

## California Court Finds Business Could Not Verify Consumer's Electronic Signature Despite DocuSign Markers

January 31, 2020 | Chris Capurso

"It's just like in algebra class!" Admittedly, this isn't the type of statement that should draw readers towards any type of non-math writing. However, it's the first thought that came to mind when I read a recent case out of California concerning the validity of an electronic signature. The agreement included several pieces of information meant to show that the signature was DocuSign-verified. And yet, it wasn't enough to sufficiently prove that the consumer had signed the agreement. After reading the court's reasoning, I immediately thought back to high school algebra class, where you could have the correct answer but still not receive credit if you didn't show your work. In *Fabian v. Renovate America, Inc.*, Renovate had the right answer: an electronic signature seemingly verified by DocuSign. However, Renovate did not show how they got to that "right answer." As a result, the court gave Renovate a failing grade.

### The Case

Ms. Fabian sued Renovate America, alleging that Renovate improperly installed a solar energy system in her home. Now, as you likely guessed, we are not concerned about whether the solar energy system was installed improperly. In this particular instance, neither was the court. The California Court of Appeal instead considered the trial court's ruling that Renovate failed to prove that Ms. Fabian electronically signed the contract.

Before getting to the appellate court's decision, it's important to provide a little background. According to Ms. Fabian, Renovate made an unsolicited phone call about financing the solar energy system. The parties communicated solely by telephone, and Ms. Fabian received no documents regarding the financing. Despite this, Renovate incorporated the financing into Ms. Fabian's mortgage payments. Ms. Fabian maintains that she never signed an agreement with Renovate to finance the solar energy system. Renovate, however, contends that Fabian electronically signed the agreement. The agreement's signature block stated "DocuSigned by:" and includes a printed signature for Ms. Fabian. The signature block also included the date of the purported signature, a 15-digit alphanumeric character, and the words "Identity Verification Code: ID Verification Complete."

In response to Ms. Fabian's lawsuit, Renovate sought to compel arbitration as required under the agreement. However, because Ms. Fabian alleged that she had never signed the agreement, Renovate bore the burden of proving that the electronic signature was authentic. The trial court found that Renovate did not meet that burden.

With the stage set, we come to the appellate court's decision. Renovate presented two pieces of

evidence to show that the trial court made a mistake. First, was the agreement itself and the signature block containing the DocuSign information. The appellate court found that the signature block alone was not enough. Instead, Renovate needed to prove Ms. Fabian signed the document by explaining the process used to verify the signature. Renovate failed to offer evidence regarding:

- Who sent Ms. Fabian the agreement;
- How the agreement was sent;
- How Ms. Fabian's electronic signature was placed on the agreement;
- Who received the signed agreement;
- How the signed agreement was returned to Renovate; and
- How Ms. Fabian's identification was verified as the person who actually signed the agreement.

As a result, the appellate court found that Renovate did not sufficiently authenticate the electronic signature.

The second piece of evidence Renovate offered was a declaration from Renovate's Senior Director of Compliance Operations that Ms. Fabian had "entered into" the agreement on the date stated in the signature block. The appellate court was once again unpersuaded. The declaration merely stated that the agreement was "entered into," and did not-according to the appellate court-explain that the agreement was signed because the declaration did not state:

- Who presented Ms. Fabian with a physical or electronic copy of the agreement;
- The specific location where the agreement was signed;
- The time when the agreement was signed; or
- How the Director ascertained that Ms. Fabian was present when the agreement was signed.

Further, the declaration made no mention of DocuSign, the process used to verify the electronic signature, or the significance of the information included in the signature box.

Having found both of Renovate's arguments unpersuasive, the appellate court affirmed the trial court's ruling.

### Takeaways

Renovate had Ms. Fabian's printed signature on the agreement. The agreement included several DocuSign verification markers. And yet, this was not enough to convince the court that Ms. Fabian had signed the agreement. If you transact with electronic signatures, pay attention to what the court noted. Make sure you can truly verify every aspect of the electronic signature process. In other words, make sure you show your work.

It's just like in algebra class.

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