Duval Ford v. Rogers: How a Merger Clause Backfired on a Car Dealer: Part 1 of 2

By Charles B. Jimerson, Esq. and Austin Calhoun, J.D. 2013

Recently, a clause in an industry standard sales contract backfired, much to the dismay of the car dealer. In Duval Ford v. Rogers, 73 So. 3d 261 (Fla. 1st DCA June 21, 2011) a sophisticated car dealer's Retail Buyer's Order ("RBO") was rendered unenforceable by the existence of a merger clause in their Retail Installment Sales Contract ("RISC"). Florida's First District Court of Appeals held that the RISC was the entire contract, consistent with the merger clause. Therefore, the RBO was totally irrelevant. Irrelevant RBO's will require substantial sales practices changes in the automotive industry.

This case may possibly have drastic repercussions that will be felt throughout the car dealer industry. Because of its importance, and the depth of coverage it deserves, we have decided to break this Blawg post into two parts. Part one will examine the case of Duval Ford v. Rogers, highlighting the pertinent facts and important rationale of the court. Part two will evaluate and hypothesize the impact Duval Ford v. Rogers may have on Florida automotive dealerships.

On June 19, 2009, Rogers bought a car from Duval Ford. At the time of purchase, Rogers signed both a Retail Installment Sales Contract ("RISC") and a Retail Buyer's Order ("RBO"), which is standard for the automotive industry. The RISC contained all essential terms, including the price of the vehicle, tax, cost of the maintenance plan, rebate terms and essential financing terms. The RISC was an integrated document that contained a merger clause stating, "This contract contains the entire agreement between you and us relating to the contract. Any change to this contract must be in writing and we must sign it. No oral changes are binding." The RISC did not contain an arbitration agreement. The arbitration agreement appears in the separate, but contemporaneously executed RBO. RBO's are generally a single part form that can be used to record the details of the sale before transferring to permanent forms or RISC's. It is a key form in motor vehicle sales transactions.

The RBO at issue identified that the "RISC…shall be immediately assigned by Dealer to a bank/finance company (at face value or greater) which shall then be the creditor to whom Customer shall be obligated under the RISC." It further stated that the dealer has the right to terminate "this Order," i.e. the RBO, if the dealer cannot obtain credit approval for the customer or if the dealer is unable to sell the RISC to a financial institution on terms of no less than face value. The RBO states that if the customer takes delivery of the vehicle before the dealer obtains financing approval, then delivery *"serves as a convenience to Customer only and Customer does not have, nor will acquire, any rights or interests in the Vehicle by such delivery except Dealer's permission to use it, which permission can be revoked, requiring the Vehicle's immediate return to Dealer in the same condition as it existed when delivered to Customer."* Finally, the RBO purported to make financing approval a condition subsequent to the enforcement and validity of the RISC.

According to Rogers' complaint, they took delivery of the vehicle after signing all the documents associated with the transaction. They alleged that two weeks after they took delivery, Duval Ford demanded an additional down payment of $5,000. According to the complaint,

Duval Ford took the vehicle from Rogers' possession after they refused this new demand. Mr. and Mrs. Rogers asserted seven causes of action arising out of these events. Instead of an answer, Duval Ford filed a motion to compel arbitration. The motion was based on the arbitration agreement in the RBO, which Duval Ford contended was part of the parties' contract. Rogers argued, among other things, that the merger clause precluded consideration of the RBO. After reviewing the language of the documents at issue and considering the parties' arguments, the trial court denied Duval Ford's motion, concluding that no binding arbitration agreement existed with respect to the transaction at issue. Based on the merger clause, the Florida First District Court agreed with the trial court.

Florida's First District Court of Appeals analyzed the documents and determined that the RISC was a fully integrated document that stood alone and did not reference or properly incorporate the terms of the RBO. The RISC identified the buyer, the seller, the vehicle being purchased, and provides the financial terms of the purchase, including the down payment, the total sales price, the total amount financed, the annual percentage rate, the total finance charge, and a payment schedule. The RISC did not contain an arbitration agreement. Most importantly, the RISC contained the merger clause referenced above which served to exclude the right to arbitrate that the RBO sought to preserve. Because the RISC contained all essential terms and served as the operative contract between the parties, the RBO became a legal nullity. The court was particularly influenced by interpretation of language in the RISC and RBO respectively that consistently referred to as "this Order" in the RBO, compared to "this Contract" in the RBO.

Previous Florida cases may have led car dealers to develop a multi-document contract system. For example, in Dodge City, Inc. v. Byrne, 693 So. 2d 1033, 1035 (Fla. 2nd DCA 1997), the court employed the general principle that when the parties execute two or more documents concurrently, in the course of one transaction concerning the same subject matter, the documents must be read and construed together." The Dodge City case even involved a vehicle transaction and documents similar to the ones at issue in the Duval Ford case. However, the contract in Dodge City did not include a merger clause, and that is what distinguished it from the Duval Ford contract documents.

The purpose of a merger clause is to affirm the parties' intent to have the parol evidence rule applied to their contracts, which excludes all evidence extrinsic to a fully integrated contract. In other words, the terms of the "merged" contract are limited to those written in the contract. Generally, a merger clause states "that the contract represents the parties' complete and final agreement and supersedes all informal understandings and oral agreements relating to the subject matter of the contract."

Duval Ford argued that its merger clause existed only to establish that the contract could not be modified orally and that if wasn't in writing it did not happen. The court found this interpretation to be inconsistent with the plain language of the clause and the operation of the parol evidence rule. The plain language provided that "this contract" is the "entire agreement" between the parties. As a result anything that did not constitute part of "this contract" was not part of the parties' agreement related to the contract. Thus, whether the RBO should be considered as evidence depended on whether it was part of "this contract" as that phrase was used in the merger clause of the RISC. The court interpreted the phrase "this contract" to only be

the document on which the merger clause appears. Also, the RISC did not refer to any other document as part of the contract. Moreover, the RBO did not refer to itself as a contract; instead it referred to itself as "this Order." Therefore, the RBO was not a part of "this contract."

Duval Ford also argued that the court should not consider the RISC a fully integrated document because the RISC did not contain all the essential terms of the agreement. The rule is that if a document does not contain all the essential terms of an agreement, it cannot be considered a fully integrated contract, and the court must look outside of the contract for other essential terms. The court concluded that the RISC was fully integrated, as it included all the essential terms, such as the price of the vehicle, sales tax, rebate to the buyers, and amount of down payment.

Duval Ford urged the court to follow established case law that requires a court to interpret the term "this contract" as referring to all the documents signed contemporaneously with the RISC in conjunction with the sale of the vehicle. Duval Ford made this argument based on the aforementioned Dodge City, Inc v. Byrne. However, the court took notice that the contracts analyzed in Dodge City did not contain a merger clause. For the Florida First DCA, this was the distinguishing factor and they were unable to find any Florida precedent analyzing whether the Dodge City principle applied in the face of a merger clause. Thus, the court reached to two out-of-state cases to find guidance. The First DCA looked at Krueger v. Heartland Chevrolet, Inc., 289 S.W. 3d 637 (Mo. Ct. App. 2009) and Patton v. Jeff Wyler Eastgate, Inc., 608 F. Supp. 2d 907 (S.D. Ohio 2007). In Krueger, the court determined that the RISC was intended to supersede the RBO and serve as the only agreement controlling the sale and purchase of the vehicle. In Patton, the court noted particular inconsistencies within the RISC which had financing on specific terms and dates, and the Purchase Spot Delivery Agreement (substantially similar document in language and function as the RBO) which permitted the dealer to cancel the transaction if financing fell through. Those contradicting contingent financing terms, along with the merger clause in the RISC, the lack of incorporation of the Purchase Spot Delivery Agreement (a.k.a. RBO) into the RISC, and the purpose of the Truth in Lending Act led the Patton court to conclude the general rule requiring consideration of all contemporaneously executed documents did not apply to automobile retail installment sales contracts. Thus, both jurisdictions followed the principle recognized in Dodge City, but both courts nevertheless required consideration of only the RISC in interpreting the parties' rights and obligations related to a vehicle purchase transaction. The Florida First District Court of Appeals was persuaded by these two cases and held that Duval Ford's RISC is a fully integrated document, consistent with the merger clause.

Duval Ford's final argument against enforcement of the RISC was that even if the RISC is a fully integrated document, the RBO constitutes a valid change to the RISC. The court dismissed this argument because nothing in the RBO indicated that it was intended as a modification of a pre-existing contract. Rather, the RBO indicated that it was signed before and in anticipation of the RISC.

The court did note that a document may be incorporated by reference in a contract if the contract specifically describes the document and expresses the parties' intent to be bound by its

terms. However, the RISC made no such reference to the RBO or any other document. As a result, the RBO was irrelevant to the disputes arising out of the transaction.

In conclusion, the court held that there was no arbitration clause for Duval Ford to rely on since the RISC contained no such clause and it did not matter what the RBO contained because it was not part of the contract. But the importance of this case is not limited solely to an arbitration clause. The courts holding essentially destroyed Duval Ford's RBO as written. The parties' rights and obligations related to a vehicle purchase transaction now flow only from the RISC unless a non-conflicting RBO is incorporated by reference. Any right written in the RBO is meaningless because it is unenforceable.

Is it only this one transaction that is affected by this ruling? What are the ramifications to the automotive dealership industry as a whole? What can be done in response? These are the questions for the part 2 of this Blawg post sequence.

Tags: Arbitration; Automotive Law

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