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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

PATRICIA BUZENES, Plaintiff and Respondent, v. NUVELL FINANCIAL SERVICES et al., Defendants and Appellants.	B221870 (Los Angeles County Super. Ct. No. BC407366)

APPEAL from an order of the Superior Court of Los Angeles County, Carolyn B. Kuhl, Judge. Affirmed.

Severson & Werson, Jan T. Chilton and John B. Sullivan for Defendants and Appellants.

Chavez & Gertler, Mark A. Chavez and Nance F. Becker; Kemnitzer Barron & Krieg and Bryan Kemnitzer; and Rosner & Mansfield and Gregory Babbitt for Plaintiff and Respondent.

I. INTRODUCTION

Defendants, Nuvell Financial Services, LLC and Nuvell National Auto Finance Company, Inc., appeal from an order denying their petition to compel arbitration. They were sued by plaintiff, Patricia Buzenes, after a car she purchased was repossessed. The trial court found the arbitration provision was unconscionable and unenforceable. We affirm the order denying the petition to compel arbitration.

II. BACKGROUND

A. The Complaint

The complaint alleges that plaintiff purchased a used car from Glendale Nissan in June 2007 pursuant to a conditional sales contract. The dealership arranged the financing for the purchase and assigned the conditional sales contract to defendants. In October 2008, defendants repossessed plaintiff's car after she defaulted on her loan. Defendants mailed a written notice to plaintiff advising her that her car had been repossessed and would be sold. The notice of intent did not contain several disclosures mandated by Civil Code section 2983.2, subdivisions (a)(1) through (a)(9). The notice of intent warned plaintiff: "YOU MAY BE SUBJECT TO SUIT AND LIABILITY IF THE AMOUNT OBTAINED UPON DISPOSITION OF THE VEHICLE IS INSUFFICIENT TO PAY THE CONTRACT BALANCE AND ANY OTHER AMOUNTS DUE."

Plaintiff allegedly requested by form an extension to redeem the car. Defendants ultimately sold the car and then assessed a deficiency balance against plaintiff, a portion of which she paid. The complaint alleges that no deficiency balance was owed due to defendants' failure to comply with all mandatory disclosure requirements imposed by law. Plaintiff alleged claims, on her own behalf and as a putative class of automobile purchasers whose cars were repossessed after February 2004 and were sent defective notices of intent to sell their cars, against defendants for: violation of the Business and

Professions Code section 17200; contract breach; violation of the Rees-Levering Automobile Sales Finance Act (Civ. Code, § 2981 et seq.); conversion; and declaratory relief.

B. Evidence

1. Arbitration provisions

On June 1, 2009, defendants filed a petition to compel arbitration of their dispute based upon the following provisions in the conditional sales contract: "ARBITRATION CLAUSE [¶] PLEASE REVIEW—IMPORTANT—AFFECTS YOUR LEGAL RIGHTS [¶] 1. EITHER YOU OR WE MAY CHOOSE TO HAVE ANY DISPUTE BETWEEN US DECIDED BY ARBITATION AND NOT IN COURT OR BY JURY TRIAL. [¶] 2. IF A DISPUTE IS ARBITRATED, YOU WILL GIVE UP YOUR RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR CLASS MEMBER ON ANY CLASS CLAIM YOU MAY HAVE AGAINST US INCLUDING ANY RIGHT TO CLASS ARBITRATION OR ANY CONSOLIDATION OF INDIVIDUAL ARBITRATIONS. [¶] 3. DISCOVERY AND RIGHTS TO APPEAL IN ARBITRATION ARE GENERALLY MORE LIMITED THAN IN A LAWSUIT, AND OTHER RIGHTS THAT YOU AND WE WOULD HAVE IN COURT MAY NOT BE AVAILABLE IN ARBITRATION."

The arbitration provision continues: "Any claim or dispute, whether in contract, tort, statute or otherwise (including the interpretation and scope of this clause, and the arbitrability of the claim or dispute), between you and us or our employees, agents, successors or assigns, which arise out of or relate to your credit application, purchase or condition of this vehicle, this contract or any resulting transaction or relationship (including any such relationship with third parties who do not sign this contract) shall, at your or our election, be resolved by neutral, binding arbitration and not by a court action. Any claim or dispute is to be arbitrated by a single arbitrator on an individual basis and

not as a class action. You expressly waive any right you may have to arbitrate a class action. You may choose one of the following arbitration organizations and its applicable rules: the National Arbitration Forum . . . , the American Arbitration Association . . . or any other organization that you may choose subject to our approval. . . . [¶] Arbitrators shall be attorneys or retired judges and shall be selected pursuant to the applicable rules. The arbitrator shall apply governing substantive law in making an award. The arbitration hearing shall be conducted in the federal district in which you reside unless the Creditor-Seller is a party to the claim or dispute, in which case the hearing will be held in the federal district where this contract was executed. We will advance your filing, administration, service or case management fee and your arbitrator or hearing fee all up to a maximum of $1500, which may be reimbursed by decision of the arbitrator at the arbitrator's discretion. Each party shall be responsible for its own attorney, expert, and other fees, unless awarded by the arbitrator under applicable law. If the chosen arbitration organization's rules conflict with this clause, then the provisions of this clause shall control. The arbitrator's award shall be final and binding on all parties, except that in the event the arbitrator's award for a party is $0 or against a party is in excess of $100,000, or includes an award of injunctive relief against a party, that party may request a new arbitration under the rules of the arbitration organization by a three-arbitrator panel. The appealing party requesting new arbitration shall be responsible for the filing fee and other arbitration costs subject to a final determination by the arbitrators of a fair apportionment of costs. Any arbitration under this Arbitration Clause shall be governed by the Federal Arbitration Act (9 U.S.C. § 1 et seq.) and not by any state law concerning arbitration."

The arbitration provision includes an exception for repossession rights: "You and we retain any rights to self-help remedies, such as repossession. You and we retain the right to seek remedies in small claims court for disputes or claims within that court's jurisdiction, unless such action is transferred, removed or appealed to a different court. Neither you nor we waive the right to arbitrate by using self-help remedies or filing suit.

Any court having jurisdiction may enter judgment on the arbitrator's award. This clause shall survive any termination, payoff, or transfer of this contract."

There are other provisions of the extensive agreement between plaintiff and defendants which refer to their repossession rights. If plaintiff is late with a payment or breaks any promises she has made, the retail installment agreement states: "We may take the vehicle from you. If you default, we may take (repossess) the vehicle from you if we do so peaceably and the law allows it. If your vehicle has an electronic tracking device, you agree that we may use the device to find the vehicle. If we take the vehicle, any accessories, equipment, and replacement parts will stay with the vehicle. If any personal items are in the vehicle, we may store them for you at your expense. If you do not ask for these items back, we may dispose of them as the law allows." Also, the retail installment agreement explains how plaintiff can get her car back if it is repossessed. Another part of the retail installment agreement states that the cost incurred in taking the car and storing may be charged to plaintiff. No provision of the retail sales contract grants plaintiff any self-help or repossession rights.

The arbitration provision also has a limited severability clause: "If any part of the Arbitration Clause, other than waivers of class action rights, is deemed or found to be unenforceable for any reason, the remainder shall remain enforceable. If a waiver of class action rights is deemed or found to be unenforceable for any reason in a case in which class action allegations have been made, the remainder of the arbitration clause, the remainder of the arbitration clause shall be unenforceable."

2. Declarations

a. defendants' declarations

Defendants filed the declaration of Charles Davis. Mr. Davis identified the retail sales contract entered into between plaintiff and Glendale Nissan. The retail sales contract contains the foregoing arbitration provisions. Further, Mr. Davis explained

plaintiff failed to make payments required under the retail sales contract. Nuevell Financial Services LLC, doing business as National Auto Finance Company, repossessed the car. The car was sold and plaintiff owed $23,534.08.

In reply, one of defendants' attorneys identified admission and document production demand responses and deposition answers. They demonstrated plaintiff executed the retail sales contract containing the foregoing arbitration provisions. Plaintiff admitted at her deposition she executed the document containing the arbitration provisions. Before signing it, she did not read the arbitration clause. Further, when she initialed the applicable box, she had not read the arbitration clause. Plaintiff did not discuss the arbitration clause with anybody at the dealership. Plaintiff has a sixth grade education and a learning disability. A municipal bus operator, she can neither read nor spell.

b. plaintiff's declarations

Plaintiff declared: she had no knowledge or understanding of the arbitration provisions; she signed the collection of documents presented to her on a take it or leave it basis; she signed the collection of 13 documents presented to her in 23 places and initialed it in 20 places; and she could not change any of the 13 documents. She declared: "The employee at Glendale Nissan put the documents in front of me and then started talking about my work as a bus driver for Long Beach. He talked extensively about the bus routes, about the Queen Mary, about the Long Beach shoreline, and my employment. He would simply say 'sign here, sign here, initial here, initial here' without explaining any of the of the documents." She also stated: "I had no choice whatsoever as to whether or not or I could sign or not sign certain documents. I had to sign and initial all of the documents in order to get the car without any opportunity to fully comprehend the documents and their impact on my rights."

Plaintiff also presented declarations by three attorneys, Lily D. McCoy, Douglas D. Law and William Robert McGee, concerning the complaint's claims. Ms. McCoy,

Mr. Law and Mr. McGee declared they would not have accepted plaintiff's case unless it could be pursued on a class-wide basis. According to Ms. McCoy, Mr. Law and Mr. McGee, only in the case of class action is it reasonable for a plaintiff's attorney to undergo the risks of providing representation. Ms. McCoy declared: the contracts in this case are typically offered on a take it or leave it basis; very few dealership employees and customers understand the effect of an arbitration clause; and persons who have their cars repossessed generally do not have the financial wherewithal to pay for an attorney. Neither Ms. McCoy, Mr. McGee nor Mr. Law had ever heard of a consumer whose car had been repossessed who could afford to pay for an attorney.

C. Trial Court's Ruling, Notice Of Appeal And Delay

The trial court denied the petition to compel arbitration. The trial court found there was procedural unconscionability in the original transaction because plaintiff was not given an opportunity to negotiate the arbitration clause. In terms of substantive unconscionability, the trial court ruled: "[T]he arbitration clause reserved remedies for the lender other than arbitration, and those remedies protected defendant for the primary rights that defendant would be likely to assert under the loan agreement. [¶] . . . As in *Flores* [*v. Transamerica HomeFirst, Inc.* (2001) 93 Cal.App.4th 846], the lender here reserves self-help remedies and non-judicial remedies to reacquire the security. Moreover, the arbitration agreement at issue here in the 'notice to buyer' section at page 2 of the agreement states that if the buyer defaults, the buyer, quote, 'may be subject to suit and liability,' close quote, for the unpaid indebtedness. [¶] Thus, the lender preserves its ability to go to court to obtain relief, despite the arbitration clause, and the clause itself states that the lender may choose to arbitrate, thereby also leaving the judicial forum available." We deem timely defendants' premature notice of appeal filed on January 19, 2010 to be timely as to the written order denying the petition to compel arbitration, filed by the trial court on February 18, 2010. (See Cal. Rules of Court, rule

8.104(d)(2); *In re Social Services Payment Cases* (2008) 166 Cal.App.4th 1249, 1262, fn. 4; *Greenfield v. Insurance Inc.* (1971) 19 Cal.App.3d 803, 814.)

After the notice of appeal was filed, several events caused the extraordinary delays in the processing of this case. After the cause was submitted, we reviewed the oral argument transcript of the then pending case of *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. __, __ [131 S.Ct. 1740, 1753] (*AT&T Mobility LLC*, *supra*). As a result, we delayed deciding this case pending the filing of the *AT&T Mobility LLC* opinion. After permitting briefing on the effect of *AT&T Mobility LLC*, the author of this opinion underwent two surgeries. Subsequently, a majority of a panel of this division issued an opinion in *Brown v. Ralphs Grocery Co.* (2011) 197 Cal.App.4th 489, 494. That opinion holds that the Federal Arbitration Act does not preempt claims under Labor Code section 2698 et seq. Then we vacated submission to permit our Supreme Court to rule on the defendant's review petition in *Brown*. As a result of the convergence of these extraordinary circumstances, we were unable to promptly decide the present arbitration dispute as we typically do as required by Code of Civil Procedure section 1291.2.

III. DISCUSSION

A. Overview

Code of Civil Procedure section 1281 provides for enforcement of arbitration agreements.[1] The trial court has authority to compel arbitration pursuant to Code of Civil Procedure section 1281.2.[2] Any doubts as to whether an arbitration clause applies to a

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[1] Code of Civil Procedure section 1281 provides, "A written agreement to submit to arbitration an existing controversy or a controversy thereafter arising is valid, enforceable and irrevocable, save upon such grounds as exist for the revocation of any contract."

[2] Code of Civil Procedure section 1281.2 provides in part: "On petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy and that a party thereto refuses to arbitrate such controversy, the court shall order the petitioner and the respondent to arbitrate the controversy if it determines that an

particular dispute should be resolved in favor of compelling the parties to arbitrate. (*Vianna v. Doctors' Management Co.* (1994) 27 Cal.App.4th 1186, 1189; *United Transportation Union, AFL/CIO v. Southern California Rapid Transit Dist.* (1992) 7 Cal.App.4th 804, 808.) However, the right to compel arbitration depends upon the existence of a valid contract between the parties. (*County of Contra Costa v. Kaiser Foundation Health Plan, Inc.* (1996) 47 Cal.App.4th 237, 245; *Marsch v. Williams* (1994) 23 Cal.App.4th 250, 254.) The question of whether a valid agreement to arbitrate exists is determined by reference to state law applicable to contracts generally even in cases subject to the Federal Arbitration Act. (9 U.S.C. § 2; *Doctor's Associates, Inc. v. Casarotto* (1996) 517 U.S. 681, 686-687; *Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 971-973.)

We assume for purposes of discussion plaintiff had the burden of proof on the unconscionability issue. (*Engalla v. Permanente Medical Group, Inc., supra,* 15 Cal.4th at p. 972; *Mission Viejo Emergency Medical Associates v. Beta Healthcare Group* (2011) 197 Cal.App.4th 1146, 1153.) In the case of meaningful factual disputes, we resolve those matters using the deferential substantial evidence standard of review. (*Lhotka v. Geographic Expeditions, Inc.* (2010) 181 Cal.App.4th 816, 820-821; *Ontiveros v. DHL Express (USA), Inc.* (2008) 164 Cal.App.4th 494, 502.) The Court of Appeal has held, "[W]hen the extrinsic evidence is undisputed, . . . we review the contract de novo to determine unconscionability." (*Gatton v. T–Mobile USA, Inc.* (2007) 152 Cal.App.4th 571, 579; see *Suh v. Superior Court* (2010) 181 Cal.App.4th 1504, 1512.) The question

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agreement to arbitrate the controversy exists, unless it determines that: [¶] (a) The right to compel arbitration has been waived by the petitioner; or [¶] (b) Grounds exist for the revocation of the agreement. [¶] . . . [¶] (c) If the court determines that a written agreement to arbitrate a controversy exists, an order to arbitrate such controversy may not be refused on the ground that the petitioner's contentions lack substantive merit. [¶] If the court determines that there are other issues between the petitioner and the respondent which are not subject to arbitration and which are the subject of a pending action or special proceeding between the petitioner and the respondent and that a determination of such issues may make the arbitration unnecessary, the court may delay its order to arbitrate until the determination of such other issues or until such earlier time as the court specifies. . . ."

of whether the arbitration agreement was invalid as unconscionable is one of law requiring de novo review. (*Roman v. Superior Court* (2009) 172 Cal.App.4th 1462, 1468-1469; *Fittane v. Palm Springs Motors, Inc.* (2003) 105 Cal.App.4th 708, 714.)

Under unconscionability principles, as a general rule, both procedural and substantive elements should be present before a contract will be invalidated. (Civ. Code, § 1670.5; *Little v. Auto Stiegler, Inc.* (2003) 29 Cal.4th 1064, 1071; *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 114.) The procedural element of unconscionability focuses on whether the contract is one of adhesion. (*Armendariz v. Foundation Health Psychcare Services, Inc., supra*, 24 Cal.4th at p. 113; *Mercuro v. Superior Court* (2002) 96 Cal.App.4th 167, 174.) Procedural unconscionability focuses on the manner in which the contract was negotiated and the circumstances of the parties and addresses two factors—oppression and surprise. (*Parada v. Superior Court* (2009) 176 Cal.App.4th 1554, 1568; *Morris v. Redwood Empire Bancorp* (2005) 128 Cal.App.4th 1305, 1319.)

The substantive element addresses the existence of overly-harsh or one-sided terms. (*Armendariz v. Foundation Health Psychcare Services*, *Inc.*, *supra*, 24 Cal.4th at p. 114; *Gutierrez v. Autowest, Inc.* (2003) 114 Cal.App.4th 77, 91-92.) *Little v. Auto Stiegler, Inc., supra,* 29 Cal.4th at pages 1071 through 1072 explained substantive unconscionsability: "Substantively unconscionable terms may take various forms, but may generally be described as unfairly one-sided. One such form, as in *Armendariz*, is the arbitration agreement's lack of a '"modicum of bilaterality,"' wherein the employee's claims against the employer, but not the employer's claims against the employee, are subject to arbitration. (*Armendariz* [*v. Foundation Health Psychcare Services*, *Inc.*], *supra*, 24 Cal.4th at p. 119.) Another kind of substantively unconscionable provision occurs when the party imposing arbitration mandates a post-arbitration proceeding, either judicial or arbitral, wholly or largely to its benefit at the expense of the party on which the arbitration is imposed." (See *Abramson v. Juniper Networks, Inc.* (2004) 115 Cal.App.4th 638, 658; *Flores v. Transamerica HomeFirst, Inc., supra,* 93 Cal.App.4th at

pp. 854-855; *Kinney v. United Healthcare Services, Inc.* (1999) 70 Cal.App.4th 1322, 1332.)

B. Preemption

There is no merit to defendants' argument we should reverse the order under review because of the holding in *AT&T Mobility LLC*, *supra*, at p. __ [131 S.Ct. at p. 1753]. *AT&T Mobility LLC* abrogated this state's rule disapproving "most collective-arbitration waivers in consumer contracts" established in our Supreme Court's decision in *Discover Bank v. Superior Court* (2005) 36 Cal.4th 148, 163-168. (*AT&T Mobility LLC*, *supra,* at p. __ [131 S.Ct. at p. 1746].) *AT&T Mobility LLC* did not disapprove of any other portion of our Supreme Court's unconscionability jurisprudence in the arbitration context. A United States Supreme Court decision may not be cited for a proposition not considered therein. (*Cooper Industries, Inc. v. Aviall Services, Inc.* (2004) 543 U.S. 157, 170; *People v. McKinnon* (2011) 52 Cal.4th 610, 639.) We have not relied upon the rule disapproved of in *AT&T Mobility LLC* in deciding this case. We remain bound by the unconscionability analysis articulated in *Armendariz Foundation Health Psychcare Services*, *Inc.*, *supra*, 24 Cal.4th at pages 99-127 and *Little v. Auto Stiegler, Inc., supra,* 29 Cal.4th at pages 1071-1085. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455; see *People v. Letner and Tobin* (2010) 50 Cal.4th 99, 197-198.)

C. Unconscionability

First, there is substantial evidence the agreement was procedurally unconscionable. The document was preprinted for plaintiff's signature and initials. Plaintiff declared that she signed the arbitration provision as part of the purchase and finance agreement. She also declared that there was no opportunity to negotiate the terms of the classwide waiver. There is no evidence that plaintiff's car would have been financed if she did not sign the agreement. Specifically, plaintiff declared she had to sign

all of the documents presented to her on a “take or leave” it basis. She had to sign and initial where she was told. Plaintiff further declared, “I had to sign and initial all of the documents in order to get the car without any opportunity to fully comprehend the documents and their impact on my rights.” Thus, there is substantial evidence the aspects of procedural unconscionability are established. (*Armendariz v. Foundation Health Psychcare Services, Inc.*, *supra*, 24 Cal.4th at pp. 113-115; *McManus v. CIBC World Markets Corp.* (2003) 109 Cal.App.4th 76, 101; *Mercuro v. Superior Court*, *supra*, 96 Cal.App.4th at p. 174; *Flores v. Transamerica HomeFirst, Inc.*, *supra,* 93 Cal.App.4th at pp. 853-854.)

Second, when the facts are construed in a light most favorable to plaintiff, the agreement is substantively unconscionable. Under its terms, defendants retain their rights to pursue its self-help remedy of repossession. There is no basis for concluding a person in plaintiff’s position would ever exercise self-help remedies (repossess her own car)—such an argument is unreasonable. (*Armendariz v. Foundation Health Psychcare Services, Inc.*, *supra*, 24 Cal.4th at p. 120; *O’Hare v. Municipal Resource Consultants* (2003) 107 Cal.App.4th 267, 274.) And the contract does not grant plaintiff any repossession rights—they belong exclusively to defendants. The notice to buyer section also permits defendants to file “suit” in the event of the plaintiff’s default. Plaintiff has no similar rights and is subjected to an arbitration agreement for any logically conceivable claims she may have. Indeed, the agreement requires arbitration of practically any claim that could ever be brought against an automobile seller or finance company. (*Armendariz v. Foundation Health Psychare Services, Inc.*, *supra*, 24 Cal.4th at p. 120; *Mercuro v. Superior Court, supra,* 96 Cal.App.4th at p. 176; *Flores v. Transamerica HomeFirst, Inc.*, *supra*, 93 Cal.App.4th at pp. 854-855.) Under these general unconscionability standards, the trial court correctly concluded the one-sided self-help provision rendered the arbitration clause substantively unconscionable. (*Discover Bank v. Superior Court*, *supra*, 36 Cal.4th at pp. 160-161; *Little v. Auto Stiegler, Inc.*, *supra*, 29 Cal.4th at p. 1070; *Baker v. Osborne Development Corp.* (2008) 159 Cal.App.4th 884, 896; *Higgins v. Superior Court* (2006) 140 Cal.App.4th 1238,

1253-1254; *Flores v. Transamerica HomeFirst, Inc.*, *supra*, 93 Cal.App.4th at pp. 854-855.)

D. *Arguelles-Romero*

Defendants contend the arbitration agreement should be found enforceable "as a matter of law" under the decision of *Arguelles-Romero v. Superior Court* (2010) 184 Cal.App.4th 825, 845, footnote 21 (*Arguelles-Romero*, *supra*). *Arguelles-Romero* held a clause challenged by the plaintiff, apparently the same as the one here, was bilateral and thus not unconscionable. Footnote 21 of *Arguelles-Romero* does not support defendants' premise its arbitration provision is enforceable as a matter of law. Here is the specific substantive unconscionability argument posited in footnote 21: "Plaintiffs state, 'The contract gives the creditor the right to exercise self-help (repossession) and to sue to collect claimed deficiencies, but does nothing to protect the consumer from suit by collection agents to whom such debts are customarily sold.'" (*Ibid.*)

The discussion in footnote 21 was confined to an argument raised by the plaintiffs in that case for the first time in their reply brief. The argument was the arbitration clause was not bilateral because it gave the creditor the right to repossess the vehicle and to sue the consumer for deficiencies. And the plaintiffs argued this arbitration provision did nothing to protect the consumer from lawsuits by a collection agency. Our Division Three colleagues found that argument had no merit and for good reason. Footnote 21 of the *Arguelles-Romero* opinion concluded: "It is apparent that, contrary to plaintiffs' assertion, if [the collection agency] were to sue a debtor to obtain a deficiency, as long as that deficiency exceeded the jurisdictional limit of small claims court, the debtor could compel arbitration. Thus, the arbitration clause is clearly bilateral, and not unconscionable." (*Ibid.*)

Here, an entirely different argument is before us. The controlling issue is that only one side, defendants, have the right to exercise self-help remedies. Defendants presented no evidence a person in plaintiff's situation would ever seek to repossess her car from

defendants after they had taken it from her. Also, unlike in *Arguelles-Romero*, plaintiff is not asserting that she could not compel arbitration of any dispute concerning a deficiency judgment. Rather, she is arguing that there is a lack of mutuality. In other words, there is one-sidedness to the agreement because it requires her to waive the rights as to any claims that could conceivably be brought against defendants. But defendants retain the right to exercise self-help remedies.

Additionally, this case is different factually from *Arguelles-Romero* because in that case, the trial court ruled the evidence was insufficient to establish unconscionability. Our Division three colleagues agreed with the trial court based on the evidentiary state of the record. This included the plaintiffs' declaration which failed to comply with Code of Civil Procedure section 2015.5. It also included several attorney declarations on economic feasibility all of which were found to be speculative and unworthy of ponderable weight by the trial court. (*Arguelles-Romero*, *supra*, 184 Cal.App.4th at pp. 833-835 & fns. 6, 7, & 8.) Here, the trial court impliedly accepted those declarations. And plaintiff declared she had a sixth grade education and a learning disability. She presented specific evidence as to the manner in which she was presented the papers she signed and initialed. Plaintiff declared she was offered the contract on a take it or leave it basis. *Arguelles-Romero*, with different issues and evidence, is not controlling. Given the foregoing, we need not address the parties' numerous other contentions.

IV. DISPOSITION

The order denying the petition to compel arbitration is affirmed. Plaintiff, Patricia Buzenes, is awarded her costs on appeal from defendants, Nuvell Financial Services LLC and Nuvell National Auto Finance Company, Inc.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

TURNER, P. J.

We concur:

KRIEGLER, J.

KUMAR, J.[*]

[*] Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.