pursuant to the Arbitration Provision on the reverse side of this contract, you or we may elect to resolve any dispute by neutral, binding arbitration and not by a court action. See the Arbitration Provision for additional information concerning the agreement to arbitrate.
>
> (emphasis added.)

Plaintiff did not sign the signature line directly below this provision.

The Arbitration Provision was on the reverse side of the RISC as described in the box above. It was entitled "**ARBITRATION PROVISION PLEASE REVIEW—IMPORTANT—AFFECTS YOUR LEGAL RIGHTS**" and states:

> **1. EITHER YOU OR WE MAY CHOOSE TO HAVE ANY DISPUTE BETWEEN US DECIDED BY ARBITRATION AND NOT IN COURT OR BY JURY TRIAL.**
>
> **. . . .**
>
> **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 Arbitration Provision, and the arbitrability of the claim or dispute), between you and us or our employees, agents, successors or assigns, which arises out of or relates 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 resolved by neutral, binding arbitration and not by a court action. If federal law provides that a claim or dispute is not subject to binding arbitration, this Arbitration Provision shall not apply to such claim or dispute. 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. You may choose the American Arbitration Association (www.adr.org) or any other organization to conduct the arbitration subject to our approval. You may get a copy of the rules of an arbitration organization by contacting the organization or visiting its website.

Arbitrators shall be attorneys or retired judges and shall be selected pursuant to the applicable rules. The arbitrator shall apply governing substantive law and the applicable statute of limitations. The arbitration hearing shall be conducted in the federal district in which you reside unless the Seller-Creditor is a party to the claim or dispute, in which case the hearing will be held in the federal district where this contract was executed. We will pay your filing, administration, service or case management fee and your arbitrator or hearing fee all up to a maximum of $5,000, unless the law or the rules of the chosen arbitration organization require us to pay more. The amount we pay may be reimbursed in whole or in part

> by decision of the arbitrator if the arbitrator finds that any of your claims is frivolous under applicable law. Each party shall be responsible for its own attorney, expert and other fees, unless awarded by the arbitrator under applicable law. If the chosen arbitration organization's rules conflict with this Arbitration Provision, then the provisions of this Arbitration Provision shall control. Any arbitration under this Arbitration Provision shall be governed by the Federal Arbitration Act (9 U.S.C. § 1 et seq.) and not by any state law concerning arbitration. Any award by the arbitrator shall be in writing and will be final and binding on all parties, subject to any limited right to appeal under the Federal Arbitration Act.
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> You and we retain the right to seek remedies in small claims court for disputes or claims within that court's jurisdiction, unless such action is transferred, removed or appealed to a different court. Neither you nor we waive the right to arbitrate by using self-help remedies, such as repossession, or by filing an action to recover the vehicle, to recover a deficiency balance, or for individual injunctive relief. Any court having jurisdiction may enter judgment on the arbitrator's award. This Arbitration Provision shall survive any termination, payoff or transfer of this contract. If any part of this Arbitration Provision, other than waivers of class action rights, is deemed or found to be unenforceable for any reason, the remainder shall remain enforceable. If a waiver of class action rights is deemed or found to be unenforceable for any reason in a case in which class action allegations have been made, the remainder of the Arbitration Provision shall be unenforceable.

Plaintiff did execute the RISC under the provision that read:

> **You agree to the terms of this contract. You confirm that before you signed this contract, we gave it to you, and you were free to take it and review it. You acknowledge that you have read both sides of this contract, including the arbitration provision on the reverse side, before signing below. You confirm that you received a completely filled-in copy when you signed it.**

At some point, plaintiff requested JP Morgan Chase provide him with all documents related to his financing. In return he received a RISC (RISC2) with electronic signatures that contained different terms than the RISC he signed at the dealer. JP Morgan Chase declined plaintiff's request to cancel the financing contract.[2]

As stated, defendants moved to compel arbitration and stay the litigation. The court denied the motion on February 18, 2022. In a written statement of reasons, the court explained it was not clear which of the relevant documents controlled the issue of whether plaintiff agreed to arbitration—the MVRO, the RISC or RISC2. Moreover, plaintiff did not sign on the signature line immediately under the arbitration clause in the RISC. The court found the inconsistency and lack of clarity in the agreements were too significant to compel arbitration.

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[2] Defendants did not seek to enforce the arbitration provision under RISC2. Therefore, we need not address the document further.

On appeal, defendants contend the court erred in finding inconsistency and ambiguity in the documents prevented the grant of an order compelling arbitration of the dispute. Because plaintiff did not sign RISC2 or the section of RISC referencing the arbitration provision, the only enforceable arbitration clause is that contained in the MVRO.

An interpretation of a contract, including an arbitration clause, is reviewed de novo. See Goffe v. Foulke Mgmt. Corp., 238 N.J. 191, 207 (2019); Kieffer v. Best Buy, 205 N.J. 213, 222 (2011). "Whether a contractual arbitration provision is enforceable is a question of law, and we need not defer to the interpretative analysis of the trial . . . courts unless we find it persuasive." Skuse v. Pfizer, Inc., 244 N.J. 30, 46 (2020) (quoting Kernahan v. Home Warranty Adm'r of Fla., Inc., 236 N.J. 301, 316 (2019)).

Under the Federal Arbitration Act,

> [a] written provision in any . . . contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof . . . 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.

Our legislature has enacted a similar statute. See N.J.S.A. 2A:23B-6(a).

The United States Supreme Court and our courts have adopted a liberal policy favoring arbitration. AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 339 (2011); Garfinkel v. Morristown Obstetrics & Gynecology Assocs., P.A., 168 N.J. 124, 131 (2001) ("our jurisprudence has recognized arbitration as a favored method for resolving disputes"); Jansen v. Salomon Smith Barney, Inc., 342 N.J. Super 254, 257–58 (App. Div. 2001) ("'New Jersey law comports with its federal counterpart in striving to enforce arbitration agreements. An agreement relating to arbitration should thus be read liberally to find arbitrability if reasonably possible.") (citations omitted).

As with all contracts, arbitration agreements must be the product of the mutual assent of both parties. Atalese v. U.S. Legal Servs. Grp., L.P., 219 N.J. 430, 442 (2014). Mutual assent requires a showing that the parties understand the terms to which they are agreeing. Ibid. In the context of arbitration agreements, a party must "have full knowledge of his legal rights and intent to surrender those rights," and courts will take special care in making sure there was a knowing assent to the terms of an arbitration agreement. Ibid. (citations omitted). The waiver-of-rights provisions must be "clear and unambiguous—that is, the parties must know that there is a distinction between resolving a dispute in arbitration and in a judicial forum." Id. at 445.

It cannot be disputed that the arbitration clause in the MVRO was compliant in all respects with Atalese. In large bold capital letters, the buyer was informed that, by signing the agreement, the buyer was waiving their rights to institute a court action, and that all claims and disputes relating to the agreement and the sale of the vehicle would be addressed and resolved in arbitration. The details of the arbitration process were meticulously spelled out. The buyer was informed at the end of the clause again in large bold capital letters that they were waiving their right to proceed to a court action. Plaintiff signed the arbitration clause in the MVRO.

The RISC also contained an arbitration agreement. It too clearly informed the buyer that any dispute would be decided in arbitration and not in court or by a jury trial. Plaintiff did not sign the line on the RISC entitled "agreement to arbitrate." But plaintiff did sign the line in the RISC in which he agreed to the contract and acknowledged he read both sides of the contract including the arbitration provision.

The trial court found there was an issue regarding which document controlled and the inconsistency between the documents prevented the imposition of any arbitration clause. We disagree.

Plaintiff did not sign the specific line on the RISC stating he agreed to the arbitration provision in that contract. Therefore, there was no mutual assent to the contract, and the arbitration provision in the RISC is not enforceable. See Atalese, 219 N.J. at 442. Consequently, there is no agreement that conflicts or is inconsistent with the MVRO's arbitration provision. As the MVRO's arbitration clause complies with Atalese, plaintiff is required to present his disputes in an arbitration proceeding.

Any remaining arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Reversed and remanded for the court to enter an order compelling arbitration and staying the litigation. We do not retain jurisdiction.