IN THE SUPREME COURT OF FLORIDA

CASE NO. SC09-2358
L.T. NO: 3D07-855

ROBERTO BASULTO and RAQUEL GONZALEZ,

Petitioners,

-vs-

HIALEAH AUTOMOTIVE, LLC,

Respondent.

APPEAL FROM THE THIRD DISTRICT COURT OF APPEAL

ANSWER BRIEF OF RESPONDENT HIALEAH AUTOMOTIVE, LLC

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STATEMENT OF THE CASE AND OF THE FACTS

Petitioners Robert Basulto and Raquel Gonzalez ("Buyers") purchased a new 2005 Dodge Caravan from the Respondent ("Dealership"). Nearly a year later, seeking to void the sale based upon a sundry of novel legal theories, they filed a Complaint against the Dealership contending that they did not speak English (Petitioners' Appendix 5). The gravamen of their Complaint is that the Dealership allegedly failed to credit them an additional $2,000 for their trade-in and they should not have to arbitrate their disputes because they did not understand the contracts. Instead of expeditiously adjudicating this dispute in arbitration, as called for by the contract documents, the Buyers have spent the last eight years litigating this case through the trial court, the Third District and now before this Court.

The Buyers knew they were signing legally binding documents and did not understand their contents (Transcript of Evidentiary Hearing of 3/2/07, page 17, lines 2-5; pg. 35, lines 11-20). Moreover, this is not the first time that these Buyers have signed important documents which they did not read or understand. Prior to the transaction that is the subject of their Complaint, the Buyers executed two lengthy mortgages and a subsequent nearly identical Agreement to Arbitrate Disputes with another automobile dealership which they did not read or understand. (Transcript of Evidentiary Hearing of 3/2/07, pg. 19, lines 17-21, pg. 21, line 25 through pg. 22, line 1).

When the Buyers purchased their vehicle they executed an Agreement to Arbitrate Disputes. (Petitioners' Appendix 4). Section 1 of the Agreement provides:

> "Election to Arbitrate Dispute/Form of Arbitration: Upon the occurrence of a claim or dispute, by or between the Dealership and Customer concerning the sale, purchase or lease of the above-described motor vehicle or the relationship of the parties, *regardless of the theory of liability asserted*, either party may elect to submit the claim or dispute to resolution through arbitration and, thereafter, such arbitration shall be administered by the American Arbitration Association under its Commercial Arbitration Rules." (Emphasis added)

Section 5 of the Agreement provides that the parties waive judicial proceedings (Petitioners' Appendix 4). In addition to this document, the Retail Installment Contract executed by the Buyers, which is an exhibit to the Complaint, contains a clause requiring the parties to submit their disputes to arbitration (Petitioners' Appendix 5). The Retail Installment Contract, in the section immediately preceding the Buyers' signatures, provides in bold letters:

> "CAUTION – IT IS IMPORTANT THAT YOU THOROUGHLY READ THE CONTRACT BEFORE YOU SIGN IT, INCLUDING IMPORTANT ARBITRATION DISCLOSURES AND PRIVACY POLICY ON THE BACK OF THIS CONTRACT."

On the second page of the Retail Installment Contract the following language appears:

> IMPORTANT ARBITRATION DISCLOSURES

> The following Arbitration provisions significantly affect your rights in any dispute with us. Please read this carefully before you sign the contract.

The actual text of the arbitration clause provides in relevant part that "Any claim or dispute, whether in contract, tort or otherwise ... between us ... which arises out of or relates to the contract or any resulting transaction or relationship ... shall at the election of either of us be resolved by a neutral, binding arbitration and not by a court action."

Mr. Basulto testified that nobody forced them to sign any of the contract documents and they were free to take the contract documents to a friend who better understood English (Transcript of Evidentiary Hearing of 3/2/07, pg. 35, lines 9-13). Likewise, Mrs. Gonzalez testified that she 'took her chances' by not getting someone to read the documents to them prior to signing them (Transcript of Evidentiary Hearing of 3/2/07, pg. 35, lines 11-20).

SUMMARY OF ARGUMENT

The Third District properly compelled the Buyers to arbitrate their monetary claims against the Dealership based on its finding that the arbitration clause contained in the Retail Installment Contract was enforceable. Florida law and public policy favor arbitration. Arbitration is required for all controversies or disputes that parties have agreed to submit to arbitration. The subject purchase and sale documents contained two broad arbitration provisions. Both documents stated

all disputes would be submitted to the American Arbitration Association ("AAA") and would be subject to the AAA procedural rules. The Buyers consented to arbitration, since they signed a document titled "Agreement to Arbitrate Disputes". Further, the Retail Installment Contract, stated in bold letters "CAUTION" --IT IS IMPORTANT THAT YOU THOROUGHLY READ THE CONTRACT". The document further stated "IMPORTANT ARBITRATION DISCLOSURES".

The Third District followed longstanding Florida law which requires individuals to read and understand the contracts they sign and be bound by them. Accordingly, under Florida law, it does not matter if a consumer is blind, illiterate or limited in his/her understanding of English, since no such infirmity will invalidate an agreement. Additionally, the subject arbitration agreements were not unconscionable. While signing the agreements was necessary to consummate the transaction, the Buyers were not coerced into signing the agreements and knew they were signing legally binding documents.

ARGUMENT

I. BUYERS EXECUTED AN ENFORCEABLE AGREEMENT TO ARBITRATE

The Florida Arbitration Code provides that arbitration agreements are valid, irrevocable and enforceable. Section 682.02, Fla. Stat. Arbitration is required for those controversies or disputes the parties have agreed to submit to arbitration. Miller v. Roberts, 682 So. 2d 691 (Fla. 5th DCA 1996). Arbitration agreements are

a favored means of dispute resolution. Raymond James Fin. Servs., Inc. v. Saldukas, 896 So. 2d 707, 711 (Fla. 2005); Roe v. Amica Mut. Ins. Co., 533 So. 2d 279 (Fla. 1988). Courts must resolve all doubts in favor of arbitration rather than against it. Prudential Secs., Inc. v. Katz, 807 So. 2d 173, 174 (Fla. 3rd DCA 2002).

There are three elements which a court must consider in ruling upon a motion to compel arbitration of a given dispute: (1) whether a valid written agreement to arbitrate exists; (2) whether an arbitrable issue exists; and (3) whether the right to arbitration has been waived. Seifert v. U.S. Home Corp., 750 So.2d 633, 636 (Fla. 1999).

In the case at bar, the only issue before the Court is whether there was a binding agreement to arbitrate as there is no issue as to whether an arbitrable issue exists or whether there has been a waiver of the right to arbitrate.

In this case, the Agreement to Arbitrate Disputes is a binding agreement signed by the parties that requires them to submit all disputes to arbitration (Petitioners' Appendix 4). Additionally, the Retail Installment Contract reiterates the parties' agreement to submit their disputes to arbitration (Petitioners' Appendix 5). Where an arbitration clause is broad in scope, as is it here, there is a presumption of arbitrability and an order compelling arbitration should not be denied unless there is no reasonable interpretation which would permit it. Morton v. Polivchak, 931 So. 2d 935, 941 (Fla. 2d DCA 2006). The District Court

properly enforced the arbitration clause of the Retail Installment Contract to require arbitration of the Buyers' monetary claims. Hialeah Auto., LLC v. Basulto, 22 So. 3d 586, 592 (Fla 3rd DCA 2009).[1]

The Buyers in this case allege that they signed the retail installment contract which contained the arbitration clause and that the Defendant dealership never disclosed or discussed the arbitration clause with them (Petitioners' Appendix 5, Complaint, par. 19). Thus, the Buyers' very Complaint undermines their contention that the dealership's employees misled them about the arbitration clause. Not mentioning or discussing an arbitration clause in an agreement does not constitute grounds to deny a motion to compel arbitration. See CFC of Del. LLC v. Santalucia, 37 Fla. L. Weekly D 1590 (Fla. 4th DCA 2012); See also Shearson/Lehman Bros., Inc. v. Ordonez, 497 So. 2d 703, 704 (Fla. 4th DCA 1986) ("Unless the arbitration clause in the contract was allegedly induced by fraud, all claims including claims that the entire contract was induced by fraud, must be submitted to arbitration.").

While the Buyers claim that they did not read English, they also testified that they knew they were signing a legal document, were not prevented from seeking legal advice from an attorney and took their chances by signing an agreement they could not read. This type of conduct should not be rewarded. If someone does not

[1] The Dealership went out of business in 2009 so the Buyers' claims for injunctive relief are moot.

read or understand a language, he should have the foresight and common sense to seek counsel to review the agreement before signing a legally binding document. That is a duty under well-established Florida case law. In the context of buying or selling property, an arms-length transaction occurs and neither party owes the other a fiduciary duty. Mac-Gray Servs. v. DeGeorge, 913 So. 2d 630, 633 (Fla. 4th DCA 2005). Thus, as a legal and practical matter, the onus should not be placed on a dealership's lay employees to explain and translate legal documents.

Florida law has long held that a party to a contract is "conclusively presumed to know and understand the contents, terms, and conditions of the contract." Stonebraker v. Reliance Life Ins. Co. of Pittsburgh, 166 So. 583, 584 (Fla. 1936). Moreover, no party to a written contract in this state can defend against its enforcement on the ground that he or she signed it without reading it. Allied Van Lines, Inc. v. Bratton, 351 So. 2d 344, 347-8 (Fla. 1977); Bill Heard Chevrolet Corp., Orlando v. Wilson, 877 So. 2d 15, 18 (Fla. 5th DCA 2004). "If a person cannot read the instrument, it is as much his duty to procure some reliable person to read and explain it to him, before he signs it, as it would be to read it before he signed it if he were able to do so, and his failure to obtain a reading and explanation of it is such gross negligence as will estop him from avoiding it on the ground that he was ignorant of its contents." All Florida Surety Co. v. Coker, 88 So. 2d 508, 511 (Fla. 1956); Rivero v. Rivero, 963 So. 2d 934, 938 (Fla. 3rd DCA

2007); Merrill, Lynch, Pierce, Fenner & Smith, Inc. v. Benton, 467 So. 2d 311 (Fla. 5th DCA 1985)(enforcing arbitration clause of a contract against a plaintiff who signed an agreement but claimed she did not understand English).

In Spring Lake NC, LLC v. Holloway, 2013 Fla. App. LEXIS 1537 (Fla. 2nd DCA 2013), health care providers appealed an order by the Circuit Court that denied their motion to compel arbitration in a wrongful death action arising from a resident's stay at a rehabilitation center. The trial court declined to find that the resident was incompetent or incapacitated to enter into a contract at the time of her admittance. It was persuaded, however, that the contracts were so complex that she could not possibly have understood what she was signing. Accordingly, it ruled that there was no meeting of the minds between the parties and that the arbitration clause was unenforceable.

In reversing the decision of the trial judge, the Second District succinctly explained the law in Florida concerning the very issues before this Court in this appeal.

> We have little doubt that the trial court correctly assessed Ms. Holloway's ability to understand these documents. For better or worse, her limited abilities are not a basis to prevent the enforceability of this contract. In a very similar case, this court explained:
>
> As a general proposition, "[w]here one contracting party signs the contract, and the other party accepts and signs the contract, a binding contract results." D.L. Peoples Group, Inc. v. Hawley, 804 So. 2d 561, 563 (Fla. 1st DCA 2002) (citing

Skinner v. Haugseth, 426 So. 2d 1127, 1129 (Fla. 2d DCA 1983); see also Mandell v. Fortenberry, 290 So. 2d 3, 7 (Fla. 1974)("There is a presumption that the parties signing legal documents are competent, that they mean what they say, and that they should be bound by their covenants."); Dodge of Winter Park, Inc. v. Morley, 756 So. 2d 1085, 1085-86 (Fla. 5th DCA 2000) ("Generally, it is enough that the party against whom the contract is sought to be enforced signs it."). Thus, "[a] party normally is bound by a contract that the party signs unless the party can demonstrate that he or she was prevented from reading it or induced by the other party to refrain from reading it." Consol. Res. Healthcare Fund I, Ltd. v. Fenelus, 853 So. 2d 500, 504 (Fla. 4th DCA 2003); see also Allied Van Lines, Inc. v. Bratton, 351 So. 2d 344, 347-48 (Fla. 1977) ("It has long been held in Florida that one is bound by his contract. Unless one can show facts and circumstances to demonstrate that he was prevented from reading the contract, or that he was induced by statements of the other party to refrain from reading the contract, it is binding." Estate of Etting ex rel. Etting v. Regents Park at Aventura, Inc., 891 So. 2d 558, 558 (Fla. 3d DCA 2004) (holding that the fact that the decedent was legally blind when she signed the arbitration agreement did not render the agreement invalid in the absence of evidence that she was coerced into signing it or prevented from knowing its contents). This is true whether a party is physically unable to read the agreement, see Estate of Etting, 891 So.2d at 558, or simply chooses not to read the agreement, see Fenelus, 853 So. 2d at 504.

Rocky Creek Ret. Props., Inc. v. Estate of Fox ex rel. Bank of Am., N.A., 19 So. 3d 1105, 1108 (Fla. 2d DCA 2009); see also SA-PG Sun City Ctr., LLC v. Kennedy, 79 So. 3d 916, 920 (Fla. 2d DCA 2012) (reaffirming that a party's alleged inability to understand an agreement does not vitiate her assent to that agreement in the absence of some evidence that she was prevented from knowing its contents).

As a practical matter, a significant percentage of the people who enter nursing homes and rehabilitation centers have mental or physical limitations that make it difficult for them to

> understand the agreements signed at admittance. The agreements are sufficiently complex that many able-bodied adults would not fully understand the agreements. The same is probably true for most of the contracts that we sign for many consumer services and even for the agreements clients sign when they hire attorneys.
>
> There was a time when most contracts were individually negotiated and handwritten. In that period, perhaps the law could adequately describe a mutual agreement as a "meeting of the minds" between the parties. A literal "meeting of the minds," requiring both parties to have a comparable, subjective understanding of their agreement is clearly not what the courts intend by the use of this phrase. Our modern economy simply could not function if a "meeting of the minds" required individualized understanding of all aspects of the typical standardized contract that is now signed without any expectation that the terms will actually be negotiated between the parties.

In the case at bar there was a meeting of the minds, as defined by Holloway, by virtue of the Buyers signing the subject agreements to arbitrate.

II. THE RETAIL INSTALLMENT CONTRACT IS NOT UNCONSCIONABLE

The party seeking to avoid the arbitration provision has the burden to establish unconscionability. Estate of Perez v. Life Care Ctrs. of Am., Inc., 23 So. 3d 741, 742 (Fla. 5th DCA 2009); Gainesville Health Care Ctr., Inc. v. Weston, 857 So. 2d 278, 288 (Fla. 1st DCA 2003). To succeed in an unconscionability argument, both procedural and substantive unconscionability must be shown. Tampa HCP, LLC v. Bachor, 72 So. 3d 323, 326 (Fla. 2d DCA 2011); Chapman v. King Motor Co. of S. Fla., 833 So.2d 820, 821 (Fla. 4th DCA 2002).

A contract is substantively unconscionable only if its terms are so outrageously unfair that they shock the judicial conscience. John Knox Vill. of Tampa Bay, Inc. v. Perry, 94 So. 3d 715, 718 (Fla. 2nd DCA 2012). A substantively unconscionable contract is one that no man in his senses and not under delusion would make on the one hand, and no honest and fair man would accept on the other. FL-Carrollwood Care Ctr., LLC v. Gordon, 72 So. 3d 162, 165 (Fla. 2d DCA 2011). The arbitration agreement contained in the Retail Installment Contract (referred to by the Third District as the "Clause"), did not contain substantively unconscionable terms.

The stand-alone arbitration provision of the Retail Installment Contract does not require a waiver of punitive damages. The only substantive rights that the Buyers waived under the arbitration clause of the Retail Installment Contract are the right to bring a class action and the right to a jury trial. In that regard, the Complaint filed by the Buyers was not a class action Complaint and in fact, the Buyers testified that they did not seek to represent anyone else. Moreover, it is well established that class action waivers in arbitration agreements are valid and enforceable. AT&T Mobility LLC v. Concepcion, 131 S. Ct. 1740, 1746, 179 L. Ed. 2d 742 (2011); Baldwin v. Regions Fin. Corp., 98 So. 3d 1210 (Fla. 3rd DCA 2012).

Similarly, an agreement to waive a right to a jury trial by agreeing to arbitrate does not make a contract unconscionable. In Kaplan v. Kimball Hill Homes Fla., Inc., 915 So. 2d 755, 761 (Fla. 2d DCA 2005), the court noted:

> The rights of access to courts and trial by jury may be contractually relinquished." Global Travel Mktg., Inc. v. Shea, 908 So. 2d 392, 398 (Fla. 2005). Here, those rights were specifically waived in the contract by inclusion of the statement that the parties waived "any right" to have disputes "resolved by judicial proceedings, including any right to trial by jury." And, of course, an agreement to arbitrate necessarily is understood to involve the relinquishment of the rights of access to courts and trial by jury. Although a specific waiver of those rights was present here, such a waiver is not necessary. See Terminix Int'l Co. v. Ponzio, 693 So. 2d 104, 109 (Fla. 5th DCA 1997) (holding that even in the absence of specific waiver, plaintiff waived rights of access to courts and of trial by jury "by consenting to arbitrate disputes" arising from contract). Similarly, the Kaplans have no viable claim that a process to which they specifically agreed violates their constitutional due process rights. Compelled arbitration does not violate the Kaplans' constitutional rights, because the Kaplans agreed generally to arbitrate controversies or claims relating to the agreement, the home, or the project or community and because they specifically waived their rights of access and trial by jury.

CONCLUSION

The Buyers executed the agreements with the Dealership knowing they were signing legally binding documents. They deliberately failed to avail themselves to a friend who could speak English. There is no evidence that the Dealership's employees induced the Buyers not to obtain assistance from a disinterested third party to read and explain the agreements to the Buyers. In an arms-length transaction concerning the purchase of property there is no fiduciary relationship

which would place a burden or duty on the Dealership's employees to explain the arbitration provisions. Such an onus should not be placed on the Dealership's employees or on any seller of real or personal property, as each party to a transaction must take reasonable measures to protect himself and understand what he signs.

The arbitration clause of the Retail Installment Contract is not substantively unconscionable. The only rights its seeks to waive are to class actions and to a jury trial. Both of these rights under the prevailing case law may be waived in favor of arbitration. The parties should be ordered to arbitrate the Buyers' monetary claims.

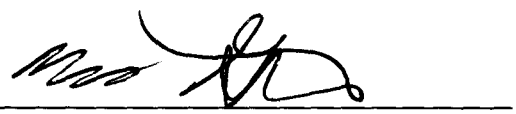
CERTIFICATE OF SERVICE

I CERTIFY that a copy of Respondent's Answer Brief was emailed on February 21, 2013, to Timothy Blake, Esq., 66 West Flagler St., 2nd Floor, Miami, Florida 33130.

Mark A. Goldstein

CERTIFICATE OF COMPLIANCE WITH FLA. R. APP. P. 9.210(a)(2)

I hereby certify that this Answer Brief is in compliance with Fla. R. App. P. 9.210(a)(2) and that Times New Roman 14-point font is used in this computer-generated brief.



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