

## SUPREME COURT OF NORTH DAKOTA

# Thompson v. Lithia ND Acquisition Corp. #1

2017 ND 136 (2017) · No. 20160280 · Decided June 7, 2017

### SUMMARY

The North Dakota Supreme Court affirmed orders compelling arbitration, confirming an arbitration award, and denying Lynne Thompson’s motion to vacate the judgment or obtain a new trial. The court held that the district court did not err in applying North Dakota arbitration law, determining the arbitration agreement was not unconscionable, or confirming the award. The court also held Thompson waived her challenge to the arbitrator-selection process by failing to object before or during arbitration, and that the Federal Arbitration Act did not preclude confirmation under North Dakota law.

### CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of North Dakota                                                                                                                                                                                                                                                                                                                                                                                  |
| WRITING FOR THE COURT | Gerald W. VandeWalle, Chief Justice; Carol Ronning Kapsner; Jerod E. Tufte; Daniel J. Crothers; Lisa Fair McEvers                                                                                                                                                                                                                                                                                              |
| JURISDICTION          | North Dakota                                                                                                                                                                                                                                                                                                                                                                                                   |
| DECIDED               | June 7, 2017                                                                                                                                                                                                                                                                                                                                                                                                   |
| DOCKET                | 20160280                                                                                                                                                                                                                                                                                                                                                                                                       |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                                                                       |
| PROCEDURAL POSTURE    | Appeal from an order compelling arbitration, a judgment confirming the arbitration award, and an order denying the appellant's motion to vacate the judgment or for a new trial.                                                                                                                                                                                                                               |
| STANDARD OF REVIEW    | An order compelling arbitration is reviewed de novo unless it is based on factual findings, which are reviewed for clear error. Whether a contract provision is unconscionable is a question of law, although the determination depends on the factual circumstances. Review of the confirmation or vacatur of an arbitration award is governed by the applicable statutory and federal arbitration standards. |
| PRECEDENTIAL VALUE    | published precedential opinion                                                                                                                                                                                                                                                                                                                                                                                 |
| PARTIES               | Lynne Thompson v. Lithia ND Acquisition Corp. #1 d/b/a Lithia Ford Lincoln Mercury of Grand Forks                                                                                                                                                                                                                                                                                                              |

### TOPICS

arbitration

unconscionability

waiver

appellate procedure

civil procedure

## PRACTICE AREAS

arbitration

contract law

consumer protection

civil procedure

## QUESTIONS PRESENTED

1. Whether the district court erred by applying North Dakota arbitration law rather than applying only the Federal Arbitration Act.
2. Whether the vehicle-purchase arbitration agreement was unconscionable and unenforceable.
3. Whether Thompson waived her challenge to the arbitrator-selection procedure by failing to object before or during the arbitration.
4. Whether the district court could confirm the arbitration award when confirmation was not sought within the one-year period referenced in Section 9 of the Federal Arbitration Act.

## HOLDINGS

1. The Federal Arbitration Act does not preempt all state arbitration law, and the district court did not err by failing to apply only the FAA to the proceedings.
2. The arbitration agreement was not unconscionable, and the district court properly compelled arbitration.
3. Thompson waived her challenge to the arbitrator-selection procedure by failing to object in writing before proceeding with arbitration.
4. The one-year period in FAA § 9 did not preclude confirmation of the arbitration award under North Dakota law, and the district court was required to confirm the award after denying the motion to vacate.

## KEY QUOTATIONS

*“The Supreme Court has not held the FAA preempts all state arbitration law.”* (¶ 13)

*“[A] party alleging unconscionability must demonstrate some quantum of both procedural and substantive unconscionability, and courts are to balance the various factors, viewed in totality, to determine whether the particular contractual provision is ‘so one-sided as to be unconscionable.’”* (¶ 19)

*“It is well settled that a party may not sit idle through an arbitration procedure and then collaterally attack the procedure on grounds not raised before the arbitrators when the result turns out to be adverse.”* (¶ 31)

## FACTUAL BACKGROUND

Thompson purchased a vehicle from Lithia and signed an agreement requiring disputes to be resolved by binding arbitration under American Arbitration Association rules before a single arbitrator who was a retired state-court judge. The agreement limited discovery and allowed Thompson to choose whether Lithia paid all arbitration expenses or the parties split them. After the parties had difficulty selecting an arbitrator, the district court directed the selection process and appointed Wickham Corwin when the parties did not select another arbitrator.

The arbitration resulted in a \$6,000 award for Lithia after the arbitrator found Thompson had not established entitlement to relief and had stopped payment on her \$6,000 vehicle-payment check.

## PROCEDURAL HISTORY

Thompson sued to rescind a vehicle-purchase contract and sought damages for unjust enrichment and unlawful sales practices. The district court compelled arbitration, the arbitration resulted in a \$6,000 award for Lithia, and the court denied Thompson's motion to vacate and ordered judgment entered. After judgment was entered for Lithia in the amount of \$6,266.05, the district court denied Thompson's motions for a new trial and relief from judgment. The North Dakota Supreme Court affirmed.

## DISPOSITION

affirmed

## CASES CITED

- 26th St. Hosp., LLP v. Real Builders, Inc., 2016 ND 95, ¶¶ 11, 14, 879 N.W.2d 437
- Allied-Bruce Terminix Cos. v. Dobson, 513 U.S. 265, 270 (1995)
- Superpumper, Inc. v. Nerland Oil, Inc., 1998 ND 144, ¶¶ 15-16, 582 N.W.2d 647
- Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Junior Univ., 489 U.S. 468, 477 (1989)
- DIRECTV, Inc. v. Imburgia, 136 S. Ct. 463 (2015)
- Kindred Nursing Ctrs. Ltd. P'ship v. Clark, No. 16-32, 2017 WL 2039160 (U.S. May 15, 2017)
- Strand v. U.S. Bank Nat'l Ass'n ND, 2005 ND 68, 693 N.W.2d 918
- Construction Assocs., Inc. v. Fargo Water Equip. Co., 446 N.W.2d 237, 241 (N.D. 1989)
- Brook v. Peak Int'l, Ltd., 294 F.3d 668 (5th Cir. 2002)
- Marino v. Writers Guild of America, East, Inc., 992 F.2d 1480, 1484-85 (9th Cir. 1993)
- Goldman, Sachs & Co. v. Athena Venture Partners, L.P., 803 F.3d 144, 149 (3d Cir. 2015)
- Delta Mine Holding Co. v. AFC Coal Props., Inc., 280 F.3d 815, 821 (8th Cir. 2002)
- Health Servs. Mgmt. Corp. v. Hughes, 975 F.2d 1253, 1263-64 (7th Cir. 1992)
- Photopaint Tech., LLC v. Smartlens Corp., 335 F.3d 152, 158 (2d Cir. 2003)
- Val-U Constr. Co. of S.D. v. Rosebud Sioux Tribe, 146 F.3d 573, 581 (8th Cir. 1998)
- Sverdrup Corp. v. WHC Constructors, Inc., 989 F.2d 148, 156 (4th Cir. 1993)
- Hall St. Assocs., L.L.C. v. Mattel, Inc., 552 U.S. 576 (2008)

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