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: January 2, 2014
Decided: March 4, 2014

Upon Consideration of Plaintiff's Motion for Reconsideration of the Court's Grant of Defendant's Motion to Dismiss
DENIED

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

Ashley N. (Reece) Elia ("Plaintiff") moves for reconsideration of the Court's grant of Hertrich Family of Auto Dealerships' ("Defendant") Motion to Dismiss. This matter arises out of the sale of a motor vehicle ("Automobile") between Plaintiff and Defendant on September 16, 2010. Defendant's Motion to Dismiss presents the issue of whether this Court has subject matter jurisdiction over Plaintiff's 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. On December 13, 2013, the Court granted Defendant's Motion to Dismiss Plaintiff's Complaint.

In the Court's Order granting Defendant's Motion to Dismiss Plaintiff's Complaint ("the Order"), the Court held that it lacks subject matter jurisdiction over the claims in issue that are covered by a valid and enforceable arbitration agreement entered into by the parties. In addition, the Court held that the Magnuson Moss Warranty Act's ("MMWA") "single document rule" does not apply to this matter, because Plaintiff's claims do not involve defects in the Automobile that Defendant failed to repair. For the reasons respectively set forth below, Plaintiff's Motion for Reconsideration is **DENIED**.

FACTS AND PROCEDURAL POSTURE

The facts regarding this matter are contained in the Order granting Defendant's Motion to Dismiss Plaintiff's Complaint on December 13, 2013, and are incorporated herein.

STANDARD OF REVIEW

The standard for reargument under Superior Court Civil Rule 59(e) is well settled.

> On a motion for reargument, the only issue is whether the court overlooked something that would have changed the outcome of the underlying decision. The Court will generally deny the motion unless a party demonstrates that the Court has overlooked a controlling precedent or principle of law, or unless the Court has misapprehended the law or facts in a manner that affects the outcome of the decision. A motion for reargument is not intended to rehash the arguments that already have been decided by the Court.[1]

DISCUSSION

First, Plaintiff argues that this Court exceeded its jurisdiction by enforcing the binding arbitration agreement. Plaintiff asserts that the Court does not have subject matter jurisdiction to decide the validity of the arbitration agreement at issue. In the Order, this Court held that it lacks subject matter jurisdiction over claims that are covered by a valid and enforceable arbitration agreement entered into by the parties.

Plaintiff argues that the Court does in fact lack subject matter jurisdiction over interpretation of the arbitration clause, but not to the subject matter of the Complaint. Plaintiff contends that this Court has jurisdiction over the sale of an automobile, Consumer Fraud, and other matters alleged in the Complaint.

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[1] *Bernhardt v. Ford Motor Co.*, 2010 WL 3005580, at *2 (Del.Super. July 30, 2010).

Ultimately, Plaintiff, relying on *Daimler Chrysler v. Matthews*, 848 A.2d 577 (Del. Ch. 2004), argues that this Court must stay this action until the Court of Chancery can rule on the validity and enforceability of the arbitration clause.

The Superior Court has held that, while it is true that the Court cannot make an order compelling arbitration, since that is within the jurisdiction of the Chancery Court, the Court may decide whether it lacks subject matter jurisdiction.[2] In *Edelist v. MBNA America Bank*, 790 A.2d 1249 (Del. Super. Ct. August 9, 2001), when the defendant moved for a motion to dismiss *or* a motion to stay an action involving a valid arbitration agreement, the Court granted the motion to dismiss, denying the motion to stay. While the Court acknowledged that it lacked subject matter jurisdiction to compel the arbitration agreement, it still found that there was sufficient evidence to deem the arbitration agreement valid, which justified a dismissal of defendant's claims. Hence, by granting Defendant's Motion to Dismiss in this matter, the Court did not exceed its jurisdiction.

Second, Plaintiff argues that the Court disregarded Plaintiff's arguments concerning the MMWA, which according to Plaintiff, applies to the facts of this action. Further, Plaintiff contends that the arbitration clause and the warranties themselves violate the "one document" Rule under the MMWA, because they are contained in three separate documents. Plaintiff argues that the description of the power train as a four-wheel drive is, by implication, an express warranty that the power train will perform as a four-wheel drive powertrain, which according to

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[2] *Tekman & Co. v. Southern Builders, Inc.*, 2005 WL 1249035, n.5 (Del. Super. Ct. May 25, 2005).

Plaintiff, satisfies the MMWA definition of a covered warranty.

In the Order, the Court held that a warranty by description is not covered by the MMWA. 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. 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. [3] 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. Plaintiff also argues that course of dealing or trade usage may imply an assurance of quality.[4] However, even if the Court found that an assurance of quality could be implied in the description, the automobile still was not defective. Therefore, the MMWA does not apply to Plaintiff's claims, thereby precluding the application of the "single document rule" to those claims.

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

[4] *15 U.S.C. Section 2301 (6) (A) at 15.3.4.5*: "Even if the description does not explicitly contain an assurance of quality, course of dealing or trade usage may imply one," citing comment 5 to *UCC Section 2-313* which states, "Of course all descriptions by merchants must be read against the applicable trade usages and the general rules as to merchantability resolving any doubts."

CONCLUSION

For the foregoing reasons, Plaintiff's Motion for Reconsideration of the Court's Grant of Defendant's Motion to Dismiss is **DENIED**.

IT IS SO ORDERED.

/s/ Robert B. Young
J.

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