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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

The Honorable L. Casey Manning

Appellate Case No. 2020-001660

Crystal Morgan, Respondent,

v.

B&L Foreign Car LLC, Appellant.

MOTION TO APPROVE AGREEMENT AND TO DISMISS APPEAL

The undersigned counsel for Appellant hereby moves pursuant to Rule 261(b), SCACR for approval of the attached settlement agreement and dismissal of the appeal with the parties bearing their respective costs.

STUDEMEYER LAW FIRM, P.C.

By: s/J. Gregory Studemeyer
J. Gregory Studemeyer
SC Bar #5416
7478 Carlisle Street
Post Office Box 1014
Irmo, South Carolina 29063
803-393-4399
Attorney for Appellant

August 2, 2021

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

PARTIES

This Settlement Agreement and Mutual Release (this "Agreement") is made and entered into by and between the following persons and/or entities pursuant to Rule 261, SCACR:

a. B&L Foreign Car LLC ("B&L), a limited liability company organized and existing under the laws of the State of South Carolina; and

b. Crystal Morgan ("Morgan"), a resident of Lexington County.

(collectively, the "Party/ies").

RECITALS

a. On May 12, 2020, Morgan purchased a 2003 Honda Civic ("the vehicle") from B&L for a total cash price of $7,005.00, including a closing fee of $125.00. Morgan made a cash down payment of $979.00 and agreed to make bi-weekly installment payments of $114.41 beginning on May 29, 2020.

b. B&L provided Morgan with a limited warranty for a period of 60 days at no additional charge.

c. B&L and Morgan entered into a separate arbitration agreement in connection with the transaction.

d. Shortly after taking possession of the vehicle, Morgan reported to B&L that she hit a bump, causing the radio and passenger window to quit working. On June 1, 2020, Morgan brought the vehicle back to B&L for repairs to the turn signals, hazard lights, and temperature gauge.

e. On June 10, 2020, the vehicle was towed to B&L. At that time, Morgan reported that the check engine light had been concealed with black tape. B&L removed the tape, performed repairs at no charge, and returned the vehicle to Morgan.

f. On June 16, 2020, Morgan filed a summons and complaint against B&L in the Richland County Court of Common Pleas, asserting claims of fraud, constructive fraud, violation of the Unfair Trade Practices Act, and negligent misrepresentation.

g. On July 10, 2020, a letter from B&L's then manager, Ed Denby ("Denby"), was stamped "FILED" by the Clerk of Court. The letter acknowledged receipt by B&L of Morgan's complaint, advised that Morgan had entered into an arbitration agreement with B&L at the time of the sale, attached a copy of the agreement, and advised that B&L wished to exercise its right to arbitration.

h. On July 24, 2020, Morgan filed a motion to dismiss and motion to strike [sic] motion to stay arbitration along with plaintiff's memorandum in support. Attached thereto were copies of various sales documents, including the arbitration agreement.

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i. On July 28, 2020, Morgan filed an affidavit of default.

j. On August 4, 2020, B&L filed a motion to set aside entry of default with a supporting affidavit from Denby. Attached thereto were copies of various sales documents including the arbitration agreement. On September 2, 2020, B&L filed a memorandum in support of its motion to set aside entry of default.

k. A hearing on Morgan's motion and B&L's motion was conducted on September 8, 2020. Counsel for the parties were instructed to submit proposed orders.

l. Morgan ceased making installment payments to B&L for the vehicle after September 1, 2020.

m. On September 29, 2020, the lower court entered an order to strike defendant's letter as an answer and stay arbitration.

n. On October 9, 2020, B&L filed a motion to alter or amend and memorandum in support.

o. On November 17, 2020, the lower court issued an amended order.

p. On December 14, 2020, B&L served a notice of appeal upon Morgan.

q. On January 8, 2021, B&L filed an initial brief and designation of matter in the South Carolina Court of Appeals. Morgan has not filed an initial brief and designation of matter.

r. The Parties wish to avoid further attorneys' fees, costs, and burdens of litigation, and wish to finally resolve any and all disputes and controversies that exist between them, including, but not limited to, the issues raised in the litigation.

AGREEMENT

In consideration of the mutual covenants, conditions and releases contained in this Agreement, the Parties agree as follows:

A. Performance of the Parties.

1. Upon approval of this Agreement and dismissal of the appeal,,

   a. Morgan will return the vehicle to B&L in the same condition it was received, normal wear and tear excepted, with all keys, owner's manuals, if any, and other documentation related to the vehicle in Morgan's possession, custody, or control;

   b. Morgan will execute any necessary documentation to transfer title to the vehicle to B&L; and

   c. B&L will return Morgan's down payment of $979.00.

   d. B&L will not make any negative reporting to any credit agency;

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e. Within five (5) days thereafter, Morgan and B&L shall cause their counsel to file a stipulation of dismissal with prejudice.

General Releases and Waivers.

Upon the filing of the stipulation of dismissal, the following general releases and waivers will take effect:

1. General Release of B&L by Crystal Morgan

Crystal Morgan hereby fully releases and discharges B&L and any of its parent, subsidiary, and affiliated corporations, directors, officers, insurers, partners, agents, representatives, attorneys, servants, employees, past and present, with respect to any and all claims, actions, and causes of action of any kind or nature whatsoever, in law, equity, or otherwise, whether fixed or contingent, whether now known or unknown, whether suspected or unsuspected, and whether concealed or hidden, which now exist, which existed before, or which may exist after the effective date of this Agreement, relating to any act, transaction, occurrence, event, error, or omission by any of them prior to the effective date of this Agreement, including, but not limited to, the claims raised in the complaint filed in this litigation. This Release does not affect, and does not include, any obligations or liabilities created by this Agreement.

2. General Release of Crystal Morgan by B&L

B&L, on behalf of itself and any of its parent, subsidiary, and affiliated corporations, directors, officers, insurers, partners, agents, representatives, attorneys, servants, and employees, past and present, hereby fully releases and discharges Crystal Morgan with respect to any and all claims, actions, and causes of action of any kind or nature whatsoever, in law, equity, or otherwise, whether fixed or contingent, whether now known or unknown, whether suspected or unsuspected, and whether concealed or hidden, which now exist, which existed before, or which may exist after the effective date of this Agreement, including but not limited to, the claims raised in the complaint filed in this litigation. This Release does not affect, and does not include, any obligations or liabilities created by this Agreement.

B. No Assignment of Released Claims.

The Parties hereto represent and warrant that they currently have the legal right to release and relinquish the claims now being released or to be released in the future, as set forth hereinabove. All Parties hereto represent and warrant that they have not previously assigned or transferred to any other individual or entity any of the claims now being released, or to be released in the future, or any interest in any such claims.

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C. Confidentiality.

The contents, terms and conditions, and recitals contained in this Agreement and the issues raised in the Litigation are intended to be, and remain, strictly confidential between the Parties and their legal counsel. Each Party represents that such party and its agents, representatives, or attorneys have not disclosed to any third party the contents, terms, or conditions of this Agreement, except to the Party's own agents and the Court. Each Party further agrees that it shall not, nor shall it permit its agents, representatives, or attorneys to divulge any information concerning this Agreement or its terms, unless compelled to do so pursuant to lawful court order, legal discovery pursuant to litigation, written consent of the other Party upon written request, or as required by law, except that the Parties may disclose the contents of the Agreement to their attorneys, accountants, and/or consultants on a strictly need-to-know basis.

E. Agreement Not to be Construed as an Admission.

The Parties enter into this Agreement, and entered into negotiations that led to this Agreement, solely for the purpose of compromising and settling the matters in dispute between the Parties. This Agreement and the negotiations that led to this Agreement, however, do not constitute an admission of any liability or responsibility by any Party, nor do they constitute an admission as to the truth or validity of the allegations of any Party.

F. Authorization.

The individuals executing this Agreement on behalf of Morgan and B&L represent and warrant that they each have the necessary power and legal authority to execute and deliver this Agreement on behalf of such individuals or entities, and that upon such execution and delivery, the Agreement shall be binding on and enforceable against Morgan and B&L, on whose behalf they have signed this Agreement.

G. Attorneys' Fees.

Each Party will bear its own attorneys' fees, expenses, and costs that it incurred, and will incur, in connection with the litigation, the appeal, and the negotiation and preparation of this Agreement.

H. Choice of Law.

The laws of the State of South Carolina, including laws regarding statutes of limitation and/or laches, but not including conflicts of laws principles, will govern the interpretation, application, and enforcement of this Agreement.

I. Integration/Merger.

The Parties agree that this Agreement sets forth the entire agreement between the Parties relating to the subject matter of this Agreement. The Parties agree that this Agreement supersedes any and all prior and contemporaneous agreements or understandings between them relating to the subject matter of this Agreement.

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J. Waiver, Modification, and Amendment.

The Parties may not waive any provision of this Agreement except by a written agreement which the Parties have signed; a waiver of any provision of this Agreement will not constitute a waiver of any other provision.

K. Delivery of Documents.

The Parties will each execute two originals of this Agreement and will deliver one executed original to the other party through counsel. The Parties agree that this Agreement may be executed in more than one counterpart and that a facsimile signature or copy of this Agreement executed by the Parties, whether complete or in counterparts, will constitute sufficient evidence of the executed original of this Agreement for all purposes. The Parties agree to execute, in a timely manner, any and all other documents that are, or may be, necessary to give full effect to this Agreement.

L. Contingency of the Agreement.

This Agreement is contingent upon approval. In the event that the South Carolina Court of Appeals declines to approve it, this Agreement is void.

Dated: 7/22, 2021

Crystal Morgan

B&L Foreign Car LLC

Dated: 7-29-21, 2021

By: William A. Villella
Its: President

Reviewed and Approved as to Form:

MULLIS LAW FIRM

By:
Pamela R. Mullis
Attorney for Crystal Morgan

Studemeyer Law Firm, PC

By:
J. Gregory Studemeyer
Attorney for B&L Foreign Car LLC

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