

Summary of SC92539, Clarence E. Johnson on Behalf of Anita Johnson, Deceased v. JF Enterprises, LLC, and Jeremy Franklin

Appeal from the Jackson County circuit court, Judge W. Brent Powell

Argued and submitted Nov. 8, 2012; opinion issued June 11, 2013, and modified on the Court's own motion July 16, 2013

Attorneys: The dealership and its president were represented by Patric S. Linden and Kevin D. Case of Case & Roberts PC in Kansas City, (816) 979-1500, and Johnson was represented by Joseph M. Backer of The Backer Law Firm LLC in Independence, (816) 283-8500.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A car dealership and its president appeal the trial court's overruling of their motion to compel arbitration of claims made against them by a woman who purchased a vehicle from the dealership. In a 4-2 decision written by Judge Laura Denvir Stith, the Supreme Court of Missouri reverses the judgment and remands (sends back) the case. As part of the sales transaction, the woman signed numerous documents, including an installment contract and an arbitration agreement. The installment contract contained a merger clause stating that it set forth the entire agreement between the parties as to certain financing issues. It is not a violation of the merger clause to give effect to the contemporaneously signed arbitration agreement because it is a dispute resolution agreement, not a conflicting financing agreement.

Chief Justice Richard B. Teitelman dissents. He would hold there is an inconsistency between the installment contract merger clause and the arbitration agreement, creating an ambiguity that should be construed against the dealership.

Facts: Anita Johnson purchased a new vehicle from a Suzuki dealership in Kansas City. Johnson financed the purchase, executing a retail installment contract that obligated her to make 75 monthly payments of \$762.32. According to Johnson, the dealership claimed she only would have to pay up to \$100 a month and that it would refund the difference between the monthly amounts due under the installment contract and the low monthly payments promised by the dealership. The installment contract contained a merger clause stating that the contract set forth the entire agreement between the parties as to prior oral agreements or oral or written commitments that pertain to the loaning of money, extending credit, and forbearing enforcing repayment of a debt. Johnson also signed an arbitration agreement, which required that all disputes arising out of or relating to the credit application, purchase or condition of the vehicle, the purchase or financing contract, or any resulting transaction or relationship would be resolved by binding arbitration and not court action. After the dealership allegedly told Johnson that she was no longer part of the promotional low monthly payment program and that she was responsible for paying the entire remaining loan amount, she sued the dealership and its president. Relying on the arbitration agreement, the dealership moved the circuit court to

compel arbitration of Johnson's claims. Johnson opposed the motion on the basis that the arbitration agreement could not apply to the installment contract. The trial court agreed with Johnson, overruling the dealership's motion to compel arbitration. The dealership appeals. Johnson died during the pendency of the appeal. Upon motion, this Court ordered substitution of Clarence Johnson.

REVERSED AND REMANDED.

Court en banc holds: The installment contract merger clause merged prior oral agreements and prior oral or written commitments "to loan money, extend credit or to forbear from enforcing repayment of a debt including promises to extend or renew such debt." The separately signed arbitration agreement is a dispute resolution agreement, not an additional financing document. It can be harmonized, therefore, with the installment contract and is not voided by operation of the merger clause. The trial court erred in determining otherwise.

(1) The order in which the documents were placed by the parties in the pile of documents does not affect the enforceability of the merger clause or the arbitration agreement, nor does it make the separate arbitration agreement a modification to the installment contract. When several instruments relating to the same subject are executed at the same time, the documents will be construed together, even in the absence of explicit incorporation, unless the record shows that the parties did not so intend. Here, the circumstances do not demonstrate that the parties did not intend to give effect to all the documents executed by Johnson at the time she purchased the vehicle.

(2) The arbitration agreement and merger clause can be harmonized. The plain language of the merger clause does not state the installment contract supersedes all contemporaneously signed documents in the "pile" – such as the arbitration agreement – presented to Johnson to sign at the same sitting. An arbitration agreement is not an agreement to loan money, extend credit or forbear from enforcing repayment or promise to extend or renew debt. It is a dispute resolution clause that applies to the disagreements over financing that are the subject of the lawsuit. The merger clause cannot be construed to make the installment contract the complete and exclusive statement of the agreement of the parties as to all matters relating to the purchase of the vehicle, as this would negate the purchase documents themselves, any warranties or disclosures given or made, and the other matters set out in the documents contemporaneously signed by Johnson.

(3) Because of its resolution of the merger clause issue, the trial court did not determine whether the arbitration agreement is unconscionable. Neither did it determine whether fraud in the inducement to contract through promises not to enforce the terms of the installment contract makes the merger clause or arbitration agreement voidable. Accordingly, this Court remands for further proceedings in accordance with this opinion.

Dissenting opinion by Chief Justice Teitelman: The author would hold there is an inconsistency between the installment contract merger clause and the arbitration agreement, creating an ambiguity that should be construed against the dealership. The

second sentence of the merger clause first provides that to prevent “misunderstanding ... any agreement we reach covering such matters are contained in this writing ...” and then provides that the “complete and exclusive statement of the agreement between us” consists of “this writing.” A reasonable consumer could construe “such matters” to mean either all loan obligations or the “exclusive statement of the agreement between us,” which would make the arbitration clause inconsistent with the merger clause. He notes it may be difficult for a consumer at a dealership to reconcile these various provisions, instantaneously and without legal counsel.