GBL § 198-a(k): Lemon Law's Alternative Arbitration Mechanism Requiring an Automobile Manufacturer to Submit to Binding Arbitration at the Consumer's Request Is Constitutional

Matthew Tracy

Follow this and additional works at: https://scholarship.law.stjohns.edu/lawreview

Recommended Citation

This Recent Development in New York Law is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact lasalar@stjohns.edu.
The New York Court of Appeals has, in effect, directed lower courts to implement more efficient remedies, such as monetary sanctions, to compel compliance with CPLR 3406(a). In light of this directive, attorneys would be wise to abide by the mandatory notice requirement time restraints pursuant to CPLR 3406(a) and avoid possible pecuniary sanctions for failure to comply in a timely manner pursuant to CPLR 3406(a).

Michael S. Re

GENERAL BUSINESS LAW

GBL § 198-a(k): Lemon Law's alternative arbitration mechanism requiring an automobile manufacturer to submit to binding arbitration at the consumer's request is constitutional

The New York State Legislature enacted its first new car "Lemon Law" in 1983. This law, General Business Law section 198-a, was promulgated in response to numerous complaints by consumers, who were dissatisfied with the myriad of confusing regulations and ineffective commercial law remedies available to them. The Lemon Law, as originally adopted, provided the pur-
Chaser of a defective automobile with two options: i) to sue the manufacturer; or ii) to submit a claim to the manufacturer’s informal arbitration program. Responding to consumer complaints about the expense of litigation and the inefficiency of the arbitration programs, the legislature amended the GBL in 1987 to in-

See GBL § 198-a(f) (McKinney 1988). The statute provides that “[n]othing in this section shall in any way limit the rights or remedies which are otherwise available to a consumer under any other law.” Id.


See GBL § 198-a(g) (McKinney 1988). The manufactures’ arbitration program must conform to section 198-a(c). Id. This section provides that if the manufacturer, during the warranty period, cannot repair a defect that substantially impairs the value of the car, it must replace the vehicle with a comparable model or give a full refund of the purchase price. See GBL § 198-a(c) (McKinney 1988 & Supp. 1990).

See Abrams, *supra* note 1, at 36-37. Realistically, neither option afforded to consumers was effective. Id. The high price of litigation kept this remedy beyond the reach of most consumers. Id. Participation in the manufacturers’ arbitration program was too often an exercise in futility, resulting in decisions that disregarded Lemon Law standards and, instead, directed further repairs. Id.; Governor’s Memorandum on Approval of ch. 799, N.Y. Laws (Aug. 2, 1986), reprinted in [1986] N.Y. Laws 3202 (McKinney). However, it must be added that the manufacturers’ arbitration process was not binding upon the consumer,
clude subsection 198-a(k) ("subsection (k)") which provides consumers with the additional option of compelling the manufacturer to submit to an alternative arbitration mechanism. The automobile industry opposed the arbitration mechanism vigorously on several constitutional grounds. Recently, however, in *Motor Vehicle Manufacturers Association v. State*, the Court of Appeals upheld the constitutionality of the alternative arbitration mechanism provided for in subsection (k), finding that the manufacturer is not denied a right to jury trial, as the remedy in subsection (k) is equitable and not legal in nature.

In *Manufacturers Association*, the plaintiffs, trade associations representing automobile manufacturers, importers, and distributors, sought a declaratory judgment on the question of whether subsection (k) was in conflict with the New York State Constitution. The state similarly moved for summary judgment on the constitutional question. The plaintiffs alleged that the alternative arbitration mechanism denied the manufacturers their right to a trial by jury, abridged the state supreme court’s juris-

whereas under GBL § 198-a(k) arbitration is binding upon both the consumer and the manufacturer. See GBL § 198-a, commentary at 316-17 (McKinney 1988).

GBL § 198-a(k) (McKinney 1988). GBL section 198-a(k) provides, in pertinent part, that: “Each consumer shall have the option of submitting any dispute arising under this section . . . to an alternate arbitration mechanism established . . . by the New York state attorney general.” Id. “Upon application of the consumer . . . all manufacturers shall submit to such alternate arbitration.” Id.

See id.


Id. at 187, 550 N.E.2d at 925, 551 N.Y.S.2d at 476.

Id. at 179, 550 N.E.2d at 921, 551 N.Y.S.2d at 471.

Id. at 180, 550 N.E.2d at 921, 551 N.Y.S.2d at 472.

Id. The New York Constitution states that “[t]rial by jury in all cases in which it has heretofore been guaranteed by constitutional provision shall remain inviolate forever.” N.Y. CONSt. art. I, § 2 (McKinney 1987); see Matter of Berkovitz v. Arbib & Houlberg, 230 N.Y. 261, 273, 130 N.E. 288, 291 (1921); Chase v. Scalici, 97 App. Div. 2d 25, 27, 468 N.Y.S.2d
diction,\textsuperscript{15} was an unconstitutional delegation of authority,\textsuperscript{16} and violated the State Administrative Procedure Act.\textsuperscript{17} Granting the state's motion, the trial court held that subsection (k) was constitutional.\textsuperscript{18} The Appellate Division unanimously affirmed.\textsuperscript{19}

\textsuperscript{15}\textit{Manufacturers Ass'n}, 75 N.Y.2d at 185, 550 N.E.2d at 923, 551 N.Y.S.2d at 474. The New York Constitution states that "[t]he supreme court shall have general original jurisdiction in law and equity." N.Y. CONST. art. VI, § 7a (McKinney 1987). The plaintiffs argued that when a claim may be brought in a court of law, the state constitution requires that the Supreme Court be permitted to determine that claim in every instance based on its own \textit{de novo} review of the law and the facts. \textit{Manufacturers Ass'n}, 75 N.Y.2d at 183, 550 N.E.2d at 923, 551 N.Y.S.2d at 474; \textit{see also In re Malloy}, 278 N.Y. 429, 432, 17 N.E.2d 108, 109 (1933) (Supreme Court has jurisdiction over matters from Surrogate's Court); Comiskey v. Arien, 55 App. Div. 2d 304, 314-15, 390 N.Y.S.2d 122, 129-30 (2d Dep't 1976) (medical panel's factual findings not binding upon jury), \textit{aff'd}, 43 N.Y.2d 696 (1977); People v. Darling, 50 App. Div. 2d 1038, 1038, 377 N.Y.S.2d 718, 720-21 (3d Dep't 1975) (Supreme Court has jurisdiction over matters from Criminal Court). Because the Lemon Law limits the Supreme Court's jurisdiction to CPLR article 75 review when a consumer elects compulsory arbitration in the first instance, plaintiffs argued that the Lemon Law provision produced an unconstitutional limitation of the Supreme Court's general original jurisdiction. \textit{Manufacturers Ass'n}, 75 N.Y.2d at 183, 550 N.E.2d at 923, 551 N.Y.S.2d at 474.


\textsuperscript{17}\textit{Manufacturers Ass'n}, 75 N.Y.2d at 187-88, 550 N.E.2d at 925-26, 551 N.Y.S.2d at 476-77. The plaintiffs argued that the alternative arbitration mechanism established by the Lemon Law violates the State Administrative Act, which requires that an arbitration decision include findings of fact, conclusions of law, or reasons for determination. \textit{See State Administrative Procedure Act § 302(1) (McKinney Supp. 1990); see also In re Field Delivery Serv.}, 66 N.Y.2d 516, 520, 488 N.E.2d 1223, 1227, 498 N.Y.S.2d 111, 115 (1985) (administrative agency must indicate reason for departure from agency precedent); Gerzof v. Gulotta, 87 Misc. 2d 768, 777, 386 N.Y.S.2d 790, 797 (Sup. Ct. Nassau County 1976) (referee's report contained findings of fact and conclusions), \textit{modified}, 57 App. Div. 2d 821, 395 N.Y.S.2d 26 (1st Dep't 1977).

\textsuperscript{18}\textit{Manufacturers Ass'n}, 75 N.Y.2d at 180, 550 N.E.2d at 921, 551 N.Y.S.2d at 472.

\textsuperscript{19}\textit{Motor Vehicle Mfrs. Ass'n v. State}, 146 App. Div. 2d 212, 221, 540 N.Y.S.2d 888, 893 (3d Dep't 1989), \textit{aff'd}, 75 N.Y.2d 175, 550 N.E.2d 919, 551 N.Y.S.2d 470 (1990). While finding the statute free from constitutional infirmity, the Appellate Division declared a portion of the regulations implementing the statute to be invalid. \textit{Id.} at 219-20, 540 N.Y.S.2d at 892. The regulation in question provides that arbitrators "shall not consider evidence that the nonconformity, defect or condition can be corrected through further repairs." [1987] 13 N.Y.C.R.R. § 300.17(c). The court asserted that this regulation had the effect of converting the presumption of reasonableness set forth in GBL § 198-a(d) into a conclusive presump-
Writing for the Court of Appeals, Judge Simons rejected each of the plaintiffs' arguments and upheld the Appellate Division's decision.\(^\text{20}\) The court concluded that since the remedies provided by the Lemon Law are equitable in nature, there is no corresponding right to a jury trial under the state constitution.\(^\text{21}\) Additionally, the court noted that the state supreme court would not lose jurisdiction since jurisdiction does not attach prior to a consumer's decision to litigate the claim in a court of law.\(^\text{22}\) The court reasoned that the legislature "merely created a new cause of action" allowing one of the litigants to select the forum.\(^\text{23}\) Finally, after con-

\(^{20}\) *Manufacturers Ass'n*, 75 N.Y.2d at 180, 550 N.E.2d at 921, 551 N.Y.S.2d at 472. Plaintiffs also claimed that the alternative arbitration mechanism violated their right to procedural due process. *Id.* at 188, 550 N.E.2d at 926, 551 N.Y.S.2d at 477. However, the court declined to address this argument since it was raised for the first time in the Appellate Division. *Id. But cf.* Lyeth v. Chrysler Corp., 734 F. Supp. 86, 91 (W.D.N.Y. 1990) (court held that GBL § 198-a(k) is not violative of defendant's due process or equal protection rights).

\(^{21}\) *Manufacturers Ass'n*, 75 N.Y.2d at 180-83, 550 N.E.2d at 921-23, 551 N.Y.S.2d at 472-74. The court construed the New York Constitution to guarantee plaintiffs a jury trial only in those cases in which the right had existed at common law. *Id.* at 180-81, 550 N.E.2d at 921, 551 N.Y.S.2d at 472. At common law, if the remedy sought was a legal one, the plaintiff would be entitled to a jury trial, whereas if the remedy sought was an equitable one, the case would be tried before a chancellor. *Id.* at 181, 550 N.E.2d at 921, 551 N.Y.S.2d at 472. The court found that the remedies provided by the Lemon Law were analogous to specific performance. *Id.* at 182, 550 N.E.2d at 922, 551 N.Y.S.2d at 473. The Lemon Law, in the court's view, "was designed to produce, as nearly as practicable under the circumstances, the same performance promised under the contract." *Id.* Thus, the court concluded that the Lemon Law was an equitable remedy and, therefore, the plaintiff had no right to a jury trial. *Id.* The Supreme Court of Connecticut ruled similarly on this issue in Motor Vehicle Mfrs. Ass'n v. O'Neill, 212 Conn. 83, 561 A.2d 917 (1989), declaring that the remedies provided under Connecticut's Lemon Law were equitable in nature, thereby not mandating a jury trial. See *id.* at 91, 561 A.2d at 921-22.

\(^{22}\) *Manufacturers Ass'n*, 75 N.Y.2d at 183-85, 550 N.E.2d at 923-24, 551 N.Y.S.2d at 474-75. The court reasoned that if a consumer chooses to litigate a Lemon Law claim, the Supreme Court has full jurisdiction to adjudicate it. *Id.* at 184, 550 N.E.2d at 923, 551 N.Y.S.2d at 474. If the consumer chooses arbitration, the claim becomes litigable when either party seeks review of the award. *Id.* Further, the Supreme Court is vested with jurisdiction to review the claim in such proceedings by applying the standards of CPLR article 75. *Id.*

\(^{23}\) *Id.* at 184, 550 N.E.2d at 924, 551 N.Y.S.2d at 475. The court noted that the legislature has been vested with the power to "change or abolish common law causes of action," as well as to "substitute new remedies." *Id.* at 184, 550 N.E.2d at 923, 551 N.Y.S.2d at 474. The legislature's enactment of subsection (k) was viewed by the court as analogous to the legislature's creation of new causes of action in the past. *Id.* at 184, 550 N.E.2d at 923, 551 N.Y.S.2d at 475.
sidering both the statute’s detailed standards for selecting and guiding the arbitrators as well as its provision for broad judicial review, the court found the legislature’s delegation of authority to the arbitration panel to be consistent with the New York State Constitution.\textsuperscript{24}

Dissenting, Judge Titone argued that subsection (k) was unconstitutional in that it places a judicial function in the hands of private arbitrators who cannot be held accountable through either the electoral process\textsuperscript{25} or the Public Officers Law.\textsuperscript{26} Judge Titone also found subsection (k) to be in violation of the separation of powers doctrine.\textsuperscript{27} Allowing the legislature to bypass the judicial process at its discretion, in Judge Titone’s view, was the creation of a precedent by the majority which would disrupt “the delicate balance governing the relationship among the various branches of government.”\textsuperscript{28}

It is submitted that the court was correct in upholding the constitutionality of subsection (k). By enacting subsection (k), the legislature has not created an ad hoc arbitration tribunal whose powers are unlimited by rules of law or evidence.\textsuperscript{29} The Lemon Law, and the regulations implementing it,\textsuperscript{30} provide specific standards for selecting and directing the arbitrators.\textsuperscript{31} Moreover, the arbitrator is limited to awarding either one of two designated rem-

\textsuperscript{24} Id. at 185-87, 550 N.E.2d at 924-25, 551 N.Y.S.2d at 475-76. The court noted that its previous holding in Mount St. Mary’s Hosp. v. Catherwood, 26 N.Y.2d 493, 260 N.E.2d 508, 311 N.Y.S.2d 863 (1970), stands for the proposition that the Legislature can delegate authority to an arbitration panel as long as adequate procedural safeguards are provided. See Manufacturers Ass’n, 75 N.Y.2d at 186, 550 N.E.2d at 925, 551 N.Y.S.2d at 476.

\textsuperscript{25} Id. at 189, 550 N.E.2d at 930, 551 N.Y.S.2d at 481 (Titone, J., dissenting).

\textsuperscript{26} Id. (Titone, J., dissenting); The New York Public Officers Law regulates the appointments and qualifications of those who work as officers of the state. N.Y. PUB. OFF. LAW. art. II (McKinney 1988 & Supp. 1990).

\textsuperscript{27} Manufacturers Ass’n, 75 N.Y.2d at 189, 550 N.E.2d at 927, 551 N.Y.S.2d at 478 (Titone, J., dissenting).

\textsuperscript{28} Id. at 194, 550 N.E.2d at 930, 551 N.Y.S.2d at 481 (Titone, J., dissenting).

\textsuperscript{29} Id. at 185, 550 N.E.2d at 924, 551 N.Y.S.2d at 475 (citing Mount St. Mary’s Hosp. v. Catherwood, 26 N.Y.2d 493, 260 N.E.2d 508, 311 N.Y.S.2d 863 (1970)).


\textsuperscript{31} See Manufacturers Ass’n, 75 N.Y.2d at 185, 550 N.E.2d at 924, 551 N.Y.S.2d at 475. Arbitrators acting pursuant to the Lemon Law must first undergo training. [1987] N.Y.C.R.R. § 300.7(e). “This training shall include procedural techniques, the duties and responsibilities of arbitrators under the program, and the substantive provisions of General Business Law, section 198-a.” Id. Furthermore, “[t]he arbitrator assigned shall not have any bias, any financial or personal interest in the outcome of the hearing, or any current connection to the sale or manufacture of motor vehicles.” [1987] N.Y.C.R.R. § 300.7(b).
edies: i) a replacement vehicle of comparable value; or ii) a refund of the full purchase price.\(^3\) This relief can be granted only when the arbitrator has determined that after a reasonable number of attempts the manufacturer has been unable to repair a defect which substantially impairs the value of the motor vehicle.\(^3\) Further, if either party is dissatisfied with the arbitrator's determination, that party can seek judicial review under CPLR article 75.\(^4\)

The goal of the Lemon Law as originally enacted was the "swift and equitable resolution of consumer complaints."\(^5\) Prior to the passage of subsection (k), this objective barely had been reached.\(^6\) Under the original statute, consumers either had to seek redress in the courts or through nonbinding arbitration programs established by the manufacturers.\(^7\) This approach often proved very costly and resulted in long delays and inequitable awards.\(^8\) Subsection (k) represents an attempt by the legislature to achieve a just and equitable solution to a long-standing problem.\(^9\) While the question of whether subsection (k) will achieve this goal remains open, the Court of Appeals undoubtedly was correct in its conclusion that the means by which the legislature has sought to

---

\(^{3}\) See Manufacturers Ass'n, 75 N.Y.2d at 186, 550 N.E.2d at 924, 551 N.Y.S.2d at 475; see also Lyeth v. Chrysler Corp., 734 F. Supp. 86, 93 (W.D.N.Y. 1990) ("arbitrators are not free to fashion their own awards, regardless of a case's equities, but are restricted to denying or granting a consumer a predictable and limited form of relief"). Consequential damages are not recoverable under the Lemon Law. See Volvo North America v. DePaola, 156 App. Div. 2d 40, 43, 554 N.Y.S.2d 835, 837 (1st Dep't 1990). However, section 198-a(l), as amended in 1988, provides that a court may award reasonable attorney's fees "to a consumer who prevails in any judicial action or proceeding arising out of an arbitration proceeding held pursuant to subdivision (k)." GBL § 198-a(l) (McKinney 1988 & Supp. 1990). This section was amended to prevent protracted post-arbitration litigation meant to wear down the consumer. See GBL § 198-a, commentary at 25 (McKinney Supp. 1990).

\(^{5}\) See Manufacturers Ass'n, 75 N.Y.2d at 186, 550 N.E.2d at 924, 551 N.Y.S.2d at 475.

\(^{6}\) Id. at 188, 550 N.E.2d at 925, 551 N.Y.S.2d at 476; Lyeth, 734 F. Supp. at 91. The arbitrator's decision must be "in accord with due process and supported by adequate evidence in the record." Manufacturers Ass'n, 75 N.Y.2d at 186, 550 N.E.2d at 925, 551 N.Y.S.2d at 476. Furthermore, the decision "must be rational and satisfy the arbitrary and capricious standards of CPLR article 78." Id.

\(^{7}\) See Lyeth, 734 F. Supp. at 89; Abrams, supra note 1, at 36.


\(^{9}\) See Manufacturers Ass'n, 75 N.Y.2d at 179, 550 N.E.2d at 920, 551 N.Y.S.2d at 471.

\(^{10}\) Id.

\(^{11}\) See id. at 179-80, 550 N.E.2d at 920-21, 551 N.Y.S.2d at 471-72; Abrams, supra note 1, at 38-39.
achieve its objective is valid under the New York State Constitution.

Matthew Tracy