

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF HAMPTON)	CASE #: 2024-CP-25-00202
)	
SADE MONIQUE KING,)	
)	
Plaintiff,)	
)	
vs.)	ORDER DENYING DEFENDANTS'
)	AMENDED MOTION TO DISMISS
BACKROADS MAFIA TOWING AND)	AND COMPEL ARBITRATION
RECOVERY DIVISION, LLC, LUCAS)	
MCMANUS, & BRENDAN MCMANUS,)	
)	
Defendants.)	
_____)	

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SC Court of Appeals

This matter came before the Court on Thursday, February 6, 2024, on Defendants' Amended Motion to Dismiss and Compel Arbitration. Jake Tillery, Esquire, appeared and argued on behalf of Defendants, and Laine B. Gooding, Esquire, appeared and argued on behalf of Plaintiff. For the reasons set forth below, the Court denies the motion.

As set forth in Plaintiff's Amended Complaint, this matter arises out of an incident on January 22, 2024, during which Plaintiff allegedly sustained personal injuries caused by Defendants when they attempted to tow her vehicle. Plaintiff named as defendants only the towing company (Backroads Mafia Towing and Recovery Division, LLC) and its two employees (Defendants McManus) who were actively involved in the incident; Plaintiff asserted causes of action for negligence, assault and battery. Defendants responded to the Amended Complaint by filing an Amended Motion to Dismiss and Compel Arbitration based on an arbitration agreement signed by Plaintiff as part of the purchase agreement that memorialized Plaintiff's purchase of her vehicle from U.S. Auto Sales, Inc. The purchase was financed by U.S. Auto Finance, Inc., which then assigned the agreement to Westlake Portfolio Management. Upon Plaintiff's alleged non-

payment, Westlake contracted Defendant Backroads Mafia to locate and repossess Plaintiff's vehicle. Both the purchase agreement and arbitration agreement were attached as exhibits to Defendants' motion.

Defendants argue that the Federal Arbitration Act (FAA) applies because the arbitration agreement was signed as part of the purchase of a vehicle involving interstate commerce and this matter arose out of a successful repossession¹ of the vehicle. Further, Defendants argued that Georgia substantive law applies because the contract for the sale of the vehicle was made in the state of Georgia. Citing *Langfitt v. Jackson*, 284 Ga.App. 628, 644 S.E.2d 460 (2007), Defendants argue that this Court must apply the FAA and conduct a two-part analysis: (1) Does a valid agreement to arbitrate exist? and (2) Does the specific dispute fall within the substantive scope of the agreement? As to the first question, Defendants argue that under § 2 of the FAA, arbitration agreements are enforceable according to their terms:

A written provision in any contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or any agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

9 U.S.C. § 2. According to Defendants' argument, because Plaintiff initialed and signed the Arbitration Agreement, it is a valid agreement to arbitrate this dispute. As to the second question, Defendants argue that "any doubt concerning the scope of arbitrable issues should be resolved in favor of arbitration." *Wise v. Tidal Const. Co.*, 261 Ga.App. 670, 583 S.E.2d 466 (2003). Further, Defendants argue that only a slight causal connection is required:

¹ Plaintiff pointed out at the hearing that the repossession was not successful as law enforcement was called and Defendants returned the vehicle to Plaintiff that same day.

Under Georgia law, where a contract provides that a [claim] must arise out of a specified [relationship], it does not mean proximate cause in the strict legal sense but instead encompasses almost any causal connection or relationship. Indeed, nothing more than a slight causal connection is required to show that a [claim] arose out of a specified [relationship] set forth in the contract.

Wedemeyer v. Gulfstream Aerospace Corp., 324 Ga.App. 47, 749 S.E.2d 241 (2013)(other citations omitted). Defendants argue that because the injuries sustained by Plaintiff occurred during the repossession of Plaintiff's vehicle, there is at least a slight causal connection that makes this action subject to the arbitration agreement and requires this Court to dismiss the action and compel arbitration.

Plaintiff does not dispute that the FAA and federal substantive law apply to the arbitration agreement. Further, Plaintiff argues that regardless of whether Georgia or South Carolina law applies to the validity or construction of the agreement, the result is the same. Relying on *Lawson v. Life of the South Ins. Co.*, 648 F.3d 1166 (2011)(11th Cir. 2011), Plaintiff argues that because the Defendants are neither signatories nor assignees of the arbitration agreement, they cannot compel Plaintiff to arbitrate this dispute. In *Lawson*, the Court pointed out that arbitration is a matter of contract and the FAA's pro-arbitration policy only applies to disputes that the parties **have agreed to arbitrate**, unless some exception applies under the applicable state law. In *Lawson*, the court recognized that a third party "beneficiary of a contract made between other parties **for his benefit** may maintain an action against the promisor on the contract." *Id.* (other citations omitted)(emphasis added). The Plaintiff argues that the arbitration agreement in question was not made for the benefit of these Defendants and therefore these Defendants cannot prevail under a third party beneficiary theory. Further, Plaintiff argues that the Arbitration Agreement itself, in the context of applying it to this dispute that does not involve U.S. Auto Sales, U.S. Auto Finance,

Westlake, or any other assignee, is ambiguous and unconscionable. *See, Doe v. TCSC, LLC*, 430 S.C. 602, 846 S.E.2d 874 (Ct.App. 2020).

Based on the arguments presented, the Court hereby finds as follows. The Defendants are third parties who claim the right to compel arbitration pursuant to an arbitration agreement between Plaintiff and the seller of the vehicle who is not a party to this action. Westlake Portfolio was the only assignee of the arbitration agreement but is likewise not a party to this action. The arbitration agreement in question provides in pertinent part:

ARBITRATION AGREEMENT

This Arbitration Agreement significantly affects your rights in any dispute with us. Please read this Arbitration Agreement carefully before you sign it.

1. **EITHER YOU OR WE MAY CHOOSE TO HAVE ANY DISPUTE BETWEEN US DECIDED BY ARBITRATION AND NOT IN COURT.**
2. **IF A DISPUTE IS ARBITRATED, YOU AND WE WILL EACH GIVE UP OUR RIGHT TO A TRIAL BY THE COURT OR A JURY TRIAL.**
3. **IF A DISPUTE IS ARBITRATED, YOU WILL GIVE UP YOUR RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR CLASS MEMBER ON ANY CLASS CLAIM YOU MAY HAVE AGAINST US.**
4. **THE INFORMATION YOU AND WE MAY OBTAIN IN DISCOVERY FROM EACH OTHER IN ARBITRATION IS GENERALLY MORE LIMITED THAN IN A LAWSUIT.**
5. **OTHER RIGHTS THAT YOU AND WE WOULD HAVE IN COURT MAY NOT BE AVAILABLE IN ARBITRATION.**
6. **EVEN IF A DISPUTE IS ARBITRATED, WE CAN STILL REPOSSESS YOUR VEHICLE IF YOU DO NOT HONOR YOUR CONTRACT OR LEASE AGREEMENT AND YOU OR WE MAY SEEK PROVISIONAL REMEDIES FROM A COURT.**

In this Arbitration Agreement, “you” and “your” refer to the customer(s) signing below, and “we,” “us” and “our” refer to the Seller/Lessor signing below. This Arbitration Agreement is, by this reference, incorporated into and becomes a part of the Retail Installment Contract and/or Purchase Agreement or Lease Agreement and/or Lease Order between you and us signed on the date below.

Any claim or dispute, whether in contract, tort or otherwise (including the interpretation and scope of this clause and the arbitrability of any issue), between you and us or our employees, agents, successors or assigns, which arises out of or relates in any manner to the purchase, financing, or lease of your vehicle or any resulting transaction or relationship (including any such relationship with third parties who do not sign this Arbitration Agreement, such as an assignee of the Contract or Lease Agreement) shall, at your or our election (or the election of any such third party), be resolved by neutral, binding arbitration and not by a court action. Any claim or dispute is to be arbitrated on an individual basis and not as a class action. **You expressly waive any right you may have to arbitrate a class action. This is called the “class action waiver.”**

The Agreement's very first sentence, which is bolded and boxed in, refers to "you" and "us". The next six sentences are numbered, bolded, and capitalized and refer to "we," "us," "you," and "your." The following paragraph defines "you" and "your" as referring "to the customer signing below" and "we," "us" and "our" as referring "to the Seller/Lessor signing below." The next paragraph, which is the delegation paragraph, speaks of claims or disputes ... "between you and us or our employees, agents, successors or assigns." Claim or dispute is modified by the phrase, "which arises out of or relates in any manner to the purchase, financing, or lease of your vehicle or any resulting transaction or relationship (including any such relationship with third parties who do not sign this Arbitration Agreement, **such as an assignee** of the Contract or Lease Agreement)." (emphasis added). In other words, the example the Agreement gives of a third party is in fact an assignee.

The Court finds that the Arbitration Agreement itself, and the delegation clause in particular as specifically challenged by Plaintiff, are ambiguous in their definition and use of the pronouns "we," "our," "us," "you," and "yours" in the context of attempting to apply the arbitration agreement to a dispute involving these Defendants who are neither signatories nor assignees of the Agreement. Based on the language of this agreement, no reasonable person signing as purchaser could be expected to understand and appreciate that she was agreeing to arbitrate any potential issue that might arise between her and a third party to this agreement including being attacked and physically harmed by the third party during a repossession of her vehicle.² Further, to the extent

² Defendant argues that a slight causal connection exists between the claims asserted by Plaintiff and the purchase agreement between Plaintiff and U.S. Auto Sales/Finance, citing *Wedemeyer v. Gulfstream Aerospace Corp.*, 324 Ga.App. 47, 749 S.E.2d 241 (2013). *Wedemeyer* involved an arbitration agreement between Wedemeyer (the employee) and Gulfstream (Wedemeyer's employer). Wedemeyer was discharged and subsequently brought suit against Gulfstream for defamation and intentional torts connected to findings made by Gulfstream related to Wedemeyer's discharge from employment. The court found that the claims arose out of Wedemeyer's

the delegation clause attempts to submit this action between Plaintiff and Defendants where Plaintiff alleges personal injuries caused by the Defendants' negligence and assault and battery, the clause is unconscionable. Accordingly, these Defendants cannot compel arbitration of this dispute.

For each of the reasons set forth above, the Court hereby denies Defendants' Amended Motion to Dismiss and Compel Arbitration.

IT IS SO ORDERED.

Robert J. Bonds
Presiding Judge
14th Judicial Department

employment with Gulfstream; the claims obviously had at least a slight connection to the employment relationship and both Wedemeyer and Gulf Stream were actual parties to the arbitration agreement. Here, we have third parties, who are neither signatories nor assignees, who are alleged to have committed intentional torts resulting in injuries to Plaintiff. The Court finds that these facts do not give rise to even a slight connection to Plaintiff's relationship with U.S. Auto Sales/Finance.



Hampton Common Pleas

Case Caption: Sade Monique King VS Westlake Financial Services, LLC ,
defendant, et al
Case Number: 2024CP2500202
Type: Order/Other

So Ordered

s/ Robert Bonds, 2770