Dealership's Finance Manager Had Duty to Inform Buyer of Inconspicuous Arbitration Clause in Purchase Agreement Due to False Impression that Buyer's Signature Was Only to Verify Information

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The buyer and a dealership signed a purchase agreement containing a dispute resolution clause ("DRC"). The DRC, in the middle of the purchase agreement, was the only provision in red ink, was in a smaller font and called for the buyer to pay one-half of the arbitrator's fee. The heading "Dispute Resolution Clause" was in all capital letters. The buyer left the dealership with the purchased truck and left his trade-in at the dealership.

A few months later, the lienholder on his trade-in contacted him claiming he owed late payments. The buyer was later notified by the dealership that his trade-in had been stolen and the payments were not the dealership's responsibility since it did not own the trade-in. The dealership took back the truck.

The buyer and his wife sued the dealership for fraud in the inducement to purchase the truck, conversion, violations of the Oklahoma Consumer Protection Act, breach of contract, negligence, and intentional infliction of emotional distress. The dealership moved to compel arbitration based on the DRC. The plaintiffs responded, arguing that the RIC contained a merger clause that provided it represented the entire contract between the parties and did not contain an arbitration provision. They also argued that the buyer's alleged agreement to the DRC was fraudulently induced and that the DRC's provisions were unconscionable.

The trial court denied the motion to compel arbitration, but the appellate court reversed and sent the case back to the trial court. The plaintiffs filed a petition to the Supreme Court of Oklahoma, which was granted.

The Oklahoma high court concluded that, under the circumstances of the case, a duty arose to inform the buyer of the DRC in the purchase agreement due to the false impression created by both the dealership's finance manager and the structure of the purchase agreement. The state high court vacated the appellate court's decision, affirmed the trial court's decision, and remanded the case to the trial court.

The state high court based its decision on the finance manager telling the buyer that the purpose of the purchase agreement was to verify his personal information, information on both vehicles, and how much he would pay for his purchase The high court reasoned that the representations of the finance manager combined with the structure of the purchase agreement, including that the

unrelated DRC provision was tucked-in right before the apparent signature line for the trade-in vehicle section, created a false impression that the only purpose of the buyer's signature was to verify information concerning his trade-in vehicle. The DRC, which provided for arbitration, was a material provision of the purchase agreement. Because of the creation of the false impression that shrouded the existence of the DRC, the high court concluded that the finance manager was under a duty to disclose this material provision to the buyer and that the buyer's failure to read the DRC clause was no defense against establishing such duty. The dealership was "under a duty to say nothing or to tell the whole truth," and disclosing some facts while concealing others was fraud.

The high court attempted to limit the effect of its holding by stating that the duty to disclose in this case is not a duty to read an entire contract; it is the duty to disclose enough information that will clear the false impression created, which, under the circumstances, only concerned the DRC. See *Sutton v. David Stanley Chevrolet, Inc.*, 2020 Okla. LEXIS 94 (Okla. October 13, 2020).