

COURT OF APPEALS OF OREGON

Godon v. Bend-CDJR, LLC

348 Or. App. 61 (2026) · No. A184256 · Decided April 1, 2026

SUMMARY

The Oregon Court of Appeals reviewed an interlocutory order denying a motion to compel arbitration in a vehicle-purchase dispute. The court held that the trial court applied the wrong analytical framework by addressing the arbitration agreement's validity before considering contract formation and specific challenges to the delegation clause. The court vacated and remanded for factual findings concerning whether the arbitration agreement was formed, including whether the promise to arbitrate was illusory.

CASE DETAILS

COURT	Court of Appeals of Oregon
WRITING FOR THE COURT	Shorr, P. J.; Shorr, Presiding Judge; Powers, Judge; O'Connor, Judge
JURISDICTION	Oregon Court of Appeals
DECIDED	April 1, 2026
DOCKET	A184256
DISPOSITION	vacated
PROCEDURAL POSTURE	Defendants appealed an interlocutory order denying their motion to compel arbitration of plaintiff's claims arising from his vehicle purchase.
STANDARD OF REVIEW	The denial of a motion to compel arbitration is reviewed for legal error.
PRECEDENTIAL VALUE	Published and precedential
PARTIES	Bend-CDJR, LLC, dba Lithia Chrysler Dodge Jeep Ram of Bend, Travelers Casualty and Surety Company of America v. Gary Godon

TOPICS

- arbitration
- contract formation
- consideration
- appellate procedure
- standard of review

PRACTICE AREAS

- arbitration
- contracts
- civil procedure
- appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court applied the correct framework in deciding defendants' motion to compel arbitration.
2. Whether contract formation must be decided by the court before enforcing a delegation clause.
3. Whether an illusory-promises challenge based on lack of consideration presents a contract-formation issue for the court.
4. Whether the appellate court could affirm on the alternative ground that the arbitration agreement was illusory when the trial court had not made the necessary factual findings.

HOLDINGS

1. A court must first determine whether the parties formed an agreement to arbitrate. If an agreement was formed, the court must next consider challenges specifically directed at the delegation provision. Only if the delegation provision is invalid may the court decide challenges to the validity of the arbitration agreement as a whole; otherwise, those validity challenges are for the arbitrator.
2. An illusory-promises challenge based on the absence of consideration presents a contract-formation issue reserved for the court.
3. The court could not resolve the illusoriness issue because the trial court had not made necessary factual findings concerning the defendant's knowledge of the arbitration agreement's deficiencies and the record was insufficient to decide that issue in the first instance.

KEY QUOTATIONS

“When the parties dispute the formation of an agreement, the court, and not an arbitrator, must decide that threshold question.” (64)

“As the issue was presented here, the trial court should have first considered whether an agreement to arbitrate was formed between the parties. If an agreement was formed, it should have next considered any challenges to the delegation provision specifically. Finally, only if the delegation provision is invalid should the trial court have considered challenges to the validity of the arbitration agreement as a whole.” (65)

“A contract based on an illusory promise lacks consideration, a fundamental element of contract formation. Therefore, illusoriness is a formation issue that is reserved for the court.” (67)

FACTUAL BACKGROUND

In 2023, Gary Godon filed claims alleging that Bend-CDJR failed to disclose that the used vehicle he purchased had previously been underwater. The parties had signed a delivery agreement containing an arbitration clause governed by the Federal Arbitration Act, discovery limitations, and a delegation clause assigning disputes concerning the arbitration agreement's validity, existence, scope, jurisdiction, or applicability to the arbitrator. Godon challenged the agreement on formation, illusoriness, unconscionability, and delegation-clause grounds, while the trial court found the agreement unconscionable as a whole without resolving formation or the specific validity of the delegation clause.

PROCEDURAL HISTORY

Godon sued Bend-CDJR in Multnomah County Circuit Court, alleging that the dealership failed to disclose that the used vehicle he purchased had previously been underwater. Defendants moved to compel arbitration under an arbitration agreement in the vehicle delivery agreement. The trial court denied the motion after finding the arbitration agreement unconscionable as a whole, without deciding whether the delegation clause itself was unconscionable. The Oregon Court of Appeals vacated and remanded because the trial court applied the wrong analytical framework and had not made necessary factual findings.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The trial court must apply the correct arbitration framework, first determine whether the parties formed an agreement to arbitrate, then address any specific challenge to the delegation provision, and only if that provision is invalid consider challenges to the arbitration agreement as a whole. The trial court must also make the factual findings necessary to resolve the illusoriness issue.

CASES CITED

- Citigroup Smith Barney v. Henderson, 241 Or. App. 65, 69, 250 P.3d 926 (2011)
- Lumm v. CC Services, Inc., 290 Or. App. 39, 44, 414 P.3d 454 (2018)
- Coinbase, Inc. v. Suski, 602 U.S. 143, 145, 147-48, 144 S. Ct. 1186, 218 L. Ed. 2d 615 (2024)
- Cornelio v. Premere Rehab, LLC, 342 Or. App. 399, 404-06, 577 P.3d 847, rev. denied, 374 Or. 616 (2025)
- Granite Rock Co. v. International Broth. of Teamsters, 561 U.S. 287, 296, 130 S. Ct. 2847, 177 L. Ed. 2d 567 (2010)
- Rent-a-Center, West, Inc. v. Jackson, 561 U.S. 63, 68-71, 130 S. Ct. 2772, 177 L. Ed. 2d 403 (2010)
- Buckeye Check Cashing, Inc. v. Cardegna, 546 U.S. 440, 444 n. 1, 126 S. Ct. 1204, 163 L. Ed. 2d 1038 (2006)
- Johnson v. Continental Finance Company, LLC, 131 F.4th 169, 175, 178 (4th Cir. 2025)
- Homestyle Direct, LLC v. DHS, 354 Or. 253, 262, 311 P.3d 487 (2013)
- Shea v. Begley, 94 Or. App. 554, 558, 766 P.2d 418 (1988), rev. denied, 307 Or. 514 (1989)
- Furrer v. Southwestern Oregon Community College, 196 Or. App. 374, 380 & n. 1, 103 P.3d 118 (2004)
- Reichert v. Rapid Investments, Inc., 56 F.4th 1220, 1227 (9th Cir. 2022)
- Doctor's Associates, Inc. v. Alemayehu, 934 F.3d 245, 252 (2d Cir. 2019)
- National Federation of the Blind v. The Container Store, 904 F.3d 70, 86 (1st Cir. 2018)
- Arnold v. Homeaway, Incorporated, 890 F.3d 546, 550-51 (5th Cir. 2018)
- Cerner Middle East Ltd. v. Belbadi Enterprises LLC, 305 Or. App. 413, 419 n. 7, 472 P.3d 299, rev. denied, 367 Or. 257 (2020)
- State v. Derby, 301 Or. App. 134, 141, 455 P.3d 1009 (2019)

- State v. Castillo, 295 Or. App. 121, 132-33, 433 P.3d 467 (2018), rev. denied, 364 Or. 749 (2019)

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