



# ORIGINAL

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See Okla.Sup.Ct.R. 1.200 before citing.

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

**FILED**  
COURT OF CIVIL APPEALS  
STATE OF OKLAHOMA

JUN 10 2026

SELDEN JONES  
CLERK

ORRKLAHOMA WEST, d/b/a )  
 OrrNissan West, )  
 )  
 Plaintiff/Counterclaim Defendant/ )  
 Appellant, )  
 )  
 vs. )  
 )  
 JAMIE MICHELLE LORAIN )  
 MALONE, )  
 )  
 Defendant/Counterclaimant/ )  
 Third-Party Plaintiff/Appellee, )  
 )  
 and )  
 )  
 RANDALL HENRY MCGUIN )  
 ESS, )  
 JACOB RISER, KELLY RISER, and )  
 SPECIAL SERVICES, INC., )  
 )  
 )  
 Third-Party Defendants.

Case No. 122,830

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APPEAL FROM THE DISTRICT COURT OF  
OKLAHOMA COUNTY, OKLAHOMA

HONORABLE C. BRENT DISHMAN, TRIAL JUDGE

**AFFIRMED**

Derrick T. DeWitt  
Kyle R. Prince  
Ryan L. Dean  
DEWITT, PARUOLO & MEEK

Oklahoma City, Oklahoma

For Appellant

Kevin Bennett  
THE BENNETT LAW FIRM  
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and

Timothy B. Hummel  
HUMMEL LAW  
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For Appellee

OPINION BY DEBORAH B. BARNES, JUDGE:

Orrklahoma West, d/b/a OrrNissan West (Dealership), appeals from the district court's order denying its motion to compel arbitration and from the district court's order denying its motion to vacate. Based on our review, we affirm.

### **BACKGROUND**

This case arises from an automobile sales transaction between Dealership and Jamie Michelle Loraine Malone (Ms. Malone). Dealership initiated this action in the district court in May 2022. However, on July 8, 2022, Dealership filed a motion to compel arbitration and stay proceedings. Dealership asserted that, among the documents signed relating to the sale, Ms. Malone signed an arbitration provision, and Dealership requested that the court enter an order compelling arbitration.

After an evidentiary hearing held on June 13, 2024, the district court, in an order filed on August 16, 2024, denied Dealership's motion to compel arbitration.

The order states that the denial of the motion is based on the following:

1. The arbitration clauses proposed by [Dealership] were statutorily cancelled and made void upon the failure to secure financing for the attempted vehicle purchase.
2. No agreement to arbitrate exists. All purchase documents, including all arbitration provisions, dated December 27, 2021, were cancelled and superseded by the purchase document dated February 17, 2022.
3. [Ms. Malone] has established by clear and convincing evidence the arbitration clauses proposed by [Dealership] are void and unenforceable because they were obtained through fraudulent inducement.

On August 26, 2024, Dealership filed a motion to vacate the court's order denying its motion to compel arbitration. In an order filed on January 3, 2025, the district court denied Dealership's motion to vacate.<sup>1</sup>

Dealership appeals.

### STANDARD OF REVIEW

Generally, "a determination of the existence of a valid enforceable agreement to arbitrate is a question of law to be reviewed by a *de novo* standard." *Signature Leasing, LLC v. Buyer's Group, LLC*, 2020 OK 50, ¶ 2, 466 P.3d 544, 545. However, such a determination may present mixed questions of law and fact regarding

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<sup>1</sup> Dealership filed its motion to vacate, citing "12 O.S. § 1031.1," within 10 days of the district court's order denying its motion to compel arbitration. Under 12 O.S. 2021 § 990.2(A), appeal time is extended by the filing of a motion to vacate if the motion to vacate is filed within 10 days of the filing of an appealable decision. An appeal after the disposition of a timely filed post-trial motion may challenge the ruling on that motion, the underlying judgment, or both. 12 O.S. § 990.2(A); Okla. Sup. Ct. R. 1.22(c)(2), ch. 15, app. 1.

the existence of an arbitration agreement. *Bruner v. Timberlane Manor Ltd. Partnership*, 2006 OK 90, ¶ 8, 155 P.3d 16, 20. Where the dispute is over the legal conclusion drawn from undisputed facts, *de novo* review is proper. *Signature Leasing*, 2020 OK 50, ¶ 2, 466 P.3d at 545. But where the facts are controverted, a more deferential standard of review is required. *Bruner*, 2006 OK 90, ¶ 8, 155 P.3d at 20. Thus, we will review trial court’s legal conclusion regarding fraudulent inducement *de novo*, but we will review the trial court’s factual findings for clear error. Under the clear error standard, we will reverse only if the trial court’s factual findings lack support in the record or if, after reviewing all the evidence, we are left with a firm conviction that the trial court made a mistake. *Atkinson v. Rucker*, 2009 OK CIV APP 30, ¶ 8, 209 P.3d 796, 798.

*Moore v. Bob Howard German Imports, LLC*, 2023 OK CIV APP 14, ¶ 9, 531 P.3d 657, 660-61 (footnote omitted).

## ANALYSIS

The district court’s order denying the motion to compel arbitration is based, in part, on Ms. Malone’s allegations of fraud. “Fraud is a generic term with multiple meanings and is divided into actual fraud and constructive fraud.” *Sutton v. David Stanley Chevrolet, Inc.*, 2020 OK 87, ¶ 9, 475 P.3d 847, 852.<sup>2</sup> “Actual fraud is the intentional misrepresentation or concealment of a material fact which substantially affects another person.” *Patel v. OMH Med. Ctr., Inc.*, 1999 OK 33, ¶ 34, 987 P.2d 1185, 1199.

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<sup>2</sup> We note that, like in *Sutton*, the arbitration agreement in the present case provides that “[a]ny arbitration under this Arbitration Provision shall be governed by the Federal Arbitration Act [FAA] (9 U.S.C. § 1 et seq.).” However, the FAA provides that a written arbitration provision “shall be valid, irrevocable, and enforceable, *save upon such grounds as exist at law or in equity for the revocation of any contract . . .*” 9 U.S.C.A. § 2 (West 2022) (emphasis added).

The theory of constructive fraud is specifically relevant when dealing with fraudulent inducement of an arbitration provision in a sales contract. *Sutton v. David Stanley Chevrolet, Inc.*, 2020 OK 87, ¶ 12, 475 P.3d 847, 853. Constructive fraud may be defined as a breach of duty that gives the actor an advantage by misleading another. *Patel*, 1999 OK 33, ¶ 34, 987 P.2d at 1199.

*Moore*, ¶ 10, 531 P.3d at 661. “[T]he Supreme Court in *Sutton* held that the arbitration provision was fraudulently induced because the car dealer breached its duty to ‘clear the false impression created.’” *Moore*, ¶ 11, 531 P.3d at 661.

In the present case, evidence was presented that a false impression was created that was never cleared. On cross-examination, the finance manager for Dealership, who handled the transaction at issue, testified in the affirmative when questioned: “[W]hen it comes to the arbitration agreement on the RISC, you tell the customers that what that arbitration provision means is that [Dealership] and the customer must come to a mutual agreement before they go to court, true?” The finance manager, who testified he did not recall the specific transaction at issue, stated that “if a customer asked me that question after I pointed out what it is and I’ve given them a chance to review it, that’s a brief summary of what I would say.”<sup>3</sup>

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<sup>3</sup> When questioned whether, “when you engage a customer and it comes to the portion of the arbitration agreement, you ask them what their understanding of arbitration is,” the finance manager stated: “I don’t ask them that every time.”

However, the arbitration provision set forth in the RISC in this case states, in bold and all caps, **“EITHER YOU OR WE MAY CHOOSE TO HAVE ANY DISPUTE BETWEEN US DECIDED BY ARBITRATION AND NOT IN COURT OR BY JURY TRIAL.”** The provision states that any dispute “shall, at your or our election, be resolved by neutral, binding arbitration and not by a court action.” The finance manager’s explanation that arbitration means Dealership and the customer must come to a mutual agreement before they go to court arguably constitutes a misstatement that, if communicated to Ms. Malone during the transaction, could have created a false impression.

However, this was not the only evidence presented at the hearing pertaining to fraud.<sup>4</sup> Ms. Malone testified that she was informed by the finance manager that the arbitration provisions “didn’t pertain to me, that my loan had already went through, that I didn’t need to worry about anything[.]” She also testified she was not given a chance to read the provisions, and that the finance manager signed the arbitration provision for her. The following exchange occurred between Ms.

Malone and her counsel at the hearing:

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<sup>4</sup> At the close of the hearing, the court stated it “also agree[s] with defendant regarding fraudulent inducement. I find that [the finance manager’s] explanation of what arbitration was misleading.” However, the subsequent written order signed by the court and filed January 3, 2025, does not limit the basis of fraudulent inducement to the finance manager’s explanation of what arbitration is, and states, as quoted above, that “[Ms. Malone] has established by clear and convincing evidence the arbitration clauses proposed by [Dealership] are void and unenforceable because they were obtained through fraudulent inducement.” The role of this Court on appeal is to determine whether this finding lacks support in the record.

Q. How did [the finance manager] present this document to you on that day?

A. It was on the computer, and I told him I couldn't see it. He just barely turned it around, and I still couldn't see it. He told me no need to worry, that it was documents that was already signed.<sup>5</sup>

Q. He told you it was already signed?

A. Yep. Just as I was talking to him, he was clicking. I asked him what he was doing and he said that that's the paperwork that he's printing off for me to take home with me.

Q. And it's your testimony that you made no signatures on the retail installment contract?

A. I made no signatures on no computer at all.<sup>6</sup>

Q. And did you see [the finance manager] sign this contract?

A. He was clicking, so I assume he was copying and pasting because I didn't sign anything.

....

Q. Did you inform [the finance manager] that you were unable to read the document?

A. Yes, I did. He told me that he would have it all in the paperwork sending it home with me; if I had any questions, that I could call.

Q. Did you ask any questions about this document when it was being printed?

A. Yes. And he told me that it didn't pertain to me, that my loan had already went through, and if I had any questions after I got home, I could always give him a call.

Dealership asserts that, “[b]ased on her own testimony, [Ms. Malone] admits [the finance manager] made no mention of the Arbitration Provision when

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<sup>5</sup> Ms. Malone further testified that the finance manager's “computer screen was facing this way and he did not turn it all the way around completely to where I could see it.”

<sup>6</sup> Ms. Malone admitted that she did sign an additional arbitration agreement – separate from the RISC – that was apparently presented to her before sitting down with the finance manager in his office. She testified, however, that she was informed this document did not pertain to her. She explained that she “believed him” when she was told the document was “just a document that's one of their legal forms but it doesn't apply to you because your loan had already gone through[.]” Moreover, this particular document is signed only by Ms. Malone and not by any representative of Dealership.

presenting the RISC; and that she did not ask any questions regarding the Arbitration Provision, or arbitration in general.”<sup>7</sup> However, even assuming the finance manager did not provide Ms. Malone with a misleading explanation regarding arbitration, the court’s finding is adequately supported by other evidence: i.e., evidence that Ms. Malone was not given an adequate opportunity to read the arbitration provision, that she was informed the arbitration provision did not pertain to her, and that the finance manager signed the provision for her while informing her it did not pertain to her.

The court’s order denying the motion to compel arbitration does not lack support in the record.<sup>8</sup> Finding no clear error, we affirm the district court’s order denying the motion to compel.

### **CONCLUSION**

We affirm the district court’s order denying Dealership’s motion to compel arbitration and the district court’s order denying Dealership’s motion to vacate.

**AFFIRMED.**

BLACKWELL, P.J., and HUBER, J., concur.

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<sup>7</sup> Reply Br. at 7.

<sup>8</sup> Having reached this conclusion, we need not address the additional bases set forth in the court’s order.

BLACKWELL, J., concurring:

I concur in full in the court's opinion but write separately to note two additional bases to affirm.

First, upon filing its petition in district court seeking to enforce the contracts at issue—the very same contracts the plaintiff later relied on in seeking arbitration—the plaintiff likely waived its right to arbitrate.<sup>9</sup> The very first of the questions that must be answered in gauging whether a party has waived its right to arbitrate is “[w]hether a party has taken actions that are inconsistent with a right to arbitrate . . . .” *Howell’s Well Serv., Inc. v. Focus Grp. Advisors, LLC*, 2021 OK 25, ¶ 15, 507 P.3d 623, 627 (quoting *Northland Ins. Co. v. Kellogg*, 1995 OK CIV APP 84, ¶ 8, 897 P.2d 1161). I can think of no action more inconsistent with arbitration than filing a lawsuit. At a minimum, I would hold that in filing a breach of contract action in district court a plaintiff is presumed to have waived its right to an arbitral forum under that same contract. Several cases so hold, and we should follow suit here. *See, e.g., Cabinetree of Wisconsin, Inc. v. Kraftmaid Cabinetry, Inc.*, 50 F.3d 388, 390 (7th Cir. 1995) (“[A]n election to proceed before a nonarbitral tribunal for the resolution of a contractual dispute is a presumptive waiver of the right to arbitrate.”). *See also* 1 DOMKE ON COMMERCIAL

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<sup>9</sup> The plaintiff brought causes of action for both replevin and breach of contract.

ARBITRATION § 23:10 (stating that “[w]aiver of arbitration occurs in most cases when a party initiates litigation” and collecting cases).<sup>10</sup>

Second, Oklahoma’s iteration of the Uniform Arbitration Act requires the party seeking arbitration—the plaintiff here—to allege two distinct facts in its motion. An applicant must both “show an agreement to arbitrate *and* allege another person’s refusal to arbitrate pursuant to the agreement . . . .” 12 O.S. § 1858(A) (emphasis supplied). A review of the record reveals that, even if an agreement to arbitrate had been shown, the plaintiff did not allege the defendant’s refusal to arbitrate. This makes sense, as it is clear that the plaintiff had not initiated arbitration proceedings, but had instead filed this action in district court. Put simply, the plaintiff sought to test its claims in court and resort to arbitration as a backup. Such is not permitted by the plain language of § 1858, which requires an allegation a “refusal to arbitrate.” *Id.*<sup>11</sup> Because the plaintiff never made any such allegation, summary denial of the plaintiff’s motion seeking arbitration would have been appropriate.<sup>12</sup>

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<sup>10</sup> The defendant pressed this waiver argument vociferously below. *See* ROA, pg. 149-52.

<sup>11</sup> The Federal Arbitration Act contains somewhat analogous language in its § 4. *See* 9 U.S.C. § 4 (requiring an applicant to be “aggrieved by the alleged failure, neglect, or refusal of another to arbitrate”). Of this language, the United States Supreme Court has said: “An indispensable element of [the applicant’s] cause of action under § 4 for an arbitration order is the [opposing party’s] refusal to arbitrate.”

<sup>12</sup> It might be argued that the defendant’s responses to the motion seeking arbitration indicated a refusal to arbitrate. After all, the defendant argued that there was no agreement to arbitrate and that arbitration had been waived, among other things. However, § 1858’s

June 10, 2026

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requirements go to the requirements of *the application* to compel arbitration. One need not look beyond the application itself to determine the allegations it contains.