



OHIO APPEALS COURT FINDS CONSUMER ARBITRATION PROVISION ENFORCEABLE

A consumer brought a pro se action against the holder of the consumer's retail installment contract for the purchase of a motor vehicle alleging violations of the Ohio Consumer Sales Practices Act. *Dozier v. Credit Acceptance Corp.*, 135 N.E. 3d 804 (Ohio Ct. App. 2019). The holder moved for arbitration based on the arbitration provision in the contract and the Court of Common Pleas denied the motion to compel arbitration on the basis of unconscionability. The holder appealed. The Court of Appeals reversed the lower court, holding that the consumer failed to establish that the arbitration provision was unconscionable, and remanded the case to the trial court to stay the litigation pending arbitration.

The Court of Appeals stated that Ohio public policy favors enforcement of arbitration provisions and that a presumption favoring arbitration arises when claims in a dispute fall within an arbitration provision.

The court examined the retail installment contract, including the arbitration provision, and noted that the fact that there is an arbitration agreement embedded within the contract was communicated to the consumer in a notice on the first page of the retail installment contract and that the word "ARBITRATION" was written in capital letters in order to attract the reader's attention. In addition, the court found that the notice informed the reader that the full text of the arbitration provision appeared on the fifth page of the contract, and the consumer's initials appeared below both the notice of arbitration on the first page and the actual arbitration provision on the fifth page. The court explained that the arbitration provision itself occupied the entire fifth page of the contract and was identified by the words "ARBITRATION CLAUSE," which were both underlined and in all capital letters. The court found that the terms of the arbitration agreement, which were not ambiguous and were written in plain English, were fair and applied equally to both parties. The court reviewed the provision and found that under the arbitration provision both parties were required to resolve their disputes in arbitration. Moreover, the court pointed to the fact that the arbitration agreement gave the borrower the right to reject the arbitration provision by mailing a written rejection to the address provided in the arbitration provision within 30 days of signing the agreement. The court also noted that a ban on class actions, as found in the arbitration

provision, did not necessarily void an arbitration agreement. The court stated that even if the Ohio Consumer Sales Practices Act contains a policy favoring class action, the court under Ohio law may not apply that policy in a way that disfavors arbitration. After reviewing the arbitration policy, the court found nothing procedurally or substantively unconscionable about the arbitration agreement presented in the case.

The case illustrates that fair arbitration provisions in consumer contracts will be enforced by Ohio courts. Please feel free to contact us with any questions regarding arbitration. □

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