| | |
|---|---|
| STATE OF SOUTH CAROLINA | IN THE COURT OF COMMON PLEAS |
| COUNTY OF BEAUFORT | CIVIL ACTION NO.: 2020-CP-07-00091 |
| Barbara Killingsworth and Brian Killingsworth,<br><br>Plaintiffs,<br><br>v.<br><br>Stokes Brown Toyota of Hilton Head,<br><br>Defendant. | **ORDER DENYING MOTION TO COMPEL ARBITRATION** |

This matter came before the Court on Defendant's Motion to Stay and Compel Arbitration. A hearing was held on May 15, 2020. Appearing for the Defendant were Bradford Martin, Esq. and Laura Teer, Esq. Rachel G. Peavy, Esq. appeared on behalf of the Plaintiffs. The Court heard oral argument from the parties, and reviewed the memoranda of law submitted by counsel. After careful review, the Court hereby finds that because a fall does not arise out of, or relate to, the purchase of a vehicle, and, accordingly is outside the scope of the parties' arbitration agreement. Accordingly, the Motion is denied and the matter allowed to proceed to trial.

**Factual Background**

This is a personal injury case which arises out of Barbara Killingsworth's fall at a car dealership lot owned by the Defendant Stokes Brown Toyota (hereafter "the Dealer"). On the evening of April 11, 2018, Mr. and Mrs. Killingsworth had completed their car purchase in the office and were walking out to their new car. Mrs. Killingsworth fell while walking to her car and allegedly suffered injuries. Plaintiffs brought suit for personal injuries and loss of consortium arising out of Mrs. Killingsworth's injuries.

Dealer filed a motion to compel arbitration of these claims, alleging that the parties intended to arbitrate such personal injury claims by virtue of executing an arbitration agreement ("the Agreement") as part of their purchase of a 2008 Toyota Highlander on the evening in question. The Agreement, a copy of which was filed with the Court, provides, in part:

> "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 . . . which arise out of or relate to the vehicle described above, your credit application, your purchase of this vehicle, your purchase of any additional products or services...the financing of your purchase of the vehicle, [or] repairs to and serving of the vehicle or any matters related thereto (a "Claim") shall, at your or our election, be resolved by neutral, binding arbitration and not by a court action."

**Applicable Law**

Not even the broadest arbitration provision applies when the claim at issue and the parties' contract lack a "significant relationship." Aiken v. World Fin. Corp. of S.C., 373 S.C. 144, 151, 644 S.E.2d 705, 709 (2004). No matter how broadly worded an arbitration contract is written, generally applicable contract law holds that its scope cannot be unbounded. Landers v. Fed. Deposit Ins. Corp., 402 S.C. 100, 115, 739 S.E.2d 209, 217 (2013) ("even the broadest of [arbitration] clauses have their limitations"). "[Arbitration] is predicated on an agreement to arbitrate because parties are waiving their fundamental right to access to the courts." Wilson v. Willis, 426 S.C. 326, 827 S.E.2d 167 (S.C. 2019). "[A] party seeking to compel arbitration under the FAA must establish that (1) there is a valid agreement, and (2) the claims fall within the scope of the agreement . . . While the presumption in favor of arbitration applies to the scope of an arbitration agreement, it does not apply to the existence of such an agreement..." 827 S.E.2d 173. Under Aiken, the Supreme Court articulated a "mutual assent" requirement to conclude that "arbitration is a matter of contract and a party cannot be required to submit to arbitration any

dispute which he has not agreed to submit." Id. at 149, 644 S.E.2d at 708 (citing Zabinski v. Bright Acres Assocs., 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001)).

While fully crediting state and federal pro-arbitration policy, our Supreme Court in Aiken held that "even the most broadly-worded arbitration agreements still have limits." Aiken, 373 S.C. at 151, 644 S.E.2d at 709; See also Landers, 402 S.C. at 115, 739 S.E.2d at 217. See also Seifert v. U.S. Home Corp., 750 So.2d 633, 638 (Fla.1999) ("[T]he mere fact that the dispute would not have arisen but for the existence of the contract and consequent relationship between the parties is insufficient by itself to transform a dispute into one `arising out of or relating to' the agreement."); The Vestry and Church Wardens of the Church of the Holy Cross v. Orkin Exterminating Co., Inc., 356 S.C. 202, 209, 588 S.E.2d 136, 140 (Ct.App.2003) ("[T]he mere fact that an arbitration clause might apply to matters beyond the express scope of the underlying contract does not alone imply that the clause should apply to every dispute between the parties.") (cited with approval in Aiken v. World Finance Corp. of SC, 644 S.E.2d 705, 373 S.C. 144 (S.C. 2007) The "significant relationship" test the Court in Aiken used to determine the limits of a broadly-worded arbitration contract is an application of the mutual assent rule that applies to every contract regardless of its subject matter. [1]

**Findings**

[1] The "significant relationship" test is not a South Carolina-specific rule. Many other jurisdictions use this analysis to determine the boundaries of a broadly worded arbitration provision. See e.g. Wachovia Bank, N.A. v. Schmidt, 445 F.3d 762, 767 (4th Cir. 2006) (quoting J.J. Ryan & Sons v. Rhone Poulenc Textile, S.A., 863 F.2d 315, 321 (4th Cir. 1988)); Jackson v. Shakespeare Found., Inc., 108 So.3d 587, 593 (Fla. 2013); Griggs v. Evans, 43 A.3d 1081, 1088 (Md. App. 2012).

Our Supreme Court's "significant relationship" test under Aiken requires a meeting of the minds in order to form a contract – in the instant case, the Court finds there was no agreement to arbitrate a personal injury claim that is so far removed from the subject matter of the contract. To find otherwise would allow any retail business to include the word "tort" in its customer's sales paperwork, and then avoid a jury trial when that same customer is hit by a falling awning on their way down the steps after completing their purchase. By the Dealer's reasoning, the scope of this arbitration agreement is virtually unlimited and encompasses these personal injury claims because the Plaintiffs were required to walk out to the parking lot to retrieve the vehicle, and thus Mrs. Killingsworth's fall is part of the sales transaction. The Court concludes that such an interpretation of the Agreement contravenes established South Carolina law.

In Aiken, employees of a consumer lender were accused of taking borrowers' personal identifying information (e.g. social security numbers and dates of birth) and misappropriating them to obtain sham loans in the borrowers' name. 373 S.C. at 146-47, 644 S.E.2d at 707. The borrowers alleged negligent and intentional tort claims against the lender, which defended by citing an arbitration provision in the lender's legitimate loan contract with each borrower. Id. The Court was tasked with determining whether the admittedly broad arbitration provision from the borrower-lender contract extended to cover the borrower's claims based on the brazen, but unrelated, misconduct of the lender's employees. Id. at 147, 644 S.E.2d at 708.

The Court rejected the argument that, because Aiken's contracts with World Finance gave the conspirators access to his personal information (which allowed them to commit the crimes), there was a "significant relationship" between his claims and the underlying loan agreement, thereby requiring arbitration. The Court noted that the defendant was essentially applying what amounted to a "but for" causation standard which could essentially include every dispute

imaginable between the parties. Id.[2] Similarly, here the Court finds that there is no significant relationship between the fall in the parking lot and the purchase and financing of the Toyota vehicle – put simply, there is no way that the Plaintiffs could have anticipated having to submit their personal injury claims to arbitration when they were in the finance office that evening.[3]

"The purpose of the rules of contract construction is to ascertain the intention of the parties as gathered from the contents of the entire document and not from any particular provision within the contract. Where one interpretation of a contract makes it unusual or extraordinary and another interpretation, equally consistent with the language employed, would make it reasonable, fair, and just, the latter construction prevails. An interpretation which establishes the more reasonable and probable agreement of the parties should be adopted while an interpretation leading to an absurd result should be avoided." Koon v. Fares, 666 S.E.2d 230, 379 S.C. 149 (S.C. 2008).

The required connection between core contract rules and the scope of arbitration is further supported by three (3) post-Aiken cases applying the exception. All three held the exception was nothing more than an application of the rule requiring courts to interpret a contract consistently with its parties' intent. In Chassereau v. Global Sun Pools, Inc., 373 S.C. 168, 644 S.E.2d 718 (2007), a woman who financed a swimming pool was not compelled to arbitrate her claim that the pool seller's agents defamed and harassed her when she fell behind on her payments. Chassereau

[2] Under the Dealer's interpretation of the arbitration agreement, it could appear that any customer who was ever injured at the dealership (whether hit by a car driven by a drunk employee while waiting for an oil change, or shot by a just-fired dealership employee while dropping their car off to be detailed, or assaulted in a restroom before receiving delivery of their vehicle) would be required to arbitrate their claims for personal injuries.

[3] The plain language of the Agreement specifically limits the scope of the agreement to those which relate to the vehicle described on the face of the document, to wit: "[a]ny claim or dispute . . . which arise out of or relate to the vehicle described above...". Plaintiffs' claims arising out of this fall would exist if they were merely browsing, as they are not tied to either the specific vehicle or their buyer status; rather, they arise out of their invitee status on the premises.

examined the broadly worded arbitration provision carefully but, given the lack of connection between the sales contract and the defamation claim, the court was left with "no doubt that [the woman] *did not intend to arbitrate*" the claim. 373 S.C. at 172, 644 S.E.2d at 721 (emphasis added); See also Partain v. Upstate Automotive Group, 386 S.C. 488, 689 S.E.2d 602 (2010) (holding that a car buyer "did not intend to submit" to arbitration his claim that a dealer maliciously switched the agreed-upon car with an inferior model).

Similarly, an arbitration provision in a financial services contract between investor and advisor did not cover negligence or consumer fraud claims because the prospect of an advisor converting his client's funds for personal use was "not within the parties' contemplation" when the contract was formed. Hatcher v. Edward D. Jones & Co., L.P., 379 S.C. 549, 554, 666 S.E.2d 294, 297 (Ct. App. 2008) (finding misconduct underlying negligence claim was "completely outside the expectations of the parties at the time the contract was entered"). Hatcher went one step further, holding that to interpret a broadly worded arbitration provision to apply to claims wholly unforeseeable at contract formation would be inconsistent with pro-arbitration policy by contravening the parties' intentions. Id.

The Dealer urges this Court to find that "any interpretation covering the dispute is all that is required", relying upon the case of Landers v. Fed. Deposit Ins. Corp., 402 S.C. 100, 739 S.E.2d 209 (2013). However, in Landers, the tort claims asserted bore a significant relationship to the arbitration agreement; *to wit*, the plaintiff was a high-ranking bank founder and executive who alleged he was unable to perform his job duties as a result of the conduct of the bank's CEO. The plaintiff brought claims for breach of contract, constructive termination, slander, and intentional infliction of emotional distress, among others, related to his "on-the-job" conditions. The executive had previously signed an employment contract with the bank which provided that "*any*

*controversy or claim arising out of relating to this contract, or the breach thereof, shall be settled by binding arbitration....*" 739 S.E.2d 211. Compelling arbitration, our Supreme Court found that the tort claims were significantly related to the employment agreement, noting that "the perceived inability to perform one's job certainly relates to an employment contract."

Unlike the plaintiff in Landers, here there is no significant relationship between the vehicle and the fall. The fall does not arise out of, or relate to, the purchase of the vehicle and the Plaintiffs' claims are outside the scope of this Agreement.

Accordingly, the Motion is hereby DENIED.

**AND IT IS SO ORDERED.**

_____
Carmen T. Mullen
Presiding Judge, 14th Judicial Circuit

Beaufort, South Carolina
Dated: _____

Beaufort Common Pleas

| | |
|---|---|
| **Case Caption:** | Barbara Killingsworth , plaintiff, et al VS Stokes Brown Toyota Of Hilton Head |
| **Case Number:** | 2020CP0700091 |
| **Type:** | Order/Compel |

So Ordered

s/Carmen T Mullen 2142