STATE OF SOUTH CAROLINA COUNTY OF KERSHAW Robert D. Miles *Plaintiff*, v. Lugoff Toyota, *Defendant*.	IN THE COURT OF COMMON PLEAS Civil Action No. 2014-CP-28-817 ORDER GRANTING MOTION TO DISMISS IN FAVOR OF ARBITRATION

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JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

This matter came before the Court by way of the Defendant Lugoff Toyota's motion to dismiss or alternatively to stay proceedings and compel arbitration under the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.* (the "FAA"). Defendant argues that the Court lacks subject matter jurisdiction over any dispute regarding the Plaintiff's purchase of two vehicles from Defendant as described in the Complaint because the parties have contractually agreed to arbitrate. After careful consideration of the parties' submissions and arguments, the Court hereby grants Defendant's motion for the reasons set forth below.

I. Facts

The following facts appear from the Complaint and the affidavits submitted by the parties:

Plaintiff participated in two vehicle transactions with the Defendant, dated July 11, 2014 and July 14, 2014. (Affidavit of Trevor Reames at ¶ 2). The first transaction involved the purchase of a Toyota Tundra truck, toward which Plaintiff traded in a personal vehicle. (Retail Buyer's Order dated 7/11/14). The second transaction involved the purchase of a Toyota Tacoma truck, toward which Plaintiff traded in the Toyota Tundra. (Retail Buyer's Order dated 7/14/2014). Both transactions included the purchase of an extended warranty or service contract

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from Fidelity Warranty Car Care, a Florida company. (Retail Installment Sales Contracts dated 7/11/14 and 7/14/14). One of the transactions was financed by a federal credit union. (Retail Buyers Order 7/14/14).

The retail buyer's orders used in both transactions contained the following notice in bold, capital letters: **"ARBITRATION IS REQUIRED BY THIS BUYERS ORDER AS SET FORTH IN THE ARBITRATION AGREEMENT EXECUTED HEREWITH.** (Retail Buyers Orders 7/11/14 and 7/14/14). The Plaintiff also signed identical arbitration agreements in each transaction. The arbitration agreements provide in pertinent part that:

> Any claim or dispute, whether in contract, tort, statute or otherwise (including the interpretation and scope of this Arbitration Agreement, and the arbitrability of the claim or dispute), between you and us or our employees, agents, successors or assigns, which arises out of or relates to your credit application, purchase, lease, or condition of this vehicle, your purchase, lease agreement or financing contract or any resulting transaction or relationship (including any such relationship with third parties who do not sign your purchase, lease agreement, or financing contract) shall at your or our election, be resolved by neutral, binding arbitration and not by a court action.

(Arbitration Agreements dated 7/11/14 and 7/14/14).

Plaintiff alleges that he was subjected to high pressure sales tactics by the Defendant and that these tactics made it difficult for him to understand the details of the transactions taking place. However, Plaintiff conceded that he signed the paperwork at oral argument. Plaintiff also stated at the hearing that he was seeking in excess of $90,000 in compensatory damages. In contrast, the affidavit and statement of account filed by Plaintiff stated that Plaintiff was seeking $10,575 in compensation from Defendant.

The matter came before the Court for hearing on November 19, 2015. Plaintiff and counsel for Defendant were present.

II. The FAA Controls.

The FAA provides that a written provision in a 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." 9 U.S.C. § 2 (1988). The United States Supreme Court has interpreted the words "involving commerce" broadly. The words "involving commerce" are the functional equivalent of "affecting commerce," which typically indicates Congress' intent to exercise its commerce power in full. *Allied–Bruce Terminix Co. v. Dobson,* 513 U.S. 265, 274 (1995).

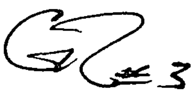
Here, the contract involves interstate commerce. Contracts to purchase or finance vehicle generally involve interstate commerce. *See York v. Dodgeland of Columbia, Inc.*, 406 S.C. 67, 79, 749 S.E.2d 139, 145 (Ct.App. 2013) (citing *Stout v. J.D. Byrider*, 228 F.3d 709, 715 (6th Cir. 2000) for the proposition that contracts for the purchase and financing of a vehicle involve interstate commerce). Additionally, the arbitration agreements here specifically provide that "[t]he parties agree that the transaction involves interstate commerce." (Arbitration Agreements dated 7/11/14 and 7/14/14). Plaintiff also purchased an extended warranty from a Florida corporation in both transactions. Finally, one purchase was financed by a federal credit union.

Accordingly, the FAA controls.[1]

III. The FAA Requires Arbitration of this Dispute.

The FAA provides that arbitration agreements are valid save upon "such grounds as exist at law or in equity for the revocation of any contract." 9. U.S.C. § 2. One such ground is unconscionability. The Court has reviewed the arbitration clause at issue and does not find it

[1] Because the FAA applies, the retail buyers order here is not required to comply with the requirements of S.C. Code Ann. §15-48-10(a). *Soil Remediation Co. v. Nu-Way Envtl., Inc.,* 323 S.C. 454, 476 S.E.2d 149 (1996) (where the FAA applies, it preempts the notice provisions of the South Carolina Uniform Arbitration Act).



unconscionable. While the Arbitration Agreement may be a contract of adhesion, such contracts are not per se unconscionable. *York*, 406 S.C. at 86, 749 S.E.2d at 149.

Moreover, the agreement does not contain oppressive or one-sided terms. It does not prevent the arbitrator from awarding legally recoverable damages. It requires Defendant to advance any arbitration filing fee required on the part of the Plaintiff up to $2,500. Both parties have mutuality of remedy. Defendant may resort to self-help remedies without arbitration, but Plaintiff may also sue Defendant in Magistrate's Court without proceeding to arbitration.

The Court does note that the arbitration agreement precludes Plaintiff from pursuing a class action. However, in cases involving the FAA, arbitration clauses containing class action waivers or prohibitions cannot be invalidated on public policy grounds. *York*, 406 S.C. at 93, 749 S.E.2d at 153.

Having found that the arbitration agreement is enforceable, the Court's inquiry ends. The arbitration agreement here contains a delegation clause. It provides that all disputes "including the interpretation and scope of this Arbitration Agreement, and the arbitrability of the claim or dispute" are subject to mandatory arbitration. While issues such as the scope of the arbitration clause are ordinarily for the court, this rule does not apply where, as here, the parties expressly provide otherwise. *Zabinsky v. Bright Acres Assocs.*, 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001) ("[t]he question of the arbitrability of a claim is an issue for judicial determination, *unless the parties provide otherwise*."). Any remaining challenges to arbitration are for decision by the arbitrator.

Additionally and alternatively, the Court concludes that the claims asserted by Plaintiffs fall within the scope of the arbitration agreement. The agreement is broad, and requires arbitration of any claim, whether in contract, tort, statute or otherwise between the parties and

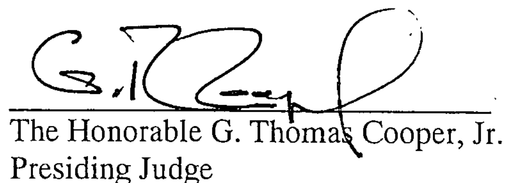
arising out of the purchase or the condition of the vehicle. Plaintiff's claim arises from his purchase of two Toyota trucks. To the extent that there is any doubt regarding the scope of the arbitration clause, the Court must give due regard to the federal policy favoring arbitration, and any ambiguities as to the scope of the arbitration clause must 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). Unless the Court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered. *Zabinski*, 346 S.C. at 597, 553 S.E.2d at 118.

IV. Conclusion

The Court concludes that this transaction is governed by the FAA. The Court also concludes that the agreement is not unconscionable, and that any remaining issues with respect to arbitrability are for the arbitrator. Alternatively, the Court believes that the claims asserted in this case fall within the scope of the arbitration clause. It is therefore ORDERED, ADJUDGED, and DECREED that:

1. Defendant's motion is granted;
2. This case is hereby dismissed in favor of arbitration.

IT IS SO ORDERED.



The Honorable G. Thomas Cooper, Jr.
Presiding Judge

Nov. 30, 2015