STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HAMPTON	)	CIVIL ACTION NO.: 15-CP-25-278
ROBERT H. CROSBY,	)	
	)	
Plaintiff,	)	
	)	**ORDER**
v.	)	
	)	
DRIVETIME CAR SALES COMPANY, LLC,	)	
Defendant.	)	

This matter came before the Court on November 20, 2015, for hearing on Defendant, Drivetime Car Sales Company, LLC's ("Drivetime") Motion to Dismiss and Motion to Compel Arbitration. Present before the Court was William F. Barnes, III, counsel for Plaintiff Robert H. Crosby, and Walton J. McLeod, IV, counsel for Drivetime.

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Plaintiff filed this action in the Hampton County Court of Common Pleas on July 29, 2015. The Complaint asserts causes of action for breach of express and implied warranty and violations under the Magnuson-Moss Act, 15 U.S.C. § 2301, et seq. Defendant Drivetime filed this Motion to Dismiss on the basis of lack of subject matter jurisdiction and this Motion to Compel Arbitration on the basis of an arbitration agreement entered into by the parties.

This action relates to a 2006 Chevrolet Silverado 1500 Truck the Plaintiff purchased from Drivetime on December 11, 2014. At the time Plaintiff purchased the Truck, Drivetime warranted by expressed and implied warranties that the Truck was free from defects in materials and workmanship and fit for the purpose for which it was purchased[1]. (Compl. ¶ 5). About three months after purchasing the Truck the Plaintiff noticed a knocking noise in the engine and notified Drivetime of the issues as the Truck was under warranty. (Compl. ¶¶ 6-7).

[1] This Court makes no decision on the merits of the Complaint's allegations except to determine that accepting those allegations as true, as the Court is required on a Rule 12(b) motion.

Drivetime advised Plaintiff to find a certified mechanic that accepted credit cards over the phone and that Drivetime would honor the warranty. (Compl. ¶ 8-9). After taking the vehicle to the mechanic, Drivetime refused to honor the warranty. (Compl. ¶ 10). Drivetime then instructed Plaintiff to take the vehicle to Savannah Tire in Savannah, Georgia, to be examined under the warranty. (Compl. ¶ 11). After two trips from Hampton to Savannah, Drivetime denied the warranty claim insisting that Plaintiff was responsible for the repairs. (Compl. ¶ 11).

"The question of the arbitrability of a claim is an issue for judicial determination, unless the parties provide otherwise." Zabinski v. Bright Acres Assocs., 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001). "[A]rbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed to submit." Partain v. Upstate Auto. Group, 386 S.C. 488, 494, 689 S.E.2d 602, 605 (2010)

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Plaintiff relies on Chassereau to oppose Drivetime's motion to compel arbitration because Drivetime's failure to stand behind the warranty is an "illegal or outrageous" act that the Plaintiff could not have foreseen. Chassereau v. Glob. Sun Pools, Inc., 373 S.C. 168, 644 S.E.2d 718 (2007). In Chassereau, the Supreme Court relied on Aiken v. World Finance Corp. of S.C., 373 S.C. 144, 644 S.E.2d 705 (2007) to hold that illegal and outrageous acts that no reasonable person would have foreseen are not arbitrable:

> "Because even the most broadly-worded arbitration agreements still have limits founded in general principle of 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."

Id. at 172, 644 S.E.2d at 720 (quoting Aiken).

The Plaintiff argues that he could not have foreseen that Drivetime would declare to honor the warranty only to later revoke its representation. Therefore, the Plaintiff contends that

Drivetime's failure to honor the warranty takes this dispute outside the scope of any arbitration agreement between the parties.

Defendant Drivetime asserts that the Plaintiff's allegations are within the scope of the party's arbitration agreement. "The range of issues that can be arbitrated is restricted by the terms of the agreement". Aiken, 367 S.C. at 180, 623 S.E.2d at 285. Thus, Drivetime suggests that the Plaintiff lacks the ability to sue in the present forum and that arbitration is appropriate pursuant to the agreement between the parties.

However, a plaintiff "cannot be held to have contemplated that, in signing the arbitration clause, he was agreeing to arbitrate claims arising from allegedly fraudulent conduct." Partain, 386 S.C. at 494, 689 S.E.2d at 605 (refusing to enforce an arbitration agreement where plaintiff-purchaser of a car alleged the defendant-seller committed a "bait-and-switch" by having the plaintiff test drive one car but selling him another). Drivetime's conduct in honoring its warranty only to subsequently deny the warranty claim is the type of conduct contemplated by Chassereau. Therefore, the Defendant's alleged conduct is unforeseeable and outside the scope of the purported arbitration agreement.

Having reviewed the parties' submissions, applicable case law, and hearing argument from counsel, the Defendant's motion for Dismissal and to Compel Arbitration is hereby DENIED.

IT IS SO ORDERED.

Walterboro, South Carolina
December 4, 2015

Perry M. Buckner
Judge, 14th Judicial Circuit