

# NJ Supreme Court Reverses Appellate Court Decision in Car Dealership Arbitration Clause Case

by Leonard S. dePalma, Esq.

In Goffe v. Foulke Management Corp., 238 N.J. 191 (2019), the New Jersey Supreme Court considered whether Plaintiffs, who were car buyers, may avoid being compelled to arbitrate their claims that fraudulent sales practices by two car dealerships induced consumers to enter into agreements for the purchase of cars. Under review was an Appellate Division decision that held, in part, that because there were fundamental questions about whether the parties entered into binding contracts, the trial court had erred because it should have held an evidentiary hearing to resolve whether the contracts were binding before the arbitration provision could have effect. This case was decided on June 5, 2019.

Plaintiffs (in separate cases that were later consolidated) challenged the formation and validity of their sales agreements on the bases that the dealerships' fraudulent practices and misrepresentations induced them to sign the transactional documents and that the agreements are invalid due to violations of statutory consumer fraud requirements. As part of the overall set of documents, plaintiffs signed arbitration agreements. Those agreements contained straightforward and conspicuous language about arbitration and broadly delegated arbitrability issues to an arbitrator.

## Facts of the Case

Plaintiffs Robinson and Goffe each signed several documents in connection with their respective car purchases from defendant car dealerships. On November 5, 2016, plaintiff Sasha Robinson contacted Mall Chevrolet in Cherry Hill about buying a car and allegedly was told that, if she purchased from the dealership, she would have two



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days within which to change her mind, return it, and get her money back. Later that day, she went to the dealership and discussed purchasing a 2016 Chevrolet Malibu. Mall Chevrolet employees told Robinson that -- in addition to trading

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out of order

"The trouble with the rat race is that even if you win, you're still a rat."

- Lily Tomlin

"Life would be infinitely happier if we could only be born at the age of eighty and gradually approach eighteen."

- Mark Twain

## Auto Sales Arbitration Clause

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in a Chevrolet Cruze that she jointly owned with her mother, Tijuana Johnson -- she would have to provide a \$1,000 deposit for the Malibu and that her monthly car payment on the remaining loan would be \$549. Robinson says she was told that Johnson would be required to co-sign in order to complete the transaction. Robinson moved ahead with the car purchase transaction that day, signing several documents. Johnson's signature does not appear on any of them.

One document Robinson signed is a two-page Motor Vehicle Retail Order (MVRO). Above her second signature, the MVRO states:

Customer agrees that ... I HAVE RECEIVED, READ, UNDERSTAND AND HAVE SIGNED THE ARBITRATION AGREEMENT WHICH APPLIES TO THIS TRANSACTION. CUSTOMER AGREES THAT CUSTOMER WILL BRING ANY CLAIMS CUSTOMER MAY HAVE HAD AGAINST DEALER, EXCEPT FOR UCC CLAIMS BUT, INCLUDING CLAIMS UNDER THE NEW JERSEY CONSUMER FRAUD ACT, WITHIN 180 DAYS FROM THE DATE OF THIS AGREEMENT AND IF NOT BROUGHT WITHIN 180 DAYS ALL CLAIMS WILL BE TIME BARRED. UCC CLAIMS MUST BE BROUGHT WITHIN ONE YEAR.

Another document Robinson signed was a "Spot Delivery Agreement." that stated, in relevant part:

It is my understanding and agreement that I am taking possession and delivery of the above described vehicle prior to financing being finalized ...

After signing the above documents, Robinson charged the \$1,000 deposit to her debit card and handed over the keys to her Chevrolet Cruze. Before driving home in the Malibu, Robinson was advised that she would have to return to the dealership with Johnson on the following Monday to finish signing the documents.

Robinson returned with Johnson to the dealership on Monday and declared that she no longer wanted the Malibu because it was too expensive. Mall Chevrolet's representatives told her that she could not return the Malibu, that the representation about being able to rescind the deal within two days was a mistake, and that she was bound by the documents she signed. Robinson alleges that the representatives attempted in various ways to "coerce" her into signing the purchase documents even though she demanded her \$1,000 deposit back. That said, Robinson was able to leave with her for-

mer car after Mall Chevrolet eventually relented, returned the Chevrolet Cruze to her, and promised a return of her deposit.

In this action, Robinson alleges that Mall Chevrolet did not give her a copy of any documents that she signed during the transaction. She further alleges that no one from the dealership had signed the MVRO or arbitration agreement when she saw the documents on Monday, November 7, and that they "had to be signed after we left the dealership on Monday."

Robinson and Goffe filed substantially similar six-count complaints. Each alleged statutory violations of the New Jersey Consumer Fraud Act (CFA); the Truth in Consumer Contract Warranty and Notice Act; the Plain Language Act; the Truth in Lending Act, as well as common law fraud. Plaintiffs, who were represented by the same counsel, claimed that both dealerships respectively engaged in deceptive and unconscionable practices, including misrepresentations and concealment in the buying process. Robinson's complaint included her mother, Johnson, as a co-plaintiff. Defendants moved to dismiss the claims in each case and to compel arbitration based on the arbitration agreements. The trial courts granted the motions and compelled arbitration.

### Appellate Division Ruling as to the Consolidated Cases

Plaintiffs appealed and the Appellate Division consolidated the cases. In a published opinion, the panel reversed the orders that granted defendants' motions to compel arbitration. Goffe v. Foulke Mgmt. Corp., 454 N.J. Super. 260, 185 A.3d 248 (App. Div. 2018). The panel's decision contains a number of conclusions, which are set forth below.

However, the Supreme Court held that the trial courts' resolution of these matters was correct and consistent with clear rulings from the United States Supreme Court that bind state and federal courts on how challenges such as plaintiffs' should proceed. Those rulings do not permit threshold issues about overall contract validity to be resolved by the courts when the arbitration agreement itself is not specifically challenged.

The New Jersey Supreme Court relied upon U.S. Supreme Court holdings that treat an arbitration agreement as severable and enforceable, notwithstanding a plaintiff's general claims about the invalidity of the contract as a whole. Thus, a general challenge to the validity of the agreement as a whole was held not sufficient to permit arbitration to be avoided.