STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	C.A. No.: 2017-CP-10-2018
Patricia Harris and Metric Harris	)	
	)	
Plaintiffs,	)	**ORDER GRANTING DEFENDANT'S MOTION TO COMPEL ARBITRATION, TO STAY LITIGATION AND DISCOVERY; AND TO DISMISS**
vs.	)	
TitleMax of South Carolina, Inc.	)	
Defendant.	)	

This matter came before the Court on Defendant TitleMax of South Carolina, Inc.'s (hereinafter "Defendant" or "TitleMax") Motion to Dismiss, Motion to Compel Arbitration and Stay Litigation and Discovery in the above-captioned case. This motion was filed pursuant to Rules 12(b)(1), (2) and (6), and Rule 26 of the South Carolina Rules of Civil Procedure and according to the provisions of the Federal Arbitration Act. The Defendant submitted memoranda in support of its motion and the Plaintiffs submitted a memorandum and affidavit in opposition. The Court heard argument on September 5, 2017 and also received supplemental briefing from both Plaintiffs and Defendant. After careful consideration of the memoranda of both parties, the able arguments of counsel, and the pleadings and record on file, the Court grants Defendant's motion to compel arbitration, to stay litigation and discovery, and dismisses this case.

FACTUAL BACKGROUND

Based on the information submitted by the parties, the Court notes the following: On July 6, 2015, Plaintiff Metric Harris entered into a Supervised Loan Agreement with the Defendant for a cash loan. Plaintiffs' vehicle was presented for collateral. The Plaintiffs had entered into this agreement several times in the months and years leading up to the executed agreement on July 6, 2015. The Plaintiffs contend the loan was paid off in 2015 and that the Plaintiff received the title

to his vehicle back. Defendant still showed the loan as outstanding in 2016 and a request was made to an independent contractor of Defendant to repossess Plaintiffs' vehicle. Plaintiffs' vehicle was repossessed in December 2016 and Plaintiffs claim that Defendants wrongfully repossessed their vehicle. The vehicle was ultimately returned to Plaintiffs but they claim the vehicle was damaged and they also claim additional damages as a result of the alleged wrongful repossession.

The present motions arise out of the "Waiver of Jury Trial and Arbitration Provision" on the second page of the Supervised Loan Agreement, which is governed by the Federal Arbitration Act ("FAA"). It provides that Plaintiffs and Defendant "agree . . . to submit their disputes to a neutral third person (an 'arbitrator') for a decision," and that the arbitrator "will issue a final and binding decision resolving the dispute." In addition, the Arbitration Provision defines the term "disputes" broadly as:

> (a) all claims, disputes, or controversies arising from or relating directly or indirectly to the signing of this Arbitration Provision, the validity and scope of this Arbitration Provision and any claim or attempt to set aside this Arbitration Provision; (b) all federal or state law claims, disputes or controversies, arising from or relating directly or indirectly to this Loan Agreement (including the Arbitration Provision) . . . (d) all common law claims, based upon contract, tort, fraud, or other intentional torts . . . (g) all claims asserted by you individually against us and/or any of our employees, agents, directors, officers . . . including claims for money damages and/or equitable or injunctive relief.

Plaintiff Metric Harris signed the Agreement in two places: on page 3 and on page 4 acknowledging that the "Waiver of Jury Trial and Arbitration Provision" was "read, underst[ood] and agree[d] to." By his signature, Plaintiff agreed to be bound by Arbitration Provision and to submit the claim to arbitration.

After the Plaintiffs' vehicle was repossessed, Plaintiffs initiated this action against the Defendant for wrongful conversion, wrongful bailment, and negligence. Defendants filed the

present motion in response seeking to compel arbitration, stay discovery and litigation, and to dismiss the action.

STANDARD OF REVIEW

South Carolina favors arbitration. *Rhodes v. Benson Chrysler-Plymouth, Inc.*, 374 S.C. 122, 126, 647 S.E.2d 249, 251 (Ct. App. 2007). "Any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability." *O'Neil v. Hilton Head Hosp.* 115 F.2d 272, 272-74 (4th Cir. 1997) (quoting *Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24, 103 S. Ct. 927, 74 L.E.2d 765 (1983)). In addition, the South Carolina Uniform Arbitration Act, S.C. Code Ann. § 15-48-810, et seq. is preempted by the FAA when the contract involves interstate commerce. *Munoz v. Green Tree Financial Corp.*, 343 S.C. 531, 538 S.E.2d 360 (2001) (citing *Allied-Bruce Terminix Companies, Inc. v. Dobson*, 513 U.S. 265, 115 S.Ct. 834, 130 L.Ed.2d 753 (1995)).

DISCUSSION

A. The Arbitration Provision affects interstate commerce, and therefore, the Federal Arbitration Act governs.

"The FAA applies . . . to any arbitration agreement regarding a transaction that in fact involves interstate commerce, regardless of whether or not the parties contemplated an interstate transaction." *Munoz v. Green Tree Financial Corp.*, 343 S.C. 531, 542 S.E.2d 360 (2001) (citing *Allied-Bruce Terminix Companies, Inc. v. Dobson*, 513 U.S. 265, 115 S.Ct. 834, 130 L.Ed.2d 753 (1995)). To be involved in interstate commerce is the "functional equivalent of 'affecting commerce.'" *Zabinski v. Bright Acres Associates*, 346 S.C. 580, 590, 553 S.E.2d 110, 115 (2001) (citing *Allied-Bruce Terminix Companies, Inc. v. Dobson*, 513 U.S. 265, 115 S.Ct. 834, 130 L.Ed.2d 753 (1995)). To determine whether a contract involves commerce within the meaning of

the FAA, the court must examine the agreement, the complaint, and the surrounding facts. *Id.* at 594, 553 S.E.2d at 117.

Courts have consistently held that transactions involving financing, loan agreements, debt restructuring, and bank transactions do involve interstate commerce. In *Citizens Bank v. Alafabco, Inc.*, 539 U.S. 52, 57-58, 123 S.Ct. 2037, 2041 (2003), the Supreme Court explained the relationship between lending agreements and commerce:

> [W]ere there any residual doubt about the magnitude of the impact on interstate commerce caused by the particular economic transactions in which the parties were engaged, that doubt would dissipate upon consideration of the "general practice" those transactions represent. *Mandeville Island Farms [v. American Crystal Sugar Co.*, 334 U.S. 219] at 236, 68 S.Ct. 996 [1948]. No elaborate explanation is needed to make evident the broad impact of commercial lending on the national economy or Congress' power to regulate that activity pursuant to the Commerce Clause. *Lewis v. BT Investment Managers, Inc.*, 447 U.S. 27, 38-39, 100 S.Ct. 2009 (1980) ("[B]anking and related financial activities are of profound local concern...Nonetheless, it does not follow that these same activities lack important interstate attributes"); *Perez [v. United States*, 402 U.S. 146,] 154-155, 91 S.Ct. 1357 [(1971)] ("Extortionate credit transactions, though purely intrastate, may in the judgment of Congress affect interstate commerce.").

Id., 539 U.S. at 57-58, 123 S.Ct. at 2041.

Though both Plaintiffs and Defendant in the present action are domiciled in South Carolina, the Agreement still affects interstate commerce due to the very nature of the agreement and the transfer of cash loans through a national bank, Wells Fargo. The Agreement also allowed for an opt-out option by sending written notice to the Defendant's legal department in Savannah, Georgia. More importantly, the parties agreed in the Agreement that the transaction involved interstate commerce. Therefore, enforcement of the Arbitration Provision is governed by the FAA.

B. The Arbitration Provision in the Supervised Loan Agreement is a valid and enforceable agreement to arbitrate a dispute that falls within the scope of the Provision.

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1. The Agreement is a valid agreement to arbitrate.

In determining the existence of an arbitration agreement, courts apply general contract law principles. *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 281 (1995). "There is a strong presumption in favor of the validity of arbitration agreements because of the strong policy favoring arbitration." *Towles v. United HealthCare Corp.*, 338 S.C. 29, 37, 524 S.E.2d 839, 844 (Ct. App. 1999). Pursuant to the FAA, a "written provision in any . . . contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract . . . 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; *Dobson*, 513 U.S. at 265, 115 S.C.t at 834.

No such grounds exist in the present case, and there are no denials by either party that the agreement to arbitrate does not exist. TitleMax's loan was accepted and the Agreement containing the Arbitration Provision was signed by Plaintiff Metric Harris. In fact, an Agreement of the same nature was signed on numerous different occasions at Plaintiff Metric Harris' request for a loan from the Defendant, amounting to reading and agreeing to this arbitration provision nine times.[1] In signing the current Agreement, as well as the prior agreements, the parties agreed to arbitrate any disputes, including those alleged in Plaintiffs' Complaint. *See e.g., Munoz*, 343 S.C. at n. 6 ("This rule is consistent with federal cases holding that arbitration agreements governed by the FAA will not be set aside on the ground the arbitration clause was not noticed or explained since the party signing the agreement is presumed to have read it." (citations omitted)). The Agreement also included an option to opt out of the mandatory arbitration agreement by Plaintiffs giving notice to TitleMax within 60 days of executing the Supervised Loan Agreement. This opt-out option was not executed.

[1] Prior agreements were signed on the following dates: July 26, 2013, September 20, 2013; November 6, 2013; January 6, 2014; March 5, 2014; April 18, 2014; July 15; 2014; September 17, 2014; and July 6, 2015.

Under the FAA, "an agreement between two or more parties to submit their disputes to arbitration is not rendered unenforceable merely because there are additional parties to the dispute who are not bound by an arbitration agreement." *Episcopal Housing Corp.*, 269 S.C. 631, 239 S.E.2d 647 (1977) (citations omitted). This Agreement was signed only by Plaintiff Metric Harris because the title to the vehicle listed Metric Harris ***or*** Patricia Harris. However, the Court finds that all the claims included in the Plaintiffs' Complaint fall under the broad provisions of the arbitration agreement in the Supervised Loan Agreement. Therefore, the claims of the Plaintiffs are subject to the arbitration agreement.

2. The claims alleged by Plaintiffs fall within the scope of the Arbitration Provision.

In order to be subject to arbitration, the dispute between the parties must fall within the scope of the Agreement. *Glass v. Kidder Peabody & Co., Inc.*, 114 F.3d 446 (4th Cir. 1997). Here, the Agreement gives "disputes" the broadest possible meaning, including, but not limited, to claims brought by the borrower against TitleMax for money damages and/or equitable relief, claims under common law contracts or torts, as well as all federal or state law claims, disputes or controversies, arising from or relating directly or indirectly to this Loan Agreement (including the Arbitration Provision). It also includes any claims attempting to set aside the Arbitration Provision. Plaintiffs' claims in state court against Defendant for wrongful conversion, wrongful bailment, and negligence are covered by the Arbitration Provision. The Court finds there is a significant relationship between the tort claims asserted by Plaintiffs and the contract containing the arbitration clause. It was, therefore, foreseeable at the time the parties executed this agreement that these types of claims would be subject to arbitration.

Plaintiffs claim that the Supervised Loan Agreement was paid off sometime in 2015 and their dealings with TitleMax were concluded at that time, well before the alleged wrongful

repossession in December 2016. Therefore, they claim, there is no nexus or connection between the alleged tortious acts of TitleMax and the arbitration provision. However, as noted above, the alleged actions that resulted in the present dispute are exactly the type of claims that are contemplated by the arbitration provision. The language of the agreement clearly states that the requirement to arbitrate survives "any termination, amendment, expiration or performance of any transaction" between the parties. Furthermore, Defendant submitted evidence showing that Right to Cure letters were sent to Plaintiffs sometime in 2016 demonstrating that Defendant did not have record of the loan being paid off. Such evidence shows that the alleged wrongful actions of Defendant in December 2016 would be foreseeable and connected to the contract between the parties. The dispute is subject to the arbitration provision.

C. Defendant has not waived its right to enforce the Arbitration Provision.

"A party can waive its right to enforce an arbitration provision when it delays in demanding arbitration and engages in extensive discovery resulting in prejudice to the party opposing arbitration." *Rhodes*, 374 S.C. at 124, 647 S.E.2d at 250. However, determining waiver is a case by case basis as there are no set rules constituting waiver. *Id.* "Thus, a party may waive its right to compel arbitration if a substantial length of time transpires between the commencement of the action and the commencement of the motion to compel arbitration," but will vary depending on the "extent of discovery conducted and the corresponding presence or absence of prejudice to the party opposing arbitration." *Id. See also, Evans v. Accent Manufactured Homes, Inc.*, 352 S.C. 544, 548, 575 S.E.2d 2d 74, 75-76 (Ct. App. 2003) (finding a nineteen-month period where the parties exchanged written interrogatories, requests to produce, and the party requesting arbitration took two depositions, demonstrated waiver); *but see, Gen. Equip. & Supply Co. v. Keller Rigging & Constr., Inc.*, 344 S.C. 553, 557 544 S.E.2d 643, 645 (Ct. App. 2001) (finding a period of less

than eight months where the "litigation consisted of routine administrative matters and limited discovery which did not involve the taking of depositions or extensive interrogatories" did not establish waiver).

In reviewing the submissions of the parties, the Court finds the Defendant has not waived its right to compel arbitration in this case. Defendant filed its Motion to Dismiss, Compel Arbitration and Stay Litigation and Discovery in response to Plaintiffs' Complaint. Based on the motions filed and limited actions of TitleMax, there has been no waiver of Defendant's right to submit this case to arbitration.

D. Discovery and litigation in this Court should be stayed pending arbitration in accordance with the terms of the valid and enforceable Arbitration Provision.

The FFA provides:

> [if] any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until arbitration has been had in accordance with the terms of the agreement . . .

9 U.S.C. § 3. A stay of litigation for all trial proceedings, including discovery, is required when a valid arbitration agreement exists and arbitration is compelled. *See Stokes v. Metro. Life Ins. Co.*, 351 S.C. 606, 612, 571 S.E.2d 711, 715 (Ct. App. 2002) ("The FAA clearly required a court stay any suit or proceeding pending the arbitration under an agreement in writing for such arbitration upon the application of one of the parties."); *Adkins v. Labor Ready, Inc.*, 303 F.3d 496, 500 (4th Cir. 2002) ("This stay-of-litigation provision is mandatory. . . no choice but to grant a motion to compel arbitration where a valid arbitration agreement exists and the issues in a case fall within its purview."); *Cape Romain Contractors, Inc. v. Wando E., LLC*, 405 S.C. 115, 128, 747 S.E.2d 461, 468 (2013).

The Arbitration Provision at issue is valid and the claims alleged in this Complaint fall within its stated scope. Furthermore, there are no assertions made by Plaintiffs that the Arbitration Provision is not valid or that the issues do not fall within the stated scope. The Court finds this action must therefore be stayed pending arbitration.

E. Pursuant to Rules 12(b)(1), 12(b)(2) and 12(b)(6) of the South Carolina Rules of Civil Procedure, the case should be dismissed based on the applicable Arbitration Provision.

Because the Court finds that the Arbitration Provision in the Agreement is valid and enforceable, and because the claims presented by the Plaintiffs are within the arbitration provision, the Court lacks continued jurisdiction over this subject matter and the parties because the Arbitration Provision in the Agreement requires this dispute to be settled by an arbitrator. Under the Agreement, Plaintiffs specifically waived their right to file a lawsuit and proceed in court to a jury trial. In addition, the Complaint fails to state a claim for which relief can be granted within the Court pursuant to Rule 12(b)(6) because the Plaintiffs' contracted source of relief is found in the binding decision of an arbitration hearing.

Based on the arbitration provision, the Court finds that the dispute at issue here falls within the arbitration provision and not within the jurisdiction of the Court.

CONCLUSION

For the reasons set forth above, **IT IS HEREBY ORDERED** that Defendant's Motion to Compel Arbitration is **GRANTED.** This dispute shall be submitted to arbitration in accordance

with the Supervised Loan Agreement. The Court stays any further discovery and litigation in this matter. Finally, **THIS MATTER SHALL BE DISMISSED.**

AND IT IS SO ORDERED.

ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
April 20, 2018

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