

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)
)
)
Michael Ray,)
)
)
Plaintiff,)
)
v.)
)
FCA US, LLC, Benson Chrysler)
Plymouth, Inc., (d/b/a Benson CDJ), and)
Benson Automotive, LLC,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2021-CP-16-00287

ORDER



This matter comes before the court upon motion filed by Defendants Benson Chrysler Plymouth, Inc. dba Benson CDJ and Benson Automotive, LLC (the “Benson Defendants”) for an order dismissing this action. These Defendants sought an order dismissing this action based upon two independent grounds as stated within their Motion with Exhibits filed on May 3, 2021:

1. Pursuant to Rules 12(b)(1) and 12(b)(6) of the South Carolina Rules of Civil Procedure, Defendants moved to dismiss and/or stay this lawsuit to compel arbitration and stay proceedings pursuant to the Federal Arbitration Act (“FAA”), 9 U.S.C.A. §§ 1-9. Defendants attached the parties’ Arbitration Agreement to this motion as Exhibit A.
2. “[W]ithout waiving the parties’ agreement made as part of Plaintiff’s automobile purchase that states all disputes are subject to the Federal Arbitration Act (“FAA”),” Defendants also moved to dismiss pursuant to Rule 41(a)(1) of the South Carolina Rules of Civil Procedure, claiming Plaintiff previously filed these same claims in

two successive lawsuits and then sought a dismissal of each lawsuit, which each of the two courts construed as a Notice by Plaintiff of Voluntary Dismissal without Prejudice¹. Defendants contend SCRPC Rule 41(a)(1) requires that the second dismissal “operates as an adjudication upon the merits when filed by a Plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.” Thus, Plaintiff’s present lawsuit is barred under SCRPC Rule 41(a)(1), the two-dismissal rule, and res judicata, and therefore must be dismissed.

On June 4, 2021, Plaintiff filed a Response in Opposition to Defendants’ Motion to Dismiss. In Reply to Plaintiff’s Opposition, Defendants’ counsel submitted a Reply Memorandum.

The court held a hearing in the matter on September 1, 2021. Upon conducting a full hearing argued by Defendants’ counsel Daniel R. Settana, Jr. and Plaintiff Michael R. Ray, the Court took the matter(s) under advisement.

Upon consideration of the arguments of counsel at the hearing, the pleadings, and other filings and submissions to this Court regarding the Motion, for the reasons below, I find that Plaintiff’s present lawsuit is his third time filing this same case against the same Defendants – a case that Plaintiff has previously twice filed and twice dismissed. Pursuant to the express terms of Rule 41(a)(1), SCRPC, Plaintiff’s second notice of voluntary dismissal in his second lawsuit “operates as an adjudication upon the merits” because Plaintiff previously had “once dismissed in any court of the United States or of any state an action based on or including the same claim[s],”

¹ Defendants attached Plaintiff’s Complaints and Dismissals from both lawsuits to their Motion in the instant case as Exhibits B through E.

thereby barring any additional litigation or claims, and this lawsuit must be dismissed pursuant to SCRCP Rule 41(a)(1), the two-dismissal rule, and the doctrine of res judicata.² Plaintiff may attempt pursuit of this matter by way of arbitration.

ANALYSIS

This dispute pertains to the Plaintiff's purchase of a Dodge Charger from Defendant Benson Chrysler Plymouth Inc dba Benson CDJ ("Benson CDJ"), a corporation organized and existing under the laws of the State of South Carolina. This purchase took place at Benson CDJ's dealership, which is located in the County of Greenville, State of South Carolina. In his Complaint, Plaintiff also named another "Benson" entity as a Defendant, specifically Benson Automotive LLC. Benson Automotive LLC also is a South Carolina entity organized and existing as a Limited Liability Company under the laws of the State of South Carolina and located in the County of Greenville, State of South Carolina.

As stated in Plaintiff's Complaint in this case as well as his two prior lawsuits, on January 2, 2021, Plaintiff purchased a 2020 Dodge Charger from Defendant Benson CDJ in Greer, South Carolina (located in Greenville County, South Carolina). After Plaintiff had purchased the Charger, he drove from Benson CDJ in Greer, South Carolina back to his residence in Hartsville, South Carolina (located in Darlington County, South Carolina). Plaintiff contends that the following day, he washed and dried the vehicle and thereafter "he discovered several foggy or hazy appearing areas." See Complaint, ¶11. Plaintiff further claims that he later was told by a third party that the vehicle had suffered hail damage (Complaint, ¶14), which Defendants deny.

Defendants contend, and Plaintiff does not dispute, that Plaintiff signed an Arbitration Agreement in connection with the purchase of the Charger. The document states, in capital

² This rule often is referenced as the "two-dismissal rule." *Manning v. S.C. Dep't of Highway & Pub. Transp.*, 914 F.2d 44, 47 (4th Cir. 1990).

letters:

ARBITRATION POLICIES AND PROCEDURES

Benson's Policies and Procedures are intended to provide the exclusive means of resolving all Disputes, as defined below, which may arise between an individual and Benson. In consideration for their mutual promises, both parties, by entering into the Agreement, give up their right to trial by court or by jury.

(See Exhibit A to Defendants' Motion).

Plaintiff further agreed:

DISPUTES SUBJECT TO ARBITRATION. Disputes subject to arbitration are 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 Customer and Benson or our employees, agents, successors, or assigns, which arise out of or relate to Customer's credit application, purchase or condition of this vehicle. Customer's purchase or financing contract or any resulting transaction or relationship. Also, subject to arbitration are disputes involving any person or entity whose liability or right of recovery derives from a Dispute that is covered by this Agreement

(See Ex. A to Defendants' Motion, ¶ 3.)

The present lawsuit is Plaintiff's third lawsuit asserting the same allegations and claims against these Defendants. The two South Carolina Benson Defendants have been named exactly the same in each of the three lawsuits. The third Defendant in this action, Defendant "FCA US, LLC," also has been named in each of the three lawsuits. As admitted by Plaintiff in the September 1, 2021, hearing and also as pled in his second Complaint filed in the United States District Court for the District of Delaware, as "Defendant "Stellantis, N.V. (successor in interest by merger to FCA US, LLC)(hereinafter "FCA"),"³ this third Defendant has been named in each

³ See Exhibit D to Defendants' Motion, ¶ 2.

of the three lawsuits⁴.

Plaintiff first filed a Complaint on January 28, 2021, in the District of South Carolina, Civil Action No. 6:21-cv-00289-TLW-TER, against the same Defendants based on the same transaction or occurrence. Five days later, Plaintiff filed what he termed a “Motion to Dismiss Complaint *without prejudice*” – on February 2, 2021. (See Exhibits B and C to Defendants’ Motion). The South Carolina Federal Court construed Plaintiff’s “Motion to Dismiss” as a “NOTICE of Voluntary Dismissal by Michael R. Ray (Attachments: # 1 Envelope)...(Entered: 02/03/2021).” (See Exhibit to Defendant’s **Reply** and Exhibit B to Plaintiff’s Response in Opposition, which is the Docket Sheet for the SC Federal District Court case #: 6:21-cv-00289-TLW.)

Plaintiff then filed another Complaint with the same claims and allegations against the Benson Defendants and all Defendants on February 4, 2021, in the United States District Court for the District of Delaware. (See Exhibit D to Defendants’ Motion). On March 26, 2021, Plaintiff again sought to Dismiss his lawsuit. On March 30, 2021, the Court construed Plaintiff’s filing to dismiss the action as a Notice of Voluntary Dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1)(A). (See Exhibit E to Defendants’ Motion).

Plaintiff contends that the first Dismissal – which the South Carolina Federal District Court correctly construed as Plaintiff’s Notice of Voluntary Dismissal – does not count because

⁴ Rule 41(a), which also is known as the two-dismissal rule, “extends not only to named parties to an action, but also to their privies.” *Manning v. S.C. Dep’t of Highway & Pub. Transp.*, 914 F.2d 44, 48 (4th Cir. 1990). In taking this further, the Fourth Circuit in *Manning* cited South Carolina case law: “The term “privy”, when applied to a judgment or decree, means one so identified in interest with another that he represents the same legal right. One in privity is one whose legal interests were litigated in the former proceeding.” *Manning*, 914 F.2d at 48, citing *Richburg v. Baughman*, 290 S.C. 431, 434, 351 S.E.2d 164, 166 (1986).

he was a *pro se* Plaintiff and no summonses had been issued or served in the SC Federal Court case. Plaintiff's argument is without merit.

First, regardless of whether a Plaintiff is proceeding pro se, is a lawyer, or has a lawyer, **only the Clerk of Court in the Federal District Court** can issue a Summons in any event. See Rule 4(a)(2), Federal Rules of Civil Procedure ("FRCP"). Second, unlike in State Court, "a [Federal] civil action is commenced by filing a Complaint with the Court." See Rule 3, FRCP. Plaintiff's Complaint was filed and docketed on January 28, 2021, and Plaintiff paid the \$402 filing fee, which is indicated on the Docket Sheet submitted by Plaintiff as Exhibit B to Plaintiff's Response in Opposition provided to this Court. The date that Plaintiff's Complaint was filed and docketed (January 28, 2021) also can be seen on the top of every page in Exhibit B to Defendants' Motion.

Pursuant to the Federal Rules of Civil Procedure, the South Carolina Federal Court action was commenced on January 28, 2021 – upon Plaintiff's filing the Complaint and paying the \$402 filing fee. Five (5) days later, Plaintiff filed to Dismiss this Complaint on February 2, 2021. The issuance of a summons is not required for a Federal Court action to be commenced. "Jurisdiction over a defendant is not essential to the commencement of an action." *Engelhardt v. Bell & Howell Co.*, 299 F.2d 480, 484–85 (8th Cir. 1962). In *Engelhardt*, the United States Court of Appeals for the Eighth Circuit examined a similar argument made by a Plaintiff who had not served the Defendant and found "Plaintiff's contention that the dismissal of the first action was a mere nullity and can be disregarded because the dismissal was filed at a time before the court had acquired jurisdiction over the defendant is without merit. Jurisdiction over a defendant is not essential to the commencement of an action. Rule 3 of the Federal Rules of Civil Procedure, 28 U.S.C.A., provides: 'A civil action is commenced by filing a complaint with

the court.”” *Engelhardt v. Bell & Howell Co.*, 299 F.2d 480, 484–85 (8th Cir. 1962).

Rule 41(a)(1) of the South Carolina Rules of Civil Procedure specifically states that “a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed *in any court of the United States or* of any state an action based on or including the same claim[s].”(emphasis added). In other words, the prior dismissal must be a valid dismissal under the rules of the court in which the dismissed action was filed. Plaintiff filed and dismissed his first two lawsuits in “court[s] of the United States,” and therefore Plaintiff’s dismissals of those lawsuits are determined by the Federal Rules of Civil Procedure. As presented to this Court though Exhibits C and E to Defendants’ Motion, Plaintiff filed a voluntary dismissal in each of those two cases.

Accordingly, any action against the Benson Defendants or the third Defendant “FCA” regarding this alleged incident must be dismissed pursuant to SCRCP Rule 41(a)(1), as Plaintiff Ray has previously dismissed these claims regarding the same transaction, occurrence, or incident against these Defendants in the South Carolina Federal District Court and in the Delaware Federal District Court. The Delaware District Court’s construction of Plaintiff’s Notice of Voluntary Dismissal on March 30, 2021 operates as an adjudication upon the merits because this voluntary dismissal was filed by Plaintiff Ray after Plaintiff Ray already had once dismissed this action in South Carolina District Court on February 2, 2021 (“in any court of the United States or of any state an action based on or including the same claim.”). Thus, the present lawsuit is barred by SCRCP Rule 41(a)(1) and the two-dismissal rule and must be dismissed.

Additionally, because a notice of a second dismissal by the plaintiff serves as an “adjudication upon the merits,” the doctrine of *res judicata* applies. *Manning v. S.C. Dep’t of Highway & Pub. Transp.*, 914 F.2d 44, 47 (4th Cir. 1990), citing *Engelhardt v. Bell & Howell*

Co., 299 F.2d 480, 484 (8th Cir.1962). Therefore, the present lawsuit is barred by the doctrine of res judicata and must be dismissed. It is THEREFORE

ORDERED, ADJUDICATED, AND DECREED that Plaintiff Michael R. Ray's Complaint is barred by the two-dismissal rule as stated in SCRCP Rule 41(a)(1) and by the doctrine of res judicata from any further action or lawsuit regarding this matter, and this lawsuit is dismissed with prejudice.

AND IT IS SO ORDERED.

The Honorable Roger E. Henderson

_____, South Carolina
_____, 2022



Darlington Common Pleas

Case Caption: Michael R Ray VS FCA US LLC , defendant, et al

Case Number: 2021CP1600287

Type: Order/Dismissal

So Ordered

s/Roger E. Henderson 2754