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Best Practices For Defeating Attempts To Void Contracts

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Plaintiffs often use several theories to avoid contract provisions that limit their recovery or bar their lawsuit entirely.[1] Common examples of this tactic include alleging that the signatory failed to read the entire contract, is illiterate or has a physical disability that prevented him or her from understanding the contract. But absent special circumstances, those who sign a contract are generally bound by the terms regardless of their failure or inability to read the contract.

The legal authority and policy propositions discussed below illustrate why courts enforce contract provisions despite contracting parties' best efforts to avoid them based on arguments that they did not or could not comprehend them at the time of formation.

Common Tactics to Void Provisions

Failure to Read a Contract Before Signing

On occasion, plaintiffs try to invalidate a specific provision by arguing that they failed to read the contract before signing it or the contract's structure was too complicated so they refrained from reading it. Nevertheless, courts typically impart a "duty to read" on all parties to a written contract,[2] so if a party fails to read a contract before signing it, he or she cannot void unwanted contractual promises.[3]

In Walker v. MDM Services Corp., for example, the Western District of Kentucky held that a former employee was bound by an arbitration provision when she sued her former employer for sexual harassment.[4] Walker attempted to void the provision on the basis that she did not remember signing the contract and was never told that work-related disputes were subject to arbitration.[5] The court rejected her attempt, stressing that parties cannot void contracts by arguing that they did not read them, regardless of potentially rushed circumstances or a complete lack of memory regarding the transaction.[6]

The knowledge imputed to a signatory often extends beyond the language the signatory was actually presented with so as to include external references made within the contract. Thus, if a plaintiff claims

that key provisions or pages were omitted at the time of signing, courts usually enforce the terms if the contract adequately referenced and incorporated the missing terms.

Indeed, in Lawson v. ADT Security Services Inc., Lawson alleged that ADT was responsible for damages to his home caused by a fire.[7] Lawson maintained that he was not bound by a limitation of liability provision contained in the service contract because he was allegedly never provided the page containing the provision.[8] The Middle District of Georgia rejected Lawson's arguments and enforced the limitation provision, noting that all parties to a contract have a duty to read and understand the content of a contract before signing it.[9] Moreover, the court noted that the duty to read extends to external references made within the contract, defeating the alleged claim that a page was missing from the contract at the time of signing or that the signatory did not understand what the incorporation terms meant.[10] As a result, the court held that Lawson was bound by a limitation provision, even if the page containing that provision was missing at the time of formation, because Lawson admitted to signing the contract's first page, which referenced the limitation provision.[11]

Illiteracy and Language Barriers

One who allegedly failed to understand a contract yet signed it is nevertheless bound by its terms.[12] Indeed, the fact that a contracting party cannot understand the contract's language due to unfamiliarity with the language or illiteracy is not sufficient grounds for voiding provisions in a signed contract.[13]

The First Circuit summarized this established principle when considering the enforceability of a contract against a signatory who did not fully understand its contents due to his lack of fluency in the English language.[14] The court found that the fact that a signatory cannot "read, write, speak, or understand the English language" does not affect the contract's enforceability.[15] Rather, one who does not understand a contract's language will be bound by its terms because they "negligently fail[ed] to learn its contents."[16]

This principle applies even if a provision in the signatory's native language incorporates by reference an external document that is written in a different language that the signatory does not understand.[17] To illustrate, when an Illinois corporation claimed it wasn't bound by a forum selection provision contained in a set of rules referenced in the contract and written in German, the Seventh Circuit held that the rule's foreign language had no bearing on enforceability.[18]

By extending the "duty to read" to all parties to a written contract, regardless of that party's ability to fully comprehend the contract's written language, courts wisely refrain from creating an additional barrier to contract formation and instead protect each party's justified expectations.[19]

Physical Disability

Plaintiffs who suffer from a physical disability that potentially impairs their ability to understand a contract might similarly seek to disaffirm contractual obligations. A common illustration is an individual who is blind or does not use reading glasses when presented with a contract but signs the contract anyway without having another person read it aloud or explain it.[20]

For example, when a signatory sought to disaffirm his contractual obligations under a brokerage agreement because he lost his reading glasses and failed to read the agreement, the New York Supreme Court, Appellate Division affirmed the trial court's finding that the signatory's physical disability had no relevance to the validity of the contract.[21] The court stressed that allowing such defenses would

permit sophisticated parties to inject expensive uncertainty into valuable transactions.[22]

Other jurisdictions addressing the issue dismiss similar attempts to avoid contractual obligations.[23] In Mississippi, for example, blindness does not excuse contracting parties' affirmative duty to make sufficient efforts to comprehend contracts they sign.[24] In American General Financial Services Inc. v. Griffin, the court used this approach by imputing knowledge of an insurance contract's terms to a blind customer, noting that a party's inability to see is not a valid argument for avoiding the contract's terms.[25]

Under this approach, blindness is treated the same as illiteracy for purposes of defining a party's capacity to contract and establishing his or her affirmative duty to comprehend the contract by having it read aloud or translated through other means.[26] As such, the blindness of a party will not preclude contract enforcement.[27] Accordingly, such a person cannot generally rescind a contract based on a visual impairment.

Consistent application of this legal principle benefits all contracting parties. If courts heavily considered signatories' familiarity with provisions or physical abilities when determining their capacity to contract, they would empower otherwise sophisticated signatories to void contractual provisions to which they should be bound while affirming provisions they favor. On the other hand, if courts allowed parties to attack the validity of contracts on grounds of illiteracy or physical disability, commercial actors would be less likely to contract with parties with comprehension barriers due to enforceability concerns. This would, of course, create additional obstacles for persons with reading disabilities who wish to enter into contracts.[28]

Enforcement Limitations

While illiteracy, physical disabilities and other barriers to comprehension, on their own, will not render a contract voidable, plaintiffs commonly attempt to use the existence of such conditions to prove that the other party induced the plaintiff to assent through misrepresentation of material facts.[29]

To avoid enforcement of a contract on grounds of fraud in the inducement, a party must clearly show that the other party made a false representation that was material to the transaction and that would prevent a reasonable person from reading the contract.[30] An alleged disability incorporated into a well-pled complaint may persuade some courts to void a contract or provisions therein insofar as the other circumstances surrounding the transaction clearly and satisfactorily show a material representation.[31]

To prevent the possibility of tenuous fraud claims succeeding past the motion-to-dismiss stage, parties to a contract should be given the opportunity to read its contents before signing and disabled signatories should be given the option to have someone else read the contract to them. While conclusory allegations that a signatory was not afforded an opportunity to read a contract before signing regularly fail, courts have relied on acknowledgements that the signatory read the challenged provision or the existence of an integration clause on their way to affirming dismissal based on the contract provision.[32]

Best Practices for Defeating Attempts to Void Contracts

When contract litigation arises, a party may claim that the contract is void due to an alleged issue of incomprehension at formation. If that occurs, first determine the basis of the incomprehension — is the

party alleging that the signatory could not understand the contract, did not read the contract or could not read the contract due to a physical impairment? If so, determine whether your state permits parties to void contracts on these grounds. As the case law above demonstrates, most states do not permit signatories to avoid their contractual promises because they did not read or understand the contract. If contract provisions limit the plaintiff's recoverable damages or bar the lawsuit entirely, consider moving to dismiss seeking to enforce the contract's provisions and citing law that rejects plaintiffs' attempts to void the contract.

If discovery ensues, be mindful that plaintiffs' attempts to void only certain provisions based on incomprehension may result in them unwittingly arguing themselves out of a successful breach of contract claim because courts do not favor selectively enforcing contracts in an à la carte fashion. The contract is either valid and enforceable or invalid and unenforceable; there is often no middle ground if the plaintiff argues selective invalidity due to incomprehension.

In sum, courts strictly apply the duty to read to promote commercial certainty and reduce costs by enforcing contracts regardless of certain excuses.[33] Obviously, it is advisable to refrain from affirmatively misleading a signatory before, or at the time of, contract formation. Absent such behavior, however, courts generally treat a contract's terms as the final expression of the agreement and disregard a plaintiff's plea that he did not have the ability, time, or the inclination to read what he or she signed.

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[1] See Aaron Kirkland and Jennifer Cascio, Using Contract Provisions Shortening the Time to Sue, Law360, September 21, 2015; Aaron Kirkland and Jason Scott, Enforcing Exculpatory Provisions Against Meritless Claims, Law360, March 17, 2014; Charlie Eblen and Aaron Kirkland, Maximize Your Contract's Exculpatory Provisions, Law360, July 15, 2013.

[2] See, e.g., Brookwood v. Bank of Am., 45 Cal. App. 4th 1667, 1674 (1996) (holding that the employee was "bound by the provisions of the [arbitration] agreement regardless of whether [she] read it or [was] aware of the arbitration clause when [she] signed the document"); See also Lennar Mare Island, LLC v. Steadfast Ins. Co., 139 F. Supp. 3d 1141, 1165 (E.D. Cal. 2015) ("[a] person who signs a contract has a general duty to read it.").

[3] See, e.g., S.E.C. v. Lyndon, 39 F. Supp. 3d 1113, 1119 (D. Haw. 2014), motion for relief from judgment denied, No. CIV. 13-00486 SOM, 2015 WL 159080 (D. Haw. Jan. 13, 2015) (contract valid notwithstanding assertion that signing party did not read); see also Jacobsen Diamond Center LLC v. ADT Sec. Services Inc., 2014 WL 2558368 (N.J. Super. L.) (enforcing an exculpatory clause despite plaintiff's contentions that the clause was "unreadable" and he refrained from reading it); aff'd, 2016 WL 3766236 (N.J. Super. Ct. App. Div. July 15, 2016), cert. denied, 2016 WL 7665618, at *1 (N.J. Dec. 2, 2016).

[4] 997 F. Supp. 822 (W.D. Ky. 1998).

[5] Id. at 825.

[6] Id.

[7] 899 F. Supp. 2d 1335 (M.D. Ga. 2012).

[8] Id. at 1338-39.

[9] Id. at 1339 ("[a] person who signs a contract is imputed with knowledge of the contents of that contract. Specifically, everyone is charged with the responsibility of reading and knowing the contents of a contract which he signs.").

[10] Id. 1339-40.

[11] Id. at 1340 ("Lawson cannot now claim, having admitted to reading and signing 'Page 1 of 4,' that he was not aware of the additional terms and conditions unambiguously referenced on the face of the Services Contract.").

[12] See, e.g., Shirazi v. Greyhound Corp., 145 Mont. 421 (1965) (holding that an Iranian student was subject to the limitation contained in his baggage receipt and stating that "[i]t was incumbent upon [the plaintiff], who knew of his own inability to read the English language, to acquaint himself with the contents of the ticket"); See Paulink v. Am. Exp. Co., 265 Mass. 182 (1928) ("plaintiff was bound by the [] terms [of foreign bills of exchange], in the absence of deceit on the part of the defendant, even though not understanding their purport and ignorant of the English language"); Wilkisius v. Sheehan, 258 Mass. 240 (1927) (holding that Lithuanian husband and wife, who did not speak or understand English and used an interpreter to contract for an exchange of real estate, were bound by the terms of the agreement because "their failure to understand these details was not due to fraudulent acts on the part of the defendant but to their own inability to read, write, speak or understand the English language, and to the incapacity of the interpreter").

[13] See, e.g., Morales v. Sun Constructors Inc., 541 F.3d 218, 222–23 (3d Cir. 2008) ("[i]n the absence of fraud, [] that an offeree cannot read, write, speak, or understand the English language is immaterial to whether an English-language agreement the offeree executes is enforceable.").

[14] See Soto v. State Indus. Prod., Inc., 642 F.3d 67, 78 (1st Cir. 2011).

[15] Id. (finding "that Soto did not "fully" understand the agreements that she signed because of her lack of fluency in English, of which she was aware, does not render void her consent to arbitrate").

[16]Id.

[17] See Paper Exp. Ltd. v. Pfankuch Maschinen, 972 F.2d 753 (7th Cir. 1992).

[18] Id. at 757.

[19] See, e.g., Adamos v. New York Life Insurance Co., 22 F. Supp. 162, 167 (W.D. Pa. 1937), aff'd sub nom. Adamos v. New York Life Insurance Co, 94 F.2d 943 (3d Cir. 1938) (urging that "[m]ere illiteracy cannot be urged to avoid a written instrument" to preserve certainty in contract law).

[20] See, e.g., Daniel Gale Associates Inc. v. Hillcrest Estates, Ltd., 283 A.D.2d 386 (N.Y. App. Div. 2001).

[21] Id. (stressing that the signer was a sophisticated businessman involved in a deal worth several million dollars).

[22] Id.

[23] See, e.g., Paper Exp. Ltd, 972 F.2d at 757 (holding signers to contractual obligations even if the parties cannot read the contracts due to blindness or illiteracy).

[24] Am. Gen. Fin. Servs. Inc. v. Griffin, 327 F. Supp. 2d 678, 683 (N.D. Miss. 2004).

[25] See Id.

[26] See Tel-Com Mgmt. Inc. v. Waveland Resort Inns Inc., 782 So. 2d 149, 153 (Miss. 2001) (upholding the enforceability of an arbitration provision in a loan document signed by a blind borrower because that borrower's blindness "was akin to illiteracy, and did not displace his affirmative duty to read contract or have it read to him").

[27] Id.

[28] Other legal systems are similarly skeptical of arguments which conflate illiteracy and physical disability with mental incapacity in an attempt to opportunistically disaffirm some contractual provisions while enforcing others. English Law, for example, treats illiteracy and mental incapacity as entirely distinct in contract law because, unlike a mentally disabled party, an illiterate signer or someone who doesn't understand a contract's language is entirely aware that he or she is operating under a disability regarding the contractual transaction. See Schwartz v. Barclays Bank Plc., [1995] E.W.J. No. 4587 at para. 94 (U.K.C.A.) (QL) [Schwartz].

[29] See, e.g., Ford Motor Co. v. Pearson, 40 F.2d 858, 868 (9th Cir. 1930) ("Ordinarily, parties are bound by their written contracts, and the exception to that rule in case of intrinsic fraud is usually invoked in favor of an illiterate or inexperienced person or . . ." others who are "induced to execute a writing by fraudulent representations as to its contents").

[30] See, e.g., Awada v. Shuffle Master Inc., 123 Nev. 613, 622, 173 P.3d 707, 713 (2007); Irwin Rogers Ins. Agency, Inc. v. Murphy, 122 Idaho 270, 273, 833 P.2d 128, 131 (Ct. App. 1992).

[31] See Ackerman v. Ackerman, 120 A.D.3d 1279, 1280 (N.Y. App. Div. 2014) ("a party is under an obligation to read a document before signing it," and "generally such a cause of action [for fraud in the inducement] only arises if the signor is illiterate, blind, or not a speaker of the language in which the document is written.").

[32] See, e.g., One-O-One Enterprises Inc. v. Caruso, 848 F.2d 1283, 1287 (D.C. Cir. 1988) (noting that "contracts would not be worth the paper on which they are written" if a signatory to a contract with an integration clause could cite a defendant's alleged representations to support a fraud-in-the inducement defense).

[33] See Bradley v. Chiron Corp., 136 F.3d 1317, 1323 (Fed. Cir. 1998) ("It is the duty of every contracting party to learn and know [the contract's] contents before he signs and delivers it. He owes this duty to

the other party to the contract, because the latter may, and probably will, pay his money and shape his action in reliance upon the agreement. He owes it to the public, which as a matter of public policy, treats the written contract as a conclusive answer to the question, what was the agreement.").

[34] Id. at 1323.
