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CC-18-2020-C-26
Jackson County Circuit Clerk
Bruce DeWees

IN THE CIRCUIT COURT OF JACKSON COUNTY, WEST VIRGINIA

CREDIT ACCEPTANCE CORPORATION,

Plaintiff/Counterclaim Defendant,

v. **CIVIL ACTION NO. 20-C-26**
Hon. Lora A. Dyer

KENNETH E. STANLEY AND KERRY J. STANLEY,

Defendants/Counterclaim Plaintiffs.

ORDER DENYING MOTION TO DISMISS AND COMPEL ARBITRATION

On September 27, 2023, this matter came before the Court regarding Plaintiff and Counterclaim Defendant Credit Acceptance Corporation's ("CAC" or "Credit Acceptance") Motion to Dismiss and Compel Arbitration (the "Motion"). Having reviewed the evidence presented and the briefs submitted by the parties, considered the arguments made by counsel, and applicable law, this Court finds as follows:

FINDINGS OF FACT

1. Defendants/Counterclaim Plaintiffs Kenneth E. Stanley and Kerry J. Stanley ("Counterclaimants") entered into a contract with Charleston Mitsubishi ("Dealership" or "Dealer") on April 17, 2018 ("Contract") to finance the purchase of a 2008 Ford Escape, VIN 1FMCU93168KA18539 ("Vehicle").

2. Counterclaimants purchased the Vehicle for $10,999.00.

3. Counterclaimants signed a Declaration Acknowledging Electronic Signature Process where they agreed to sign the remaining documents with an electronic signature.

4. Dealer assigned the contract to CAC.

5. The Contract contains an Arbitration Clause, providing that any dispute

between Counterclaimants and CAC arising out of or in any way relating to the Contract is subject to binding arbitration at either party's election. *See* Pl.'s Ex. A, at 5.

6. The Arbitration Clause further states that CAC may require any dispute to be arbitrated and "may do so before or after a lawsuit has been started over the Dispute or with respect to other Disputes or counterclaims brought later in the lawsuit." *Id.*

7. In 2019, Counterclaimants defaulted on their payment obligations.

8. On August 27, 2017, CAC repossessed the Vehicle and sold it for $2,400.00.

9. CAC applied the proceeds from the sale leaving a deficiency balance of approximately $8,172.98.

10. On February 20, 2020, CAC filed this action seeking to collect the deficiency.

11. On March 3, 2020, the Counterclaimants filed an Answer appearing *pro se.*

12. In June 2023, the Counterclaimants obtained counsel and filed a Motion for Leave to submit an Amended Answer and Counterclaim Complaint and propounded written discovery requests.

13. In August 2023, CAC filed a Motion to Dismiss and Compel Arbitration.

14. On September 25, 2023, the Counterclaimants filed an Opposition to Credit Acceptance's Motion to Dismiss and Compel Arbitration where the Counterclaimants argued that Credit Acceptance waived its right to Arbitration.

15. On September 27, 2023, the Court heard oral arguments from both parties in support and opposition to Credit Acceptance's Motion to Dismiss and Compel Arbitration.

APPLICABLE LAW

In examining the enforceability of any arbitration agreement, courts must apply general principles of state contract law. Importantly, in considering challenges to the validity of an

arbitration agreement, "[n]othing in the Federal Arbitration Act, 9 U.S.C. § 2, overrides normal rules of contract interpretation. Generally applicable contract defenses—such as laches, estoppel, waiver, fraud, duress, or unconscionability—may be applied to invalidate an arbitration agreement." Syl. Pt. 9, *Brown v. Genesis Healthcare Corp.*, 228 W. Va. 646, 724 S.E.2d 250 (2011); Syl. Pt. 2, *State ex rel. Johnson Controls, Inc. v. Tucker,* 229 W. Va. 486, 729 S.E.2d 808 (2012); *see also AT&T Mobility LLC v. Concepcion,* 563 U.S. 333, 339 (2011) (reiterating that arbitration clauses are unenforceable if they are void under any state law or equitable principle applicable generally to contracts). Accordingly, courts must analyze a challenge to an arbitration agreement under the basic rules of state law applicable to contracts generally—including the principle of waiver—or any other contract-based defenses or requirements and may do so without running afoul of the FAA.

Counterclaimants argue that under West Virginia law, any right—contractual, constitutional, or other—is waived as a matter of law if the evidence demonstrates that a party with knowledge of its right intentionally acted so as to expressly or impliedly relinquish it. *See* Syl. Pt. 1, *Citibank, N.A. v. Peny,* 238 W. Va. 662, 797 S.E.2d 803 (2016); Syl. Pt. 1, *Potesta v. U.S. Fidelity & Guar. Co.,* 202 W. Va. 308,504 S.E.2d 135 (1998). Counterclaimants further rely on equitable doctrine of estoppel when citing "in West Virginia the legal bar of waiver does not require proof of prejudice or detrimental reliance by the party asserting waiver." *See id.,* 202 W. Va. 316,504 S.E.2d at 143 ("The doctrine of waiver focuses on the conduct of the party against whom waiver is sought and requires that party to have intentionally relinquished a known right. There is no requirement of prejudice or detrimental reliance by the party asserting waiver.").

The West Virginia Supreme Court of Appeals has applied these principles to the

waiver of a right to assert arbitration, holding that

> The right to arbitration, like any other contract right, can be waived. To establish waiver of a contractual right to arbitrate, the party asserting waiver must show that the waiving party knew of the right to arbitrate and either expressly waived the right, or, based on the totality of the circumstances, acted inconsistently with the right to arbitrate through acts or language. There is no requirement that the party asserting waiver show prejudice or detrimental reliance.

Syl. Pt. 6, *Parsons v. Halliburton Energy Services, Inc.*, 237 W. Va. 138, 785 S.E.2d 844 (2016); *see also State ex rel Barden and Robeson Corp.*, 208 W. Va. 163, 168-69, 539 S.E.2d 106, 111 (2000) (neglect or refusal to demand arbitration constituted waiver of right to compel arbitration). This Court also notes for informative purposes that in the case of *Kirk v. Credit Acceptance Corp.*, 829 N.W.2d 522, 533 (Wis. Ct. App. 2013) the Wisconsin Court concluded CAC waived its right to arbitration by accessing the judicial system and delaying its assertion of arbitration for fifteen months.

The Supreme Court of Appeals of West Virginia further noted that enforcement of an arbitration clause is purely a matter of contract and "... may be waived through the conduct of the parties." *State ex rel. Barden & Robeson Corp. v. Hill,* 208 W. Va. 163, 168, 539 S.E.2d 106, 111 (2000) (citing *Earl T. Browder, Inc. v. Cnty. Court of Webster Cnty.,* 143 W. Va. 406, 412, 102 S.E.2d 425, 430 (1958) (finding that "[a]rbitration agreements are as much enforceable as other contracts, but not more so." This Court may "infer[] from actions or conduct" that it had "intentionally relinquished its right to arbitrate." *Hoffman v. Wheeling Sav. & Loan Ass'n,* 133 W. Va. 694, 713, 57 S.E.2d 725, 735 (1950).

CAC argues that under traditional rules of contract application, it has a clear contractual right to seek arbitration after a lawsuit has been filed and expressly when a counterclaim has been filed. CAC argues that under West Virginia law, "[t]o effect a waiver, there must be

evidence which demonstrates that a party has intentionally relinquished a known right." *Citibank, N.A. v. Perry,* 238 W. Va. 662, 666, 797 S.E.2d 803, 807 (2016) (quoting *Ara v. Erie Ins. Co.,* 182 W.Va. 266, 387 S.E.2d 320 (1989)).

In the alternative, the Counterclaimants request the Court to deny CAC's motion allowing the parties the opportunity to conduct additional discovery and present evidence regarding the enforceability of the arbitration agreement. Under West Virginia law, a trial court is permitted broad discretion in the control and management of discovery. *See, e.g., State ex rel. State Farm Mut. Auto. Ins. Co. v. Marks,* 230 W. Va. 517, 523, 741 S.E.2d 75, 81 2012 W. Va. LEXIS 829, *14, 2012 WL 5834584 (2012). Here, the Counterclaimants argue that additional discovery is needed to inquire regarding two issues of arbitrability. First, they argue that the Declaration Acknowledging Electronic Signature Process does not comply with the Electronic Records and Signatures Act. *See* 15 U.S.C. § 7001. Second, the Counterclaimants argue their signatures were rushed and they were denied a request that the process be slowed to give them time to understand the terms of the transaction.

Applying the above facts and law, this Court **FINDS** as follows:

1. CAC exercised its right to file the lawsuit in this Court.

2. CAC litigated its lawsuit by serving discovery on the *pro se* Counterclaimants and moved this Court for summary judgment.

3. Only after Counterclaimants retained counsel did CAC move this Court to compel arbitration. More than three years passed before CAC attempted to exercise the arbitration provision.

4. The Supreme Court of Appeals has held that the right to arbitrate can be waived.

6. The Supreme Court of Appeals instructed the trial court to examine the

totality of circumstances when determining whether a party waived the arbitration agreement or not.

7. CAC tries to circumvent the delay of more than three years by asserting that the arbitration agreement allows CAC to elect arbitration at any time.

8. With CAC's argument, this Court surmises that CAC believes that it could elect to arbitrate even after the conclusion of the litigation.

9. This Court also notes that CAC had prior notice that it could potentially waive its right to arbitrate due to delay when the Wisconsin Court denied the motion to compel arbitration after the passage of 15 months.

10. Here, approximately thirty-six months passed before CAC moved this Court to grant a motion for arbitration.

11. This Court also relied heavily on the following: "[a]rbitration agreements are as much enforceable as other contracts, but not more so." This Court may "infer[] from actions or conduct" that it had "intentionally relinquished its right to arbitrate." *Hoffman v. Wheeling Sav. & Loan Ass'n,* 133 W. Va. 694, 713, 57 S.E.2d 725, 735 (1950).

13. When applying the totality of circumstances, this Court concluded that CAC waived its right to arbitrate due the significant passage of time before moving this Court to compel arbitration. Instead of timely exercising that right, CAC only chose to exercise that right when Counterclaimants retained counsel. This Court further notes CAC had no qualms litigating this matter, including engaging in discovery and moving this Court for summary judgment when Counterclaimants were *pro se.*

14. This Court further agrees with Counterclaimants that discovery may further support their waiver argument, or in the alternative, it may support CAC's argument that arbitration is appropriate.

WHEREFORE, Credit Acceptance Corporation's Motion to Dismiss and Compel Arbitration is **DENIED**. The parties are **ORDERED** to communicate jointly with the Court's law clerk to discuss dates for this Court to enter an amended scheduling order.

All objections are reserved herein.

The Clerk is **DIRECTED** to forward copies of this Order to counsel of record.

IT IS SO ORDERED.

ENTERED January 18, 2024

The Honorable Lora A. Dyer
Circuit Court Judge
5th Judicial Circuit of West Virginia