

STATE OF SOUTH CAROLINA )  
COUNTY OF ALLENDALE )  
JOYCE MYERS, )  
Plaintiff, )  
vs. )  
TITLEMAX OF SOUTH CAROLINA, )  
INC. and AFFORDABLE RECOVERY )  
SOLUTIONS a/k/a ARS, )  
Defendants. )

IN THE COURT OF COMMON PLEAS  
C/A: 13-CP-03-147

**RECEIVED**

JUN 29 2015

SC Court of Appeals

ORDER DENYING  
DEFENDANT AFFORDABLE  
RECOVERY SOLUTIONS'  
MOTION TO COMPEL  
ARBITRATION

This matter came before the Court on April 20, 2015, upon Defendant Affordable Recovery Solutions' Motion to Compel Arbitration. Defendant Affordable Recovery Solutions will hereinafter be referred to as ARS. The Plaintiff Joyce Myers was represented at the hearing by Mark Tinsley, and the Defendant ARS was represented by Patrick Higgins. The attorney for the Defendant Titlemax, Adam Yount, was present, but did not argue or take a position at the hearing. After a thorough review of the pleadings, evidence, arguments, memoranda, affidavits, and case law presented by the parties, the Court denies Defendant ARS' Motion to Compel Arbitration on the following grounds.

#1  
PMB

"Arbitration is a matter of contract, and a party cannot be required to arbitrate any dispute which he has not agreed to arbitrate." Zabinski v. Bright Acres Assoc., 346 S.C. 580, 596 (2001). Courts generally hold that broadly-worded arbitration agreements apply to disputes in which a "significant relationship" exists between the asserted claims and the contract in which

the arbitration clause is contained. Id. at 598 (quoting Long v. Silver, 248 F.3d 309 (4<sup>th</sup> Cir. 2001)). "Because even the most broadly-worded arbitration agreements still have limits founded in general contract law, this Court will refuse to interpret any arbitration agreement as applying to outrageous torts that are unforeseeable to a reasonable consumer in the context of normal business dealings." Aiken v. World Finance Corporation of South Carolina, 373 S.C. 144, 151 (2007).

Therefore, the Court must analyze whether there is a "significant relationship" between the Loan Agreement and the allegations made in the Complaint. The Loan Agreement, attached as Exhibit A to the Defendant ARS' Memorandum in Support of its Motion to Compel Arbitration, has a broadly-worded provision that covers "all federal and state law claims" and "all common law claims, based upon contract, tort, fraud, or other intentional torts." The Defendant ARS argues that this provision should have put the Plaintiff on notice that their claims would be subject to arbitration.

However, in Paragraph 2 of the Repossession Agreement, attached as Exhibit 1 to the Affidavit of Adam Yount, ARS warranted and agreed that repossessions would be accomplished "without (1) the use of trick, fraud or other deceptive practices, including but not limited to impersonating a law enforcement or court official or other deceptive practices; 2) breach of the peace; 3) force, threat or intimidation; or, 4) any other unlawful means."

The Complaint alleges abusive behavior and conduct, including intentional infliction of emotional distress, battery, assault, and trespass, which, if true, would not have been allowed under the Repossession Agreement. Even though repossession was included as a possible remedy under the Loan Agreement, the Plaintiff would not expect the alleged conduct from reading the

#2  
PnB

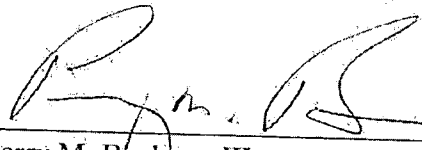
Repossession Agreement between Defendants Titlemax and ARS, which governs the conduct in which the Defendant ARS was supposed to use in performing its duties.

The Court finds that the Loan Agreement, which contains the arbitration provision, does not have a "significant relationship" to the alleged claims. Following Aiken and Chassereau, the Court additionally finds that the conduct alleged, if true, was unforeseeable at the time the parties executed the agreement to arbitrate. Therefore, there was no meeting of the minds between the parties and the arbitration provision does not apply to the facts currently before the Court.

For the reasons set forth above, the Court denies Defendant ARS' Motion to Compel Arbitration.

IT IS SO ORDERED this 30<sup>th</sup> day of April, 2015.

Walterboro, SC

  
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Perry M. Buckner, III  
Chief Administrative Judge of the Fourteenth Judicial Circuit

#3

FILED FOR RECORD

Joyce Myers

Titlemax of South Carolina, Inc.

2015 JUN 19 AM 11:42

PLAINTIFF(S)

DEFENDANT(S)

ELAINE SABB  
CLERK OF COURT  
ALLENDALE COUNTY, S.C.

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), 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

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 :

*Motion to Reconsider filed 5/15/2015 is respectfully denied. Mark Tinsley appeared for the Plaintiff and Patrick Higgins appeared for Defendant Affordable Recovery Solutions. Adam Yant represents Defendant Titlemax but did not appear.*

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.

Circuit Court Judge

2122

Judge Code

6/19/2015

Date

