IN THE CIRCUIT COURT OF MERCER COUNTY, WEST VIRGINIA

FREDDIE & SHELBY REYNOLDS, PLAINTIFFS,

VS. CIVIL ACTION NO. 17-C-372-MW

TD AUTO FINANCE, LLC, DEFENDANT.

ORDER

On May 23, 2018 came the Plaintiff, by counsel, Ralph C. Young, and the Defendant, by counsel, Daniel J. Konrad, all for a hearing on the Defendant's *Supplemental Motion to Compel Arbitration.*

WHEREUPON, the Court took the matter under advisement for purposes of issuing an Order following deliberations concerning the arguments and pleadings of the parties as well as pertinent legal authority. For the reasons stated more fully hereinafter, Defendant's *Supplemental Motion to Compel Arbitration* is DENIED.

I. Standard of Review

"When a trial court is required to rule upon a motion to compel arbitration pursuant to the Federal Arbitration Act (FAA), the authority of the trial court is limited to determining the threshold issues of (1) whether a valid arbitration agreement exists between the parties; and (2) whether the claims averred by the plaintiff fall within the substantive scope of that arbitration agreement." *Hampden Coal, LLC v. Varney*, 240 W. Va. 284, 810 S.E.2d 286 (2018).)). While the Court applies the "federal substantive law of arbitrability," *id.* (quoting *Moses H. Cone Mem'l Hosp.,* 460 U.S. 1, 24 (1983)), it applies "state law governing contract formation" to

determine "[w]hether a party agreed to arbitrate a particular dispute," *Adkins,* 303 F.3d at 501. *Kabba v. Ctr.*, No. PWG-17-211, 2017 WL 1508829, at *2 (D. Md. Apr. 27, 2017).

II. Background

The above entitled action stems from the purchase of a vehicle on or about November 14, 2014. Subsequent to the purchase, Plaintiffs became in arrears on the debt for the vehicle and the Defendant began to engage in collection of that debt. Plaintiffs allege that Defendant violated the West Virginia Consumer Credit Protection Act (hereinafter "WVCCPA"), violated the West Virginia Computer Crime and Abuse Act (hereinafter "WVCCAA"), committed Intentional Infliction of Emotion Distress (hereinafter "IIED"), and committed Invasion of Privacy.

The Plaintiffs signed a credit application dated November 14, 2014, for which the purpose was to allow their credit to be checked to allow them to purchase a vehicle. The credit application also contained a contract of arbitration. The credit application was between Plaintiffs and TD Auto Finance. Subsequently, the Plaintiffs purchased a vehicle and signed a Retail Instalment Sales Contract (hereinafter "RISC"). The RISC was between the Plaintiffs and the auto dealership, however, the RISC identified that the auto dealership was assigning its interest in the contract to TD Auto Finance. The RISC also contained a merger clause which stated:

> HOW THIS CONTRACT CAN BE CHANGED. This contract contains the entire agreement between you and us relating to this contract. Any change to this contract must be in writing and we must sign it. No oral changes are binding.

The RISC does not contain an arbitration agreement and the credit application is not incorporated by reference into the RISC.

Defendant argues that there is a delegation provision located in the arbitration agreement and pursuant to that provision, this matter is to be sent to an arbitrator to determine if the issues

are arbitrable. Further, Defendant argues that the credit application and the RISC are separate, contemporaneously executed agreements, which should be construed together. Accordingly, the merger clause and the arbitration clause applies to both documents.

Plaintiffs respond that the credit application and the RISC are two contracts with one relating to the permission to check Plaintiffs credit and the other relating the sale of the vehicle. Further, that by operation of the merger clause in the RISC, it entirely replaces any terms in the credit application. Finally, the credit application and the RISC do not relate to the same subject matter so the general principle that they are contemporaneously executed agreements does not apply.

III. Discussion

The primary issue before this Court is whether the integration or merger clause contained in the RISC should be given full effect, which would prohibit the credit application's arbitration provision from being enforced. General contract principals provide that the coverage of an integration clause is a matter of interpretation, and does not "exclude reading the instruments together [where] the parties did not intend the sales contract standing by itself to be a final and complete integration of the agreed upon terms. *Jaguar Land Rover North America, LLC v. Manhattan Imported Cars, Inc.*, 738 F.Supp.2d 640, 648 (D.Md.2010). Further, "whether an agreement is integrated and the effect of an integration clause are preliminary questions of interpretation determined by the court." *citing Shoreham,* aff'd, 477 Fed.Appx. 84 (4th Cir.2012).

In this case, the credit application informs the applicants that, if it is "submitted to TD Auto Finance LLC only," then, "YOU AGREEE TO ALL OF THE TERMS OF THE TD AUTO FINANCE LLC CONTRACT OF ARBITRATION CONTAINED IN THIS APPLICATION."

Typically in this type of transaction, the credit application is followed by a period of negotiation of the material terms of the sales agreement such as price of the vehicle, trade in value, financing rate, and length of time for repayment of the loan. The negotiations concerning offers from the auto dealership cannot even begin until after the applicant's credit has been checked. Financing is a material term of the agreement and the rate would be impossible to offer until the buyers' credit information is known. This is an entirely separate transaction from the actual sales agreement which contains all of those material terms. After the negotiations are complete, which frequently takes several trips to the auto dealership, then the sales agreement is signed along with an abundance of other documents that are drafted by the auto dealership.

When an integration clause is expressly included in an agreement, generally that agreement is enforced as the entire agreement of the parties. Defendant attempts to create an ambiguity by alleging that the prior credit application and arbitration agreement should be given full force because the event was one transaction. The key issue is to determine what the intent of the parties was at the time of the contract. "Exploring the intent of the contracting parties often, but not always, involves marshaling facts extrinsic to the language of the contract document. When this need arises, these facts together with reasonable inferences extractable therefrom are superimposed on the ambiguous words to reveal the parties' discerned intent." *Fraternal Order of Police, Lodge Number 69 v. City of Fairmont*, 196 W.Va. 97, 101 n. 7, 468 S.E.2d 712, 716 n. 7 (1996). However, "***in case of doubt, the construction of a written instrument is to be taken strongly against the party preparing it.***" *Henson v. Lamb*, 120 W.Va. 552, 558, 199 S.E. 459, 461–62 (1938). *Lee v. Lee*, 228 W. Va. 483, 486–87, 721 S.E.2d 53, 56–57 (2011).

The facts and reasonable inferences in this case suggest that Plaintiffs likely signed many pages at the end of the automobile sales transaction, after they agreed to all the material terms of

the transaction. This is customary when purchasing an automobile. This is further evidenced by the integration or merger clause which was included in the RISC that was ***drafted by the Defendant***. If Defendant wanted to arbitrate disputes that arose from the sale of the automobile, then Defendant should have included an arbitration agreement in the same document as the integration clause. In the alternate, Defendant could have incorporated the prior arbitration agreement by reference. At the very least, the arbitration agreement could have been included in a document that was signed at the end of the transaction along with the RISC and not the credit application that was signed prior to the start of negotiation.[1]

IV. Conclusion

The Court **FINDS** and **CONCLUDES** that a valid arbitration agreement did not exist between the parties due to the integration clause that was included in the RISC. This integration clause prohibits the prior credit application's arbitration agreement from being included in the final agreement. Accordingly, Defendant's *Supplemental Motion to Compel Arbitration* is DENIED.

The clerk is directed to send copies of this Order to all counsel of record.

ENTER:

This the 8th day of June, 2018.

Mark Wills

Mark Wills, Judge 9th Judicial Circuit

[1] Although there was no evidence presented as to exactly when the agreement was signed, the auto dealer cannot make an offer especially as to financing rate terms until after the buyer has a credit check.