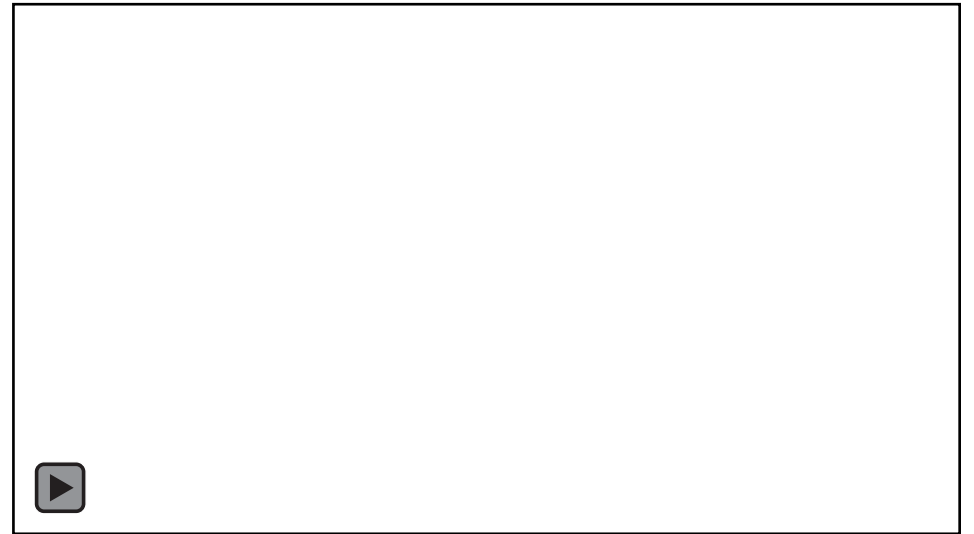


ARBITRATION STRATEGY

Rojas v. Reliable Chevrolet, et. al.



KNOW YOUR ENEMY (2019-2022)

141 – Lawsuits

84 – Lawsuits from Feferman Warren Mattison

\$4,200,000 – Estimated Settlements and Verdicts

100% - Opposed to Arbitration

WHAT IS ARBITRATION?

- Arbitration is a private means of resolving disputes without going to court.
- Nearly every buyer's order has an arbitration clause.
- Arbitration agreements must be enforced so long as (1) they are agreed to by the consumer and (2) they are not **unconscionable**.

ARBITRATION IS GOOD

- **P**redictable
- **P**rice
- **P**rivate

ARBITRATION IS PROTECTED BY STATUTE

- Arbitration is protected by Congress and the state legislature as a fair, expeditious, and private mechanism for dispute resolution without going to court. NMSA, 44-7A-16; 9 U.S.C. Ch. 1 § 2.

FREEDOM OF CONTRACT IS PROTECTED BY THE U.S. CONSTITUTION

U.S. Constitution - Article I, Section 10, Clause 1:

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

ARBITRATION CLEARS THE WAY FOR COURTS TO ADDRESS OTHER CASES

- Bernalillo County must call in retired judges to facilitate pleas in criminal cases. ABQ Journal “DISTRICT COURTS CALL ON RETIRED JUDGES FOR CRIMINAL CASE BACKLOGS” 04/25/2022.
- Bernalillo County had 26,376 active civil cases in 2019 with an average of 420 days to resolution. New Mexico Legislative Finance Committee “LEGISLATING FOR RESULTS: APPROPRIATION RECOMMENDATIONS” Fifty-Fourth Legislature, Second Session
- Bernalillo County was forced to expand its “Court Annexed Arbitration Program” to all civil cases when \$50,000 or less at stake.

PATTERN OF JUDICIAL HOSTILITY

LOCAL JUDGES *ROUTINELY* REFUSE TO ENFORCE ARBITRATION AGREEMENTS

- Unfair Advantage
- Misunderstanding of the Law
- Politics

WE CAN TURN THE TIDE: *ROJAS V. RELIABLE CHEVROLET, ET. AL.* (CASE STUDY)

- In this case, arbitration pursuant to the purchase agreement was compelled by the district court over the consumer's objections.
- The consumer appealed and the appellate court recently issued a proposed decision upholding the lower court's ruling.

ARBITRATION AGREEMENT

Any dispute between Buyer and Dealer arising out of this transaction **will be decided by arbitration** in the City of Albuquerque, New Mexico **under the New Mexico Uniform Arbitration Act** and the applicable rules of the American Arbitration Association. Any arbitration award may be enforced as provided by law.

BOOTSTRAPPING OTHER PORTIONS OF THE CONTRACT

Dealer is not liable for incidental, consequential or punitive damages arising out of this sale or the use of this vehicle, including but not limited to *loss of use, loss of time, inconvenience, transportation, rental, loss of earnings or profits, or any commercial loss.*

Any legal claim arising from this transaction *must be brought within one year* after the date a cause of action accrues, or it will be forever barred.

CONSUMER ARGUMENTS

For all intents and purposes, consumers make the same argument in every case

- The Arbitration Agreement is Unconscionable because it strips the consumer of punitive damages, statutory damages, and attorneys' fees
- The Court should not strike the unconscionable provisions and enforce the arbitration agreement because it incentivizes dealers to act unconscionably knowing they most likely will not be challenged
- A judge's prior ruling in a prior case involving the same dealership with the same arbitration clause where the judge holds the clause unconscionable merits doing the same in the instant case. *Lewis et. al. v. Reliable Chevrolet et. al.* (09/15/2020)

DEALER ARGUMENT (KEY TO VICTORY)

- The Consumer misunderstands the law surrounding punitive damages
 - Contrary to the popular belief of the Plaintiffs and Defense Bars, common law punitive damages and treble damages under the UPA are not the same thing
 - Both are designed to punish wrongful conduct
 - Punitive damages are **uncapped**
 - Treble damages are **capped** at three times actual damages

DEALER ARGUMENT

- The consumer reads new language into the agreement to avoid arbitration altogether
 - There is nothing in the contract that says consumers can't get attorney's fees.
 - There is nothing in the contract that limits the consumers right to UPA damages including treble damages.

DEALER ARGUMENT

- Limitations on remedies *are permissible* so long as they are non-exculpatory and reasonable.
 - The Uniform Commercial Code (UCC) allows for limitations on damages
 - The Arbitration Agreement does nothing to limit the consumer's ability to obtain treble damages, statutory damages, or attorneys fees.

ARBITRATION STRATEGY (SUMMARY)

1. Always move the court to force arbitration.
2. Never admit that any portion of the contract is unconscionable.
3. Don't let the consumer read new language into the contract.
4. Make sure your lawyers cite to *Rojas v. Reliable Chevrolet et. al.*
5. Appeal, Appeal, Appeal.