

M&P obtains published opinion from Kentucky Supreme Court enforcing arbitration agreements in motor vehicle sales disputes.

When Velessa Hathaway found some records in a used car she purchased showing that a wheel speed sensor and a power steer pump had been replaced in the past, she tried to sue on all types of theories – fraud, conversion, breach of warranty, violation of Kentucky’s consumer protection and motor vehicle sales laws, and violation of the federal Truth In Lending Act. The seller of the used car, Commonwealth Dodge, LLC, disputed her claims, and it also insisted that she arbitrate all of her claims under a written arbitration agreement Ms. Hathaway had signed at the time of the sale. Ms. Hathaway refused, but both the Kentucky Circuit Court and the Court of Appeals ordered her to arbitration.

When Ms. Hathaway appealed to the Kentucky Supreme Court, M&P was tasked with explaining why Commonwealth Dodge’s arbitration agreement should be enforced. On March 24, 2011, in the case of *Hathaway v. Commonwealth Dodge, LLC, No. 2010-SC-000457-MR*, the Kentucky Supreme Court unanimously ruled that “all of the claims [Ms. Hathaway] raises against Commonwealth Dodge ... are covered by the arbitration clause” which is binding against her.

The case addresses a number of key points that regularly arise in disputes over arbitration. First, the Supreme Court ruled that parties may, by contract, specify that the arbitration clause will be governed by the federal Arbitration Act (9 U.S.C. §1, et seq.). Second, the Supreme Court reminded contracting parties that when the

Kentucky arbitration act (KRS Chapter 417) applies, the arbitration clause must expressly specify a location in Kentucky for the location of the arbitration or the agreement is not enforceable. Third, the Supreme Court rejected all of Ms. Hathaway’s arguments that the arbitration clause was “unconscionable” even though it was on a preprinted form and allowed Commonwealth Dodge to use court procedures to enforce its security interest in the vehicle if necessary to repossess it. Fourth, the Supreme Court emphasized that Ms. Hathaway had the obligation to read the contract she signed and that Commonwealth Dodge was not required to verbally warn her about its contents. Fifth, the Supreme Court enforced in a commonsense way the “broad” scope of the disputes the agreement provided were subject to arbitration.

M&P is pleased to have helped Commonwealth Dodge obtain a published opinion from Kentucky’s highest court enforcing its contractual arbitration agreement.

“Thurman knew the importance of this appellate brief to our company and understood the repercussions that it would have for all businesses utilizing arbitration clauses. And because of that, Thurman put tremendous effort and focus into preparing a quality and well-thought out brief. His convincing arguments are what ultimately won the day. We are beyond pleased with this outcome.”
– Ray Duran, Jr., CFO, Hays Automotive Group



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