

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012CP4007313

Cynthia Hall  
Ronald R Ballentine  
PLAINTIFF(S)

Green Tree Servicing LLC  
Green Tree Financial Servicing Corp  
DEFENDANT(S)

Submitted by: \_\_\_\_\_ Attorney for :  Plaintiff  Defendant or  Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried, heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):  Affirmed;  Reversed;  Remanded;  Other \_\_\_\_\_

RICHLAND COUNTY  
FILED  
2013 JUN 13 AM 11:32  
JANETE W. BRIDGE  
CLERK

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court.

ORDER INFORMATION

This order  ends  does not end the case.  
Additional Information for the Clerk : \_\_\_\_\_

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of (List name(s) below) | Judgment Against (List name(s) below) | Judgment Amount To be Enrolled |
|---|---------------------------------------|--------------------------------|
|   |                                       | \$                             |
|   |                                       | \$                             |
|   |                                       | \$                             |

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge \_\_\_\_\_ Judge Code \_\_\_\_\_ Date \_\_\_\_\_

For Clerk of Court Office Use Only

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this 3 day of June, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Brian L. Boger

Suzanne G. Grigg

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court Jeanette W. Bridge

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Cynthia Hall; Ronald R. Ballentine,  
Plaintiffs,

v.

Green Tree Servicing, LLC, f/k/a Green  
Tree Financial Servicing Corp.,  
Defendant.

) IN THE COURT OF COMMON PLEAS  
) FIFTH JUDICIAL CIRCUIT

) Civil Action No.: 2012-CP-40-7313

ORDER

2013 JUN -3 AM 11:32  
RICHLAND COUNTY  
FILED  
JEANNETTE N. McBRIDE  
C.C.P. & G.S.

This matter came before the Court on January 30, 2013, on the Motion to Dismiss pursuant to Rule 12(b)(1), SCRCP, or, in the Alternative, to Stay Pending Mandatory Arbitration filed by Defendant Green Tree Servicing LLC, f/k/a Green Tree Financial Servicing Corp. ("Green Tree"). Present at the hearing were Brian Boger, Esquire, and Jessie White, Esquire, counsel for Plaintiffs Cynthia Hall and Ronald R. Ballentine ("Plaintiffs"), and Rick Mendoza, Esquire, and Kyle Brannon, Esquire, counsel for Green Tree. After considering the law, the briefs filed by the parties, the arguments of counsel, and all matters submitted, Green Tree's Motion to Dismiss is **GRANTED in part.**

FACTS

On or about July 6, 1999, Plaintiffs executed and delivered to Green Tree a contract under which Green Tree provided financing to Plaintiffs to enable them to purchase a 1999 Redman Manufactured Home ("the Contract"). The Contract provides the following provision with respect to arbitration:

**ARBITRATION OF DISPUTES AND WAIVER OF JURY TRIAL**

**a. Dispute Resolution.** Any controversy or claim between or among you and me or our assignees arising out of or relating to this Contract or any agreements or instrument relating to or delivered in connection with this Contract, including any claim based on or arising from an alleged tort, shall, if requested by either you or me, be determined by arbitration, reference, or trial by a judge as provided below. A controversy involving only a single claimant or claimants who are related or asserting claims arising from a single transaction, shall be determined by arbitration as described by below. . . **YOU AND I AGREE AND UNDERSTAND THAT WE ARE GIVING UP THE RIGHT TO TRIAL BY JURY, AND THERE SHALL BE NO JURY WHETHER THE CONTROVERSY OR CLAIM IS**

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**DECIDED BY ARBITRATION, BY JUDICIAL REFERENCE,  
OR BY TRIAL BY A JUDGE.**

**b. Arbitration.** Since this Contract touches and concerns interstate commerce, an arbitration under this Contract shall be conducted in accordance with the United States Arbitration Act (Title 9, United States Code) . . . .

Plaintiff stopped making monthly payments under the Contract, constituting a default. On May 16, 2012, Green Tree repossessed the manufactured home and on June 11, 2012, Green Tree sold the home. On October 30, 2012, Plaintiffs filed a Complaint against Green Tree alleging four causes of action: (1) Breach of Contract; (2) Violation of Claim and Delivery Proceedings, S.C. Code Ann. § 15-69-10, *et seq.* (Rev. 2005); (3) Violation of Notification Provisions, S.C. Code Ann. § 36-9-601, *et seq.* (Rev. 2003); and (4) Unjust Enrichment. Green Tree filed its Motion to Dismiss, or, in the Alternative, to Stay Pending Mandatory Arbitration on November 29, 2012.

**DISCUSSION**

Green Tree claims this Court lacks subject matter jurisdiction pursuant to Rule 12(b)(1), SCRCPC, because each claim in Plaintiff's Complaint is subject to binding arbitration. "Subject matter jurisdiction refers to the court's power to hear and determine cases of the general class to which the proceedings in question belong." *Bardoon Properties, NV v. Eidolon Corp.*, 326 S.C. 166, 169, 485 S.E.2d 371, 372-73 (1997). This Court lacks subject matter jurisdiction over the Breach of Contract claim and Unjust Enrichment claims because they are subject to arbitration. This Court has subject matter jurisdiction over Plaintiffs' Violation of Claim and Delivery Proceedings and Violation of Notification Provisions claims because they are not subject to binding arbitration.

There is no question that arbitration is favored in South Carolina. See *McMillan v. Gold Kist, Inc.*, 353 S.C. 353, 359, 577 S.E.2d 472, 485 (Ct. App. 2003). Any "ambiguities as to the scope of the arbitration clause itself [should be] resolved in favor of arbitration." *Stokes v. Metropolitan Life Ins. Co.*, 351 S.C. 606, 610, 571 S.E.2d 711, 714 (Ct. App. 2002)(quoting *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior University*, 489 U.S. 468 (1989)). "Arbitration is a matter of contract, and a party cannot be required to submit to arbitration any dispute that the party has not agreed to submit." *Chassereau v. Global-Sun Pools, Inc.*, 363 S.C. 628, 632, 611 S.E.2d 305, 307 (Ct. App. 2005)(citing *Zabinski v. Bright Acres Assoc.*, 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001)).

Plaintiffs' Complaint alleges Green Tree failed to remit proper notification pursuant to S.C. Code Ann. § 36-9-601, *et seq.* or follow procedures set forth by statute before engaging in self-help

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remedies. Because Green Tree repossessed and sold Plaintiffs' manufactured home, the following paragraph of the Contract is applicable:

**d. Self-Help, Foreclosure, and Provisional Remedies.** The provisions of this paragraph shall not limit any rights that you or I may have to exercise self-help remedies such as set-off or repossession, to foreclose by power of sale . . . before, after or curing the pendency of any arbitration . . . . Neither the obtaining nor the exercise of any such remedy shall serve as a waiver of the right of either you or me to demand that *the related or any other dispute* or controversy be determined by arbitration as provided above. (Emphasis added).

Plaintiffs contend their claim against Green Tree for failure to provide reasonable notification prior to repossession of the home are not "related" or "other disputes" as provided in the Contract because they are statutorily based; therefore, they are beyond the scope of mandatory arbitration. Plaintiffs further claim that whether they were denied reasonable notification is a question for this Court to determine and the interests of justice and judicial economy would suffer if Plaintiffs' claims are severed from the violations and forced into a foreign forum. Green Tree claims the Contract permits recovery through remedies such as repossession and disposition of the collateral while coextensively protecting Green Tree's right to demand arbitration as to all other claims.

Plaintiffs' Violation of Claim and Delivery Proceedings and Violation of Notification Provisions claims are statutorily based. See *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 626-27 (1985). Under the Federal Arbitration Act (FAA), "statutory claims may be the subject of an arbitration agreement . . ." *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 26 (1991). "By agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral, rather than a judicial, forum." *Mitsubishi Motors Corp.*, 473 U.S. at 628. There is no provision in the arbitration agreement that indicates Plaintiffs agreed to arbitrate statutory claims. Therefore, Plaintiffs' Violation of Claim and Delivery Proceedings and Violation of Notification Provisions claims are not subject to arbitration.

This Court finds Plaintiffs' Breach of Contract and Unjust Enrichment claims arise out of or are related to the Contract. The Contract states that all controversies or claims arising out of or relating to the Contract involving a single claimant, or claimants who are related or asserting claims from a single transaction shall be resolved by arbitration. This is an action where the Plaintiffs are related and are asserting claims arising from a single transaction. Cynthia Hall is Ronald Ballentine's daughter and the claims arise from a transaction involving the same manufactured home.

Therefore, this Court lacks subject matter jurisdiction over Plaintiffs' Breach of Contract and Unjust Enrichment claims because those claims are subject to mandatory arbitration.

Plaintiffs further challenge the validity of the arbitration clause on the basis that it is unconscionable. Plaintiffs claim they entered into a consumer credit transaction with Green Tree without knowingly and intelligently understanding their rights and obligations under the agreement. Plaintiffs contend: (1) they were inexperienced persons who did not possess the business judgment necessary to be aware of the implications of an arbitration clause; (2) they did not have an attorney present to explain the agreements; and (3) Green Tree is a highly experienced lender and/or servicer with vastly superior bargaining power. Plaintiffs rely on the Consumer Protection Code, S.C. Code Ann. § 37-1-101, *et seq.*, which was enacted to "further consumer understanding of the terms of credit transactions . . . ." S.C. Code Ann. § 37-1-102.

"The trial court should determine the threshold validity of the arbitration agreement." *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 23, 644 S.E.2d 663, 667 (2007); *See* S.C. Code Ann. § 15-48-20. The Plaintiffs claim, pursuant to Section 36-2-302, that because the arbitration clause is unconscionable, this Court should allow Plaintiffs to present evidence as to the issues involved in this lawsuit rather than submit them to arbitration. Section 36-2-302(2) provides that when it is claimed or appears that a clause is unconscionable, "the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination." This Section does not permit *all* claims in the lawsuit to be heard by the Court; rather, it permits the Court to hear evidence on the issue of unconscionability as it relates to the arbitration clause.

"Unconscionability has been recognized as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them." *Carolina Care Plan, Inc. v. United HealthCare Services, Inc.*, 361 S.C. 544, 554, 606 S.E.2d 752, 757 (2004). A court may refuse to enforce or limit the application of an arbitration clause, in whole or in part, if it finds as a matter of law that the clause was unconscionable at the time it was made. *See Simpson*, 373 S.C. at 25, 644 S.E.2d at 668.


Plaintiffs essentially argue the Contract is an adhesion contract. Where evidence suggests "that the contract at issue is an adhesion contract, and the arbitration clause itself appears to be adhesive in nature," the presumption in favor of arbitration clauses will be substantially weakened. *Id.* at 26, 644 S.E.2d at 669. "[A]n adhesion contract is a standard form contract offered on a 'take-

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it-or-leave-it' basis with terms that are not negotiable." *Id.* at 26-27, 644 S.E.2d at 669-70. However, even if the Contract is an adhesion contract, it is not unconscionable *per se*. See *Lackey v. Green Tree Fin. Corp.*, 330 S.C. 395, 395-96, 498 S.E.2d 898, 902 (Ct. App. 1998). The "standardization of forms for contracts is a rational and economically efficient response to the rapidity of market transactions and the high costs of negotiations." *Id.* (quoting *Goodwin v. Ford Motor Credit Co.*, 970 F.Supp. 1007, 1015 (M.D. Ala. 1997)). Therefore, without other evidence of unconscionability, the arbitration clause will not be invalidated solely on the basis there is an adhesion contract.

To support their claim that the arbitration clause is unconscionable, Plaintiffs argue Green Tree is a highly experienced lender and/or servicer with vastly superior bargaining power. "[A] finding of unconscionability simply cannot be based on the mere fact that one party to the contract is larger than the other." *Stedor Enterprises, Ltd. v. Armtex, Inc.*, 947 F.2d 727, 733 (4<sup>th</sup> Cir. 1991). "Inequality in bargaining power alone will not invalidate an arbitration agreement." *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 541 n. 5, 542 S.E.2d 360, 365 n. 5. (2001). A party has a duty to read a contract and learn of its contents before signing it. See *Burwell v. South Carolina Nat. Bank*, 288 S.C. 34, 39, 340 S.E.2d 786, 789 (1986)(citing *J.B. Colt Co. v. Britt*, 129 S.C. 226, 123 S.E. 845 (1924)). In this case, Plaintiffs failed to present evidence of inequality in bargaining power or oppressive provisions in the agreement. The fact that Green Tree is a larger or more experienced party is not alone sufficient to invalidate the arbitration clause.

Plaintiffs further argue they lacked a meaningful choice upon entering into the Contract with Green Tree. To determine whether there was lack of meaningful choice, "courts should take into account the nature of the injuries suffered by the plaintiff; whether the plaintiff is a substantial business concern; the relative disparity in the parties' bargaining power; the parties' relative sophistication; whether there is an element of surprise in the inclusion of the challenged clause; and the conspicuousness of the clause." *Simpson*, 373 S.C. at 25, 644 S.E.2d at 668. In *Simpson*, the plaintiff signed a contract that included an arbitration clause and the South Carolina Supreme Court concluded the plaintiff suffered an absence of meaningful choice. The Court based its conclusion on several factors; including the fact the contract involved the purchase of an automobile, which is "a necessity . . . intended for use as [plaintiff's] primary transportation, which is critically important in modern society." *Id.* at 26, 644 S.E.2d at 663. The Court further found the plaintiff lacked sufficient business judgment and that factor, coupled with the lack of meaningful choice, rendered the arbitration agreement unconscionable. *Id.* at 27, 644 S.E.2d at 663.



The Contract between Green Tree and Plaintiffs was to finance a manufactured home, which is considered a necessity. However, Plaintiffs failed to present any evidence, by way of affidavit or otherwise, to support their allegations that they did not understand the agreements, did not have an attorney present, and lacked the business judgment and sophistication necessary to understand the implications of the provisions. Because Plaintiffs failed to meet their burden of establishing that the arbitration agreement is unconscionable, the arbitration agreement is valid and enforceable and the Breach of Contract and Unjust Enrichment claims should proceed to arbitration.


Plaintiffs further claim that even if the arbitration clause is valid, the arbitration clause provides for forum selection. The arbitration provision provides that claims arising out of or relating to the Contract "shall, if requested by either [party], be determined by arbitration, reference, or trial by judge as provided below." Plaintiffs claim this provision allows them to elect to seek relief through the judicial system and have their claims heard by a trial judge.

The provision Plaintiffs rely upon applies to claims that are not submitted to arbitration. In this case, because Plaintiffs are related and asserting claims arising from a single transaction, a non-jury trial is unavailable.

**ORDER**

For the reasons state above, it is therefore **ORDERED** that the Motion to Dismiss pursuant to Rule 12(b)(1), SCRCF, or, in the Alternative, to Stay Pending Mandatory Arbitration filed by Defendant Green Tree Servicing LLC, f/k/a Green Tree Financial Servicing Corp. is **GRANTED in part** and Green Tree's Breach of Contract and Unjust Enrichment claims are to proceed to arbitration pursuant to the Contract.

**AND IT IS SO ORDERED.**

  
ALISON RENEE LEE  
Presiding Judge

Columbia, South Carolina  
May 31, 2013

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