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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No. 2021-CP-23-00244
Appellate Case No. 2023-001053

Dealer Financial Holdings, LLC, Steve Lanzl, and Daniel B. Haight,

Appellants,

v.

Penland Automotive, LLC and Charles W. Penland, Jr.,

Respondents.

APPELLANT'S INITIAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

1. Whether the Circuit Court erred in denying the Renewed Motion to Strike Jury Demand based on the language contained within the agreements.

STATEMENT OF THE CASE

In 2016, Penland Automotive, LLC (“Penland Automotive”), Charles W. Penland, Jr. (“Charles Penland”), Penland Properties II, LLC (collectively, “Respondent” or “Penland”), and Dealer Financial Holdings, LLC (“DFH”) entered into that certain Loan and Security Agreement dated November 21, 2016 (the “Financing Agreement”), pursuant to which Penland Automotive borrowed money from DFH in the form of cash advances to Penland Automotive to purchase used car inventory for resale in its used car business. (Ans. at ¶ 107) (R. ____).¹ The Financing Agreement established the lending relationship between DFH and Penland by which DFH lent money for floor financing. (Ans. at ¶¶ 107-08) (R. ____). It is undisputed that Charles Penland signed the Financing Agreement and other documents on behalf of himself and Penland Automotive in 2016. (Def. Memo in Support of Mtn at p. 2(Order July 28, 2021 at p. 1; Tr. of Hrg. p. 4) (R. ____). The parties successfully conducted business with one another for three years, during which DFH advanced money, and Penland then purchased vehicles and made payments back on the loans. (Tr. of Hrg. p. 4) (R. ____).

On or about February 20, 2019, the parties paused their business relationship with one another. (Tr. of Hrg. p. 4) (R. ____). In July 2020, however, it is undisputed the parties again resumed business with one another. (Tr. of Hrg. pp. 4-5) (R. ____). At the time the parties resumed doing business, no new contract was signed between the parties. As their business relationship

¹ Contemporaneously with the execution of the Financing Agreement, Penland Automotive executed a Demand Note, and Charles Penland executed an Unlimited Guaranty, both of which contain the identical jury trial waiver language as the Financing Agreement and cited herein. (Ans. Exhs.) (R. ____).

continued, DFH loaned funds, Penland accepted the money to purchase vehicles, and Penland had repaid some of the money owed. (Tr. of Hrg. p. 4) (R. ____).

In October 2020, a dispute arose among the parties regarding the Financing Agreement, and Respondents filed the lawsuit. (Compl.) (R. ____). Appellants answered denying liability and asserted counterclaims, including an affirmative defense based on the jury trial waiver. (Ans. & Counterclaims) (R. ____). DFH initially filed a Motion to Strike Jury Demand on April 13, 2021, and a hearing was held on June 29, 2021. (Order July 28, 2021 at p. 1) (R. ____). On July 28, 2021, the Court denied the Motion to Strike Jury Demand *without prejudice* and with leave to renew at a later time, indicating further discovery was necessary. (Order July 28, 2021 at p. 3) (R. ____) (emphasis added). After two years of conducting discovery, DFH filed a Renewed Motion to Strike Jury Demand on September 28, 2022. (Def. Renewed Mtn.) (R. ____). A hearing on DFH's Renewed Motion was held on January 4, 2023, before the Honorable J. Derham Cole. (Tr. of Hrg. p. 1) (R. ____). On June 1, 2023, Judge Cole entered a Form 4 Order denying DFH's Renewed Motion to Strike Jury Demand. (Order June 1, 2023) (R. ____). This appeal followed.

STANDARD OF REVIEW

“Whether a party is entitled to a jury trial is a question of law.” *Verenes v. Alvanos*, 387 S.C. 11, 15, 690 S.E.2d 771, 772 (2010). Appellate courts may decide questions of law with no particular deference to the circuit court's findings. *Id.* at 15, 690 S.E.2d at 772-73.

ARGUMENT

The jury trial waiver in the Financing Agreement applies to the claims at issue, even if the Court were to ultimately conclude that the Financing Agreement does not apply to the subsequent loan transactions. Penland expressly waived any right to a jury trial as to any and all causes of action alleged in this case. Moreover, the jury trial waiver applies regardless of whether or not those causes of action arose pursuant to the Financing Agreement. Specifically, Section 17 of

Financing Agreement, which is titled in bold and italic font “*Waiver of Jury Trial*”, contains the following language in all capital letters:

TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH GRANTOR AND DFH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, AND AFTER AN OPPORTUNITY TO CONSULT WITH INDEPENDENT LEGAL COUNSEL, (A) **WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING IN CONNECTION WITH THIS AGREEMENT, ANY RELATED AGREEMENT, THE LIABILITIES, ALL MATTERS CONTEMPLATED HEREBY AND DOCUMENTS EXECUTED IN CONNECTION HEREWITH, AND ANY AND ALL CAUSES OF ACTION IN ANY WAY RELATING TO ANY MATTER BETWEEN THEM WHETHER ARISING FROM OR RELATING TO THIS AGREEMENT OR ANY RELATED AGREEMENT, OR ARISING FROM ALLEGED EXTRA-CONTRACTUAL FACTS PRIOR TO, DURING, OR SUBSEQUENT TO THIS AGREEMENT** AND REGARDLESS OF THE LEGAL THEORY UPON WHICH SUCH MATTER IS ASSERTED, AND (B) AGREE NOT TO SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE, OR HAS NOT BEEN, WAIVED. EACH GRANTOR CERTIFIES THAT NEITHER DFH NOR ANY OF ITS REPRESENTATIVES, AGENTS OR COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT DFH WOULD NOT IN THE EVENT OF ANY SUCH PROCEEDING SEEK TO ENFORCE THIS WAIVER OF RIGHT TO TRIAL BY JURY.

(Def. Memo. in Support of Renewed Mtn. p. 3) (R. ____) (emphasis added). The term “Grantor”, as used in the jury trial waiver, is defined at the beginning of the Financing Agreement to include Penland Automotive and Charles Penland. (Ans. Exhs.) (R. ____).

In light of the clear and unambiguous language contained in the Financing Agreement, any claims asserted by the Respondents in this case fall within the scope of the jury waiver and the waiver should be enforced. The law is well-settled in South Carolina that the right to a jury trial may be waived by contract. *Wachovia Bank, Nat. Ass’n v. Blackburn*, 407 S.C. 321, 333, 755 S.E.2d 437, 443 (2014) (“A party may waive the right to a jury trial by contract.”); *Regions Bank v. Schmauch*, 354 S.C. 648, 663, 582 S.E.2d 432, 440 (Ct. App. 2003) (“[A] person who signs a contract or other written document cannot avoid the effect of the document by claiming that he did not read it.”); *see also DRV Fontaine, LLC v. Fontaine Business Park, LLC*, No. 2015-UP-506, 2015 WL 9998292, at *1 (S.C. Ct. App. Dec. 23, 2015) (holding that a party may waive the right

to jury trial by contract); *N. Charleston Joint Venture v. Kitchens of Island Fudge Shoppe, Inc.*, 307 S.C. 533, 535, 416 S.E.2d 637, 638 (1992) (stating that right to jury trial may be waived by contract); *Leasing Serv. Corp. v. Crane*, 804 F.2d 828, 833 (4th Cir. 1986). Moreover, while jury trial waivers are strictly construed, they are nevertheless construed according to their “plain, ordinary and popular meaning.” *Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 64, 566 S.E.2d 863, 866 (Ct. App. 2002) (citing *Fritz-Pontiac-Cadillac-Buick v. Goforth*, 312 S.C. 315, 318, 440 S.E.2d 367, 369 (1994)). An ambiguous contract is “one capable of being understood in more ways than just one, or an agreement unclear in meaning because it expresses its purpose in an indefinite manner.” *Klutts Resort Realty, Inc. v. Down’Round Development Corp.*, 268 S.C. 80, 89, 232 S.E.2d 20, 25 (1977).

Here, the “plain, ordinary and popular meaning” of the jury trial waivers contained in the Financing Agreement executed by Penland clearly encompasses all causes of action asserted in the Complaint, regardless of whether the Court ultimately concludes that the transactions that are at issue are otherwise governed by the remaining terms of the Financing Agreement. The plain language is broader than just this Financing Agreement itself, and it is not unclear. By its plain and unambiguous language, the jury trial waiver clearly applies not only to all disputes arising under the Financing Agreement, it also apply to: (1) all disputes related to the Financing Agreement, (2) any and all causes of action “in any way relating to any matter” involving the parties, and (3) all causes of action arising from or related to “extra-contractual facts ... subsequent to” the Financing Agreement. Essentially, the unambiguous language states that if these parties are going to engage in business with one another, whether under the specific Financing Agreement originally executed in 2016 or through some future arrangement, DFH and Penland agree to a jury trial waiver. Respondents have argued the Financing Agreement between the parties was terminated, therefore

the jury trial waiver provision was also terminated. Appellants dispute the termination, and this is an issue that remains for trial. However, regardless of whether the Financing Agreement executed in 2016 was terminated, the narrow issue is whether the jury trial waiver remains effective. Because the specific language of the jury trial waiver is broader than just the specific contract in which it is included, it governs any relationship or any business between DFH and Penland.

Each and every one of the causes of action asserted arose because of the financing arrangement between DFH and the Respondents. It is undisputed that the present lawsuit is about the relationship between these parties and a dispute over their rights and obligations. If not for this relationship, regardless of whether the Financing Agreement and its terms were applicable in 2020, the dispute “relates to” a matter involving the parties and certainly arises out of facts at issue subsequent to the execution of the Financing Agreement. Respondents cannot present any facts about their claims which take it outside of the language of the jury waiver.

Additionally, the Financing Agreement includes a severability clause at Section 13. This clause states that “[a]ny invalidity, in whole or in part, of any provision of this Agreement shall not affect the validity of any other provision of this Agreement.” Thus, even if one provision of the Financing Agreement is determined to be unenforceable, that does not mean the jury waiver or any other clause is invalid. Therefore, even if the Court were to find that the specific Financing Agreement or other terms were inapplicable to the current dispute, the jury trial waiver would still apply. The unambiguous language of the jury trial waiver clause at issue states it applies to all causes of action that in any way relate to the parties to it, and there are no other reasonable interpretations of the language.

In briefing and at the hearing, Penland has attempted to expand the issue beyond simply the enforceability of the jury trial waiver to the entire merits of the case, which is not the issue

raised by DFH's Motion before the Court. Specifically, Penland has claimed that the contract was terminated before the parties resumed business in July 2020. However, the merits of this particular argument are of no relevance for the issue before the Court. The question is whether the jury trial waiver as written survives termination, if in fact, any alleged termination occurred. The narrow, discrete issue brought by DFH as well as before the Court is whether the specific language of the jury trial waiver applies to the lawsuit, regardless of whether any other provisions of the Financing Agreement are enforceable. The only question is whether the clear, unambiguous, and broad language of the jury trial waiver applies to the causes of action among the party - as it plainly does. The express language of the clause states that anything related to the business dealings among the parties, including arrangements subsequent to the specific Financing Agreement, all fall under the purview of the jury trial waiver language.

As such, the jury trial waiver applies, and the Court erred in denying Appellants' Renewed Motion to Strike.

CONCLUSION

All of the causes of action asserted by the Respondents in this action either arise out of or are related to the exact same lending relationship that has existed between the parties since 2016, regardless of whether the same commercial terms are still in effect or different ones apply.

Accordingly, Respondents have no right to a jury trial on any issue in this case, and their demand for a jury trial should be struck and the case referred to the Greenville County Master-in-Equity in accordance with Rule 53(b), SCRPC.

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PROOF OF SERVICE

The undersigned hereby certifies that on August 11, 2023, a copy of Dealer Financial Holdings, LLC, Steve Lanzl, and Daniel B. Haight's **APPELLANT'S INITIAL BRIEF** to be filed with the South Carolina Court of Appeals was served on all counsel of record via email containing the above referenced documents to counsel's individual AIS email addresses as follows:

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