In The
Supreme Court Of Virginia

AT RICHMOND

RECORD NO. 050008

TOMASITA GONZALEZ,

Appellee-Plaintiff,

v.

CONSUMER PORTFOLIO SERVICES, INC.,

Defendant,

and

RDA, INC., trading as Easterns Automall,

Appellant-Defendant.

From The Circuit Court For The
County Of Rockingham

Opening Brief of Appellant

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ASSIGNMENT OF ERROR

The circuit court erred in refusing to order arbitration of the parties' dispute arising out of the Appellant's sale of a used motor vehicle to the Appellee on the ground that the financing document, which contained an integration clause but no arbitration agreement, superseded the Buyer's Order, which contained both an integration clause and an arbitration agreement, even though the two documents were executed contemporaneously as part of the same sale transaction.

NATURE OF THE CASE

The Appellee-Plaintiff Tomasita Gonzalez ("Gonzalez") brought this action alleging various causes of action, including fraud, breach of implied warranty, and violation of the Virginia Consumer Protection Act and the federal Magnuson-Moss Warranty Act, arising out of her purchase of a used motor vehicle from the Appellant-Defendant RDA, Inc., trading as Easterns Automall ("RDA"). Gonzalez also seeks recovery from Defendant Consumer Portfolio Services, Inc. ("CPS"), which provided the financing for Gonzalez's purchase of the vehicle from RDA.

MATERIAL PROCEEDINGS BELOW

On February 27, 2004, Gonzalez filed her Motion for Judgment against CPS and RDA in the Circuit Court of Rockingham County. Based on the arbitration clause contained in the Buyer's Order executed by Gonzalez at the time she purchased the vehicle, RDA moved to stay the pending proceedings and to compel arbitration

pursuant to the Uniform Arbitration Act, Va. Code Ann. '' 8.01-581.01 through 8.01-581.16. The circuit court heard argument on RDA's motion on August 18, 2004. Based on its letter opinion dated September 2, 2004, the circuit court issued an Order on October 12, 2004 denying RDA's motion. Pursuant to Va. Code Ann. ' 8.01-581.16, RDA filed a timely notice of appeal from the circuit court's Order.

QUESTION PRESENTED

Did the circuit court err in refusing to order arbitration of the parties' dispute arising out of RDA's sale of a used motor vehicle to Gonzalez on the ground that the financing document, which contained an integration clause but no arbitration agreement, superseded the Buyer's Order, which contained both an integration clause and an arbitration agreement, even though the two documents were executed contemporaneously as part of the same sales transaction?

STATEMENT OF FACTS[1]

Gonzalez and her husband went to RDA's place of business to shop for a motor vehicle on February 28, 2003. After test driving a 1997 Ford Windstar van, Gonzalez decided to purchase the vehicle. The paperwork executed at the time of Gonzalez's purchase included, among other things, a Buyer's Order and, since Gonzalez was buying the van on credit, a Retail Installment Sales Contract (the "RISC") setting

[1]The only fact relevant to this appeal that is in dispute is the order in which the parties executed the documents effecting the sale of the vehicle.

forth the terms of her financing arrangement with RDA, which subsequently assigned the RISC to CPS. Although there is no evidence in the record as to the exact order in which any of the sale documents were actually signed by the parties (App. at 93), the circuit court, based on its erroneous reading of Va. Code Ann. ' 46.2-1530(A), concluded that the RISC must have been executed after the Buyer's Order. (App. at 155.) In any event, it is undisputed that all of the documents, including the Buyer's Order and the RISC, were executed contemporaneously on February 28, 2003, at the time that Gonzalez purchased the van from RDA. (App. at 106.)

The Buyer's Order executed by Gonzalez contains an integration clause, which provides, in relevant part:

> You agree that this Buyer's Order, together with any documents signed by the party against which such writing is sought to be enforced (collectively, the "Agreement") contains the full and final agreement between the parties concerning the purchase of the Vehicle (including but not limited to any financing and warranty issues) and supersedes and replaces all prior or contemporaneous agreement[s] between the parties. . . . All understandings and agreements between the parties are merged into the Agreement. The front and back of this Buyer's Order, along with other documents signed by you in connection with this Buyer's Order, comprise the entire agreement between the parties affecting this purchase.

(App. at 60.) In addition to this reference to any other documents signed by Gonzalez in connection with her purchase of the van, the Buyer's Order specifically references the RISC in several places, including the arbitration clause, which provides, in part:

> The parties agree that all disputes, claims or controversies arising from or relating to the Purchaser's purchase of the Vehicle, the Agreement or the relationship which result[s] from the Agreement, or the validity of the arbitration clause or the Agreement shall be resolved by binding arbitration by one arbitrator located in the Northern Virginia area

> selected by the Dealer (or the assignee of any Retail Installment Sales Contract) with the consent of the Purchaser. . . . A Dispute is any question as to whether something must be arbitrated, as well as any litigation concerning a violation of state or federal statute that may be the subject of binding arbitration, any purely monetary claim greater than $1,000.00 in the aggregate whether contract, tort, or other, arising from the negotiation of and terms of the Buyer's Order, any service contract or insurance product, or any retail installment sale contract or lease[.]

(App. at 62.)

The RISC executed by Gonzalez on February 28, 2003 does not contain an arbitration clause. It does, however, contain the following integration clause: "This contract contains the entire agreement between you and us relating to this contract." (App. at 11.)

After completion of the sale, Gonzalez subsequently experienced some difficulties with the van. On June 24, 2003, Gonzalez returned the vehicle to RDA and attempted to cancel the transaction. CPS sold the van at auction on November 26, 2003 for $2,600, resulting in a deficiency balance to Gonzalez of $7,333.27. CPS has not sought to recover the deficiency from Gonzalez in this action.

ARGUMENT

THE CIRCUIT COURT ERRED IN REFUSING TO ORDER ARBITRATION OF THE PARTIES' DISPUTE ARISING OUT OF RDA'S SALE OF A MOTOR VEHICLE TO GONZALEZ ON THE GROUND THAT THE RISC, WHICH CONTAINED AN INTEGRATION CLAUSE BUT NO ARBITRATION AGREEMENT, SUPERSEDED THE BUYER'S ORDER, WHICH CONTAINED BOTH AN INTEGRATION CLAUSE AND AN ARBITRATION AGREEMENT, EVEN THOUGH THE TWO DOCUMENTS WERE EXECUTED CONTEMPORANEOUSLY AS PART OF THE SAME SALE TRANSACTION.

The Uniform Arbitration Act, which was adopted in Virginia in 1986, provides that

> A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, except upon such grounds as exist at law or in equity for the revocation of any contract.

Va. Code Ann. ' 8.01-581.01. As in other states that have adopted the Uniform Arbitration Act, "[t]his language illustrates Virginia's public policy in favor of arbitration and the validity of arbitration agreements." *TM Delmarva Power, L.L.C. v. NCP of Virginia, L.L.C.*, 263 Va. 116, 122, 557 S.E.2d 199, 202 (2002); *see, e.g.*, *Marsh v. Loffler Housing Corp.*, 648 A.2d 1081, 1085 (Md. Ct. Spec. App. 1994) (the Maryland Uniform Arbitration Act "embodies a legislative policy favoring enforcement of executory agreements to arbitrate"); *cf. Shearson/American Express, Inc. v. McMahon*, 482 U.S. 220, 226 (1987) (analogous provision of the Federal Arbitration Act, 9 U.S.C. ' 2, establishes a federal policy favoring arbitration

requiring that courts "rigorously enforce agreements to arbitrate") (internal quotation omitted).

Since the duty to arbitrate arises from contractual undertakings, the first task of a court asked to compel arbitration of a particular dispute is to determine from the language of the parties' contract whether they agreed to arbitrate that dispute. *Weitz v. Hudson*, 262 Va. 224, 228, 546 S.E.2d 732, 735 (2001); *accord Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 626 (1985). Here, the language of the arbitration agreement contained in the Buyer's Order executed by Gonzalez and RDA is exceedingly broad:

> The parties agree that all disputes, claims or controversies arising from or relating to the Purchaser's purchase of the Vehicle, the Agreement or the relationship which result[s] from the Agreement, or the validity of the arbitration clause or the Agreement shall be resolved by binding arbitration by one arbitrator located in the Northern Virginia area selected by the Dealer (or the assignee of any Retail Installment Sales Contract) with the consent of the Purchaser. Judgment upon award rendered may be entered in any court having jurisdiction. The parties agree and understand that they choose arbitration instead of litigation to resolve disputes. The parties understand that they have a right or opportunity to litigate disputes through a Court, but that they prefer to resolve their disputes through arbitration, except that the Dealer (or the Assignee or any Retail Installment Sales Contract) may proceed with Court action in the event the Purchaser fails to pay any sums due under the Agreement. THE PARTIES VOLUNTARILY AND KNOWINGLY WAIVE ANY RIGHT THEY HAVE TO JURY TRIAL EITHER PURSUANT TO ARBITRATION UNDER THIS CLAUSE OR PURSUANT TO COURT ACTION BY THE ASSIGNEE (AS SET FORTH HEREINABOVE). Except as provided herein, 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 or property disputes will be subject to binding arbitration in accordance with the terms hereof. The parties agree that the arbitrator shall have all powers provided by law and agreement. The parties agree that the cost of arbitration shall be borne equally

> between the parties, provided however, that the arbitrator may, in the interests of justice, order that the losing party pay the prevailing party's costs. A Dispute is any question as to whether something must be arbitrated, as well as any litigation concerning a violation of state or federal statute that may be the subject of binding arbitration, any purely monetary claim greater than $1,000.00 in the aggregate whether contract, tort, or other, arising from the negotiation of and terms of the Buyer's Order, any service contract or insurance product, or any retail installment sale contract or lease (but this arbitration provision, does not apply to and shall not be binding on any assignee thereof); provided, however that your failure to provide consideration to be paid by you (including your failure to pay a note, a dishonored check, failure to provide a trade title, or failure to pay deficiency resulting from additional payoff on trade) as well as our right to take repossession of the vehicle pursuant to this Buyer's Order shall not be considered a Dispute and shall not be subject to arbitration.

(App. at 62.)

The contract, tort, and statutory claims asserted by Gonzalez against RDA for fraud, breach of implied warranty, and violation of the Virginia Consumer Protection Act and the federal Magnuson-Moss Warranty Act clearly arise from or relate to her "purchase of the Vehicle, the Agreement or the relationship which result[s] from the Agreement." *See Weitz*, 262 Va. at 228-29, 546 S.E.2d at 734-35 (discussing very broad coverage of "relating to" language in arbitration agreements). Accordingly, all of Gonzalez's claims against RDA fall within the arbitration agreement set forth in the Buyer's Order.

Nevertheless, the circuit court concluded that Gonzalez was not required to arbitrate her dispute with RDA because the RISC, which contains an integration clause but no arbitration agreement, superseded the Buyer's Order.[2] Even though

[2]Having decided that Gonzalez was not required to arbitrate her dispute with RDA

there is no evidence in the record to indicate the order in which the sale documents were executed by Gonzalez and RDA, the circuit court based this conclusion on its finding that the Buyer's Order must have been signed prior to the RISC because the controlling statute "clearly requires that [the Buyer's Order] precede the sales agreement." (App. at 155.) In so finding, the circuit court quoted the requirements of Va. Code Ann. ' 46.2-1530 as follows:

> "A. Every motor vehicle dealer shall complete in duplicate, a buyer's order for each sale or exchange of a motor vehicle. A copy of the buyer's order shall be made available to a prospective buyer during the *negotiating phase of a sale and prior to any sales agreement*. The completed original shall be retained for a period of four years in accordance with ' 46.2-1529, and a duplicate copy shall be delivered to the purchaser at the time of sale and exchange."

(App. at 154-55 (emphasis added by circuit court).)

It must be noted, however, that the circuit court's quotation of the controlling statute leaves out one very important word. In fact, the portion of Va. Code Ann. ' 46.2-1530(A) relied on by the circuit court actually states that

> Every motor vehicle dealer shall complete, in duplicate, a buyer's order for each sale or exchange of a motor vehicle. A copy of the buyer's order *form* shall be made available to a prospective buyer during the negotiating phase of a sale and prior to any sales agreement. The completed original shall be retained for a period of four years in accordance with ' 46.2-1529, and a duplicate copy shall be delivered to the purchaser at the time of sale or exchange.

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on that ground, the circuit court did not address Gonzalez's second argument that her language limitations prevented her from knowingly and intelligently agreeing to the arbitration clause and waiving her right to a jury trial. (*See* App. at 154.) RDA assumes the validity of Gonzalez's assent to the arbitration agreement set forth in the Buyer's Order for purposes of this appeal.

(Emphasis added.) In keeping with the ordinary meaning of the word "form," *see* Black's Law Dictionary (8th ed. 2004) (a "form" is a "model; a sample," or "[a] legal document with blank spaces to be filled in by the drafter"), ' 46.2-1530(A) clearly distinguishes between the "form" of the buyer's order that must be made available to the prospective purchaser "during the negotiating phase of a sale and prior to any sales agreement" and the "completed" buyer's order that must be delivered to the purchaser "at the time of sale."[3]

[3]Va. Code Ann. ' 46.2-1530(B) provides that the Motor Vehicle Dealer Board "shall approve a buyer's order form and each dealer shall file with each original license application its buyer's order form." This provision plainly refers to the generic "form" required to be provided by the dealer during the negotiating phase of a sale rather than to the individual buyer's order completed each time the dealer makes a sale. Thus, ' 46.2-1530(B) also recognizes that the buyer's order form provided prior to the making of any sales agreement is different from the completed buyer's order that is delivered at the time the sale is actually concluded.

This distinction is supported by the fact that "[a] completed buyer's order when signed by both buyer and seller may constitute a bill of sale." Va. Code Ann. ' 46.2-1530(A). Since a "bill of sale" is the instrument that actually transfers title to personal property from the seller to the purchaser, *see Vicars v. Atlantic Discount Co.*, 205 Va. 934, 939, 140 S.E.2d 667, 671 (1965), it would be inappropriate to give a bill of sale "during the negotiating phase" and prior to the completion of the sale transaction. In short, as opposed to the buyer's order "form," the "completed" buyer's order is not delivered until the sale is actually consummated, particularly in cases, like this one, where the completed buyer's order is signed by both parties and becomes the bill of sale transferring title to the property being sold.[4] Since the relevant document in this case is a completed Buyer's Order, which was executed by both Gonzalez and RDA, ' 46.2-1530 does not mandate the conclusion, erroneously drawn by the circuit court, that the Buyer's Order must have been signed before the RISC in order for RDA to have complied with the requirements of Virginia law. (*See* App. at 155.)

In any event, the result in this case is in no way dependent on the timing of the execution of the Buyer's Order and the RISC. Even if it could be demonstrated that the execution of the Buyer's Order had preceded the execution of the RISC, it is

[4]It is unclear why the circuit court felt that the Buyer's Order could have become a bill of sale in this case only if the parties had concluded a cash sale. (*See* App. at 155.) Certainly, the statute itself gives no indication that a buyer's order cannot constitute the bill of sale in a credit transaction. To the contrary, ' 46.2-1530 clearly specifies that where, as here, the completed buyer's order is executed by both parties, rather than just being filled in to include the required information, it may constitute a bill of sale, without regard to the type of transaction that is concluded.

undisputed that the two documents were executed contemporaneously on February 28, 2003 as part of one sale transaction. As such, the Buyer's Order and the RISC must be read together to determine the entire agreement of the parties with regard to the sale of the van from RDA to Gonzalez. *See Countryside Orthopaedics, P.C. v. Peyton*, 261 Va. 142, 151, 541 S.E.2d 279, 284 (2001) ("This Court has repeatedly stated that '[w]here two papers are executed at the same time or contemporaneously between the same parties, in reference to the same subject matter, they must be regarded as parts of one transaction, and receive the same construction as if their several provisions were in one and the same instrument.'") (quoting *Oliver Refining Co. v. Portsmouth Cotton Oil Refining Corp.*, 109 Va. 513, 520, 64 S.E. 56, 59 (1909)).

Following *Peyton*, the United States District Court for the Western District of Virginia applied this rule to the same type of documents at issue in this case in *Mayberry v. Ememessay, Inc.*, 201 F. Supp. 2d 687 (W.D. Va. 2002). In that case, the plaintiff went to the defendant's car dealership with the aim of purchasing a used motor vehicle. The plaintiff sat down with a representative of the dealership and executed a series of documents, including a buyers order, a retail installment sales contract, an acknowledgment of receipt of credit disclosure, an odometer disclosure statement, and an agreement to furnish insurance. All of these documents were executed at essentially the same time, as steps that the plaintiff was required to take in order to purchase the vehicle. The dealer then handed plaintiff the keys to the car, and she drove it off the lot. The plaintiff argued that, by working through this transaction, she had purchased herself a car. The defendant, in contrast, insisted that the parties

knew and understood that the sale was conditioned on the willingness of a specified third-party lender (Triad) to agree to finance the vehicle and that the purchase would not be complete without Triad's approval. A few days after the transaction, Triad informed the defendant that it would not provide financing. As a result, the defendant contacted the plaintiff and advised her that she could either return the car and void the sale, or execute another retail installment sales contract with another lender. The plaintiff filed suit, alleging various common-law and statutory claims under federal and Virginia law.

In her motion *in limine*, the plaintiff argued that the buyer's order and retail installment sales contract were separate, independent contracts that must be interpreted independently from one another. In addition, the plaintiff posited that the other documents that were executed by the parties on that same day were not part of any contract and should not be used to interpret the meaning of either the buyer's order or the retail installment sales contract. The district court disagreed.

> "[W]here parties have entered into more than one document relating to a business transaction, 'these documents should be interpreted together, each one assisting in determining the meaning intended to be expressed by the others.'" *American Realty Trust v. Chase Manhattan Bank*, 222 Va. 392, 281 S.E.2d 825, 830-31 (1981) (quoting *J.M. Turner & Co. v. Delaney*, 211 Va. 168, 176 S.E.2d 422, 425 (1970)); *see also Hitachi Credit America Corp. v. Signet Bank*, 166 F.3d 614, 626 (4th Cir.1999). In this case, Plaintiff and Defendant sat down on one day and executed several documents, all relating to the credit sale of a single automobile. All of these documents were signed because they were considered to be a part of the sale process. As such, these documents must be read together, so that "each document will be employed to ascertain the meaning intended to be expressed by the others." *Countryside Orthopaedics, P.C., v. Peyton*, 261 Va. 142, 541 S.E.2d 279, 284

(2001) (quoting *Daugherty v. Diment,* 238 Va. 520, 385 S.E.2d 572, 574 (1989)).

Id. at 692. Since the buyer's order and the retail installment sales contract had to be read together to determine the parties' agreement, the court denied the plaintiff's motion *in limine*. *Id.*

Similarly, in this case, Gonzalez and RDA executed all of the various sale documents, including the Buyer's Order and the RISC, at the same time as part of one transaction whereby RDA sold the van to Gonzalez. As such, the Buyer's Order and the RISC should be construed together to determine the agreement between the parties. Since the Buyer's Order includes an arbitration agreement, Gonzalez's claims relating to her purchase of the van from RDA are subject to that agreement, and the circuit court erred in refusing to compel arbitration of her claims.

In reaching its decision, the circuit court was unpersuaded by *Mayberry* because there was no reference in the decision indicating that the district court had considered any merger clause that may have been included in the various agreements executed by the plaintiff in that case. (*See* App. at 157.) However, the effect of an integration clause in a case involving the same type of documents at issue in *Mayberry*, as well as in this case, was specifically considered by the United States District Court for the Eastern District of Virginia in *Williams v. Hall Auto World, Inc.*, Civil Action No. 4:04cv52 (E.D. Va. Oct. 4, 2004).[5]

[5]A copy of the court's opinion in *Williams* is attached hereto as Exhibit A.

In *Williams*, the plaintiff went to the defendant car dealership on May 7, 2003, with the intent of purchasing an automobile. As part of the sales process, the plaintiff and the dealer entered into a retail buyers order, which "memorialized the terms of the sale of the vehicle," and a retail installment sales contract, which "constituted the financing agreement in the event that the plaintiff's credit was approved." (Ex. A at 2.) The retail buyers order contained an arbitration agreement that defined an arbitrable "dispute" in nearly identical terms to the Buyer's Order at issue in this case, as well as an integration clause indistinguishable from the one in the Buyer's Order executed by Gonzalez and RDA. (*See* Ex. A at 12, 17.) In addition, just as in this case, the RISC did not contain an arbitration provision, but did contain an integration clause stating that "[t]his contract contains the entire agreement between you and us relating to this contract." (Ex. A. at 13.) When the plaintiff was forced to return the vehicle to the dealership because her loan had not been approved, she alleged a variety of claims against the dealership under federal and Virginia law. The dealership filed a motion to compel arbitration in light of the arbitration agreement contained in the retail buyers order. In response, the plaintiff, like Gonzalez in this case, argued, among other things, that the integration clause contained in the RISC superseded conflicting terms in the retail buyers order, including the arbitration clause. (Ex. A at 11-12.)

The district court disagreed with the plaintiff, finding her argument to be without merit.

> Both the Retail Buyers Order and the RISC were entered into contemporaneously, as part of the plaintiff's purchase of the vehicle. The Retail Buyers Order contains language expressly incorporating the RISC, together with any other documents signed by the purchaser in connection with the sale and indicates that collectively, the aforementioned documents "comprise the entire agreement between the parties affecting this purchase." Accordingly, language in the subsequently entered RISC does not supercede or contravene the provisions of the Retail Buyers Order.

(Ex. A at 12.) In reaching this decision, the district court reviewed the opinion in *Mayberry* and was persuaded by it, even though the district court was familiar with the circuit court's opinion in this case. (*See* Ex. A at 5 n.1, 12-13 & n.3.)[6] Thus, the district court noted that

> In the instant case, as in *Mayberry*, "[p]laintiff and [d]efendant sat down on one day and executed several documents, all relating to the credit sale of a single automobile. All of these documents were signed because they were considered to be part of the sale process." *Id.* Accordingly, the Retail Buyers Order and the RISC must be read together, so that "each document will be employed to ascertain the meaning intended to be expressed by the others." *Id.* (quoting *Countryside Orthopaedics, P.C. v. Peyton*, 261 Va. 142 (Va. 2001).
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> . . . .
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> . . . [N]othing in the RISC is inconsistent with the arbitration clause in the Retail Buyers Order. The arbitration clause does not modify any provisions of the RISC or vary any terms. Moreover, the scope of the arbitration clause refers specifically to any disputes or allegations arising from any retail installment sales contract. The court

[6]In fact, the district court specifically noted its disagreement with the circuit court's opinion in this matter, "find[ing] that it is contrary to the authority relied upon by the court such that the court does not concur as to the letter opinion's conclusions. Specifically, the letter opinion relies on general provisions of contract law that do not address the nature of the transaction at issue in this case." (Ex. A at 5 n.1; *see also* Ex. A at 13 n.3 (disagreeing with the circuit court's conclusion that the Buyer's Order and the RISC should not be considered together).)

> finds, then, that the RISC does not supercede and prohibit application of the arbitration clause in the Retail Buyers Order.

(Ex. A at 13-14.)

There is nothing to distinguish this case from *Williams*, and the district court's reasoning in ordering arbitration in that case is highly persuasive. Contrary to the decision rendered by the circuit court in this matter, there is no reason to believe that the well-established rule requiring multiple documents executed contemporaneously as part of one transaction to be construed together should be swept away by the inclusion of an integration clause in the last of several contracts signed by the parties at the same time. Indeed, under such circumstances, courts, in addition to *Williams*, have consistently held that a declaration in the final document signed by the parties that there is no other agreement between them is not conclusive, especially where, as here, evidence of the intended connection among the various documents executed by the parties as part of the same transaction is found in the plain language of the documents. *See, e.g.*, *United States v. Basin Elec. Power Coop.*, 248 F.3d 781, 808-09 (8th Cir. 2001), *cert. denied*, 534 U.S. 1115 (2002) (applying North Dakota law) (integration clause in one of two contracts signed on same day did not prohibit court from examining other contract, which expressly cited first contract in one of its provisions, to determine parties' agreement; "[i]t is well-established that a statement in a contract that it is integrated is not conclusive, but only a factor to be considered.") (citing Restatement (Second) of Contracts ' 209 cmt. b (1981) ("Written contracts,

signed by both parties, may include an explicit declaration that there are no other agreements between the parties, but such a declaration may not be conclusive.")); *North American Sav. Bank v. RTC*, 65 F.3d 111, 114-15 (8th Cir. 1995) (applying Missouri law) (multiple instruments executed at the same time and relating to the same transaction may be read together, "even if one of those documents contains an integration clause); *Lenzi v. Hahnemann Univ.*, 664 A.2d 1375, 1380 (Pa. Super. Ct. 1995) ("[T]wo contracts may be construed together to represent a complete transaction even where the subsequent contract contains an integration clause") (citing *Neville v. Scott*, 127 A.2d 755, 757 (Pa. Super. Ct. 1956) (despite the presence of an integration clause in one of the documents, "[w]here several instruments are made as part of one transaction they will be read together, and each will be construed with reference to the other")).

Williams and these other decisions reflect nothing if not the application of good common sense. Where, as here, the parties sat down and executed a series of documents one after the other as part of a single transaction, it is ludicrous to suggest that none of the documents should be given any effect save for the one instrument containing an integration clause, which, paradoxically, typically provides that the contract contains the entire agreement between the parties. If that one contract really contains the "entire agreement" between the parties, then why did all of the other documents need to be executed at the same time?

The absurdity of such a result is demonstrated by the instruments at issue in this case, which plainly reflect the parties' intent that all of the documents be read

together in determining their agreement. Thus, the Buyer's Order specifically references the RISC in several places. For example, the Buyer's Order recognizes that the parties would enter into the RISC if Gonzalez was purchasing the vehicle on credit, rather than paying cash:

> IF THIS SALE IS TO BE FINANCED BY OR THROUGH US USING A RETAIL INSTALLMENT SALE CONTRACT ("CONTRACT"), THIS PARAGRAPH APPLIES. IF THE CONTRACT IS NOT APPROVED UNDER THE TERMS AGREED TO WITH US, WE MAY CANCEL THIS SALE. IF WE DO, YOUR DOWN PAYMENT AND/OR TRADE-IN WILL BE RETURNED TO YOU, PROVIDED THAT THE VEHICLE IS RETURNED TO US IN THE SAME CONDITION AS DELIVERED TO YOU, NORMAL WEAR AND TEAR EXCEPTED, WITHIN 24 HOURS OF WRITTEN OR ORAL NOTICE TO YOU OF THE CREDIT DENIAL.

(App. at 59.) This paragraph obviously envisions an agreement—i.e., the cancellation of the sale transaction if the RISC is not approved by a third-party lender—that survives the execution of the RISC.[7] As such, the RISC cannot have embodied the entire agreement of the parties, integration clause notwithstanding.

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[7]This continuing agreement is also embodied in another provision of the Buyer's Order, which provides that

> If Purchaser is financing this transaction or leasing the vehicle, the transaction is conditioned upon approval of Purchaser's retail installment sale contract or lease by a financial source on terms acceptable to the Dealer . . . . If the retail installment sale contract or lease is not approved, Purchaser or Dealer may cancel this sale and any downpayment and/or trade-in Purchaser submitted will be returned to Purchaser, provided that any vehicle delivered by the Dealer pursuant to this agreement is returned to the Dealer in the same condition as delivered to Purchaser, normal wear and tear excepted, within twenty-four hours of written or oral notice to Purchaser of the credit denial.

(App. at 61.)

The parties' intentions regarding the documents that would comprise their agreement are even more clearly spelled out in the integration clause set forth in the Buyer's Order, which was not discussed at all by the circuit court in its decision.[8] That portion of the Buyer's Order provides, in relevant part:

> You agree that this Buyer's Order, together with any documents signed by the party against which such writing is sought to be enforced (collectively, the "Agreement") contains the full and final agreement between the parties concerning the purchase of the Vehicle (including but not limited to any financing and warranty issues) and supersedes and replaces all prior or contemporaneous agreement[s] between the parties. Neither party has made any representation or warranty, express or implied (except for implied warranties prohibited by law from being disclaimed) not contained in the Agreement. All understandings and agreements between the parties are merged into the Agreement. The front and back of this Buyer's Order, along with other documents signed by you in connection with this Buyer's Order, comprise the entire agreement between the parties affecting this purchase. No oral agreements or understandings are binding. You acknowledge that you have had the opportunity to review all documents prior to signing them and that you have not signed any documents in blank. By executing this Order, you acknowledge that you have read all of its terms and have received a fully completed copy.

(App. at 60.) Consistent with the long-standing rule of Virginia contract law stated by this Court in *Peyton*, this provision, executed contemporaneously with the RISC, plainly expresses the parties' intention that their agreement would consist of all of the documents, including the Buyer's Order, signed at the time the van was sold to Gonzalez.

[8]This glaring omission from the circuit court's letter opinion led the district court in *Williams* to note that "the Retail Buyers Order in this case expressly incorporated the RISC, which did not appear to be the case in the letter opinion." (Ex. A at 13 n.3.)

Finally, the arbitration agreement set forth in the Buyer's Order also contains an explicit reference to the RISC, thus demonstrating the parties' intention that any dispute relating to Gonzalez's purchase of the vehicle from RDA, including disputes arising under the RISC, would be arbitrated. In that regard, the arbitration agreement, quoted in full above, provides, in pertinent part, that

> [t]he parties agree that all disputes, claims or controversies arising from or relating to the Purchaser's purchase of the Vehicle, the Agreement or the relationship which result[s] from the Agreement, or the validity of the arbitration clause or the Agreement shall be resolved by binding arbitration by one arbitrator located in the Northern Virginia area selected by the Dealer (or the assignee of any Retail Installment Sales Contract) with the consent of the Purchaser. . . . A Dispute is any question as to whether something must be arbitrated, as well as any litigation concerning a violation of state or federal statute that may be the subject of binding arbitration, any purely monetary claim greater than $1,000.00 in the aggregate whether contract, tort, or other, arising from the negotiation of and terms of the Buyer's Order, any service contract or insurance product, or any retail installment sale contract or lease[.]

(App. at 62.) Even without such an explicit reference to the arbitration of disputes arising under other documents, courts have held that an arbitration clause contained in one document of several comprising the parties' agreement as to the same transaction is sufficient to require the parties to arbitrate all disputes relating to that transaction. *See, e.g.*, *Neal v. Hardee's Food Sys., Inc.*, 918 F.2d 34, 37-38 (5th Cir. 1990) (applying Texas law) (applying the general contract law principle that "separate agreements executed contemporaneously by the same parties, for the same purposes, and as part of the same transaction, are to be construed together," the court held that a broad arbitration clause, covering "any and all disputes," contained in a license

agreement between the parties applied to disputes under a purchase agreement executed contemporaneously and regarding the same business transaction); *Sanford v. H.A.S., Inc.*, 136 F. Supp. 2d 1215, 1221-22 (M.D. Ala.), *aff'd*, 268 F.3d 1068 (11th Cir. 2001) (under the general principle of Alabama law that "two or more instruments executed contemporaneously by the same parties in reference to the same subject matter constitute one contract and should be read together in construing the contract," "an arbitration agreement executed at the same time as other agreements concerning the same subject matter is rightly considered an enforceable element of the contract") (internal quotation omitted).

This is true even if one of the other documents comprising the parties' agreement contains an integration clause but does not also provide for arbitration. Thus, in *Isp.com LLC v. Theising*, 805 N.E.2d 767, 776-77 (Ind. 2004), the court enforced an arbitration clause contained in an asset purchase agreement between the parties even though the loan and security agreement subsequently executed by the same parties with regard to the same transaction did not provide for arbitration and included an integration clause stating that the loan and security agreement "constitute[d] the complete agreement of the parties hereto and supersede[s] all previous understandings relating to the subject matter hereof." *Id.* at 777. Despite this broad merger language, the court concluded that the arbitration clause contained in the earlier asset purchase agreement applied to claims asserted under the loan and security agreement: "There is no requirement that an arbitration clause be included in all potentially relevant documents to be binding if it covers the dispute at hand. As

long as one agreement between two parties includes an agreement to arbitrate, that is enough to bind both parties to that undertaking." *Id.* at 776 (citations omitted).

It is interesting to note that the merger clause relied on by the circuit court as supporting its holding that the RISC completely superseded the Buyer's Order is far narrower than the integration clauses contained in either the loan and security agreement in *Theising* or the Buyer's Order in this instance. Here, the Buyer's Order states that

> this Buyer's Order, together with any documents signed by the party against which such writing is sought to be enforced . . . contains the full and final agreement between the parties *concerning the purchase of the Vehicle* (including but not limited to any financing and warranty issues) and supersedes and replaces all prior or contemporaneous agreement[s] between the parties.

(App. at 60 (emphasis added).) By contrast, the RISC provides only that "[t]his contract contains the entire agreement between you and us *relating to this contract.*" (App. at 11 (emphasis added).) Given the narrow focus of the integration clause contained in the RISC, the clause can easily be read as applying solely to bar the introduction of parol evidence as to any financing issues covered by the RISC (such as an interest rate or monthly payment amount different from that agreed to in the RISC), while leaving in place the arbitration agreement set forth in the Buyer's Order.

In fact, this was the conclusion reached by the district court in *Williams* when confronted with the exact same integration clause in the RISC before it in that case.

> The integration clause in the RISC relates specifically to that agreement only, and not to the entire agreement between the parties relating to the sale. The relevant portion of the Retail Installment Sales Contract states, "[t]his contract contains the entire agreement between

> you and us relating to this contract." This provision is not a complete integration clause with respect to the entire agreement between the parties. *See Mayberry*, 201 F. Supp. 2d at 692. Although the integration clause in the RISC may present a complete statement of the parties' agreement with respect to the financing provisions therein, the Retail Installment Sales Contract was but one part of the overall sales transaction, which was memorialized into the Retail Buyers Order. Thus, the integration clause in the RISC operates as a partial integration of the parties' complete agreement. *See id.*

(Ex A at 13-14.)

Other provisions of the RISC also support the fact that, while the RISC may have constituted a complete statement of the parties' agreement with regard to the financing arrangements, it was but one part of the overall sales transaction and must be read together with the Buyer's Order in order to determine the entire agreement between the parties. For example, & 3.c in the "Other Important Agreements" portion of the RISC states that: "If we hire an attorney to collect what you owe, you will pay the attorney's fee and court costs as permitted by law." (App. at 12.) Paragraph 3.f of the RISC similarly provides that, if the seller/creditor has to sell the vehicle after repossessing it to redress a default by the buyer, the seller/creditor can apply the money from the sale to various "allowed expenses," including "attorney fees and court costs." (App. at 12.) Gonzalez has previously argued that the reference to "court costs" in these two provisions is consistent with the fact that arbitration was not intended to be included under the RISC.

However, the arbitration clause set forth in the Buyer's Order specifically provides, after describing what is a "Dispute" covered by the arbitration agreement, that

> *your failure to provide consideration to be paid by you* (including your failure to pay a note, a dishonored check, failure to provide a trade title, or failure to pay deficiency resulting from additional payoff on trade) *as well as our right to retake possession of the vehicle* pursuant to this Buyer's Order shall not be considered a Dispute and *shall not be subject to arbitration*.

(App. at 62 (emphasis added).) Thus, far from demonstrating that arbitration was not intended to be included under the RISC, these provisions of the RISC actually show that the RISC and the Buyer's Order are completely in lock step when it comes to arbitration, in that the RISC permits "court costs" to be recovered only in those exact instances in which the Buyer's Order specifically provides that the parties' dispute is not subject to arbitrationCi.e., collection efforts and sale after repossession occasioned by the buyer's failure to make payments on the vehicle. The coordination of these provisions clearly demonstrates that the Buyer's Order and the RISC must be read together in order to determine the entire agreement between the parties.

In sum, there is no evidence in the record demonstrating that the Buyer's Order was executed before the RISC, and the circuit court erred in concluding that the Buyer's Order must have been signed before the RISC in order to comply with Virginia law. In any event, even if the Buyer's Order was signed before the RISC, it is undisputed that the Buyer's Order and the RISC were executed contemporaneously by the same parties as part of the same sale transaction. As such, the Buyer's Order and the RISC should be construed together to determine the parties' entire agreement with regard to Gonzalez's purchase of the vehicle from RDA. Since the Buyer's Order contains an arbitration agreement that is broad enough to cover the claims alleged

against RDA in this case, the circuit court erred in refusing to order arbitration of the parties' dispute based solely on the inclusion of a far narrower integration clause in the RISC.

CONCLUSION

WHEREFORE, in light of the foregoing, the decision of the circuit court denying RDA's motion to stay the pending proceedings and to compel arbitration pursuant to the Uniform Arbitration Act should be reversed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 5:26(d)

I, David R. Mahdavi, as counsel for the Appellant, do hereby certify that three copies of the foregoing brief were mailed or delivered to opposing counsel on or before the day on which the brief was filed, and that 20 copies of the brief were transmitted to the clerk of this Court for filing by hand delivery on this _____ day of May 2005.

_____/S/_____
David R. Mahdavi, Esquire
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EXHIBIT A