STATE OF SOUTH CAROLINA)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF GREENVILLE)	**THE 13TH JUDICIAL CIRCUIT**
David Carroll,)	C.A. No. 2012-CP-23-7156
Plaintiff,)	**ORDER GRANTING DEFENDANT'S MOTION TO DISMISS BASED ON ARBITRATION**
vs.)	
Toyota of Greenville, Inc.,)	
Defendant.)	

This matter comes before the Court by way of Defendant's Motion to Dismiss based on Arbitration. This Motion was argued before me on July 8, 2013, with Terry E. Richardson and Brady R. Thomas appearing on behalf of Plaintiff, David Carroll, and Bradford N. Martin and Laura W.H. Teer appearing on behalf of Defendant, Toyota of Greenville.

The Court entered an order granting the Defendant's motion on August 9, 2013. The Plaintiff thereafter timely filed a Rule 59(e) motion to alter or amend, seeking to amend Section F of the August 9, 2013 order as it pertains to "private attorneys general" findings but not to amend the substantive result of the order compelling arbitration. The Court grants Plaintiff's Rule 59(e) motion, withdraws its order of August 9, 2013, and submits this order in its place.

This case involves a binding arbitration clause in a contract between a car dealer and its customer. It requires me to consider the relationship of state and federal law and the concept of preemption in this context.

I must consider, in light of the United States Supreme Court's decisions in *AT&T Mobility, LLC v. Concepcion*, __ U.S. __, 131 S. Ct. 1740 (2011), *Marmet Health Care Center, Inc. v. Brown*, __ U.S. __, 132 S. Ct. 1201 (2012), and *American Express Co. v. Italian Colors Rest.*, __ U.S. __, 133 S. Ct. 2304 (2013), whether the Federal Arbitration Act ("FAA") (codified

as amended at 9 U.S.C. §§ 1-2 *et seq.*), preempts South Carolina state law and public policy invalidating a contract provision, in an arbitration agreement, banning class action suits.

My decision turns on an interpretation of the meaning and breadth of these recent Supreme Court opinions. After analyzing *AT&T Mobility, Marmet Health Care*, and *American Express*, I am bound by the *Supremacy Clause* of the United States Constitution to conclude that the Supreme Court has limited the FAA's saving clause, 9 U.S.C. § 2, and therefore find that: 1) the FAA preempts South Carolina's public policy to provide consumers with a non-waivable right to bring class action suits for violations of the Dealers Act; 2) the saving clause does not apply in the present case to prevent FAA preemption; and 3) preemption applies to Carroll's claim that he is acting as a private attorney general. I grant Defendant's Motion, and order this case be stayed and compel the parties to enter bilateral arbitration. I will start with the facts of this case and then turn to applicable law.

I. PROCEDURAL POSTURE AND FACTUAL BACKGROUND

A. Origin of this Action.

Four Plaintiffs filed their original Complaint in Aiken County against 51 dealers located in 13 counties on August 29, 2006. Plaintiffs filed a "Corrigenda" correcting the original Complaint on September 1, 2006. Plaintiffs then filed their First Amended Complaint on October 31, 2006, with 8 Plaintiffs suing some 324 dealerships ("Defendants" or "Dealers") located in 41 counties. Michael Watts was the Plaintiff who purchased a car from Defendant Toyota of Greenville.

As set forth more fully in the First Amended Complaint, Plaintiffs alleged that: 1) Defendants charged closing fees in violation of the South Carolina Regulation of Manufacturers, Distributors and Dealers Act (the "Dealers Act") contained in South Carolina Code Ann. § 56-15-10 *et seq.* and failed to comply with the requirements in South Carolina Code Ann. § 37-2-

#2

307 (2002) (the "Closing Fee Statute"); 2) Defendants engaged in a civil conspiracy; and 3) Plaintiffs were entitled to declaratory relief.

Plaintiffs then filed a Rule 41(a) Motion to Voluntarily Dismiss Certain Defendants and Defendants filed certain Motions to Dismiss on several grounds. In my Order dated January 31, 2008, I granted the Motion to Dismiss all but seven Defendants. Toyota of Greenville remained as one of the seven. Plaintiffs sought to establish public interest standing which I denied and found that "[this] lawsuit is an action by private individual plaintiffs against private corporate defendants." (January 31, 2008 Order, p. 11).[1]

I further found that no party had waived any substantive or procedural rights or arguments relating to arbitration agreements, including the right to move to dismiss to arbitration. I found that Defendants had been careful throughout the litigation to preserve all rights related to the enforcement of arbitration agreements, which was acknowledged on several occasions by Plaintiffs and this Court. (January 31, 2008 Order, p. 14).

Plaintiffs then filed a Motion to Dismiss Watts and Substitute David Carroll ("Carroll") as to Toyota of Greenville. I issued my Order dated October 7, 2009, allowing Carroll to replace Watts as the named representative as to Toyota of Greenville. At that time, I found that the case is being prosecuted pursuant to a "private attorneys general" provision under the Dealers Act. Toyota of Greenville filed a Motion to Alter or Amend on January 19, 2010, specifically objecting to the "private attorneys general" finding on several grounds. This Motion was denied by my Order of February 5, 2010.

On August 31, 2012, I signed an Order severing Carroll's claims against Toyota of Greenville and transferring the case to Greenville County. On July 11, 2012, the Chief Justice of

[1] Plaintiffs filed no Rule 59(e) Motion objecting to this finding.

#3

the South Carolina Supreme Court assigned to me all the severed cases, including *Carroll v. Toyota of Greenville.*

B. The Facts Underlying Carroll's Claims.

Carroll, through the First Amended Complaint, is suing "for the benefit of all South Carolina car buyers whom paid administrative fees to [Toyota of Greenville] ... in the past four years..."[2] In 2005, Carroll began looking for a car to purchase for his life-partner, Kathy Steading. Carroll was a former General Manager of a large corporation and was the Office Manager for a large, prominent South Carolina law firm. Steading, who accompanied him to Toyota of Greenville, was a paralegal at the same firm with 15 years of experience. Carroll gave Toyota of Greenville a bottom line price of $27,000, which Toyota of Greenville accepted.

Carroll decided to finance the purchase, and Toyota of Greenville presented him with a Retail Installment Sales Contract. The contract was between Carroll and Toyota of Greenville and later assigned to World Omni.

On the front page, the contract contained two paragraphs, in bold print, labeled **"ARBITRATION CLAUSE – IMPORTANT - PLEASE REVIEW - PROTECT YOUR LEGAL RIGHTS..."** The Arbitration Clause provided that any dispute between Carroll and Toyota of Greenville would be decided by arbitration and not in a court or by jury trial. The Clause further stated that the parties agreed that the transaction involved interstate commerce and that the contract was subject to and governed by the FAA.

The Clause also provided in bold and all capital letters that Carroll would give up his right to participate as a class representative or class member in any class claim he may have against Toyota of Greenville, including any right to class arbitration or any consolidation of individual arbitrations.

[2] First Amended Complaint dated October 28, 2006, ¶¶ 398-99, pp. 63-64.

The Clause further provided:

> ...to the extent permitted by law, the arbitrator shall not have any authority to award punitive damages in any Dispute... If any part of this Arbitration Clause, other than waivers of class action rights, is deemed or found to be unenforceable for any reason, the remainder shall remain enforceable.[3]

Toyota of Greenville requested Carroll to initial right underneath the Arbitration Clause, and Carroll admitted he did.[4] Carroll then signed the Contract in full under highlighted language where he acknowledged receiving a completely filled in copy on October 29, 2005.[5] Carroll stated he did not read the Arbitration Clause prior to signing,[6] but admitted that if he had, he would have understood the implications of arbitrating any disputes or would have asked someone to explain the Clause.[7]

II. CONCLUSIONS OF LAW

A. Arbitration.

The question of arbitrability is an issue for the courts. *Partain v. Upstate Auto. Group*, 386 S.C. 488, 689 S.E.2d 602 (2010). At the outset, I recognize that there is a strong presumption in favor of the validity of arbitration agreements, because both federal and state policy favor them. *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20 (1991); *Herron v. Century BMW*, 387 S.C. 525, 531, 693 S.E.2d 394, 397 (2010) [Herron I]. Anyone challenging the enforceability of an arbitration agreement bears the burden of proving the provision is unenforceable. *Green Tree Fin. Corp. – Ala. v. Randolph*, 531 U.S. 79, 91 (2000).

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[3] Carroll also signed an Arbitration Agreement on October 6, 2007 when he purchased a second car from Toyota of Greenville. There is a dispute between the parties as to the scope of this action; however, I need not answer that question at this time. The analysis of the 2005 Clause applies equally to the 2007 Arbitration Agreement, with the exception that the 2007 Arbitration Agreement did not have the same punitive damages language.

[4] Carroll Dep., p. 65, ll. 20-25.

[5] Carroll Dep., p. 54, l. 23 – p. 55, l. 22. Carroll did not have to agree to arbitration. He admitted that he could have paid cash or arranged his own financing. Carroll Dep., p. 105, ll. 15-18. Toyota of Greenville also said arbitration was not required, and it had other lenders available that did not request arbitration. Rick Turk Dep., p. 8, ll. 8-16.

[6] Carroll Dep., p. 59, l. 12-13; p. 97, ll. 17-20. Because Steading wanted a gold colored car, Toyota of Greenville had to locate one with another dealer. Carroll Dep., p. 50, ll. 10-17. Carroll had ample opportunity to read the paperwork in the several days before the car actually arrived.

[7] Carroll Dep., p. 59, l. 1 – p. 64, l. 19.

B. Adhesion Contract.

The parties dispute whether the Arbitration Clause is a contract of adhesion. Whether a contract is one of adhesion is merely the beginning point in the analysis of whether the contract is unconscionable. *See Lackey v. Green Tree Fin. Corp.*, 330 S.C. 388, 394, 498 S.E.2d 898, 901 (Ct.App.1998). The interpretation of this Arbitration Clause is not affected by the issue of adhesion.

C. Scope of the Arbitration Clause.

The Arbitration Clause covers "any dispute" between the parties. Since Carroll does not dispute that this action is within its scope, I find Carroll's action is within the scope of the Clause. *See Towles v. United HealthCare Corp.*, 338 S.C. 29, 524 S.E.2d 839 (Ct.App.1999) (any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration).

D. Unconscionability.

In South Carolina, unconscionability is defined 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 accept them. *Herron I*, 387 S.C. at 532, 693 S.E.2d at 398.

1. Absence of Meaningful Choice.

Absence of meaningful choice speaks to the fundamental fairness of the bargaining powers in entering into the contract. *Id.* Therefore, I must consider the relative disparity in the parties' bargaining power, the parties' relative sophistication, the nature of the injuries suffered by the Plaintiff, whether the Plaintiff is a substantial business concern, whether there is an element of surprise in the inclusion of the challenged clause, and the conspicuousness of the clause. *Id.*

Carroll is an educated man who has managed other people and held positions of responsibility in substantial business and professional concerns. He has not established that he lacked the business judgment necessary to make him aware of the implications of the Arbitration Agreements. His decision not to read the Arbitration Clause does not affect his meaningful choice in entering into the Clause.

Since Carroll purchased the car for Steading, it was not his primary form of transportation. He does not allege that he was subject to any duress in signing and admits that he had time to read along with the Finance & Insurance Manager before signing.[8]

Carroll's injuries are very small as the amount at stake is a $189 closing fee. The Clause is highlighted in the Agreement with bold, capitalized letters and Carroll was required to initial immediately below the Clause. The Clause was labeled as an arbitration clause in bold, capital font; so it is conspicuous and there is no surprise in its enforcement.

Therefore, I find that Carroll had a meaningful choice in entering into the Arbitration Clause.

2. Oppressive One-Sided Terms.

Upon review of the Arbitration Clause, I do not find that it contains "terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them." *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 25, 644 S.E.2d 663, 668 (2007). The Clause provides for a mutuality of remedies between the parties, with each able to pursue self-help remedies in court or to pursue action in small claims court.

The only limitation in the Clause is a limitation on punitive damages. The Clause only limits punitive damages, however, to the extent allowed by law. In the present case, the limitation is simply not allowed. Furthermore, the severance clause removes the provision

[8] Carroll Dep., p. 81, ll. 11-23; p. 82, ll. 21-23.

limiting punitive damages, allowing the rest to survive. Carroll will have the right to punitive damages to the same extent they would be available outside of arbitration.[9] Therefore, I find that the Arbitration Clause is not unconscionable.

E. Preemption of the Public Policy Rule that Class Actions cannot be Prohibited in Dealers Act Cases.

Having found the Arbitration Clause is not unconscionable, I must now turn my attention to Carroll's argument that the Clause is against South Carolina public policy. The *Supremacy Clause* provides that "the Laws of the United States ... shall be the supreme Law of the Land", *U.S. Const. art. VI, cl. 2*, and any state law that "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" is preempted by the *Supremacy Clause*. *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941).

1. The FAA and the Saving Clause.

As federal substantive law, the FAA preempts contrary state law. *See Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 400 (1967); *see also AT&T Mobility*, 131 S. Ct. at 1748. Congress enacted the FAA in response to widespread judicial hostility to arbitration. *See AT&T Mobility*, 131, S. Ct. at 1757. The Act provides:

> 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 ... 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. As stated by the United States Supreme Court in *American Express*:

> This text reflects the overarching principle that arbitration is a matter of contract. And consistent with that text, courts must "rigorously enforce" arbitration agreements according to their terms, including terms that "specify with whom [the parties] choose to arbitrate their disputes," and "the rules under which that arbitration will be conducted." That holds true for claims that allege a violation of a federal statute, unless the FAA's mandate has been "'overridden by a contrary congressional command.'".

[9] Punitive damages are not limited under Carroll's 2007 Agreement.

American Express, 133 S. Ct. at 2309 (internal citations omitted).

The FAA's preemption power has an exception: it does not require the enforcement of arbitration agreements on "such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2 (also known as the "saving clause"). This saving clause preserves generally applicable contract defenses, such as fraud or duress and ensures that they are not preempted. *See Kilgore v. KeyBank, Nat'l Ass'n*, Nos. 09-16703, 10-15934, 2013 U.S. App. LEXIS 7312 (9th Cir. April 11, 2013); *see also AT&T Mobility*, 131 S. Ct. at 1746.

Carroll does not argue such general contract defenses; rather, he argues that the saving clause applies because it takes away "statutory rights vested in consumers by the Dealers Act." In particular, Carroll claims that the Arbitration Clause takes away "(1) the right to bring a private attorney general action on behalf of all affected purchasers; (2) his statutory right to seek group injunctive relief; and (3) his statutory right to seek punitive damages." (Carroll's Memorandum in Opposition, p. 8).

The holding of *AT&T Mobility* "plainly prohibited application of the general contract defense of unconscionability to an otherwise valid arbitration agreement." *Muriithi v. Shuttle* Express, 712 F.3d 173 (4th Cir. 2013). As the Ninth Circuit Court of Appeals has recently stated:

> Parties have often cited the savings clause in an attempt to defeat a motion to compel arbitration. The United States Supreme Court has been moved to step in and stop some efforts to avoid FAA preemption, most notably in its [*AT&T Mobility*] decision.

Mortensen v. Bresnan Commc'ns, LLC, No. 11-35823, 2013 U.S. App. LEXIS 14211 (9th Cir. July 15, 2013).

2. ***AT&T Mobility* and its Progeny.**

AT&T Mobility directly addressed whether the FAA's saving clause preempted a California state rule, known as the *Discover Bank* rule,[10] which invalidated the majority of class action waivers in contracts as unconscionable. The plaintiff in that case purchased mobile phone service from AT&T. The service contract signed by the class members included a provision requiring all disputes to be arbitrated individually and not collectively.

The Ninth Circuit had earlier found that the FAA did not preempt the *Discover Bank* rule, but the United States Supreme Court reversed, and held that even general contract defenses, such as unconscionably, are preempted if they "stand as an obstacle to the accomplishment" of "ensur[ing] that private arbitration agreements are enforced according to their terms." *AT&T Mobility*, 131 S. Ct. at 1748. The United States Supreme Court concluded for the first time that even generally applicable state law rules are preempted if in practice they have a "disproportionate impact" on arbitration or "interfere with fundamental attributes of arbitration and thus create a scheme inconsistent with the FAA" *Id.* at 1747-48.

In *Marmet Health Care Center, Inc., v. Brown*, __ U.S. __, 132 S. Ct. 1201 (2012), the Supreme Court once again limited the saving clause as it did in *AT&T Mobility*. The Supreme Court held that the FAA preempted a West Virginia law invalidating arbitration clauses in nursing home admission agreements adopted before an occurrence of negligence resulting in a personal injury or wrongful death:

> When state law prohibits... the arbitration of a particular type of claim, the analysis is straight forward: The conflicting rule is displaced by the FAA.

Id. at 1203 (quoting *AT&T Mobility*, 131 S. Ct. at 1747).

[10] Carroll argues that *AT&T Mobility* is distinguishable from the present case because it does not address state statutory rights. I disagree. The U.S. Supreme Court in *AT&T Mobility* addressed a judicial interpretation of Cal. Civ. Code Ann. § 1668, which rendered contracts unenforceable if they were unconscionable. The Court then specifically held that "requiring the availability of classwide arbitration interferes with fundamental attributes of arbitration and thus creates a scheme inconsistent with the FAA." *AT&T Mobility*, 131 S. Ct. at 1748.

The fact that the Dealers Act expressly permits collective actions does not alter the FAA's preemption. The Supreme Court held in *American Express Co. v. Italian Colors Rest.*, __ U.S. __, 133 S. Ct. 2304 (2013):

> A pair of our cases brings home the point. In *Gilmer* [*v. Interstate / Johnson Lane Corp.*, 500 U.S. 20 (1991)], we had no qualms in enforcing a class waiver in an arbitration agreement even though the federal statute at issue, the Age Discrimination and Employment Act, expressly permitted collective actions. We said that statutory permission did "not mean that individual attempts at conciliation were intended to be barred." *Id* at 32.

American Express, 133 S. Ct. at 2311.

Therefore, these Supreme Court cases stand for the proposition that any state law contract defense based on unconscionability or otherwise, that has a disproportionate effect on arbitration is displaced by the FAA.[11] The FAA's saving clause will not bar preemption in such cases. I am bound by the *Supremacy Clause* to apply United States Supreme Court precedent and do so here.

3. The South Carolina Public Policy Rule Invalidating Class Action Waivers in Dealers Act Cases.

I must apply the Supreme Court precedent to South Carolina's public policy rule invalidating class action waivers in Dealers Act cases.

The South Carolina rule arose in the context of this case when the parties were still joined in one action. Christine and Michael Watts entered into a contract with Co-Defendant, Century BMW, for the purchase of a car. The transaction included the execution of an arbitration agreement. I found that the arbitration agreement was unconscionable and unenforceable and denied the Motion to Compel Arbitration. Century then appealed, and the South Carolina

[11] Courts across the country are following the *AT&T Mobility* line of cases in compelling arbitration in class action waiver cases, including the Fourth Circuit Court of Appeals. *See Muriithi v. Shuttle Express, Inc.*, 712 F.3d 173 (4th Cir. 2013).

Supreme Court held that the agreement was not unconscionable.[12] However, the Court reasoned that the arbitration provision prohibiting class actions was against public policy. The arbitration provision would ordinarily be severed pursuant to the severance clause; however, since Century insisted it did not want class action arbitration, the Supreme Court affirmed in result my original order denying the Motion to Compel Arbitration. *Herron I*, 387 S.C. at 525, 693 S.E.2d at 394.

The Court in *Herron I* interpreted the Dealers Act as providing consumers with a non-waivable right to bring class action suits for violations. The Court held that any contract prohibiting a class action suit violated the state's public policy and was void and unenforceable. The Court focused on the fact that the Legislature expressly granted the right to collective action in the Dealers Act. It was further concerned that the consumers would be discouraged from bringing cases with small damages if they couldn't bring collective actions.

The decision was appealed to the United States Supreme Court, which vacated the decision and remanded it for reconsideration in light of *AT&T Mobility*. Because the issue of preemption was not originally brought before me, and not preserved for review in the South Carolina proceedings, the South Carolina Supreme Court reinstated their initial opinion. *Herron v. Century BMW*, 395 S.C. 461, 719 S.E.2d 640 (2011) [Herron II].

4. The Effect of *AT&T Mobility* on the Public Policy Rule Invalidating Class Action Waivers in Dealers Act Cases.

Carroll contends that the public policy decision in *Herron I* invalidating class action waivers should be applied in the present case. He argues that the Clause is void *ab initio* because it conflicts with South Carolina statutory law. Toyota of Greenville contends that the public policy holding "stand[s] as an obstacle to the accomplishments" of "ensur[ing] that private

[12] In analyzing the facts, the South Carolina Supreme Court held that the Wattses had a meaningful choice in signing the contract. *Id.* at 533, 693 S.E.2d at 398. It also reasoned that South Carolina jurisprudence forbade allowing the Wattses to invalidate the enforceability of the arbitration agreement by claiming they did not read it. *Id.*

arbitration agreements are enforced according to their terms." *AT&T Mobility*, 131 S. Ct. at 1748.

Toyota of Greenville also contends that the public policy holding disproportionately affects arbitration agreements and thus is preempted by the FAA, following *AT&T Mobility*. I agree. The rationale in *Herron I* of the Dealers Act providing a non-waivable right for class arbitration was rejected by the United State Supreme Court in *Gilmer*[13] and once again in *AT&T Mobility*. *See AT&T Mobility*, 131 S. Ct. at 1749 n.5. I find that the Arbitration Clause is not rendered void because of a conflict with South Carolina statutory law where, as here, that law is preempted by the FAA.

Carroll argues that the text of the Dealers Act shows the South Carolina Legislature intended to preclude a waiver of classwide arbitration, citing to S.C. Code Ann. § 56-15-130. The text of the Dealers Act does not restrict a waiver of collective action with the clarity necessary to avoid preemption by the FAA.[14] I find as the Court did in *American Express* that statutory permission does "not mean that individual attempts at conciliation were intended to be barred." *American Express*, 133 S. Ct. at 2311. Additionally, this argument overlooks S.C. Code Ann. § 56-15-80 which provides that the Act applies to agreements "between a manufacturer, wholesaler or distributor with a motor vehicle dealer", and not the consumer.

Finally, *Herron I*'s reasoning that class actions cannot be waived under the Dealers Act because damages are typically small was expressly rejected in *American Express*:

> ...But the fact that it is not worth the expense involved in *proving* a statutory remedy does not constitute the elimination of the *right to pursue* that remedy.

[13] *Gilmer v. Interstate / Johnson Lane Corp.*, 500 U.S. 20 (1991).

[14] When Congress has restricted the use of arbitration, it has done so with clarity. *See* 7 U.S.C. § 26(n)(2) (2006 ed., Supp. IV) (No arbitration agreement shall be valid if the agreement requires arbitration arising under this section); 15 U.S.C. § 1226(a)(2) (2006 ed.) (Motor vehicle franchise contracts that provide for arbitration may only be used if all parties consent in writing).

American Express, 133 S. Ct. at 2311. Additionally, insofar as Carroll has the right, should he prevail in arbitration, to recover attorneys' fees and costs, he does not forfeit this right by pursuing arbitration. *See, e.g.*, *Adkins v. Labor Ready, Inc.*, 303 F.3d 496, 502 n. 1 (4th Cir. 2002) (citing *Gilmer*, 500 U.S. at 27-28).

Therefore, I must find that *Herron I* is no longer applicable law following *AT&T Mobility* and its progeny.

F. Preemption of a Private Attorney General Action.

Carroll claims FAA preemption does not apply because he is acting as a private attorney general. I find that Carroll's status as a private attorney general does not prohibit the enforcement of the Arbitration Clause as written.

The FAA preempts any attempt by a court or state legislature to insulate a particular type of claim from arbitration. *Doctor's Assocs., Inc. v. Casarotto*, 517 U.S. 681, 687 (1996). Thus the existing ruling that Plaintiff Carroll is acting as a private attorney general under the Dealers Act does not impede the application of the FAA.

III. CONCLUSION

This is not an easy case as it requires me to interpret Supreme Court authority and apply it to an established South Carolina precedent that its public policy does not allow for class action waivers. The Supreme Court in *AT&T Mobility* and the subsequent cases has instructed me to find that the FAA preempts all laws that do not enforce the intent of the parties, and that have any disproportionate impact on arbitration agreements. Given this directive, I am required by the *Supremacy Clause* of the United States Constitution to find that the South Carolina public policy of no class action waivers in Dealers Act cases is preempted by the FAA. I therefore grant Toyota of Greenville's Motion, and order this case be stayed and compel the parties to enter bilateral arbitration.

Based on the foregoing and after full consideration of the issues herein, IT IS HEREBY ORDERED that Toyota of Greenville's Motion is GRANTED.

AND IT IS SO ORDERED.

Doyet A. Early, III
Presiding Judge

Aiken, South Carolina This 1st day of October, 2013.

FORM 4

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF Greenville

IN THE COURT OF COMMON PLEAS

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2013 OCT 10 P 1:20

CASE NO. 2012 CP-23-7156

David Carroll

PLAINTIFF(S)

Toyota of Greenville Inc

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 or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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

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 (List amount(s) below)
		$
		$
		$

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.

RECEIVED
DEC 09 2013
SC Court of Appeals

Circuit Court Judge | Judge Code | Date

For Clerk of Court Office Use Only

This judgment was entered on the 10 day of Oct, 2013 and a copy mailed first class or placed in the appropriate attorney's box on this 10 day of Oct, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Bradford Neal Martin
Laura Wilcox Howle Teer
Evan Bristow
ATTORNEY(S) FOR THE PLAINTIFF(S)

Terry Richardson Jr
James David Butler
ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Copy to Judge Early

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.