SYLLABUS

(This syllabus is not part of the opinion of the Court. It has been prepared by the Office of the Clerk for the convenience of the reader. It has been neither reviewed nor approved by the Supreme Court. Please note that, in the interests of brevity, portions of any opinion may not have been summarized).

Raymond Van Duren v. Leigh Rzasa-Ormes (A-52-07)

(NOTE: This Court wrote no full opinion in this case. Rather, the Court's affirmance of the judgment of the Appellate Division is based substantially on the reasons expressed in Judge Parrillo's opinion below.)

Argued March 25, 2008 -- Decided June 19, 2008

PER CURIAM

The Court considers whether the Appellate Division erred by enforcing a clause in an arbitration agreement that precluded judicial review of an arbitration award. 394 N.J. Super. 254 (2007).

In 1998, a dispute arose between the plaintiff, Raymond Van Duren, and the defendant, Leigh Rzasa-Ormes, who were business partners in several automobile dealerships and related real estate holdings. After failing to settle the dispute and after retaining separate counsel, the parties executed a "Binding Arbitration Agreement" on April 11, 2000. The arbitration agreement reflected the parties' decision to appoint as arbitrator a certain individual who was known to both of them. The agreement also stated that the arbitrator's decision would be "final, binding and conclusive" and "not subject to an appeal to any authority in any forum." Additionally, the parties forswore any legal action other than one to confirm or enforce (but not to vacate) the arbitration award.

The arbitration spanned a period of five years. The arbitrator entered a series of interim award orders, beginning in 2000, and a final award order in 2005. Following one of the interim awards in 2001, Van Duren sought to confirm the award and Rzasa-Ormes cross-moved for vacatur, complaining about the involvement of the corporate attorney. Rzasa-Ormes did not challenge the validity of the arbitration agreement or claim fraud, duress, economic compulsion, unequal bargaining power, or unconscionability associated with the execution of the contract. The general equity judge dismissed both applications without prejudice, finding the relief premature because disposition of some issues remained open. The judge directed the completion of arbitration. Rzasa-Ormes filed suit in the Chancery Division, seeking removal of the arbitrator and alleging that he abused his position, made false or misleading statements, conspired to defraud her, and was biased. However, she did not challenge the validity of the arbitration agreement. The complaint was dismissed without prejudice.

The remaining issues were arbitrated and a final arbitration order was entered on June 21, 2005. Van Duren filed a summary action in the Chancery Division to confirm the final award. Rzasa-Ormes moved to vacate the award, alleging that the arbitrator was biased, incompetent, and made misrepresentations. She also argued that the non-appealability clause of the arbitration agreement was void as against public policy. On November 23, 2005, the general equity judge confirmed the arbitration award, finding that Rzasa-Ormes should be bound by her consent to the arbitrator chosen by the parties, and that her perceived conflicts of interest of the arbitrator were self-created.

Rzasa-Ormes filed a notice of appeal. Van Duren moved for summary dismissal, asserting that the court lacked jurisdiction due to the parties' express waiver of the right to appeal. The motion was denied. On appeal, Rzasa-Ormes argued that the waiver was unenforceable with regard to her claims of arbitrator bias and misconduct that implicated the fundamental fairness of the procedure—claims for which she allegedly was denied a hearing in the Chancery Division.

The Appellate Division examined the right to appeal from final decisions of the Law and Chancery Divisions of the Superior Court that is secured in the New Jersey Constitution, and recognized that a party may, by express agreement, waive that right. The court explained that waiver agreements are upheld as a matter of public policy to encourage litigants to accept as final decisions by courts of original jurisdiction. The court noted also that the public policies favoring restricted review of arbitration awards are embodied in the Arbitration Act, which limits judicial review to narrow grounds that include partiality or misconduct by arbitrators.

The Appellate Division acknowledged that in this matter the arbitration agreement was executed between two sophisticated business parties, each represented by counsel. The court upheld, therefore, the non-appealability clause to the extent that it foreclosed appellate court review. The court found the clause invalid, however, to the extent that it foreclosed the right to initial judicial review, explaining that it deprived the trial court of the ability to review and vacate the award if it violated public policy. The court determined, however, that Rzasa-Ormes actually obtained meaningful judicial review because the general equity judge did not view the agreement as either requiring confirmation or relinquishing the court's right to abrogate the arbitrator's award if the facts warranted it. Instead, the general equity judge closely examined the substance of the arbitrator's decision, considered and weighed Rzasa-Ormes's claims, and found no recognizable grounds to vacate the award. Because Rzasa-Ormes did not allege any of the rare circumstances grounded in public policy that might otherwise compel limited appellate review—circumstances such as bias or misconduct of the trial judge or unconscionability in the formation of the contract—the Appellate Division found that it lacked jurisdiction over her appeal from the Chancery Division's denial of her application to vacate the arbitration award and dismissed the appeal.

The Supreme Court granted Rzasa-Ormes's Petition for Certification.

HELD: The judgment of the Appellate Division is **AFFIRMED** substantially for the reasons expressed in Judge Parrillo's opinion.

CHIEF JUSTICE RABNER and JUSTICES LONG, LaVECCHIA, ALBIN, WALLACE, RIVERA-SOTO and HOENS join in this opinion.

SUPREME COURT OF NEW JERSEY
A-52 September Term 2007

RAYMOND VAN DUREN,

Plaintiff-Respondent,

v.

LEIGH E. RZASA-ORMES,

Defendant-Appellant.

Argued March 25, 2008 – Decided June 19, 2008

On certification to the Superior Court, Appellate Division, whose opinion is reported at 394 N.J. Super. 254 (2007).

Kevin McNulty argued the cause for appellant (Gibbons and Schepisi & McLaughlin, attorneys; Mr. McNulty, Michael R. Griffinger, John A. Schepisi and Glenn M. Finkel, on the briefs).

Steven R. Klein argued the cause for respondent (Cole, Schotz, Meisel, Forman & Leonard, attorneys; Mr. Klein and Susan M. Usatine, on the briefs).

David G. Evans submitted a brief on behalf of amicus curiae Pacific Legal Foundation.

PER CURIAM

The judgment of the Appellate Division is affirmed, substantially for the reasons expressed in Judge Parrillo's opinion for the Appellate Division, reported at 394 N.J. Super. 254 (2007).

CHIEF JUSTICE RABNER and JUSTICES LONG, LaVECCHIA, ALBIN, WALLACE, RIVERA-SOTO, and HOENS join in this opinion.

SUPREME COURT OF NEW JERSEY

NO. A-52 SEPTEMBER TERM 2007

ON CERTIFICATION TO Appellate Division, Superior Court

RAYMOND VAN DUREN,

Plaintiff-Respondent,

v.

LEIGH E. RZASA-ORMES,

Defendant-Appellant.

DECIDED June 19, 2008

Chief Justice Rabner PRESIDING

OPINION BY Per Curiam

CONCURRING/DISSENTING OPINIONS BY

DISSENTING OPINION BY

CHECKLIST	AFFIRM	
CHIEF JUSTICE RABNER	X	
JUSTICE LONG	X	
JUSTICE LaVECCHIA	X	
JUSTICE ALBIN	X	
JUSTICE WALLACE	X	
JUSTICE RIVERA-SOTO	X	
JUSTICE HOENS	X	
TOTALS	7	