IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
October 16, 2002 Session

**SHARON TAYLOR**
**v.**
**DOUGLAS BUTLER AND CITY AUTO SALES**

**An Appeal from the Chancery Court for Shelby County**
**No. CH-02-0287-3 D.J. Alissandratos, Chancellor**

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**No. W2002-01275-COA-R3-CV - Filed April 24, 2003**

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This case involves the enforceability of an arbitration agreement. In June 1998, the plaintiff signed a contract to buy a used car from the defendant car dealership for approximately $10,000. In the sales contract, the plaintiff agreed to pay the dealership approximately $1,000 as a down payment on the car and finance the remainder. The sales contract included an arbitration provision. The plaintiff gave the dealership the down payment, and the dealership gave the plaintiff possession of the car pending final approval of the financing. Approximately a week later, the car dealership told the plaintiff that her application for financing had been rejected, and asked her to return the car. The plaintiff refused. The dealership then repossessed the car and kept the down payment and other personal property that the plaintiff had in the car. The plaintiff sued the dealership, claiming fraud, violation of the Tennessee Consumer Protection Act, and conversion. The dealership filed a motion to dismiss, arguing that the plaintiff's claims were subject to the arbitration provision in the sales contract. The trial court dismissed the plaintiff's lawsuit, and the plaintiff now appeals. We reverse, finding that the plaintiff stated a claim for fraudulent inducement of the contract, which is not subject to the arbitration provision.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court is Reversed and Remanded**

HOLLY KIRBY LILLARD, J., delivered the opinion of the court, in which W. FRANK CRAWFORD, P.J., W.S., and DAVID R. FARMER, J., joined.

Sam F. Cole, Jr., Memphis, Tennessee, for the appellant, Sharon Taylor.

Joseph D. Barton, Millington, Tennessee, for the appellees, Douglas Butler and City Auto Sales.

## OPINION

On June 4, 2001, Plaintiff/Appellant Sharon Taylor ("Taylor") sought to purchase a used 1998 Pontiac Grand Am from the Defendant/Appellee City Auto Sales ("City Auto"). The parties signed a document called an "'As Is' Used Vehicle Retail Buyers Order" ("Buyers Order"), reflecting that the total purchase price of the car was $10,058. The Buyers Order included an arbitration provision, stating that "all claims, demands, disputes or controversies of every kind or nature between [she and City Auto] arising from [the sale of the vehicle] . . . shall be settled by binding arbitration conducted pursuant to the provisions of the Federal Arbitration Act, 9 U.S.C. Section 12 et seq."

The Buyers Order also provided that Taylor agreed to make a cash down payment to City Auto of $1,310, and to finance the remainder.[1] To that end, Taylor sold her older car for $1,000, and gave that money to City Auto to satisfy part of her down payment. For the rest of the down payment, $310, Taylor signed a short-term promissory note agreeing to pay it in three equal installments over the following three months.

On that same day, pending approval of the long-term financing arrangement, City Auto delivered possession of the vehicle to Taylor. Taylor claims that City Auto told her at the time of delivery that the long-term financing had been approved. It is undisputed, however, that Taylor signed a "Spot Delivery Agreement," which stated that City Auto was giving her immediate possession of the car "[p]ending the purchase of the installment sales agreement by a financing institution." The Spot Delivery Agreement also provided that, if proper financing could not be obtained within three days, City Auto would be entitled "immediately to rescind the sale." Furthermore, upon City Auto's recission of the sale, Taylor would have twenty-four (24) hours from notice of the recission to return the vehicle to City Auto. If she did not return the vehicle, the Spot Delivery Agreement stated that City Auto would "have the right to take immediate possession of the vehicle."

After Taylor had had the car for about a week, City Auto told her that her application for financing had been rejected. Consequently, City Auto demanded that she return the vehicle. Taylor refused. City Auto then repossessed the vehicle, along with other personal items belonging to Taylor that were in the car. According to Taylor, City Auto retained the $1,000 down payment and the personal items that were left in the car after the repossession.

On February 14, 2002, Taylor filed a lawsuit against City Auto. The complaint was entitled "Complaint for Damages for Violation of Tennessee Consumer Protection Act, for Fraud and

[1] Though the parties agree that Taylor's down payment was $1,310, the Buyers Order actually shows that the amount due from Taylor was $1,300. The $10 discrepancy, however, is immaterial to the issues in this appeal.

Conversion."[2] In the complaint, Taylor alleged that City Auto improperly obtained her $1,000 down payment and her personal property that was in the car by using deceptive tactics in violation of the Tennessee Consumer Protection Act ("TCPA"), Tennessee Code Annotated § 47-18-112.[3] Taylor claimed that, when City Auto had her sign the incomplete Spot Delivery Agreement, she was told "that her signing of the incomplete form was simply a formality and did not change the fact that she had already been approved for financing on their sale to her of the '98 [Pontiac Grand Am] anyway." Taylor asserted that, because City Auto's conduct constituted fraud, all transactions between her and City Auto were invalidated, and that City Auto improperly converted her property. Taylor sought $200,000 in damages as well as attorney's fees.

On March 27, 2002, City Auto filed a motion to dismiss the complaint based on the arbitration provision in the Buyers Order. City Auto asserted that Taylor's lawsuit was premised on breach of contract and that, therefore, her claims were subject to the parties' arbitration agreement. On April 26, 2002, Taylor filed a motion to strike City Auto's motion to dismiss, arguing that City Auto could not rely on an arbitration clause in a contract that it had elected to rescind. On May 17, 2002, the trial court entered an order denying Taylor's motion to strike and granting City Auto's motion to dismiss the complaint. From that order, Taylor now appeals.

On appeal, Taylor makes the same argument that she made in her motion to strike, i.e. that City Auto cannot rely on a provision in a contract that it has otherwise rescinded. Taylor maintains that her lawsuit is not premised on breach of contract. Rather, she has alleged that City Auto engaged in a fraudulent scheme and deceptive practices in violation of the TCPA. Finally, Taylor argues that the Spot Delivery Agreement is the contract at issue in this case, and that it did not include an arbitration clause. Consequently, she argues she is not obligated to arbitrate her disputes with City Auto. City Auto responds that Taylor's lawsuit is in fact premised on breach of contract, and that the Spot Delivery Agreement is subject to the terms in the Buyers Order and, therefore, the arbitration provision in the Buyers Order applies to Taylor's claims.

Whether Taylor's claims are subject to the arbitration provision is an issue of law, which is reviewed *de novo*. ***See B.L. Hodge Co. v. Roxco, Ltd.***, No. 03A01-9704-CH-00144, 1997 WL

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[2]The complaint also named Douglas Butler as a defendant. The complaint does not explain who Butler is or his relationship to City Auto Sales, nor does it make any specific allegations against Butler separately. The complaint does not indicate whether Taylor intended to sue Butler individually or in a representative capacity. Rather, the complaint refers to Butler and City Auto Sales collectively as "defendants." Furthermore, the defendants have submitted only one brief on appeal for both parties. Taylor argues in her appellate brief that Butler is liable to her as an individual who participated in the fraud perpetuated by City Auto. The record reflects that Butler signed the $310 short-term promissory note, apparently on behalf of City Auto. The record contains no other evidence of involvement by Butler in City Auto's transaction with Taylor. Since there are no specific allegations against Butler in the complaint, it appears that Butler was sued as a representative of City Auto. Therefore, we will treat the defendants together, hereinafter referred to collectively as "City Auto."

[3]Taylor claimed that City Auto also retained the first month's premium payment for automobile insurance that she was required to pay upon receiving the car.

644960, at *2 (Tenn. Ct. App. Oct. 16, 1997). The trial court's findings of fact are reviewed *de novo*, with a presumption that those findings are correct unless the evidence preponderates otherwise. ***Id.***; Tenn. R. App. P. 13(d).

We first address Taylor's argument that the trial court erred in finding that she was bound by the arbitration provision in the Buyers Order because she alleges fraud, not breach of contract. Taylor notes that her complaint alleges a fraudulent scheme, including fraud in the inducement of the contract at issue. City Auto says that the arbitration provision in Taylor's contract was broad, providing for arbitration of "all claims . . . of every kind or nature" arising out of the sale at issue. Because of the breadth of that provision, City Auto argues that Taylor should be compelled to arbitrate all the claims raised in the lawsuit, including fraud, because they all relate to the sale of the vehicle.[4]

It is well-settled in Tennessee that arbitration agreements are favored under the Tennessee Uniform Arbitration Act ("the Act") and should be given as broad a construction as the language of the agreement will warrant. ***See Buraczynski v. Eyring***, 919 S.W.2d 314, 317-18 (Tenn. 1996); ***Wachtel v. Shoney's, Inc.***, 830 S.W.2d 905, 908 (Tenn. Ct. App. 1991). Tennessee has recognized, however, that a plaintiff cannot be compelled to arbitrate a claim pursuant to an arbitration provision in a contract that was fraudulently induced. ***See River Links at Deer Creek v. Melz***, No. M2002-00043-COA-R3-CV, 2002 WL 31890897, at *3 (Tenn. Ct. App. Dec. 31, 2002) (citing ***City of Blaine v. John Coleman Hayes & Assocs., Inc.***, 818 S.W.2d 33, 38 (Tenn. Ct. App. 1991)). Indeed, the Tennessee Supreme Court has held that "Tennessee law does not allow arbitration of contract formation issues." ***Id.*** (quoting ***Frizzell Constr. Co. v. Gatlinburg, LLC***, 9 S.W.3d 79, 85 (Tenn. 1999)). This rule of law is based on the premise that "[r]escission involves the avoidance or setting aside of a transaction." ***City of Blaine***, 818 S.W.2d at 38. If the contract should be rescinded based on fraudulent inducement, then "there is no contract containing an arbitration clause and the rights of the parties can be fully adjudicated by the court." ***Id.*** Consequently, if Taylor alleges fraud in the inducement, then that claim is not arbitrable and must be adjudicated by the trial court on its merits. ***See Spurling v. Kirby Parkway Chiropractic, Inc.***, No. 02A01-9609-CH-00225, 1997 WL 756684, at *1 (Tenn. Ct. App. Dec. 9, 1997).

An action for fraud in the inducement of a contract, also called promissory fraud, has four elements: (1) an intentional misrepresentation of a material fact; (2) knowledge of the falsity of that representation; (3) an injury caused by reasonable reliance on the representation; and (4) involvement of a promise of future action with no present intent to perform. ***Dobbs v. Guenther***, 846 S.W.2d 270, 274 (Tenn. Ct. App. 1992) (citing ***Oak Ridge Precision Indus., Inc. v. First Tenn. Bank***, 835 S.W.2d 25, 28 (Tenn. Ct. App.1992), and ***Stacks v. Saunders***, 812 S.W.2d 587, 592 (Tenn. Ct. App.

[4] City Auto also argues that this case is governed by the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1, *et seq.*, because the transaction at issue involved commerce. Because the FAA applies, City Auto argues, this Court must give weight to the strong federal policy favoring the enforcement of arbitration agreements. As we note above, however, the Tennessee Arbitration Act also reflects a strong legislative policy favoring arbitration. ***Compare*** Tenn. Code Ann. § 29-5-302(a) (2000), ***with*** 9 U.S.C. § 2 (1999).

1990)). In averring any type of fraud, the plaintiff must state with particularity the circumstances constituting fraud. ***Spurling***, 1997 WL 756684, at *1. With those parameters in mind, we must look to the complaint to determine whether Taylor sufficiently alleges fraud in the inducement of the contract at issue. ***Id.***

The complaint first sets out the undisputed aspects of the sale at issue, stating that Taylor attempted to purchase the vehicle, and was required to pay a $1,310 deposit. It notes that Taylor sold her older car for $1,000 and paid that amount to City Auto as the bulk of her down payment. The complaint then avers that Taylor was given possession of the car, and that she drove it for over a week before City Auto repossessed it. At that point, the complaint details the allegedly deceptive circumstances and actions surrounding the signing of the Spot Delivery Agreement and City Auto's repossession:

> 5. That during the course of her dealings with the [City Auto] and [its] representations to her about inquiry into her credit history before she obtained possession and use of the '98 [Pontiac], they had they [sic] [Taylor] sign an incomplete form which they represented to her would be completed by them thereafter concerning her credit history. ***[Taylor] was told by [City Auto] that her signing of the incomplete form was simply a formality and did not change the fact that she had already been approved for financing on their sale to her of the '98 [Pontiac] automobile anyway.***
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> 6. That during the period of time that she drove and had possession of the '98 [Pontiac], [Taylor] placed a number of items of her personal property in the vehicle. ***Upon utilizing the vehicle as her newly purchased automobile for a week, [City Auto] informed [Taylor] that she was no longer approved for purchase of the '98 [Pontiac]*** and they demanded its return to them by [Taylor]. After refusing to return the '98 [Pontiac] to [City Auto] they then seized possession of it depriving her of it along with her items of personal property contained in that vehicle. [City Auto] also retained her $1,000.00 down-payment to them plus the insurance premium on the vehicle that she had also paid to [City Auto].
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> 9. That [Taylor] charges and alleges that her above mentioned money and property were obtained from her by [City Auto] in their above described tactics and actions towards her in violation of the [TCPA], which prohibited [City Auto's] deceptive acts and practices against [Taylor].
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> 10. ***That [Taylor] also alleges that [City Auto's] conduct and actions in reference to her purchase of the '98 [Pontiac] also constitute fraud thereby vitiating and invalidating their transactions with her.*** [City Auto has] likewise converted and retained her money and property to which they have no right whatsoever. [City Auto

> has] at no time ever sought or acted in any manner to return her funds or personal property to her any more than the '98 [Pontiac] automobile they sold to her.

Complaint (emphasis added). Thus, Taylor alleges that City Auto induced her into signing the Spot Delivery Agreement by telling her that she had been approved for financing, when she, in fact, had not been approved. She asserts that City Auto impermissibly retained her down payment and personal property after the repossession, which was a result of fraud that "invalidat[ed] [City Auto's] transactions with her."

After reviewing the complaint, we must conclude that it sufficiently states a claim for fraudulent inducement. Though not a model of clarity, the complaint's allegations were "sufficient to provide the defendants with fair notice of the nature of the claims made against them." ***Dobbs***, 846 S.W.2d at 274. Taylor seeks to show that City Auto induced her into signing the contract by falsely representing that her financing had been approved. She alleges either that the representation was false because her financing had actually not been approved, or if it had in fact been approved, City Auto later falsely represented that the financing was not approved. Regardless, Taylor's allegations set out a claim for fraudulent inducement which, if proven, would provide a basis on which Taylor could rescind the contract and the arbitration provision it contained. Moreover, Taylor's TCPA claims are based on the same allegations of fraudulent inducement. Therefore, those claims are also are not subject to arbitration. ***See Brown v. KareMor Int'l, Inc.***, No. 01A01-9807-CH-00368, 1999 WL 221799, at *2 (Tenn. Ct. App. Apr. 19, 1999) (noting that the TCPA allegation was not arbitrable because it did not "relate to the agreement"); ***but see Pyburn v. Bill Heard Chevrolet***, No. M2000-02322-COA-R3-CV, 2001 WL 487569, at *10 (Tenn. Ct. App. May 9, 2001) (distinguishing ***KareMor*** and determining that the TCPA claim in that case was "within the scope of what the parties agreed to arbitrate"). Accordingly, we must conclude that the trial court erred in holding that Taylor's claims must be arbitrated.[5] This holding pretermits all other issues raised in this appeal.

The decision of the trial court is reversed and the cause is remanded for further proceedings not inconsistent with this Opinion. Costs are to be taxed to the appellees, Douglas Butler and City Auto Sales, for which execution may issue, if necessary.

HOLLY KIRBY LILLARD, JUDGE

[5] We emphasize that this holding in no way reflects this Court's opinion regarding the merits of Taylor's claims. We merely adhere to the long-standing rule that allegations of fraudulent inducement are not arbitrable unless the parties specifically contract otherwise. ***See Frizzell Constr. Co. v. Gatlinburg, LLC***, 9 S.W.3d 79, 85 (Tenn. 1999)