IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

ASHLEY N. (REECE) ELIA,	:	
	:	C.A. No: K13C-06-036 RBY
_____Plaintiff,	:	
	:	
v.	:	
	:	
HERTRICH FAMILY OF AUTOMOBILE DEALERSHIPS, INC. d/b/a HERTRICH'S CAPITOL, a Delaware Corporation,	:	
	:	
Defendant.	:	

Submitted: September 9, 2013
Decided: December 13, 2013

Upon Consideration of
Defendant's Motion to Dismiss
GRANTED

ORDER

Christopher J. Curtin, Esquire, MacElree Harvey, LTD, Centreville, Delaware for Plaintiff.

Danielle K. Yearick, Esquire, Tybout, Redfearn & Pell, Wilmington, Delaware for Defendant.

Young, J.

SUMMARY

Hertrich Family of Automobile Dealerships ("Defendant") Motion to Dismiss presents the issue of whether this Court has subject matter jurisdiction over Ashley N. Elia's ("Plaintiff") claims, where Plaintiff agreed to a binding arbitration agreement in a Retail Installment Sales Contract ("RISC"), as part of her motor vehicle purchase from Defendant. In this Motion to Dismiss, Defendant contends that the matters asserted in Plaintiff's Complaint are the exact claims intended to be covered by the agreement to arbitrate. Defendant, therefore, maintains that this Court lacks subject matter jurisdiction over the claims in issue, and should dismiss the suit. Defendant's Motion to Dismiss is **GRANTED**, because the Court lacks jurisdiction over claims that are covered by the valid and enforceable arbitration agreement entered into by the parties.

FACTS AND PROCEDURAL POSTURE

Defendant operates automobile dealerships, selling and servicing new and used vehicles. In that capacity, Defendant sold to Plaintiff the used 2007 Mazda CX7 GT ("Automobile"), which is the subject of this litigation. Plaintiff asserts that on September 16, 2010, she went to the Defendant's auto dealership, expressly to purchase a four wheel drive vehicle for driving in the snowy, wintery weather conditions. Defendant allegedly selected, presented and sold to Plaintiff a vehicle with a two wheel drive, telling her it was a four wheel drive vehicle ("Condition"). The Defendant noted "4wd" on the Sales Invoice, which Defendant required Plaintiff to sign in three versions. Defendant financed the sale of the Automobile to the Plaintiff with a RISC, which Defendant prepared, listing itself

as the Creditor. The RISC stated that the annual percentage rate of the loan for the Plaintiff's purchase of the Automobile was 8.8% simple annual interest. Defendant represented to Plaintiff that she had been approved for that financing, which caused her to sign the RISC and accept the offered loan.

Before September 23, 2010, Defendant contacted Plaintiff to tell her that financing at 8.8% interest had not been approved, demanding Plaintiff to return to the dealership as soon as possible to sign new papers for the purchase of the Automobile at 13.59% simple annual interest. Allegedly, Defendant led Plaintiff to believe that if she did not sign new papers at the higher interest rate, Defendant would repossess the Automobile. Plaintiff asked to cancel the sale for the return of her traded-in vehicle. Defendant stated that it could not return the traded-in vehicle. According to Defendant, Plaintiff was bound by the contract, meaning Defendant could not cancel the sale. On September 23, 2010, Plaintiff returned to the Dealership to sign new papers for the purchase of the Automobile at the higher interest rate, including a new RISC at the 13.59% annual interest rate.

Before any payment was due under the Defendant's financing, Plaintiff financed the purchase of the Automobile through Dover Federal Credit Union, at 9.867% simple annual interest. Plaintiff made monthly payments of approximately $400.00 per month, including interest, from November 23, 2010 to the date of filing Plaintiff's Complaint. Plaintiff paid Defendant the full amount for the Automobile on September 28, 2010. In the winter of 2012, after driving in snow, Plaintiff discovered that the Automobile was a two wheel drive instead of a four wheel drive. Subsequently, Plaintiff contacted Defendant to give notice of the non-

conformity to the Automobile's written specifications on the Sales Invoice. Plaintiff demanded that Defendant cancel the sale to refund the money Plaintiff paid for the Automobile, to which Defendant refused. Since then, Plaintiff has been unable to resolve her complaint.

Plaintiff alleged that Defendant breached the express warranty by description, violated the Federal Trade Commission's Trade Regulation Rule that prevents unfair, deceptive acts or practices in the sale of used cars by violating the "Warranty Rule," and violated the "Used Car Buyer's Guide Rule." Plaintiff sought cancellation of the sale of the vehicle with remedies related to that right. On August 23, 2013, Defendant filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction. On September 5, 2013, Plaintiff filed an Answer in Opposition to Defendant's Motion to Dismiss.

STANDARD OF REVIEW

Under Delaware Superior Court Civil Rule 12(h)(3), "[w]henever it appears by suggestion of the parties or otherwise that the Court lacks jurisdiction of the subject matter, the Court shall dismiss the action." Delaware Courts lack subject matter jurisdiction to resolve disputes that litigants have contractually agreed to arbitrate.[1] In Delaware, there is a strong presumption in favor of arbitration, therefore, contractual arbitration clauses are generally interpreted broadly by the Courts. Arbitration is the preferred mechanism for resolving disputes in this State. Hence, the Court should "ordinarily resolve any doubt as to arbitrability in favor

[1] *Behm v. Am. Int'l Grp., Inc.*, 2013 WL 3981663, *4-5 (Del. Super. July 30, 2013).

of arbitration."[2]

DISCUSSION

In this case, the parties entered into a valid and enforceable arbitration agreement to have disputes arising from the subject motor vehicle sale resolved by arbitration under the Rules of the American Arbitration Association. The matters asserted in Plaintiff's Complaint constitute the exact claims intended to be covered by the agreement to arbitrate, specifically consumer fraud and all other statutory causes of action asserted by the Plaintiff.

First, Plaintiff asserts that the arbitration clause is unenforceable as a result of the "single document rule" created by the FTC regulation for warranties covered by the Magnuson Moss Warranty Act ("MMWA"). The rule requires certain information on informal dispute methods to be contained in a single document with a written warranty.[3] However, it is clear that the MMWA does not apply in this action, because Plaintiff does not allege a claim for failure to repair under a warranty for defects in the vehicle. A written warranty under the MMWA is defined as:

> any written affirmation of fact or written promise made in connection with the sale of a consumer product by a supplier to a buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time. 15 U.S.C.A.

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[2] *Id.*

[3] 16 CFR 701.3; see also *DaimlerChrysler v. Matthews*, 848 A.2.d 577 (Del. Ch. 2004).

Section 2301 (6) (A).

Instead, Plaintiff's claims arise out of the alleged erroneous description of the vehicle as "4WD" in the RISC. A product that is delivered with the wrong description, but is still functional for its purpose is not defective.[4] It is clear to the Court that the Plaintiff's allegations pertain to the description of the Automobile in the Sales Invoice, not a defect that the Defendant failed to repair. Therefore, the MMWA does not apply to Plaintiff's claims, thereby, precluding the application of the "single document rule" to those claims.

Second, Plaintiff contends that the arbitration clause contained in the RISC is procedurally unconscionable as it limits the remedies of recovering statutory attorney's fees and costs.[5] Plaintiff contends that since she is entitled to attorney fees and costs, if she prevails on the consumer warranty claims,[6] this may conflict with the portion in the arbitration clause that states: "Each party shall bear his or her own attorney fees and costs associated with the arbitration."

Because there is a strong presumption in favor arbitration agreements in Delaware Courts, and there is no binding authority that arbitration agreements should be found unconscionable when they limit attorney's fees, this Court finds that the arbitration clause is valid. Since the matters asserted in the Plaintiff's

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[4] *Baccellieri v. HDM Furniture Indus., Inc.*, 2013 WL 1088338 (Del. Super. Feb. 28, 2013).

[5] Nat'l Consumer Law Center, *Automobile Fraud*, (4th Ed. 2011) Section 10.3.5.4. (An "arbitration clause should not limit statutory attorney fees").

[6] 6 Del. C. Section 2734 (a), and 15 U.S.C.A. Section 2310 (d) (2).

Complaint constitute the exact claims in the arbitration clause, this Court lacks jurisdiction over Plaintiff's instant action.

CONCLUSION

For the foregoing reasons, Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction is **GRANTED**.

IT IS SO ORDERED.

/s/ Robert B. Young
J.

RBY/lmc
oc: Prothonotary
cc: Counsel
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