IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

No. A-1-CA-42272

SUNNY NODINE,

Plaintiff-Appellee,

v.

RELIABLE CHEVROLET (NM), LLC, JOSH DAY, and KIRTLAND FEDERAL CREDIT UNION,

Defendants-Appellants.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY
Joshua A. Allison, District Court Judge

Feferman, Warren & Mattison
Susan Warren
Albuquerque, NM

for Appellee

Holland & Hart LLP
Larry J. Montaño
Olga Serafimova
Santa Fe, NM

for Appellant Reliable Chevrolet (NM), LLC

Decker Law Office
Benjamin E. Decker
Albuquerque, NM

for Appellant Kirtland Federal Credit Union

MEMORANDUM OPINION

MEDINA, Chief Judge.

{1} Reliable Chevrolet (Reliable), Josh Day (Employee) and Kirtland Federal Credit Union (KFCU) (collectively, Defendants) appeal the denial of their motion to compel arbitration. Defendants assert the district court erred in determining: (1) the one-year time-to-sue provision in the Buyer's Order Agreement and Bill of Sale (the Agreement) is unconscionable; (2) the time-to-sue provision is not severable; and (3) Plaintiff is not compelled to arbitrate the claims with Employee and KFCU. For the reasons set forth below, we affirm.

BACKGROUND

{2} Sunny Nodine (Plaintiff), with the assistance of Employee, selected and then purchased a vehicle from Reliable in May 2023. Plaintiff signed the Agreement drafted by Reliable. The Agreement included two provisions stating that "[a]ny dispute between [Plaintiff] and [Reliable] arising out of this transaction will be decided by arbitration" and "[a]ny 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."

{3} Plaintiff alleged that the vehicle exhibited various mechanical issues after purchase. In March 2024, Plaintiff filed a complaint against Defendants under the Unfair Practices Act (UPA), NMSA 1978, §§ 57-12-1 to -27 (1967, amended through 2025), as well as claims for fraud and negligence. Defendants moved to compel arbitration pursuant to the Agreement. Plaintiff opposed the motion arguing that the arbitration clause in the Agreement was substantively unconscionable based on multiple provisions,[1] the unconscionable provisions in the Agreement could not be severed from the arbitration clause, and Employee and KFCU were not parties to the Agreement.

{4} After briefing and a hearing on the motion, the district court found in part that the time-to-sue provision of the Agreement was substantively unconscionable because it was one-sided and denied the motion to compel arbitration. The district court further found that the time-to-sue provision could not "be severed from the remainder of the arbitration agreement" and that Plaintiff did not enter into a valid arbitration agreement with Employee or KFCU.

{5} Plaintiff argued the Agreement was substantively unconscionable on various grounds relating to how it one-sidedly limits the buyer's claims without limiting Reliable's claims. Plaintiff offered an affidavit attesting that in the last fourteen years, while twelve claims have been brought against Reliable, ten similar in nature to these claims, none have been brought by Reliable against a buyer.

{6} During the hearing on the motion, the district court afforded Defendants an opportunity to explain and present evidence demonstrating why the Agreement was not

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1Plaintiff additionally argued that the one-year-time-to-sue provision stripped him of the UPA's four-year statute of limitations. *See Nance v. L.J. Dolloff Assocs., Inc.*, 2006-NMCA-012, ¶ 21, 138 N.M. 851, 126 P.3d 1215 (holding that the UPA has a four-year statute of limitations); NMSA 1978, § 37-1-4 (1880).

one-sided. Defendants declined the opportunity to present evidence and instead argued that it did not matter if the provision applied to both sides because even a provision benefiting only the dealer would still be conscionable. The district court denied the motion to compel.

{7} The district court's reasoning turned on the nature of the sale. Plaintiff signed a contract with Reliable for the purchase of the vehicle and simultaneously entered into a separate financing agreement with KFCU, which paid the full cost to Reliable. The district court found that the time-to-sue provision was facially one-sided because it reduced the statute of limitations on all of Plaintiff's claims arising from the transaction and that the most likely claim Reliable would bring pursuant to the Agreement would be to collect for nonpayment. However, given the nature of the third-party financing, Reliable would, in all likelihood, never have to bring such a claim as they are paid in full at the point of sale. Meanwhile, the Agreement limits all of a buyer's potential claims, including one of this nature related to unfair practices, fraud, and negligence. Accordingly, the district court determined that the Agreement is unfairly one-sided, disfavoring buyers and is therefore substantively unconscionable. This appeal followed.

DISCUSSION

I. The Agreement is Substantively Unconscionable

{8} Defendants argue that their motion to compel arbitration should have been granted because the time-to-sue provision applies bilaterally and therefore is not one-sided. Defendants emphasize that a dealership not having brought collections actions against any customers in recent years is not sufficient basis for the district court to determine that the time-to-sue provision is one-sided. Defendants also assert a number of public policy concerns in arguing that the district court erred in determining the arbitration agreement was substantively unconscionable. Defendants argue that "the district court's reasoning would prevent a non[]litigious party from enforcing any arbitration agreement." In so doing, Defendants contend "there is no authority supporting the district court's decision that an entire category of persons—i.e., those unlikely to sue (as opposed to be sued)—are effectively ineligible to enter into arbitration agreements." Defendants, generally citing *Territory v. Baca*, 1892-NMSC-010, ¶ 10, 6 N.M. 420, 30 P. 864, suggest this creates a "classification" and the right to create classifications "belongs to the Legislature, not the judiciary." Defendants also assert that the district court's reasoning is "against public policy," because it "creates an incentive for parties to pursue litigation they would have otherwise foregone merely to preserve their right to enforce their arbitration agreements" and that the ruling is "unworkable" and poses a litany of questions implicating public policy concerns.

{9} As to the one-sided issue, Plaintiff responds that while facially the provision applies bilaterally, in effect it only applies to the car buyer here. Plaintiff explains that "Reliable does not sue customers for non[]payment because Reliable does not finance vehicle sales," so Reliable is not "also harmed" by the time-to-sue limitation as it had

argued before the district court.[2] Plaintiff argues that he supported this contention at the district court with "uncontroverted evidence that in the past fourteen years, Reliable had not sued a single customer. In contrast, twelve customers had sued Reliable, and ten of those lawsuits involved claims for violations of the UPA and for fraud."

{10} Arbitration agreements are "subject to generally applicable contract law, including unconscionability." *Peavy v. Skilled Healthcare Grp. Inc*., 2020-NMSC-010, ¶ 12, 470 P.3d 218. "Unconscionability is an equitable doctrine, rooted in public policy, which allows courts to render unenforceable an agreement that is unreasonably favorable to one party while precluding a meaningful choice of the other party." *Id.* ¶ 10 (internal quotation marks and citation omitted); *see also Cordova v. World Fin. Corp. of N.M.*, 2009-NMSC-021, ¶ 22, 146 N.M. 256, 208 P.3d 901. "The substantive analysis focuses on such issues as whether the contract terms are commercially reasonable and fair, the purpose and effect of the terms, the one-sidedness of the terms, and other similar public policy concerns." *Id.*

{11} Arbitration agreements are "one-sided when the agreements exclude the drafting party's likeliest claims from arbitration while subjecting the non[]drafting party's likeliest claims to arbitration." *Peavy*, 2020-NMSC-010, ¶ 19. "A one-sided arbitration agreement is not substantively unconscionable merely by way of its one-sidedness." *Id.* ¶ 13. "Rather, our substantive unconscionability law requires a determination that the one-sidedness of an arbitration agreement is unfair and unreasonable." *Id.* We make this determination on a case-by-case basis. *Id.* ¶ 17.

{12} "[A] presumption of unfair and unreasonable one-sidedness arises when a drafting party excludes its likeliest claims from arbitration, while mandating the other party arbitrate its likeliest claims." *Id.* ¶ 19. However, "this presumption may be overcome by an evidentiary showing that justifies the one-sidedness of the arbitration agreement." *Id.* Thus, "a defendant drafter may offer evidence showing that an arbitration agreement's exceptions are reasonable and fair, such that enforcement of the agreement is not substantively unconscionable." *Id.*

{13} *Peavy* identifies "a two-step analysis a court should apply when confronted with the substantive conscionability of an arbitration agreement." *Id.* ¶ 20. First, we "look to the face of the arbitration agreement to determine the legality and fairness of the contract terms themselves." *Id.* (internal quotation marks omitted and citation). "Second, if the court determines the arbitration agreement is facially one-sided, the court should allow the drafting party to present evidence that justifies the agreement is fair and reasonable, such that enforcement of the agreement would not be substantively unconscionable." *Id.* ¶ 21. "The evidence need not show that the agreement is not one-sided, but rather must justify that the agreement's exceptions are fair and reasonable." *Id.*

2Plaintiff raises other grounds for affirmance in the answer brief. We do not address them, because the district court found only the time-to-sue provision to be unconscionable.

{14} The analysis in *Peavy* defeats Defendants' claim that the time-to-sue provision is not one-sided because it applies bilaterally. In *Peavy*, the contractual terms applied to both parties, but the arbitration agreement was unconscionable nonetheless, because it excluded without justification the drafter's likeliest claims from arbitration while requiring the nondrafting party to arbitrate its likeliest claims. *See id.* ¶¶ 5, 26 (The arbitration agreement bound both parties to arbitration, but excepted "either the [f]acility or the [r]esident in any disputes pertaining to collections or discharge of residents," and the our Supreme Court held "that the [arbitration a]greement is one-sided on its face because it exempts the [f]acility's likeliest claim, but requires its residents to arbitrate their likeliest claims.").

{15} Here, because third-party financing provided Reliable with full payment at the point of sale, the Agreement reduces the time to sue on all of a buyer's potential claims, while placing no such limitations on the most likely claim Reliable would bring against a buyer—collection actions for nonpayment. *See id.* ¶ 24 (explaining that courts look to the face of the agreement to determine whether "the benefits to both parties to the agreement were facially apparent"). Following *Peavy*, during the hearing on the motion to compel arbitration, the district court explicitly offered Defendants an opportunity to present evidence justifying that the Agreement is fair and reasonable. Defendants declined to do so.

{16} In their briefing before this Court, Defendants rely on *Baca*, 1892-NMSC-010, ¶ 2, a case from territorial New Mexico concerning the constitutionality of laws pertaining to the number of grand jurors that will hear causes arising under the laws of the United States. Defendants suggest *Baca* supports the proposition that the "right to create . . . classification[s such as a category of people unlikely to sue] belongs to the Legislature, not the judiciary." We are unpersuaded that determining the time-to-sue provision to be substantively unconscionable creates such a classification. The determination does not turn on the affidavit attesting that—in fact—Reliable has not brought any claims against any buyers pursuant to the Agreement. Instead, the district court could not fathom any circumstance in which Reliable *would need to* bring any claims against any buyer pursuant to this Agreement. Neither do we.

{17} Defendants failed to demonstrate that there would be any circumstance under which Reliable would need to arbitrate claims against a buyer according to the time-to-sue provision under the Agreement, even after the district court's prompting that doing so would be dispositive. Further, in their briefing before this Court, Defendants do not contend that there would ever be circumstances in which Reliable would be bound by the time-to-sue provision. The terms limit the time in which Plaintiff may bring a claim while not placing any meaningful limit on Reliable. Accordingly, Defendants failed to show the district court erred.

II. The Time-to-Sue Provision Cannot be Severed From the Arbitration Provision

{18} Without citing any authority supporting the proposition, Defendants assert that "the [t]ime-to-[s]ue [p]rovision does not affect the dispute resolution mechanism agreed to by the parties," so the district court erred in not severing the provision from the arbitration provision in the Agreement. For clarification, following *Rojas v. Reliable Chevrolet* (*NM*)*, LLC*, we understand the arbitration provision at issue here includes only those challenged provisions that "would logically be employed as a part of arbitration" within the Agreement. *See* 2024-NMCA-003, ¶ 10, 539 P.3d 1253 (determining a damages limitation provision to be a part of an arbitration provision that was itself part of a broader contract).

{19} Plaintiff relies on a handful of cases where courts have refused to sever unconscionable terms from arbitration agreements and instead held that the entire arbitration agreement was unenforceable. *See, e.g.*, *Cordova*, 2009-NMSC-021; *Rivera v. Am. Gen. Fin. Servs.*, 2011-NMSC-033, 150 N.M. 398, 259 P.3d 803; *Figueroa v. THI of N.M. at Casa Arena Blanca, LLC*, 2013-NMCA-077, 306 P.3d 480; *Felts v. CLK Mgmt., Inc.*, 2011-NMCA-062, 149 N.M. 681, 254 P.3d 124. Plaintiff contends that because the unconscionable terms go to the heart of "the arbitration scheme itself, not just procedures for appeal," *Cordova*, 2009-NMSC-021, ¶ 40, the district court did not err.

{20} In cases where a provision of a contract is determined to be unconscionable, "a court may refuse to enforce the contract, or may enforce the remainder of the contract without the unconscionable term, or may so limit the application of any unconscionable term as to avoid any unconscionable result." *Padilla v. State Farm Mut. Auto. Ins. Co.*, 2003-NMSC-011, ¶ 15, 133 N.M. 661, 68 P.3d 901 (internal quotation marks and citation omitted). In doing so, we consider whether the provision is part of the arbitration agreement and is central to the mechanism for resolving the dispute between the parties. *See Fiser v. Dell Comput. Corp.*, 2008-NMSC-046, ¶ 24, 144 N.M. 464, 188 P.3d 1215.

{21} The time-to-sue provision—"[a]ny 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"—is a part of the agreement to arbitrate. As articulated above, the Agreement requires that any claims be resolved through arbitration, and the provision at issue limits how long a buyer has to bring a claim. The time in which a buyer may bring a claim against Reliable is "central to the means by which the parties could resolve their disputes under this particular arbitration provision." *See Felts*, 2011-NMCA-062, ¶ 42. Accordingly, the district court did not err in determining the time-to-sue provision is not severable from the arbitration provision and renders the arbitration provision unenforceable.

III. The Unenforceable Arbitration Agreement Does Not Compel Plaintiff to Arbitrate Claims With NonSignatories

{22} Defendants argue that "Plaintiff should be compelled to arbitrate his claims against [Employee] and KFCU." Defendants ask this Court to adopt a doctrine that

"equitable estoppel may apply to allow a non[]signatory to compel arbitration . . . when a signatory alleges substantially interdependent and concerted misconduct by both another signatory and non[]signatory making arbitration between signatories meaningless." *See Rock Roofing, LLC v. Travelers Cas. & Sur. Co.*, 413 F. Supp. 3d 1122, 1130 (D.N.M. 2019). Defendants' argument relies on the arbitration provision's enforceability as to Reliable and Plaintiff. *See Horanburg v. Felter*, 2004-NMCA-121, ¶¶ 3, 16, 18, 136 N.M. 435, 99 P.3d 685 (recognizing that "[g]enerally, third parties who are not signatories to an arbitration agreement are not bound by the agreement and are not subject to, and cannot compel, arbitration" and where the enforceability of the arbitration agreement was not at issue, assuming without deciding that, if the doctrine applied, equitable estoppel would not enable a nonsignatory to compel arbitration with a signatory under the circumstances); *Rock Roofing*, *LLC*, 413 F.Supp.3d at 1131-2 (determining a nonsignatory may compel arbitration of a signatory's claim pursuant to an arbitration agreement that had not been challenged on the basis of unconscionability). Having concluded it is not, we do not address Defendants' assertion that equitable estoppel should apply here to compel Plaintiff to arbitrate with Employee and KFCU.

CONCLUSION

{23} For the foregoing reasons, we affirm.

{24} IT IS SO ORDERED.

JACQUELINE R. MEDINA, Chief Judge

WE CONCUR:

GERALD E. BACA, Judge

KATHERINE A. WRAY, Judge