PRACTICE FOCUS / ARBITRATION

In any language, arbitration clauses need to be clear

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A recent decision by the Florida Supreme Court is raising eyebrows among businesses and practitioners because it regards what constitutes a valid agreement to arbitrate, specifically, whether an arbitration clause written in English can be enforced against parties who do not speak the language. Given Florida's diverse population, the opinion causes concern as some interpreted it to go against longstanding law that binds a signatory to a contract even if they did not fully understand it.

Business owners with a multi-ethnic clientele, however, should put those fears to rest. While the parties' inability to understand English colored the Florida Supreme Court's opinion, a closer look reveals that this was not the fact that turned the decision. The opinion presents instead a different concern for businesses: that having multiple arbitration provisions may invalidate them all.

In *Basulto v. Hialeah Automotive*, an exclusively Spanish-speaking couple purchased a minivan from a Miami-Dade dealership. According to their allegations, the buyers signed multiple documents, with some of the terms left blank, in order to consummate the transaction. Those documents were a retail installment contract, a loan agreement and an arbitration agreement. They contained provisions calling for arbitration in front of a panel of arbiters, arbitration in front of a sole arbiter and a waiver of jury trial. The buyers' dispute with the dealership arose after the dealership allegedly gave them a lower trade-in allowance than the parties had agreed to.

The buyers sued, and the dealership moved to compel arbitration. The trial court did not compel arbitration, finding, among other reasons, that there was no valid arbitration agreement. The Third District Court of Appeal analyzed the different arbitration clauses and affirmed the trial court's holding that one of the provisions was unconscionable but reversed the trial court regarding the other clause and compelled arbitration of the buyers' claim for monetary relief. On review, the Florida Supreme restated many of the trial court's findings and held that there was no "meeting of the minds," thus no agreement to arbitrate. It held that the appellate court never evaluated the threshold requirement of determining whether there was a valid agreement to arbitrate, in spite of acknowledging that "neither of the parties has challenged the validity [of] the Retail Installment Contract, which contains [one of the arbitration clauses]."

In conducting its analysis of the validity of the arbitration clauses, the Florida Supreme Court deferred to the trial court's findings that the parties "had not, in fact, agreed to any of the arbitration terms in dispute." As a result of having restated those findings—including that the buyers did not understand English, that the dealership failed to adequately explain what arbitration meant and that the buyers were given insufficient notice that they were waiving important rights—some have interpreted the ruling to, in the words of the dealership's counsel, open up "the floodgates to people avoiding arbitration agreements … if they claim not to be fluent in the English language."

Upon closer examination, however, seemingly much more important to the highest state court was that the appellate court never analyzed whether there was a valid agreement. Even were that not the primary reason for the ruling, more important than the parties' inability to understand English was the trial court's finding that there were three resolution clauses: clauses that "were conflicting in their essential provisions and [that], taken together, provided for three separate and distinct means of dispute resolution." As quoted in the Florida Supreme Court's opinion, the trial court found that "even if the documents had been printed in Spanish, a reasonable person reading these documents would not have a clear understanding of the precise terms and conditions to which they were called upon to agree." It was not that the provisions were in English, it was that the multiple English provisions created contradictions and ambiguities regarding what the parties agreed to arbitrate and how. The Supreme Court of Florida held that the trial court's factual findings were entitled to deference and there was no valid agreement to arbitrate.

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The *Basulto* opinion is in line with U.S. Supreme Court precedent regarding the enforceability of arbitration clauses and reflects why businesses need clear arbitration provisions. The opinion does not overturn longstanding precedent that parties are generally presumed to know the contents of a contract they have entered into, even when the parties do not speak the same language. Businesses should be wary, however, to include arbitration provisions by rote, especially when there are multiple documents for the same transaction that contain such provisions.

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