2014 WL 1414623 (Okla.) (Appellate Brief)
Supreme Court of Oklahoma.

Victor POLLOCK and Evelyn Pollock, Plaintiffs/Appellants,
v.
DAVID STANLEY DODGE, L.L.C.; David Stanley-John Doe Co. (the parent company and/or partner of David Stanley Dodge, L.L.C.); and Bmw Financial Services NA, L.L.C. (doing business as Alphera Financial Services), Defendants/Appellees.

No. 112,055.
March 17, 2014.

Appeal from the District Court of Oklahoma County No. CJ-2012-1688
The Honorable Judge Lisa T. Davis

Appellees' Joint Answer Brief

Derrick T. DeWitt, Esq. (OBA #18044), Melanie K. Christians, Esq. (OBA #30846), Nelson Terry Morton Dewitt, Paruolo & Wood, P.O. Box 138800, Oklahoma City, Oklahoma 73113, Telephone: 405/705-3600, Facsimile: 405/705-2573, dewitt @ntmdlaw.com, mchristians@ntmdlaw.com, David Stanley Dodge, LLC, for appellee.

Melvin R. McVay, Jr., Esq. (OBA #6096), Clayton D. Ketter, Esq. (OBA #30611, Phillips Murrah P.C., Corporate Tower, Thirteenth Floor, 101 North Robinson, Oklahoma City, OK 73102, Telephone: 405/235-4100, Facsimile: 405/235-4133, mrmcvay@phillipsmurrah.com, cdketter@phillipsmurrah.com, Bmw Financial Services NA, LLC, for appellee.

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***1** Defendants/Appellees David Stanley Dodge, LLC ("DSD") and BMW Financial Services NA, LLC ("BMW") (collectively referred to as "Defendants"), pursuant to Rule 1.10 of the Oklahoma Supreme Court Rules, hereby submit their Joint Answer Brief to Plaintiffs/Appellants Victor Pollock ("Mr. Pollock") and Evelyn Pollock ("Ms. Pollock") (collectively referred to as "Plaintiffs") Brief in Chief.

SUMMARY OF THE RECORD

On or about February 20, 2012, Plaintiffs Victor and Evelyn Pollock went to the DSD dealership in Midwest City, Oklahoma intending to purchase a vehicle. (5/17/13 Transcript of Evidentiary Proceedings, p. 16:6-13). On that day, Mr. Pollock decided to purchase a 2012 Jeep Patriot from DSD. (Defendant David Stanley Dodge, LLC's Trial Brief on Defendants' Motions to Compel Arbitration (hereinafter "DSD Trial Brief") at p. 3, 10/08/12 Depo. Victor Pollock, ***2** pp. 210:8-211:8) (5/17/13 Transcript of Evidentiary Proceedings, p. 19:15-18). Mr. Pollock signed several documents to effectuate the sale of the 2012 Jeep Patriot, including a Purchase Agreement. (DSD Trial Brief at 4, 11, Depo. Victor Pollock, pp. 204:13-16; 210:8-211:8) (Purchase Agreement, Defendant DSD's Exhibit 1 admitted into evidence by the Court at May 17, 2013 Evidentiary Hearing (hereinafter cited as "Purchase Agreement, Defendant DSD's Exhibit 1"). The Purchase Agreement contained a Dispute Resolution Clause requiring Mr. Pollock and DSD submit disputes arising out of or related to the purchase of the 2012 Jeep Patriot to binding arbitration pursuant to the Federal Arbitration Act ("FAA"). Id. The Dispute Resolution Clause provided as follows:

DISPUTE RESOLUTION CLAUSE

This Dispute Resolution Clause applies to any controversy, claim or dispute between the Purchaser and the Dealer arising out of, or related to this sale or transaction, including, but not limited to any and all issues or disputes arising as a result of this sale or transaction, whether said issues arise prior to, during or subsequent to the sale or attempted sale of a vehicle and whether said sale or attempted sale is a cash sale or is based upon financing or extended credit, or arises as a result of any financing contract, agreement or sales document related to the sale or attempted sale of a vehicle. The Purchaser and Dealer agree that all matters addressed within this Clause shall be submitted to binding arbitration, with an Arbitration Service or Arbitrator of the parties choosing, pursuant to the Federal Arbitration Act, Title 9 U.S.C. § 1, et seq. The parties agree and understand that all disputes arising under case law, statutory law, and all other laws, including but not limited to, all contract, tort and property disputes, including any claim regarding the use, misuse, and/or disclosure of any information or documentation, including, but not limited to, personal or financial information obtained by the dealership from the purchaser, or about the purchaser, which may arise from the sale relationship or otherwise during the sale or at any time in the future will be subject to binding arbitration in accord with this Contract. The specifically exclude from this Dispute Resolution Clause all claims or disputes subject to the Small Claims Procedures Act of the State of Oklahoma. The parties agree that the arbitrator shall have authority provided for by the law and contract, including but not limited to authority to grant an award or order for money damages, consequential damages, exemplary damages, declaratory relief, or injunctive relief. Arbitration shall be conducted in compliance with the Rules of an Arbitration Service or Arbitrator of the parties choosing and in ***3** conformity with the Federal Rules of Civil Procedure. Any evidence submitted shall be in conformity with the Federal Rules of Evidence. The Arbitrator's award(s) will be entered as a judgment in a court having jurisdiction over the parties. Both the Purchaser and Dealer acknowledge and understand that they are waiving their right to a jury trial by entering into this agreement. It is agreed that the party filing the arbitration claim shall be responsible for the filing fee. The arbitrator's fee shall be equally divided between the parties. The prevailing party shall be entitled to attorney's fees and costs as allowed by Oklahoma and/or Federal Statutes. Dealer and Purchaser agree that if Dealer must hire legal counsel to enforce or defend Dealer's legal rights under this Dispute Resolution Clause, Purchaser will pay to Dealer its attorneys fees and costs incurred by Dealer in Dealer's successful defense of Dealer's rights hereunder. PURCHASER: DEALER:

Id. The Dispute Resolution Clause was printed in red font on the front of the Purchase Agreement (as compared to the rest of the provisions which were printed in blue font), in the same typeface as the rest of the paragraphs on the front of the Purchase Agreement, and its heading was in capital letters like all other paragraph headings in the Purchase Agreement. Id. In addition, the Dispute Resolution Clause contained a separate signature line for both the purchaser and dealer directly underneath the provision. Id.

The language of the Dispute Resolution Clause was present in its entirety on the day the contract was signed and contained no errors, missing terms or ambiguities. (DSD Trial Brief at p. 11, Depo. Victor Pollock, pp. 210:8-211:8). After the Purchase Agreement was placed in front of Mr. Pollock for his signature and made available for Mr. Pollock's examination and inspection, Mr. Pollock signed directly underneath the Dispute Resolution Clause. (DSD Trial Brief at p. 6, Depo. Victor Pollock, pp. 203:16-204:6) (Defendant BMW Financial Services NA, LLC's Hearing Brief for Hearing on Motion to Compel Arbitration and Stay Proceedings (hereinafter "BMW Hearing Brief's at p. 8, 10/08/12 Depo. Victor Pollock, p. 214:17-25). DSD did not prevent Mr. Pollock from reading the Dispute Resolution Clause, and DSD made no representations to Plaintiffs regarding this clause or arbitration generally. (DSD Trial Brief at p. ***4** 6-8, Depo. Victor Pollock, pp. 164:18-21; 203:16-204:6; 216:15-18; 235:24-236:4) (5/17/13 Transcript of Evidentiary Proceedings, p. 16:18-17:1; 18:14-17). Although Mr. Pollock knew he had poor vision prior to going to DSD to purchase a vehicle, he did not bring his magnifying glass or request the assistance of a DSD employee or his wife in reading the contract, and instead chose to sign the Dispute Resolution Clause without reading its contents. (5/17/13 Transcript of Evidentiary Proceedings, pp. 21:7-12; 21:25-22:6; 60:25-61:9; 60:20-22; 63:3-14). After the sale was complete, Plaintiffs left with the 2012 Jeep Patriot and have continuously maintained possession of the vehicle to this day. (5/17/13 Transcript of Evidentiary Proceedings, p. 19:15-18) Defendants dispute the remainder of Plaintiffs' claims regarding the facts and circumstances surrounding the sale of the 2012 Jeep Patriot and signing of the Dispute Resolution Clause.

On March 20, 2012, Mr. Pollock commenced this action against DSD alleging he executed documents containing blank pricing and financing terms which were later filled in by DSD with a purchase price which was higher than the parties agreed. (Petition of Plaintiff Victor Pollock). On November 8, 2012, Plaintiff filed his First Amended Petition, adding Evelyn Pollock as a party plaintiff and bringing BMW into the lawsuit for its alleged joint and several liability in relation to the Financing Agreement assigned from DSD to BMW after Plaintiffs' purchase of the vehicle. (Plaintiffs' First Amended Petition).

Both DSD and BMW filed Motions to Compel Arbitration and Stay Proceedings pursuant to the Dispute Resolution Clause contained in the Purchase Agreement. (Defendant DSD's Motion to Dismiss and Compel Arbitration) (Defendant BMW's Motion to Compel Arbitration and Stay Proceedings, and in the Alternative, Motion to Dismiss for Failure to State a Claim Upon Which Relief can be Granted). On May 17, 2013, an Evidentiary Hearing was had before the Trial Court on Defendants' Motions to Compel Arbitration.

***5** Plaintiffs' assertion that the "trial court and all understand that Defendants' purported PA 'was presented to [Mr. Pollock] in blank and that he signed the document. That it's his signature but it was signed in blank... And so it didn't exist in blank anymore because it's now been altered with figures in it's is a gross misstatement of the record. See Brief in Chief at pp. 12-13. A reading of the full statement by the Trial Court, in context, shows this statement was merely a summation of Plaintiffs' *allegations and purported testimony* in this case. (5/17/13 Transcript of Evidentiary Proceedings, p. 20:1-15). Defendants never conceded, nor did the Trial Court hold, the Purchase Agreement presented to Mr. Pollock contained blank pricing and financing terms. Rather, during the Evidentiary Hearing, Defendants, through testimony of Mr. Pollock and introduction of the Purchase Agreement, presented evidence Mr. Pollock signed the Dispute Resolution Clause, a valid agreement was formed, and the agreement should be enforced.

Plaintiffs' statement that the "Trial Court presumed that an arbitration agreement existed and did not require the Defendants to prove that an agreement to arbitrate was formed" is also incorrect. See Brief in Chief at p. 11. The Trial Court, after reading the briefs, hearing testimony from Plaintiffs, and hearing oral argument of counsel, found Defendants met their initial burden to make and support their motions to compel arbitration. *See Rogers v. Dell Computer Corp.*, 2005 OK 51, 138 P.3d 826. The

burden then shifted to Plaintiffs to present evidence the supported arbitration agreement was invalid or did not apply to the dispute in question. Id. As set forth in the record, Plaintiffs went to great lengths to prove the Dispute Resolution Clause was procured by fraud and thus invalid. The Trial Court, however, found Plaintiffs argument spoke only to the contract as a whole and upheld the arbitration clause which, standing alone, was valid and enforceable. The Trial Court stated:

***6** THE COURT: And I think the law is that the issues about the validity of the contract are secondary to the arbitration clause, and I am going to grant the motion to stay this case to compel arbitration.

(5/17/13 Transcript of Evidentiary Proceedings, p. 84:12-15).

STANDARD OF REVIEW

Under the proceedings governing applications to compel arbitration, the existence of an agreement to arbitrate is a question of law which is reviewed *de novo.* *Dell,* 138 P.3d at 831 (*citing Hill v. Blevins,* 2005 OK 11, 109 P.3d 332, 334; *Cummings v. Fedex Ground Package System, Inc.*, 404 F.3d 1258, 1261 (10th Cir. 2005)).

ARGUMENT AND AUTHORITY

PROPOSITION I: AN AGREEMENT TO ARBITRATE EXISTS AND IS APPLICABLE TO PLAINTIFFS' CLAIMS

The Federal Arbitration Act ("FAA") provides that arbitration agreements are "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. § 2. Arbitration is designed "to preclude court intervention into the merits of disputes when arbitration has been provided for contractually." *Harris v. David Stanley Chevrolet, Inc.*, 2012 OK 9, 273 P.3d 877, 879 (citing *Voss v. City of Oklahoma City,* 1980 OK 148, 618 P.2d 925, 928). The United States Supreme Court has repeatedly emphasized that the FAA represents "a liberal federal policy favoring arbitration agreements." *Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983); *See also Towe Hester & Erwin, Inc. v. Kansas City Fire & Marine Ins. Co.,* 1997 OK CIV APP 58, 947 P.2d 594, 599. Pursuant to that liberal policy, "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration". *Moses H. Cone,* 460 U.S. at 24-25; *Thompson v. Bar-S Foods Co., 2007* OK 75, 174 P.3d 567, 572 ("Arbitration should be compelled unless it may be said with positive assurance that the arbitration clause is not susceptible of an ***7** interpretation that covers the asserted dispute."). However, courts will not impose arbitration upon parties where they have not so agreed. *Okla. Oncology & Hematology, P.C. v. US Oncology, Inc.*, 2007 OK 12, 160 P.3d 936, 944-45. "To assure that the parties have consented to arbitration, the courts will decide whether there is a valid enforceable arbitration agreement, whether the parties are bound by the arbitration agreement, and whether the parties agreed to submit the particular dispute to arbitration." *Id.* at 944-45.

The existence of an agreement to arbitrate is a question of law to be decided by the court. *Dell,* 138 P.3d at 831. "The initial burden is on the party petitioning the court to compel arbitration." Id. at 836. However, "[a]fter the motion to compel arbitration has been made and supported, the burden is on the non-moving party to present evidence that the supported arbitration agreement is not valid or that it does not apply to the dispute in question." *Id.* To determine whether the arbitration clause is valid and binding on the parties, the court severs it from the rest of the contract. Id. at 830 (citing *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 404 (1967)); *Hai v. Baptist Healthcare of Okla., Inc.*, 2010 OK CIV APP 3, 230 P.3d 914, 919 ("Under the FAA, the question of the validity of the arbitration provision must be severed and considered separately."). According to the United States Supreme Court, such inquiry must focus on the validity of the arbitration clause itself, not the validity of the contract as a whole:

> [W]hen parties commit to arbitrate contractual disputes, it is a mainstay of the Act's substantive law that attacks on the validity of the contract, as distinct from **attacks on the validity of the arbitration clause itself, are to be resolved by the arbitrator in the first instance, not by a federal or state court.** For these purposes, an arbitration provision is severable from the remainder of the contract, and its validity is

> subject to initial court determination; but **the validity of the remainder of the contract (if the arbitration provision is valid) is for the arbitrator to decide.**

***8** *Nitro-Lift Techs, L.L.C. v. Howard*, 133 S.Ct. 500, 503 (2012) (citing *Preston v. Ferrer*, 552 U.S. 346, 349 (2008); *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440 (2006); *Prima Paint*, 388 U.S. at 403-04) (emphasis added). Thus, Plaintiffs cannot avoid arbitration by challenging the validity of the contract as a whole. Nitro-Lift, 133 S.Ct. at 503. Rather, the underlying contract must be considered valid for purposes of determining the existence of an agreement to arbitrate: "Because under the FAA this court cannot examine the validity of the contract as a whole, **we must treat the contract as valid when analyzing an arbitration provision."** *Dell*, 138 P.3d at 830 (citing *Prima Paint*, 388 U.S. at 404) (emphasis added). Thus, an arbitration agreement may be binding even if the contract as a whole is later found to be void. *Prima Paint*, 388 U.S. at 402.

In *Prima Paint*, the parties entered into a consulting agreement which contained an arbitration clause governed by the FAA. 388 U.S. 395, 397. The plaintiff later brought suit to rescind the consulting agreement, claiming it was procured by fraud. Id. at 397-99. The defendant moved to compel arbitration pursuant to the provision contained in the consulting agreement, and the district court stayed the action pending arbitration. Id. at 399. On appeal, the United States Supreme Court affirmed, holding the plaintiff's allegations that the consulting agreement was the product of fraud were irrelevant to its inquiry. Id. at 403-04. The Court held:

> [I]f the claim is fraud in the inducement of the arbitration clause itself-an issue which goes to the 'making' of the agreement to arbitrate - the [] court may proceed to adjudicate it. But the statutory language does not permit the [] court to consider claims of fraud in the inducement of the contract generally.

Id. Because the plaintiffs claims related to fraud in the inducement of the consulting agreement generally, and not the agreement to arbitrate contained therein, the Court held the case was properly submitted to arbitration. *Id.* at 406.

***9 A. An Agreement to Arbitrate Exists Between Plaintiffs and Defendants**

In the instant case, Plaintiffs' primary argument against arbitration is that an agreement to arbitrate does not exist because there was no "sale or transaction" to trigger the Dispute Resolution Clause. Plaintiffs claim that, because the underlying Purchase Agreement allegedly contained blank pricing and financing terms at the time it was signed, there was no "sale or transaction" to apply the Dispute Resolution Clause to and therefore no mutual consent to form an agreement to arbitrate. *See* Brief in Chief at pp. 13-17. Plaintiffs' entire argument is based on a blatant misunderstanding of controlling Oklahoma and United States Supreme Court precedent.

As set forth above, federal and Oklahoma arbitration law dictates courts must treat the underlying contract as **valid** when analyzing arbitrability. *Dell*, 138 P.3d at 830 (*citing Prima Paint*, 388 U.S. at 404). Consequently, it must be presumed there was a valid "sale or transaction" for purposes of determining whether an agreement to arbitrate exists in this case. *See id.* The court must look only to the Dispute Resolution Clause which is severed from the rest of the contract. *See Prima Paint*, 388 U.S. at 404. Although Plaintiffs' allegations are disputed, whether the Purchase Agreement contained missing pricing or financing terms is irrelevant when determining the enforceability of the Dispute Resolution Clause. *Id.*

Plaintiffs do not, and indeed cannot present any argument questioning the validity of the Dispute Resolution Clause itself without reference to the Purchase Agreement as a whole, which, for purposes of arbitrability, the court treats as valid. Plaintiffs admit the language of the Dispute Resolution Clause, contained in both Plaintiffs' Exhibit 1 and Defendants DSD's Exhibit 1, was present in its entirety on the day the agreement was signed. Plaintiffs further admit Mr. Pollock, intending to purchase a vehicle, signed directly underneath the section containing the Dispute Resolution Clause. Mr. Pollock testified:

***10** Q: So the dispute resolution clause, that paragraph that we're talking about, was there on the - on the purchase agreement on the day that you signed it?

A: Yes, ma'am. This.

Q: Right. So this language was not filled in after the fact. This dispute resolution clause was already there; correct? Would that be fair?

A: It was there.

Q: And you signed - and you signed directly underneath it; correct?

A: Yes, ma'am.

Q: Okay. Because you intended to purchase a vehicle that day; correct?

A: Yes. I was trying.

Q: So you just take issue with the pricing and financing of the vehicle; correct?

A: I'd say that's correct.

(DSD Trial Brief at p. 11, 10/08/12 Depo. Victor Pollock, pp. 210:8-211:8).

Moreover, Plaintiffs make no allegations of errors, missing terms or ambiguities in the Dispute Resolution Clause itself. Rather, Plaintiffs challenge only the price and finance terms, claiming Mr. Pollock signed blank forms which were later filled in with a higher price than what the parties agreed. The price and finance terms, however, are not part of the Dispute Resolution Clause and, as stated above, are irrelevant to a determination of arbitrability. Accordingly, the Dispute Resolution Clause, which is considered a separate contract and was admittedly signed and agreed to by Mr. Pollock, contains all material terms necessary to create an agreement to arbitrate.

Plaintiffs' attacks on the "sale or transaction" language of the Dispute Resolution Clause are nothing more than cleverly disguised challenges to the contract as a whole in an attempt to avoid arbitration. According to clear U.S. Supreme Court precedent, attacks on the validity of the contract as a whole are to be resolved by the arbitrator, not by a federal or state court. Nitro-Lift, 133 S.Ct. at 503. Looking only to the Dispute Resolution Clause itself, without reference to the underlying Purchase Agreement, there is no question an agreement to arbitrate exists.

***11 B. The Dispute Resolution Clause is Applicable to Plaintiffs' Claims**

Although the price of the vehicle and the manner in which the sale occurred may be in dispute, there can be no dispute a "sale or transaction" did, in fact, occur in order to bring Plaintiffs' claims within the realm of the Dispute Resolution Clause. [1]

The Dispute Resolution Clause applies to "any controversy, claim or dispute between the Purchaser and the Dealer arising out of, or **related to this sale** or transaction... whether said issues arise prior to, during or subsequent to the sale or attempted sale of a vehicle". (Purchase Agreement, Defendant DSD's Exhibit 1) (emphasis added). Accordingly, the Dispute Resolution Clause comprehends arbitration of disputes arising from a completed sale or transaction, as well as arbitration of disputes arising from an attempted sale of a vehicle.

It is undisputed Mr. Pollock agreed to buy the 2012 Jeep Patriot on February 20, 2012, purchased the vehicle, and presently maintains possession of the vehicle. As such, a completed "sale or transaction" occurred. Mr. Pollock testified:
Q: So at some point you did make the decision on your own to buy the vehicle. Otherwise, you wouldn't have taken it home that day; right?

A: Yes, ma'am. I - I agreed to buy it.

(DSD Trial Brief at p. 3, 10/08/12 Depo. Victor Pollock, pp. 200:13-16)
Q: The Jeep was purchased from David Stanley?

A: Yes.

Q: And it's still in your possession, correct?

A: Yes.

(5/17/13 Transcript of Evidentiary Proceedings, p. 19:15-18)

Even if there was no "sale or transaction", which Defendants expressly deny, there undoubtedly was an "attempted sale" of the 2012 Jeep Patriot on February 20, 2012 sufficient to ***12** compel arbitration. Newmont U.S.A., Ltd. v. Ins. Co. of N. Am., 615 F.3d 1268, 1274 (10th Cir.2010) ("Where the arbitration clause is broad, there arises a presumption of arbitrability and arbitration of even a collateral matter will be ordered if the claim allegedly implicates issues of contract construction or the parties' rights and obligations under it."). Mr. Pollock, by his own testimony, admits as much. Mr. Pollock testified:
Q: At the time that you signed the document entitled "Purchase Agreement," it was your intention to purchase a vehicle?

A: Yes, sir.

Q: Okay. And at the time that you signed a Dispute Resolution Clause, it was your intention to purchase a vehicle?

A: Yes, sir.

(5/17/13 Transcript of Evidentiary Proceedings, p. 16:6-13)
Q: Okay. So you would - it would be fair to say that you were signing the documents because you had intended to purchase the vehicle?

A: To purchase, yes, ma'am.

(DSD Trial Brief at p. 4, 10/08/12 Depo. Victor Pollock, pp. 204:13-16)

Mr. Pollock admits he signed the contract documents, including the Purchase Agreement containing the Dispute Resolution Clause, in an attempt to purchase the 2012 Jeep Patriot, and in fact, Mr. Pollock did purchase the vehicle and has been in possession of the vehicle to this day. Because all of Plaintiffs' claims relate to the "sale" or "attempted sale" of the vehicle, the dispute clearly falls within the scope of the Dispute Resolution Clause and arbitration was properly compelled.

PROPOSITION II: FRAUD IN THE INDUCEMENT OF AN ARBITRATION AGREEMENT CANNOT EXIST WHERE DEFENDANTS' MADE NO REPRESENTATIONS TO PLAINTIFFS REGARDING THE DISPUTE RESOLUTION CLAUSE

The only fraud alleged by Plaintiffs is that Mr. Pollock executed documents containing blank pricing and financing terms which were later filled in with a purchase price which was not ***13** agreed upon by the parties - an argument which goes to the making of the contract as a whole, not the making of the arbitration agreement itself. See Brief in Chief at pp. 18-19. Despite Plaintiffs' assertions, the alleged fraud of the underlying "sale or transaction" has no bearing on the enforceability of the Dispute Resolution Clause where there is no actionable fraud in the inducement of the arbitration clause itself. See Proposition I, supra.

To establish actionable fraud in the inducement of the Dispute Resolution Clause, Plaintiffs must prove Defendants: (1) made a material representation relating to the Dispute Resolution Clause that was false; (2) knew when he made the representation that it was false; (3) made it with the intention that it should be acted upon by plaintiff; and (4) plaintiff acted in reliance upon it and thereby suffered detriment. *Silk v. Phillips Petroleum Co.*, 1988 OK 93, 760 P.2d 174, 176-77. When fraud is alleged in the procurement of a written instrument, Oklahoma law requires the party claiming fraud to establish proof "by a preponderance of the evidence so great as to overcome all opposing evidence and to repel all opposing presumptions of good faith." *Butler v. Conyel*, 1936 OK 475, 60 P.2d 749, 751 (stating that it is not enough to simply introduce evidence showing that "this could have been fraud"). Courts examining whether a contractual obligation should be avoided are to exercise restraint:

> Canceling an executed contract is an exercise of the most extraordinary power of a court of equity. The power ought not to be exercised except in a clear case, and never for an alleged fraud, unless the fraud be made clearly to appear; never for alleged false representations, unless their falsity is certainly proved.

Ramsey v. Fowler, 1957 OK 61, 308 P.2d 654, 656.

In *Silk v. Phillips Petroleum Co*, the defendant orally negotiated with the plaintiff to acquire an oil and gas lease. 760 P.2d at 177. A few days later, defendant returned with the lease forms. Id. at 177-78. The parties did not discuss the contents of the forms, and plaintiff voluntarily executed them without reading them, assuming they contained the terms previously ***14** negotiated. Id. Thereafter, the plaintiff brought suit claiming the lease was the product of fraud because the terms contained there, particularly an "option to renew" clause, were inconsistent with the prior oral negotiations. Id. at 178.

The Oklahoma Supreme Court rejected this argument, holding there could be no fraud because plaintiff acknowledged the defendant made no representations as to the "option to renew" clause. Id. Without any representations, there could be no fraud. Id. As set forth by the Court, "the presentation by one party to the contract to the other of a written instrument purporting to embody their agreement, and the person receiving it signs the same, *the mere presentation of the instrument is no proof of fraud or misrepresentation*, especially when the party complaining could read..." Id. (emphasis in original) (citation omitted).

The court further held the evidence failed to show defendant actively concealed the "option to renew" clause or that defendant had a duty to disclose the existence of the clause to plaintiff. Id. at 178-79. Rather, the evidence showed plaintiff, a literate adult, had previously executed oil and gas leases and was generally familiar with their terms, the parties were involved in an arms-length business transaction, a confidential or fiduciary relationship was not alleged, and the plainly captioned "option to renew" clause was separately signed, making it difficult for the signing lessor to be unaware of its existence. Id. at 180. Because plaintiff failed to introduce evidence of a material misrepresentation, the court found there was no actionable fraud, the plaintiff was bound by her voluntary signature, and the lease, including the "option to renew" clause, was enforceable. *Id.; See also Butler v. Conyel*, 1936 OK 475, 60 P.2d 749 (holding contract was enforceable against **elderly**, illiterate man who signed contract without reading it or having it read to him because "A party's mere ignorance, occasioned by his limited intelligence and understanding of the language and of the contents of the contract which he voluntarily ***15** executes, is not, in the absence of fraud, a ground for avoiding it, though it is different from what he supposed.").

Here, Mr. Pollock admits DSD made no representations to him regarding the Dispute Resolution Clause. In fact, there was no discussion regarding arbitration **at all.** Mr. Pollock testified:
Q: Did anyone at David Stanley ever say anything to you about this dispute resolution clause?

A: No ma'am.

(BMW Hearing Brief at p. 8, 10/08/12 Depo. Victor Pollock, p. 216:15-18)
Q: Did he ever - Shane or Terry or anyone else at David Stanley ever discuss with you arbitration?

A: No sir.

(BMW Hearing Brief at p. 8, 10/08/12 Depo Victor Pollock, p. 164:18-21)

Q: Okay. And no one at David Stanley Dodge made any representations to you about the part in red, the Dispute Resolution Clause?

A: Wasn't never mentioned.

Q: No one said anything to you at all about it?

A: No, sir. Never.

Q: No representations were made to you about what it said?

A: No, sir.

(5/17/13 Transcript of Evidentiary Proceedings, pp. 16:18-17:1)

Mr. Pollock's testimony reveals the parties did not discuss the Dispute Resolution Clause, DSD made no representations to Plaintiff regarding such clause, and Mr. Pollock voluntarily executed the clause without reading it. As in Silk, in the absence of representations regarding the Dispute Resolution Clause or arbitration, **there can be no fraud.** Further, there is no confidential or fiduciary relationship imposing a duty on DSD to disclose the existence of the Dispute Resolution Clause, and regardless, the Dispute Resolution Clause was clearly designated on the front of the Purchase Agreement in red font, and therefore was conspicuous to consumers, ***16** including Mr. Pollock. As set forth in Silk, DSD's mere presentation of the Purchase Agreement containing the Dispute Resolution Clause, without more, is not evidence of fraud or misrepresentation. Because Plaintiffs failed to present evidence of a material misrepresentation (and thus, actionable fraud), Mr. Pollock is bound by his voluntary signature, and the Dispute Resolution Clause is enforceable.

PROPOSITION III: PLAINTIFFS' FAILURE TO READ THE ARBITRATION PROVISION DOES NOT PRECLUDE ITS ENFORCEMENT

Plaintiffs claim the arbitration clause should not be enforced against them because Mr. Pollock did not read the arbitration provision, and even if he did, his poor eyesight prevented him from reading the small print. See Brief in Chief at pp. 6, 8, 15, 16-17. However, the law will not reward a party who knowingly fails to read the contract which he signs.

Under Oklahoma law, a party who signs a contract is presumed to have read and understood its terms. *Mayfield v. Fid. State Bank of Cleveland,* 249 P. 136 (Okla. 1926). The Oklahoma Supreme Court has repeatedly emphasized this basic contract principle, holding "[a] person signing an instrument is presumed to know its contents, and one in possession of his faculties and able to read and understand and having an opportunity to read a contract which he signs, if he **neglects** and fails to do so, cannot escape its liability." Id.; *Colonial Jewelry Co. v. Bridges,* 144 P. 577 (Okla. 1914); *Allis Chalmers Mfg. Co. v. Byers,* 88 P.2d 368 (Okla. 1939); *Herron v. M. Rumley Co.,* 116 P. 952 (Okla. 1911); *See Elsken v. Network Multi-Family Security Corp.,* 49 F.3d 1470 (10th Cir. 1995) (applying Oklahoma law). It is the duty of every contracting party to learn and know the contents of a contract before he signs and delivers it. *Magnolia Petroleum Co. v. Saylor,* 1919 OK 137, 180 P. 861, 865-66. Failure to read or examine the contract, or to obtain assistance in reading or examining the contract, is negligence as a matter of law. *Id.* This principle touches on the very purpose of contract law. "To permit a ***17** party, when sued on a written contract, to admit that he signed it, but deny that it expresses the agreement he made, or to allow him to admit that he signed it, but did not read it or know its stipulations, would absolutely destroy the value of all contracts." *Hoshaw v. Cosgriff,* 247 F. 22, 26 (8th Cir. 1917); *See Blackwell Enter., Inc. v. Henkels & McCoy, Inc.,* 2013 WL 3771290 (W.D. Okla.) ("Failure to read a contract is neither a defense nor an excuse and will not provide grounds for avoiding the contract or any provision therein."); *Balliett v. Merrill Lynch, Pierce, Fenner & Smith, Inc.,* 1988 WL 152016 (W.D. Okla.) ("failure to read what one has signed does not relieve from obligations stated in the document signed.")

Oklahoma courts consistently uphold this established contract principle. *Schooley v. Merrill Lynch, Pierce Fenner & Smith, Inc.,* 867 F. Supp. 989, 992 (W.D. Okla. 1994) (plaintiff's claim that he did not intend to be bound by arbitration clause was without merit where his signature on the arbitration clause indicated his consent and he was presumed to have read it and understood its terms); *Adams v. Merrill Lynch, Pierce, Fenner 8 Smith,* 888 F.2d 696, 701 (10th Cir. 1989) (applying Oklahoma law) (plaintiffs' argument that the arbitration clause was either not noticed or not explained to them was unpersuasive given the presumption that one who executes an instrument has read it and understands its contents); *Elsken v. Network Multi-Family Security Corp.,* 49 F.3d 1470 (10th Cir. 1995) (applying Oklahoma law) (where decedent had an opportunity to read the contract, including the limitation of liability provision on the reverse side of the contract, plaintiff could not avoid the legal effect of the provision on the ground that decedent did not read the contract).

The case of *Johnson v. Lynn Hickey Dodge Inc.,* 166 F.3d 347 (10th Cir. 1998) (unpublished opinion) (applying Oklahoma law), which is factually similar to the case at hand, is instructive on this issue. In *Johnson,* plaintiffs Judith and Russell Johnson purchased a used ***18** vehicle from defendant and signed a purchase agreement containing a dispute resolution clause which provided that any dispute between the parties arising out of the sale of the vehicle "shall be submitted to binding arbitration". *Id.* at *1. After plaintiffs filed suit against defendant alleging fraud and misrepresentation in relation to the vehicle's mileage, defendant moved to compel arbitration pursuant to the arbitration clause. The court granted defendant's motion and ordered the parties into arbitration, and plaintiffs appealed. *Id.*

Plaintiffs disputed the validity of the arbitration clause, alleging Mr. Johnson was fraudulently induced into entering the arbitration agreement because he did not receive any definition or explanation of arbitration, and he was induced to sign the agreement without reading it. Id. at *2. The court held Mr. Johnson's signature on the purchase contract indicated his acceptance of the terms of the contract, including the unambiguous arbitration provision. Id. at *3. The court found the arbitration clause was not buried in the additional terms of the contract, but appeared as a separate paragraph on the face of the contract that required separate signature. Id. The court held, in accordance with established contract law, Mr. Johnson's signature on the dispute resolution paragraph raises the presumption that he read and understood the terms. Id. Therefore, the court concluded Mr. Johnson's claims that the arbitration clause was not explained to him and that he did not intend to be bound by it were without merit. Id.

In the instant case, Mr. Pollock admits on February 20, 2012 he went to DSD to purchase a car. Mr. Pollock knew he would need to sign documents to effectuate this purchase. Yet, despite being aware of his poor vision, Mr. Pollock failed to bring his magnifying glass or request the assistance of a DSD employee or his wife, and instead willfully chose to sign the Dispute Resolution Clause without reading it. Mr. Pollock testified:

Q: At the time that you signed the document entitled “Purchase Agreement,” it was your intention to purchase a vehicle?

***19** A: Yes, sir.

Q: Okay. And at the time that you signed a Dispute Resolution Clause, it was your intention to purchase a vehicle?

A: Yes, sir.

(5/17/13 Transcript of Evidentiary Proceedings, p. 16:6-13)
Q: Okay, okay. So prior to going to David Stanley Dodge on February 20 of 2012, you knew you had difficulty reading small letters.

A: Yes, sir.

Q: And you knew prior to February 20 of 2012 that you needed a magnifying glass to read documents, right?

A: Probably so. But I wasn't even thinking about all this. Because the last time I bought a vehicle, I didn't sign near that many papers and I had good eyesight. So it just didn't register to do that.

Q: Okay. And you did not take your magnifying glass with you to David Stanley.

A: No, sir. I did not.

(5/17/13 Transcript of Evidentiary Proceedings, pp. 60:25-61:9; 60:20-22)
Q: In terms of the magnifying glass, sir, you never asked for a magnifying glass to read the Dispute Resolution Clause.

A: He never offered and I never asked.

Q: Okay. And your wife didn't read the Dispute Resolution Clause to you.

A: No, but she wasnt happy.

Q: Okay. And she could have read it to you, couldn't she?

A: If he had give her time probably.

Q: Okay. You never asked them to.

A: No, sir, I did not.

(5/17/13 Transcript of Evidentiary Proceedings, p. 63:3-14)
Q: But you didn't make an attempt to read it?

A: No, I couldn't see it.

Q: You didn't ask Shane Romee or any other David Stanley employee if you could read the Dispute Resolution Clause, did you?

A: I didn't ask him to read it, sir.

Q: You didn't ask your wife to read the Purchase Agreement to you before signing it, did you?

A: No, sir.

Q: And you didn't ask Shane Romee or any other David Stanley employee to read the Dispute Resolution Clause to you before signing it, did you?

***20** A: No, sir. I didn't know what it meant.

(5/17/13 Transcript of Evidentiary Proceedings, pp. 21:7-12; 21:25-22:6)

The Purchase Agreement containing the Dispute Resolution Clause was placed in front of Mr. Pollock for his signature and made available for Mr. Pollock's examination and inspection, and Mr. Pollock signed directly underneath the section titled Dispute Resolution Clause. DSD did not prevent Mr. Pollock from reading the Dispute Resolution Clause, and Mr. Pollock even admits he "probably could have read it." Mr. Pollock testified:
Q: Okay. You testified earlier that you did not read this document?

A: No ma'am. I'm sure I didn't.

Q: Okay. But you did have an opportunity to read it if you wanted to. Would that be fair to say?

A: I probably could have if I asked him, but I didn't ask him. So he didn't offer it, so - you know.

(BMW Hearing Brief at p. 8, 10/08/12 Depo. Victor Pollock, p. 214:17-25)
Q: An no one at David Stanley Dodge told you that you could not read the Dispute Resolution Clause when the document was handed to you, did they?

A: He didn't tell me I had to read it.

(5/17/13 Transcript of Evidentiary Proceedings, p. 18:14-17)
Q: He never said you can't read this document?

A: He explained everything to me. I've said that many a time.

Q: Okay.

A: I probably could have read it.

(DSD Trial Brief at p. 7, 10/08/12 Depo. Victor Pollock, pp. 235:24-236:4)

Now Mr. Pollock seeks to avoid the contract which, by his own admission, he willfully failed to read. Such an outcome is not permissible under Oklahoma law. As set forth above, it is the duty of every contracting party, including Mr. Pollock, to learn and

know the contents of a contract before he signs and delivers it. Magnolia, 180 P. at 865-66. Under the facts of this case, ***21** Mr. Pollock is presumed to know the contents of the Purchase Agreement which he signed. Mr. Pollock's failure to read or examine the Dispute Resolution Clause, or to obtain assistance in reading or examining the Dispute Resolution Clause, is negligence as a matter of law and does not relieve Mr. Pollock of liability under the arbitration provision where he had an opportunity to read its contents. Therefore, Plaintiffs are bound by the terms of the Dispute Resolution Clause and must arbitrate their claims.

PROPOSITION IV: THE DISPUTE RESOLUTION CLAUSE CONTAINED IN THE PURCHASE AGREEMENT IS NOT UNCONSCIONABLE

Plaintiffs claim the Dispute Resolution Clause was unconscionable because of its "tiny print, obscure formatting, and confusing language." Brief in Chief at pp. 15-17. However, Plaintiffs failed to submit anything more than mere conclusory allegations insufficient to overcome the heavy burden of establishing unconscionability.

The question of unconscionability is one of law for the Court to decide. *Stoll v. Chong Lor Xiong,* 2010 OK CIV APP 110, 241 P.3d 301, 305. "In a commercial setting, the burden of proving unconscionability is on the party seeking to invalidate the contract or clause." *Phillips Machinery Co. v. LeBlond,* 494 F.Supp. 318, 323 (N.D. Okla. 1980). This burden is a heavy one. *Freeman v. Bodyworks, Inc.,* 2008 OK CIV APP 14, 213 P.3d 838, 840-41. "An unconscionable contract is one which no person in his senses, not under delusion would make, on the one hand, and which no fair and honest man would accept on the other." *Barnes v. Helfenbein,* 1976 OK 33, 548 P.2d 1014, 1020. As set forth by the Oklahoma Supreme Court:

> The basic test of unconscionability of a contract is whether under the circumstances existing at the time of making of the contract, and in light of the general commercial background and commercial need of a particular case, clauses are so one-sided as to oppress or unfairly surprise one of the parties. Unconscionability has generally been recognized to include an absence of any meaningful choice on the part of one of the parties, together with contractual terms which are unreasonably favorable to the other party.

***22** Id. Relevant factors include whether the aggrieved party had a reasonable opportunity to understand the terms of the contract and whether the important terms were hidden "in a maze of fine print" or were "minimized by deceptive sales practices." *Been v. O.K. Indus., Inc.,* 495 F.3d 1217, 1236-37 (10th Cir. 2007) (applying Oklahoma law). However, fine print, in and of itself, is not unconscionable. *See Pinstripe, Inc. v. Manpower, Inc.,* 2009 WL 1457704 (N.D. Okla.) (where waiver was printed in the same typeface as the rest of the agreement and the heading was in bold lettering like all other paragraph headings in the agreement, waiver was neither in inconspicuous fine print nor inconspicuously buried in the contract).

In *Adams v. Merrill Lynch, Pierce, Fenner & Smith,* 888 F.2d 696 (10th Cir. 1989) (applying Oklahoma law), plaintiff retained defendant as their broker-dealer in connection with the purchase and sale of securities and commodities and signed standard brokerage agreements which contained an arbitration provision. *Id.* at 697. Plaintiffs later filed a lawsuit against defendant for common law fraud, breach of fiduciary duty, breach of contract, and negligent management. Upon motion of the defendant, the district court compelled arbitration pursuant to the arbitration provision in the brokerage agreements. *Id.*

On appeal, plaintiffs argued the brokerage agreements were a form, boilerplate contract, drafted by defendant, whose agents made no attempt to highlight the provision requiring arbitration. *Id.* at 700. The plaintiffs further argued that even if they were aware of the arbitration provision, they had no real opportunity to negotiate the terms because signing the agreement was a prerequisite to doing business in the securities market. *Id.* The court, however, found no authority to support the contention that arbitration clauses are inherently unconscionable or unfair, even if they are contained in a contract of adhesion, and held the arbitration causes were enforceable. *Id.* at 700. Further, because it is presumed that one who ***23** executes an instrument has read and understands it contents, the court found plaintiffs' conclusory allegations of fraud and allegations that the arbitration clause was either not noticed or not explained to them were unpersuasive. *Id.* at 701; *See also Freeman v. Bodyworks, Inc.,* 213 P.3d at 840-41 (finding one-page contract for repair work containing an arbitration agreement was not an adhesion contract

because there was no evidence that the plaintiff "could not find a repair facility that did not require an arbitration agreement, or that she was not capable of understanding the agreement.")

In the context of automobile sales, arbitration clauses similar to the one involved in this case have been upheld as valid and enforceable. *See AutoNation USA Corp. v. Leroy*, 105 S.W.3d 190 (Tex. App. 2003) (where arbitration agreement on back of single page purchase agreement was separately numbered and set out in uniform type, and language on the front of the purchase agreement referred plaintiff to terms and conditions set forth on the reverse side, arbitration clause was sufficiently obvious to give plaintiff notice that claims against dealership would be resolved through arbitration); *Mitchell Nissan, Inc. v. Foster*, 775 So. 2d 138 (Ala. 2000) (plaintiff's allegation that arbitration provision in purchase agreement was unreasonably favorable to dealer and buyer's limited reading ability prevented him from having meaningful choice was insufficient to render arbitration provision unconscionable, noting "fact that a buyer was unaware of an arbitration provision in a contract is not evidence that the buyer could not have obtained the desired product or service, either from this seller or from some other seller, without consenting to the arbitration provision."); *Russell v. Performance Toyota, Inc.*, 826 So. 2d 719 (Miss. 2002) (where arbitration clause in purchase agreement was preceded by boldface and capitalized headings and was almost immediately succeeded by the signature line, and where ***24** plaintiff was not coerced into signing the arbitration agreement and could have walked away and purchased a vehicle at another dealership, arbitration clause was not unconscionable).

In this case, Mr. Pollock made a decision to purchase a vehicle from DSD and willingly signed the Dispute Resolution Clause relating to the purchase. Although Plaintiffs admit they have purchased other vehicles, and therefore were familiar with the process, Plaintiffs chose not to discuss the terms of the contract, including the Dispute Resolution Clause. Mr. Pollock was free to not only discuss the Dispute Resolution Clause, but was free to buy a vehicle at any other dealership.

Additionally, the terms in the Dispute Resolution Clause are fair. Under the Dispute Resolution Clause, the person filing the arbitration claim must pay the filing fee, just as a plaintiff must remit the filing fee when filing a case in district court. The Dispute Resolution Clause also requires the arbitrator's fee be split between the parties, which applies equally to both parties to the arbitration. Further, Oklahoma law permits an award attorneys fees based upon prevailing party status when, as here, such fees are provided for by contract. *State ex rel. State Ins. Fund v. JOA, Inc.*, 2003 OK 82, 78 P.3d 534, 536.

Finally, the Dispute Resolution Clause was conspicuous. The arbitration clause was printed in red font on the front of the Purchase Agreement to distinguish it from the rest of the contract provisions (which were printed in blue font) and alert the purchaser of its existence. In addition, the Dispute Resolution Clause was printed in the same typeface as the rest of the paragraphs on the front of the Purchase Agreement, the heading of the Dispute Resolution Clause was in capital letters like all other paragraph headings in the Purchase Agreement, and the Dispute Resolution Clause required separate signature. Despite Plaintiffs' conclusory assertions, the existence of the Dispute Resolution Clause was readily apparent from the face of the ***25** contract. It was not hidden "in a maze of fine print" or "minimized by deceptive sales practices", but rather was prominently distinguished on the front of the Purchase Agreement. Plaintiffs have presented no evidence the Dispute Resolution Clause was "so one-sided as to oppress or unfairly surprise one of the parties". Therefore, the Dispute Resolution Clause was not unconscionable and Mr. Pollock must arbitrate his claims.

PROPOSITION V: THE PURCHASE AGREEMENT AND RETAIL INSTALLMENT SALES CONTRACT ARE CONSIDERED A SINGLE AGREEMENT UNDER OKLAHOMA LAW

In another attempt to avoid arbitration, Plaintiffs argue the Retail Installment Sales Contract ("RISC"), which contains no arbitration provision, supersedes the Purchase Agreement, and therefore there is no arbitration clause to enforce. [2] *See* Brief in Chief at pp. 19-21. Plaintiffs argue the RISC is the final expression of any agreement between Plaintiffs and Defendants because the RISC has a merger clause. ("This contract contains the entire agreement between you and us relating to this contract"). Plaintiffs cite to the Michigan case of *Rugumbwa v. Betten Motor Sales* in support of this position. 136 F.Supp.2d 729 (W.D. Mich. 2001). The Rugumbwa court, however, made its ruling **based upon specific Michigan motor vehicle statutes which** require all agreements between the parties be in one installment sales contract. *Id.; See Harnden v. Ford Motor Co.*, 408

F.Supp.2d 300, 305-06 (E.D. Mich 2004). Here, no similar Oklahoma statute exists which requires all agreements between dealerships and purchasers be in one retail installment sales contract. Even if such statute did exist in the state of Oklahoma, it would be preempted by the FAA. *Nitro-Lift,* 133 S.Ct. at 503 ("the Oklahoma ***26** Supreme Court must abide by the FAA, which is 'the supreme Law of the Land,' and by the opinions of this Court interpreting that law.") (citation omitted)). Therefore, *Rugumbwa* simply does not apply to this case.

In addition, Plaintiffs argument that the Purchase Agreement is a separate contract from, and superseded by, the RISC is contrary to clear Oklahoma contract law. "Oklahoma adheres to the widely-accepted rule that when several contracts relating to the same matter are made by the parties as parts of one transaction, all of the instruments should be construed together." F.D.I.C. v. Hennessee, 966 F.2d 534, 537 (10th Cir. 1992) (citing Mid-America Corp. v. Miller, 1962 OK 23, 372 P.2d 14, 17) (emphasis added); Mid-Continent Life Ins. Co. v. Goforth 1943 OK 244, 143 P.2d 154, 157 ("It is the general rule that instruments executed at the same time, and for the same purpose, and in the course of the same transaction, are, in the eye of the law, one instrument"); Malicoate v. Standard Life & Ace. Ins. Co, 2000 OK CIV APP 37, 999 P.2d 1103, 1112. These documents must be "considered together in arriving at the intent of the parties. It is not essential that the instruments refer in express terms to each other if in point of fact they are part of a single transaction." Morgan v. Griffith Realty Co., 192 F.2d 597, 599 (10th Cir. 1951) (citing Pauly v. Pauly, 176 P.2d 491 (Okla. 1946)); See Boulds v. Chase Auto Fin. Corp., 266 S.W.3d 847, 851 (Mo. 1998) (finding parties intended arbitration agreement contained in Purchase Agreement to cover all disputes relating to the vehicle sale even though the Retail Installment Sales Contract did not mention arbitration, because "instruments executed at the same time, by the same contracting parties, for the same purpose, and in the course of the same transaction will be considered and construed together."); See also Aliron In. v. Cherokee Nation Indus. Inc., 531 F.3d 863, 868 (D.C. Cir. 2008) (according effect to arbitration clause found in one contract for dispute arising under separate contract because contracts were ***27** made by same parties and concerned same subject matter); Cara's Notions, Inc. v. Hallmark Cards, Inc., 140 F.3d 566, 571 (4th Cir. 1998) (construing broad arbitration clause in one contract to encompass dispute originating from another contract that had no arbitration clause).

In the instant case, Plaintiffs agree the documents signed by Mr. Pollock, including the Purchase Agreement and RISC, were forms DSD uses to effect a sale of a vehicle to one of its customers. The Purchase Agreement and RISC were executed between the same parties (Mr. Pollock and DSD), at the same time (February 20, 2012), for the same purpose (to effectuate the sale of the 2012 Jeep Patriot), and in the course of the same transaction (the sale of the vehicle to Mr. Pollock). In addition, the Dispute Resolution Clause applies to any disputes arising out of, or related to the sale or transaction, whether said sale or attempted sale "arises as a result of any financing contract, agreement or **sales document relating to the sale or attempted sale of a vehicle."** Purchase Agreement, Defendant DSD's Exhibit 1. From this language, the Dispute Resolution Clause clearly contemplates application to all documents relating to the sale or attempted sale of the 2012 Jeep Patriot to the Plaintiffs, including the RISC. Therefore, under Oklahoma law, the RISC and the Purchase Agreement, including the Dispute Resolution Clause contained therein, are one instrument and must be construed together. As such, the Dispute Resolution Clause is applicable to Plaintiffs' claims, and arbitration must be compelled.

WHEREFORE, premises considered, Defendants David Stanley Dodge, LLC and BMW Financial Services NA, LLC respectfully request this Court uphold the Trial Court's Order granting Defendants' Motions to Compel Arbitration.

Footnotes

1 Again, courts assume the underlying agreement is valid for purposes of determining arbitrability, and whether the terms of the underlying Purchase Agreement were blank is irrelevant. See Proposition I(A), supra.

2 Alternatively, Plaintiffs contend the provision of the RISC which provides for application of federal and Oklahoma law conflicts with the arbitration clause in the Purchase Agreement because "Federal law and State law provides for jury trials" and "[a]rbitration concerns the waiver of jury trials". Plaintiffs ignore extant federal and Oklahoma jurisprudence favoring and upholding agreements to arbitrate, and therefore this claim is baseless.

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