STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Ethan Tyler Vanfossen and Corey J. Davis, on behalf of themselves and all others similarly situated, Plaintiffs vs. Love Chevrolet Company, Defendant.	Civil Action No.: 2022-CP-40-00654

ORDER DENYING DEFENDANT'S MOTION TO STAY AND COMPEL ARBITRATION

This matter came before the Court for hearing on Defendant Love Automotive Group, Inc.'s Motion to Stay and Compel Arbitration. The Motion was argued before me on April 17, 2023, with Dave Maxfield appearing on behalf of the Plaintiffs Ethan Tyler Vanfossen and Corey J. Davis, and Gregory J. Studemeyer appearing on behalf of the Defendant, Love Chevrolet. For the reasons set forth below, the Court denies Defendant's Motions.

In their complaint, Plaintiffs allege that they each separately purchased 2020 Chevrolet Silverado 1500 trucks from Love's dealership, and that in each transaction Love misrepresented that the trucks had 12,000 lb. towing capacity. Plaintiffs later discovered that the actual towing capacity was only 6,600 lbs. and, in their complaint state that Defendant, through advertising and otherwise, grossly exaggerated the towing capacity of similar trucks equipped with 2.7-, 3.0- and 5.3-liter engines to at least 1,081 South Carolina consumers. The Plaintiffs sued on behalf of

themselves and the other consumers, alleging that Defendant Love's acts violated the South Carolina Motor Vehicle Dealer's Act, §56-15-10, et. seq., and constitute breach of warranty, and misrepresentation. In response, Defendant Love argues that Plaintiff's claims must be stayed and arbitrated individually based upon an arbitration agreement executed at the time of sale. In response, Plaintiffs point out first that Love, having incorporated its arbitration agreement into the Retail Installment Sales Contract which it then assigned to GM, no longer has the right to compel arbitration. Second, Plaintiffs contend that even if Love retained rights under the arbitration clause, the Court should decline to enforce it under four grounds: (1) it was procured by fraud, (2) that it is unconscionable under the South Carolina Consumer Protection Code, (3) that it unconscionable under common law, and (4) that it violates public policy per the South Carolina Supreme Court's recent decision in *Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 879 S.E.2d 746 (2022), reh'g denied (Nov. 17, 2022). Having reviewed the pleadings,[1] the contracts, and entertained the argument of counsel, the Court agrees and finds that Defendant Love's motions should be denied based on assignability and *Sanders v. Savannah Highway Auto. Co.*, 432 S.C. 328, 332, 852 S.E.2d 744, 746 (Ct. App. 2020).

Assignment of Contract.

As customary in vehicle transactions in South Carolina, the primary contract document for the vehicle purchases is a Retail Installment Sale Contracts ("RISC"). Love prepared the RISC and identified itself as the "Seller-Creditor" in the document. The RISC states that "[t]his contract contains the entire agreement between you and us relating to this contract." The RISC also includes a provision that allows Love to assign its contract rights to a third party. Here, Love assigned its interest to GM Financial regarding both plaintiffs.[2]

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[1] At hearing, Defense counsel implied that Plaintiffs had not filed any "affidavit" in response to its motions. However, the Court's review under these circumstances is confined to the pleadings and the contracts between the parties (which neither party disputes are authentic). Moreover, the only affidavit provided by Defendant is the records custodian affidavit of Ben Hoover attesting to the authenticity of the arbitration agreements.

[2] See, Exhibit B to Plaintiff's Response in Opposition, 4/17/23.

The assignment of the contract to GM Financial creates a problem for Love's argument that arbitration is required. Under South Carolina law, "once a contract is properly assigned... the assignor retains no interest in the right transferred." This rule applies to dealer arbitration agreements too, as the South Carolina Court of Appeals recently held in *Sanders v. Savannah Highway Auto. Co.*, 432 S.C. 328, 332, 852 S.E.2d 744, 746 (Ct. App. 2020), reh'g denied (Jan. 21, 2021), cert. granted (Nov. 10, 2021). There, the Court held that a dealer who assigns a contract containing an arbitration clause no may longer compel arbitration. "The principle is well settled that a valid assignment operates to pass the whole right of the assignor, and that thereafter the assignee stands in the place of the assignor, possessing all rights or remedies available to the assignor." *Sanders v. Savannah Highway Auto. Co.*, 432 S.C. 328, 333, citing *duPont de-Bie v. Vredenburgh,* 490 F.2d 1057, 1061 (4th Cir. 1974). "[W]here a party assigns agreements that include an arbitration clause, **the assignor's 'right to compel arbitration under those agreements is extinguished.'"** In re *Wholesale Grocery Prods. Antitrust Litig.*, 97 F. Supp. 3d 1101, 1106 (D. Minn. 2015) (quoting *HT of Highlands Ranch, Inc. v. Hollywood Tanning Sys., Inc.*, 590 F. Supp. 2d 677, 684–85 (D.N.J. 2008) (internal quotation omitted)), aff'd, 850 F.3d 344 (8th Cir. 2017), amended (May 1, 2017).

Love argues this rule should not apply because its arbitration agreement is in a separate "stand alone" Arbitration Agreement.[3] However, under the FAA, courts must treat arbitration agreements on "the same footing as other contracts." *Palmetto Constr. Grp., LLC v. Restoration Specialists, LLC*, 432 S.C. 633, 639, 856 S.E.2d 150, 153 (2021). Thus, as with any contract, the contract itself must be examined to determine what terms it does – and does not – contain. Here, the Arbitration Agreement relied on by Love expressly states:

"*This Agreement is incorporated into and made a part of all Contract(s) as defined in this Agreement.*" "Contracts" as defined in the agreement refers to "*any agreement(s) between you and us regarding the sale, lease, financing, service or maintenance of the vehicle.*" "Contracts"

[3] See attachment to Affidavit of Ben Hoover, filed 4/14/2022.

thus clearly includes the RISC, which Defendant Love indisputably has assigned to GM Financial. Nothing in the Arbitration Agreement reserves or carves out from the assignment a right for the Love to "hold onto" a right to arbitrate.

Having thus incorporated its Arbitration Agreement into the RISC, which it then assigned away, Love has nothing left to enforce under South Carolina law. "[A] corollary to the principle that an assignee is bound by the arbitration clause in an assigned contract is that "an assignment ordinarily extinguishes the right [of the assignor] to compel arbitration." *Sanders* citing *HT of Highlands Ranch, Inc.*, 590 F. Supp. 2d at 684.

Thus, the Court finds that having chosen to incorporate its Arbitration Agreement without reservation into the RISC, which it then assigned, its motion must be denied.

The Court does not find that the Arbitration Agreement is unenforceable because it was procured by fraud, is unconscionable, or violates public policy. However, because Defendant's Motion is denied based on assignability, this Court does not address these claims any further.

ORDER

For the foregoing reasons, Defendant Love Automotive Group, Inc.'s Motion to Stay and Compel Arbitration is DENIED.

AND IT IS SO ORDERED.

DATED: May 9th, 2023

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Daniel Coble, Judge
Richland County Court of Common Pleas

Columbia, South Carolina

Richland Common Pleas

Case Caption: Ethan Tyler Vanfossen , plaintiff, et al vs Love Chevrolet Company

Case Number: 2022CP4000654

Type: Order/Stay

So Ordered

s/ Daniel Coble, 2774