

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN BRYAN CLIFTON,  
Petitioner,  
vs.  
THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK, AND THE HONORABLE  
SUSAN JOHNSON, DISTRICT JUDGE,  
Respondents,  
and  
BILL HEARD CHEVROLET CORP., NW  
LV, D/B/A VISTA CHEVROLET,  
Real Party in Interest.

No. 51155

**FILED**

SEP 05 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges a district court order compelling arbitration.

A writ of mandamus is generally available when there is no plain, speedy, and adequate remedy at law<sup>1</sup> and is available to compel the performance of an act that the law requires or to control a manifest abuse of discretion.<sup>2</sup> This court has held that a writ petition is a proper method of challenging a district court order compelling arbitration<sup>3</sup> because there

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<sup>1</sup>Pan v. Dist. Ct., 120 Nev. 222, 224, 88 P.3d 840, 841 (2004).

<sup>2</sup>See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

<sup>3</sup>Burch v. Dist. Ct., 118 Nev. 438, 441, 49 P.3d 647, 649 (2002).

is no statutory right to appeal such an order.<sup>4</sup> Mandamus is an extraordinary remedy, however, and the decision to entertain such a petition is addressed to our sole discretion.<sup>5</sup> Moreover, petitioner John Clifton bears the burden to demonstrate that our extraordinary intervention is warranted.<sup>6</sup>

Clifton argues that writ relief is warranted because the district court manifestly abused its discretion when it compelled arbitration in this matter. Specifically, Clifton claims that since the arbitration agreement is not contained within the four corners of the retail installment contract, the arbitration agreement is unenforceable and invalid under NRS 97.165(1)'s "one document rule."<sup>7</sup> Additionally, Clifton argues that the arbitration agreement is unenforceable because it is neither procedurally nor substantively conscionable.

Real party in interest Bill Heard Chevrolet Corp. contends that the district court properly compelled arbitration because enforcement of the arbitration agreement is not precluded by NRS 97.165(1). In particular, Bill Heard argues that Clifton's vehicle purchase transaction is not a "retail installment sale" because there was no finance charge directly or indirectly imposed by Bill Heard. Thus, according to Bill Heard,

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<sup>4</sup>See NRS 38.247 (providing for no independent appeal from an order granting motion to compel arbitration).

<sup>5</sup>See Poulos v. District Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982).

<sup>6</sup>Pan, 120 Nev. at 228, 88 P.3d at 844.

<sup>7</sup>NRS 97.165(1) provides that a retail installment contract must be contained in one single document evidencing the entire agreement of the parties.

compliance with NRS 97.165(1) was not required. Alternatively, Bill Heard contends that because the arbitration agreement was entered into contemporaneously with the retail installment contract, the arbitration agreement was incorporated into the retail installment contract and thus the documents may be considered a single document under NRS 97.165(1). Further, Bill Heard asserts that the arbitration agreement is not unconscionable and was properly enforced by the district court.

NRS 97.165 is part of the Nevada Retail Installment Sales of Goods and Services Act, which is based on a uniform act. Under NRS 97.165(1), a retail installment contract must be contained in one single document evidencing the entire agreement of the parties. A retail installment contract is defined as a contract, other than a retail charge agreement<sup>8</sup> that reflects a sale made pursuant thereto, that is entered into or performed in Nevada for a retail installment transaction.<sup>9</sup> A retail installment transaction is a transaction in which a retail buyer<sup>10</sup> purchases goods from a retail seller<sup>11</sup> pursuant to a retail installment

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<sup>8</sup>See NRS 97.095 (defining retail charge agreement).

<sup>9</sup>NRS 97.105(1).

<sup>10</sup>A retail buyer is defined, generally, as a person who buys goods from a retail seller. NRS 97.085.

<sup>11</sup>A retail seller is a person engaged in the business of selling or leasing goods to retail buyers or “a person, other than a financial institution, who enters into agreements prescribing the terms for the extension of credit pursuant to which the person may . . . acquire one or more obligations of the buyer to a retail seller if the purchase . . . to be paid in accordance with the agreement is evidenced by a sales slip or memorandum.” NRS 97.125.

contract that provides for a finance charge and under which the buyer agrees to pay the total of payments in one or more installments.<sup>12</sup>

Under these definitions, when a dealer is not involved in arranging for a buyer's credit through a lending institution, regardless of the form used to evidence the purchase agreement, the transaction does not constitute a retail installment sales contract.<sup>13</sup> And when a transaction does not involve a finance charge, the subject transaction does not fall under the Retail Installment Sales of Goods and Services Act's definition of a retail installment contract.<sup>14</sup>

Having considered the petition, the answer thereto, and the supporting documentation in light of the principles discussed above, we are not persuaded that our intervention by way of extraordinary relief is warranted. Specifically, the record demonstrates that Clifton did not

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<sup>12</sup>NRS 97.115.

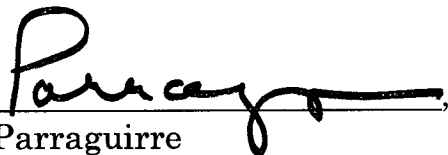
<sup>13</sup>Cf. Espinoza v. Victoria Bank & Trust Co., 572 S.W.2d 816 (Tex. Ct. App. 1976) (providing that when a dealer is substantively involved in arranging for a buyer's credit through a lending institution, the transaction is a retail installment sales contract); accord NRS 97.125 (defining retail seller). Generally, courts should consider a transaction's substance rather than its mere form in determining whether it is a retail installment sale. Espinoza, 572 S.W.2d at 822-23. Since Nevada's act is based on a uniform act, cases from other jurisdictions with the same provisions are persuasive. See Volvo Cars of North America v. Ricci, 122 Nev. 746, 750, 137 P.3d 1161, 1164 (2006).


<sup>14</sup>See NRS 97.115 (defining a retail installment transaction, generally, as a transaction pursuant to a retail installment contract or agreement that provides for a finance charge); accord Am. Buyers Club of Mt. Vernon v. Zuber, 373 N.E.2d 786, 789 (Ill. Ct. App. 1978) (providing that "a finding that a finance charge is present in the instant transaction is necessary in order to determine that the transaction is governed by the Illinois Retail Installment Sales Act").

obtain financing from Bill Heard to complete the vehicle purchase and Bill Heard did not impose a finance charge on Clifton.<sup>15</sup> Thus, the transaction does not constitute a retail installment transaction. Because we conclude that the district court did not abuse its discretion when it granted Bill Heard's motion to compel arbitration, we

ORDER the petition DENIED.<sup>16</sup>

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

cc: Hon. Susan Johnson, District Judge  
George O. West III  
Goodman Law Group  
Eighth District Court Clerk

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<sup>15</sup>See Zuber, 373 N.E.2d at 789 (explaining that the transactions contemplated to fall under the scope of Illinois' Retail Installment Sales Act are transactions where a charge is made by a retail seller for the extension of credit to a retail customer in addition to what the cost would be if payment was made in cash rather than installments); see also NRS 97.115.

<sup>16</sup>Having considered all the other issues raised by Clifton, we conclude that his other contentions lack merit and do not warrant our intervention by way of extraordinary relief.