IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

WILLIAM BOGY	)	**CASE NO. CV-16-866951**
	)	
Plaintiff,	)	**JUDGE PAMELA A. BARKER**
	)	
v	)	**JOURNAL ENTRY AND**
	)	**OPINION ON DEFENDANT'S**
RICK CASE MOTORS, INC.	)	**MOTION TO COMPEL**
	)	**ARBITRATION AND STAY**
Defendant.	)	**LITIGATION**

This lawsuit arises from the purchase and sale of a vehicle by and between Plaintiff and Defendant ("the transaction"). The matter is before the Court on Defendant's Motion To Compel Arbitration and Stay Litigation, filed on September 6, 2016 ("Defendant's Motion"), Defendant's Notice Of Filing Affidavit In Support Of Defendant's Motion To Compel Arbitration and To Stay Litigation and Affidavit of Janice Redenshek attached thereto, filed on September 15, 2016 ("Defendant's Affidavit"), Plaintiff's Brief In Opposition to Defendant's Motion, filed on September 29, 2016 ("Plaintiff's Brief"), and Defendant's Reply To Plaintiff's Brief, filed on November 3, 2016 ("Defendant's Reply").

Defendant's Motion to Compel Arbitration is made pursuant to R.C. 2711.03, and Defendant's Motion to Stay Litigation is made pursuant to R.C. 2711.02. As required under R.C. 2711.03, a hearing was held on Defendant's Motion on November 7, 2016. No evidence was submitted by either party at the hearing. The only evidence before this Court is the Affidavit, and the Retail Purchase Agreement (Buyers Order) and Agreement to Arbitrate attached thereto, respectively, as Exhibits A and B. Attached as Exhibit 1 to Plaintiff's Complaint, is a copy of the Retail Installment Sale Contract ("RISC"), that, at page 2 of Defendant's Reply, in footnote 2, Defendant agrees or admits is a true and accurate copy of the RISC executed as part of the transaction. It was confirmed at the hearing that Plaintiff does not dispute that these three documents bear his signature. Moreover, Plaintiff has not

argued that he did not receive copies of these documents.

Attached as Exhibit 2 to Plaintiff's Complaint is a copy of the Spot Delivery Agreement – Limited Right To Cancel ("Spot Delivery Agreement"). At page 2 of Defendant's Reply, specifically under the heading "Relevant Documents", Defendant asserts that "[a]s part of the Transaction," Plaintiff and Defendant "executed numerous documents, including, **but not limited to**, a Retail Purchase Agreement/Buyers Order ("Buyers Order"), Retail Installment Sale Contract ("RISC"), Agreement to Arbitrate ("Arbitration Agreement"), Delivery Confirmation, Limited Powertrain Warranty, and a Guaranteed Asset Protection Addendum." (Emphasis added by bold print.) Defendant has not denied the execution of the Spot Delivery Agreement as part of the transaction.

The Retail Purchase Agreement (Buyers Order) contains the following relevant provisions:

> **OTHER MATERIAL UNDERSTANDINGS AND INTEGRATED DOCUMENTS**
> ☐ IF MARKED, PLEASE SEE ATTACHED DELIVERY CONFIRMATION
> ☐ IF MARKED, PLEASE SEE ATTACHED SPOT DELIVERY AGREEMENT-LIMITED RIGHT TO CANCEL
> ☐ IF MARKED, PLEASE SEE ATTACHED ARBITRATION AGREEMENT.[1]
>
> ***
>
> **Waiver of Jury Trial:** The Dealership and Purchaser knowingly, voluntarily and intentionally waive any right they may have to a trial by jury in any litigation based upon or arising out of this Agreement, any document related to this transaction, or any course of conduct, dealing, statements (whether oral or written), or any act of Dealership or Purchaser.
>
> The front and back of this document and any documents which are part of this transaction or incorporated herein comprise the entire agreement effecting this Retail Purchase Agreement (Buyers Order) and no other agreement or understanding of any nature concerning the same has been made or entered into, or will be recognized. I have read the terms and

[1]The parties agree that none of the boxes were checked on the Retail Purchase Agreement (Buyers Order), including the boxes related to the Spot Delivery Agreement and the Arbitration Agreement. Yet, the parties also agree that Plaintiff signed and was provided a copy of the Arbitration Agreement. And, Defendant has not disputed the execution of the Spot Delivery Agreement, which permitted Plaintiff to take possession of the vehicle, despite the fact that financing for the purchase had not been finalized or approved; and gave Plaintiff the option to cancel within 10 days in the event that financing for the purchase was not obtained.

conditions of this Agreement, including the terms and conditions that appear on the reverse side, and agree to them as if they were printed above my signature. I further acknowledge receipt of a copy of this Agreement. ***

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ADDITIONAL AGREEMENTS BETWEEN THE DEALERSHIP AND PURCHASER(S)

1. Terms Used In This Agreement: This Retail Purchase Agreement contains the following words and phrases that appear throughout this Agreement and have particular meanings:

- **Agreement** – Means this Retail Purchase Agreement together with any documents incorporated into this Agreement by reference, whether such reference is made in this Agreement or in the document itself.

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16. **Entire Agreement and Signing Other Documents:** The front and back of this Agreement and any documents incorporated by reference comprise the entire Agreement affecting this transaction. No other Agreement or understanding of any nature has been made. You agree to sign any and all documents necessary to complete the terms of this transaction.

The Agreement to Arbitrate contains the following relevant provisions:

By entering into this Agreement to Arbitrate ("Agreement"), Customer and Dealership, *** agree, except as otherwise provided in this Agreement, to settle by binding arbitration any dispute between them regarding: (1) the purchase/lease by Customer of the above-referenced Vehicle; (2) any products and services purchased in conjunction with the Vehicle; (3) any financing obtained in connection with the transaction; and/or (4) any other dispute between them related to the purchase/lease transaction. Matters that the Parties agree to arbitrate include, but are not limited to, disputes related to the Retail Purchase/Retail Lease Agreement and any documents incorporated therein by reference (whether such reference is made in the Agreement or in the document itself), the application for and terms of financing for the transaction, the Finance/Lease Contract, any alleged promises, representations and/or warranties made to or relied upon by the Parties, and any alleged unfair, deceptive, or unconscionable acts or practices.

***

BY SIGNING BELOW, CUSTOMER ACKNOWLEDGES THAT HE

> OR SHE HAS READ THIS AGREEMENT TO ARBITRATE AND AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. THIS AGREEMENT IS INCORPORATED BY REFERENCE INTO THE RETAIL PURCHASES/RETAIL LEASE AGREEMENT. IT MAY NOT BE MODIFIED OR AMENDED EXCEPT BY A SEPARATE WRITTEN AGREEMENT SIGNED BY CUSTOMER AND AN AUTHORIZED DEALERSHIP REPRESENTATIVE.

Thus, the Arbitration Agreement is specifically incorporated by reference into the Retail Purchase Agreement, but is not incorporated by reference into the RISC. Indeed, nowhere in the Arbitration Agreement is the RISC, as distinguished from the Finance/Lease Contract, mentioned or referenced.

The Spot Delivery Agreement contains the following relevant provisions:

> By signing below, I acknowledge that I have read this Spot Delivery Agreement and I fully understand and agree to be bound by the terms and conditions set forth herein and in the Retail Purchase Agreement (Buyers Order) and the Retail Installment Sales Contract. This Spot Delivery Agreement is incorporated by reference into and made part of the Retail Purchase Agreement (Buyers Order) and Retail Installment Sales Contract/Finance Contract.

Thus, the Spot Delivery Agreement is incorporated by reference into and made part of both the Retail Purchase Agreement (Buyers Order) and the RISC/Finance Contract. So, whereas in the Spot Delivery Agreement the RISC is equated with the Finance Contract, and as noted above, the same is not true in the Arbitration Agreement.

The RISC does not contain any reference whatsoever to the Arbitration Agreement, but does contain the following relevant provisions:

Limited Right to Cancel

> ☐[2] **If checked, a limited right to cancel applies:**
> You agree that we have 10 days from the date you sign this contract to assign this contract. If we are unable to assign this contract within this time period, you or we may cancel this contract. ***

***

[2]The box is checked on the RISC.

> **HOW THIS CONTRACT CAN BE CHANGED.** This contract contains the entire agreement between you and us relating to this contract. Any change to this contract must be in writing and we must sign it. No oral changes are binding. ***

In summary, to the extent that the Arbitration Agreement, in all capital letters, provides that it is incorporated by reference into the Retail Purchase Agreement, and the Retail Purchase Agreement ("Buyers Order") defines the term "Agreement" to mean or include the Retail Purchase Agreement ("Buyers Order") together with any documents incorporated therein by reference, whether such reference is made in this Agreement or in the document itself, the Arbitration Agreement is part of the Retail Purchase Agreement ("Buyers Order"), despite the fact that the box next to the provision "IF MARKED, PLEASE SEE ATTACHED ARBITRATION AGREEMENT" is not checked. Indeed, the box next to the provision "IF MARKED, PLEASE SEE ATTACHED SPOT DELIVERY AGREEMENT-LIMITED RIGHT TO CANCEL", likewise, is not checked but Plaintiff has alleged that the Spot Delivery Agreement was provided to him, and in fact, has attached it to, and cited to it in, his Complaint as a document executed as part of the transaction.[3]

The Arbitration Agreement does provide that any dispute between the parties regarding any financing obtained in connection with the transaction, the application for and terms of financing, the Finance/Lease Contract, and any alleged promises and/or representations made to or relied upon by the parties. However, the Arbitration Agreement is not part of the RISC. The Arbitration Agreement does not specifically mention the RISC or incorporate it into the Arbitration Agreement by reference, and the RISC does not mention the Arbitration Agreement or incorporate it by reference into the RISC. Yet, the Spot Delivery Agreement specifically provides that it is incorporated by reference into both the Retail Purchase Agreement (Buyers Order) and the RISC. In other words, if Defendant intended that the Arbitration Agreement be incorporated by reference into the RISC, it certainly knew how to effectuate that intent. Also, and contrary to Defendant's assertion, the RISC does specifically provide that "[t]his

[3]Plaintiff's Complaint, at paragraph 26.

contract contains the entire agreement relating to this contract."

Plaintiff's Complaint sets forth the following causes of action: Count I (Violation of the CSPA) (Deposit Provisions), alleging that Defendant violated R.C. 1345.02 by providing Plaintiff with a receipt that did not indicate the true cash selling price of the vehicle and which does not specify the time the option is binding and how long the seller will refrain from selling the product; Count II (Violation of the CSPA – Deceptive Acts – R.C. §1345.02), alleging that Defendant violated §1345.02 by falsely stating that the RISC could be refinanced, by stating that only a more expensive car could be financed, and by misstating the cash price of the vehicle; Count III (Violation of the CSPA – Violations of R.C. §1345.03), alleging that Defendant violated §1345.03 by telling Plaintiff he could not purchase a less expensive vehicle, by telling Plaintiff he could refinance to a lower rate if he made payments, and by charging a price substantially in excess of the price at which similar property is readily obtainable; Count IV (Violation of RISA R.C. §1317.061 and Usury), alleging that the Truth in Lending disclosures on the RISC failed to include hidden finance charges for the excessive price of the vehicle which substantially understated the annual percentage rate, under RISA all amounts considered components of the finance charge and APR under the TILA must be considered interest for purposes of calculating usury limitation compliance, R.C. §1317.061 caps the interest rate at 25%, the rate Defendant charged was usurious, and since Defendant knowingly did so, it violated R.C. ¶§1345.05(A)(3); and Count V (Fraud/Misrepresentation in the Sale and Financing of the Vehicle).

Thus, certain of Plaintiff's claims arise under the Purchase Retail Agreement (Buyers Order) or the sale of the vehicle and alleged CSPA violations and fraud/misrepresentations associated therewith, and certain of Plaintiff's claims arise under the RISC, or the financing of the vehicle and alleged RISA/CSPA violations and fraud/misrepresentations associated therewith.

Defendant argues that the claims set forth in Plaintiff's Complaint clearly fall within the terms of the Arbitration Agreement that was incorporated by reference into the Purchase Retail Agreement (Buyers Order). It correctly cites to *Vincent v. Neyer*, 139 Ohio App.3d 848, 852, 745 N.E.2d 1127,

1130, (10th Dist. No. 00AP-344), for the proposition that an arbitration panel can rule on issues arising under the CSPA. *See, also, Eagle v. Fred Martin Motor Co.*, 157 Ohio App.3d 150, 2004-Ohio-829, 809 N.E.2d 1161, ¶27. And, Defendant correctly cites to *KeyBank Nat'l Ass'n v. Columbus Campus, LLC*, (10th Dist. Nos. 11AP-920, 11AP-952, 11AP-955, 11AP-958, 11AP-959, 11AP-963, 11AP-964) 2013-Ohio-1243, ¶21 988 N.E.2d 32, for its proposition that "[i]n Ohio, under general principles of contract law, separate agreements may be incorporated by reference into a signed contract" and "[w]hen a document is incorporated into another by reference, both instruments must be read and construed together." However, Defendant does not direct this Court to any language in the RISC to support any assertion, much less assert, that the the Arbitration Agreement is incorporated into that contract. That is because no such language exists.

In response, Plaintiff argues that the "single document rule" set forth in R.C. 1317.02 applicable to "retail installment sales"[4], and the "single document rule" set forth in R.C. 4517.26, specifically applicable to the "sale of a motor vehicle"[5], apply to preclude arbitration of Plaintiff's claims. Specifically, Plaintiff argues that the "stand-alone arbitration agreement" violates the "single document rule" set forth in each of these statutes, making the Arbitration Agreement that Plaintiff admittedly received and signed, unenforceable as to both the Retail Purchase Agreement (Buyers Order) and the RISC. Also, Plaintiff argues that both of these contracts are fully integrated documents that do not incorporate other documents. As to the Retail Purchase Agreement (Buyers Order), Plaintiff argues that the failure to check the box under "**OTHER MATERIAL UNDERSTANDINGS AND INTEGRATED DOCUMENTS**" that reads "IF MARKED, PLEASE SEE ATTACHED ARBITRATION AGREEMENT," makes this contract a fully integrated document. And, as to the RISC, the provision that reads "[t]his contract contains the entire agreement between you and us

[4] R.C. 1317.02 provides in relevant part as follows: "Every retail installment sale shall be evidenced by an instrument in writing. *** The written instrument shall contain all of the agreements of the parties, and shall set forth specifically all items and matters required by sections 1317.01 to 1317.11, inclusive, of the Revised Code. ***"

[5] R.C. 4517.26 provides in relevant part as follows: "Every retail and wholesale sale of a motor vehicle shall be preceded by a written instrument or contract that shall contain all of the agreements of the parties and shall be signed by the buyer and the seller. ***"

relating to this contract" makes the contract a fully integrated document. Absent from Plaintiff's Brief is any argument that the Arbitration Agreement is unconscionable, and no such argument was made at the hearing.

In support of his argument that R.C. 1317.02 sets forth a single document rule, Plaintiff cites to, and quotes from, one Ohio case out of the Toledo Municipal Court, i.e., *Cartier v. Brown Credit Lot*, 2005 WL 3867414, at *5, wherein the court found that a third agreement that was extraneous to the two sales contracts titled "Alternative Financing/Agreement To Return Vehicle" was void for its "abject failure to conform with RISA's clear single document rule." Defendant counters by asserting that *Cartier* is distinguishable from the instant matter because: 1.) there were two sales contracts at issue and both contained integration clauses proclaiming each document to be "the entire agreement" between the parties; and 2.) the conduct of the dealer at issue therein was so egregious.

Plaintiff argues that Michigan, like Ohio, has a single document rule set forth in the Michigan Motor Vehicle Sales Finance Act ("MVSFA")[6], and cites to and discusses several Michigan cases wherein Michigan courts have applied the one-document rule to determine as a matter of law that a stand-alone arbitration agreement was unenforceable. *Larkin v. New Century Auto Sales, Inc.* (E.D. Mich.), 2014 U.S. Dist. LEXIS 350, *Rugumba v. Betten Motor Sales*, 136 F. Supp.2d 729 (W.D. Mich. 2001), and *Lozada v. Dale Baker Oldsmobile, Inc.*, 197 F.R.D. 321 (W.D. Mich. 2000), involved claims challenging the subject matter of the retail installment sales contract, and each court found that the arbitration agreement was unenforceable because it was a stand-alone document and not part of the retail installment sales contract as required pursuant to rhe MVSFA.[7]

Defendant attempts to distinguish these three Michigan cases from the instant matter and cites to two other Michigan cases in support of its position that the Arbitration Agreement is enforceable,

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[6] Pursuant to the Michigan Motor Vehicle Sales Finance Act ("MVSFA"), Mich. Comp. Laws §492.112(a), an installment sale contract "must be in writing, signed by both parties, and must 'contain all of the agreements between the buyer and the seller relating to the installment sale of the motor vehicle sold ...'" *Davis v. LaFontaine Motors, Inc.*, 271 Mich. App. 68, 78, 719 N.W.2d 890 (2006) (citing MVSFA, §492.112(a)).

[7]

specifically *Pack v. Damon Corp.*, 320 F.Supp.3d 545 (E.D. Mich. 2004), *rev'd in part on other grounds*, 434 F.3d 810 (6th Cir. 2006), and *Harnden v. Ford Motor Co.*, 408 F. Supp.2d 300 (E.D. Mich. 2004). However, in *Larkin*, the Court rejected the defendant's reliance upon *Pack* and *Harnden* because those cases did not involve claims challenging the subject matter of, or relate to any of the terms set forth in, the retail installment sales contract, but involved the dealers' warranties and performance under the terms of the sales agreements. Indeed, in *Larkin*, the court recognized that "[t]he *Harnden* court ... noted that '[i]n *Pack*, the plaintiff challenged the seller's performance of warranties in the purchase agreement, not in the retail installment contract. Therefore, the arbitration clause did not violate the MVISCA or the MVSFA. [*Harnden*] at 306 (internal citation *Pack omitted.*)." *Larkin, id.* at *19. *See, also Davis v. LaFontaine Motors, Inc.*, 271 Mich.App. 68, 78, 719 N.W.2d 890, 897 (2006) (where the court applied the reasoning in *Pack*[8] to find that enforcement of a disclaimer that was not included in the retail installment sale contract was not precluded by the one-document rule of the MVSFA, because the dispute did not relate directly to any provision of the retail installment motor vehicle purchase agreement).

This Court's interpretation of these Michigan cases is that Michigan's one-document rule applies to a retail installment sale contract, and any claims relating to or arising from the RISC are not subject to a stand-alone arbitration agreement or one that is not included in the RISC or incorporated by reference therein.

However, Defendant, in effect, rejects Plaintiff's contention that, like the MVSFA as interpreted by Michigan courts, R.C. §§1317.02 and 4517.26 contain or create a one-document rule that applies to

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[8] As noted by the court in *Davis*, "in *Pack*...., the court declined to invalidate an arbitration clause that was contained in the dealer's sales agreement, but not in the retail installment contract. The court distinguished *Rugumbwa* and another case, *Lozada*...stating: "[*Rugumbwa*] and [*Lozada*] stand for the more narrow proposition that claims alleged with regard to the subject matter of a retail installment contract are subject only to those agreements expressly set forth in the installment contract. Unlike the *Rugumbwa* and *Lozada* plaintiffs, plaintiff Pack is not challenging the terms of his retail installment contract, but [the dealer's] warranties and performance under the terms of the ... sales agreement. [The dealer] does not seek arbitration of claims arising under the ... retail installment agreement; plaintiff does not allege claims regarding the subject matter of the retail installment contract. The [*Rugumbwa*] court itself distinguished between claims with regard to a retail installment contract, and claims with regard to a sales contract[.] [*Pack, supra* at 554-555.]

void the Arbitration Agreement. Defendant contends that the plain language of these statutes does not require that the contract for an automobile purchase be contained in one document. R.C. §1317.02 requires that "every retail installment sale shall be evidenced by an instrument in writing **and** shall set forth specifically all items and matters required by sections 1317.01 to 1317.11, inclusive, of the Revised Code." (Emphasis added.) R.C. §4517.26 requires that "[e]very retail and wholesale sale of a motor vehicle shall be preceded by a written instrument or contract that shall contain all of the agreements of the parties and shall be signed by the buyer and the seller." In both code sections, the term instrument is singular, not plural, and "the items and matters required by sections 1317.01 to 1317.11" and "all of the agreements of the parties", as those phrases are used in R.C. §§1317.02 and 4517.26, respectively, must be set forth or be contained in, that instrument. Defendant does point to *Ford v. Antwerpen Motorcars, Ltd.*, 117 A.3d 21 (Md. Ct. App. 2015), wherein the court found that despite the purchaser's labeling of the relevant statute as a "single document rule", the term single was not contained anywhere in the statute and the use of the terms "an instrument" or "a contract" did not supplant common law principles of contract interpretation. *Id.* 479-80. While the court in *Ford* reached a different conclusion than this court does in finding that the use of the terms "an instrument" and "a contract" indicates a single document, ultimately or regardless, *Ford* is distinguishable from the instant matter because the RISC at issue in *Ford* incorporated by reference the Buyer's Order and its arbitration provision by providing that "'[t]his contract along with all other documents signed by you in connection with the purchase of this vehicle, comprise the entire agreement.'"[9] *Id.* By contrast, the RISC at issue herein provides that it "contains the entire agreement relating to this contract." And, finally, albeit a more minimal distinction, whereas the arbitration agreement at issue in *Ford* specifically included or referenced the retail installment sale contract, the Arbitration Agreement at

[9] The court relied upon Maryland jurisprudence, to include the Fourth Circuit's opinion in *Rota-McLarty v. Santander Consumer USA, Inc.*, 700 F.3d 690 (4th Cir. 2012), involving a similar situation where a purchaser executed a Buyer's Order which contained an agreement to arbitrate, and a RISC which did not contain an arbitration agreement, where "[d]espite the presence of an integration clause in the RISC, the court concluded that 'Rota-McLarty has failed to establish that the RISC's integration clause prevents reading both [the Buyer's Order and the RISC] together as a single agreement.' *Id.* at 700."

issue herein does not specifically reference the RISC, but the term "Finance/Lease Contract".

Defendant also contends that since R.C. §1317.04, which sets forth the items or information that must be recited in the written instrument evidencing a retail installment sale as required by R.C. §1317.02, and R.C. §4517.26, which sets forth the required contents of the written instrument, do not include or refer to arbitration provisions or alternative dispute resolution provisions, then an arbitration provision is not required to be part of the written instrument referred to in those statutes. In support thereof, Defendant directs this Court's attention to *Patriot Mfg., Inc. v. Dixon*, 399 F.Supp.2d 1298 (S.D.Ala.2005), and *Scott v. Forest Lake Chrysler-Plymouth-Dodge*, 611 N.W.2d 346 (Minn.2000).

In *Dixon*, the court read and interpreted the one-document rule of the Magnuson Moss Warranty Act (MMWA) and the Federal Trade Commission ("FTC") rules promulgated thereunder to plainly provide that a warrantor's required disclosures under that rule were limited to those specifically enumerated in the FTC regulations, and those regulations did not specifically identify arbitration agreements as having to be disclosed. However, this Court declines to apply a decision interpreting the statutory and regulatory scheme of the MMWA's one-document rule to the instant matter.

In *Scott*, the plaintiff executed a vehicle purchase contract, a retail installment contract and a conditional delivery agreement. The conditional delivery agreement provided that if financing was not approved, then the retail installment contract would be void. After the plaintiff was denied financing, he signed another retail installment contract with an increased APR. He brought suit alleging that the dealer violated Minn. Stat. § 168.71(a)(1) because the retail installment contract did not include the conditional delivery agreement in violation of the statutory requirement that a retail installment contract "shall contain all the agreements of the parties." The Court rejected the plaintiff's argument, explaining in relevant part as follows:

> The plain purpose of the MMVRISA is to require disclosure to consumers of the cost of credit extended to them, including sale price, amount of down payment, insurance charges, and finance charges. The "agreement of the parties' clause serves to prohibit dealers from relying on separate agreements containing additional or contradictory financing

> terms. The Court does not read the clause as requiring that every agreement to a condition precedent be contained in the installment contract. Here all the credit terms were contained in the installment contract itself. Moreover, the addendum did not change any contract terms' it simply made the contract itself conditional. [Citation omitted.]
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> ***
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> Finally, Scott's argument ignores the interrelationship of the three separate agreements relating to the financing transaction. The retail installment contract sets forth the details of how the financing is to work 'the interest rate, the finance charge, amount financed, total payment and total sales price' and becomes effective only if financing is arranged. The conditional delivery agreement permits the buy to take immediate possession of the vehicle, but the buyer is obligated to return it if financing is not approved, as happened here. The vehicle purchase contract sets forth the terms of the actual purchase, including trade-in allowances and identifies the amount to be financed, if any. Moreover, each agreement is dependent upon financing approval; the retail installment contract expressly states that it may not be binding; the conditional delivery agreement provides that the sale is null and void if financing is not approved, and the vehicle purchase contract provides that if the dealer is to arrange credit for respondent, the contract is not valid until the credit is accepted. We reject Scott's argument that all of these documents are subsumed into the retail installment contract as contrary to the clear objective of the MMVRISA, its statutory scheme and to our well-considered case precedent.

Scott, *supra*, 611 N.W.2d at 351, 352.

First, *Scott* did not involve the interpretation of the MMVRISA as applied to determine the enforceability of a stand-alone arbitration agreement. Second, the "interrelationship of the three separate agreements relating to the financing transaction" at issue was an important consideration for the court in *Scott*. All three documents or contracts made the financing approval a condition precedent to the validity or performance of the contract. In the context of deciding Defendant's Motion, the interrelationship of the Retail Purchase Agreement (Buyers Order), the RISC, and the Spot Delivery Agreement relating to the financing transaction is not the issue, but whether or not the Arbitration Agreement applies to require that Plaintiff's claims associated therewith be arbitrated.

Plaintiff also argues that the Arbitration Agreement violates Ohio law on integrated agreements, citing *Cuyahoga Metro. Hous. Auth. v. Roth Bros.* (8th Dist. Cuyahoga No. 86106), 2005-Ohio-6491,

and *Patton v. Jeff Wyler Eastgate, Inc.*, 608 F.Supp.2d 907 (S.D. Ohio 2007). In *Cuyahoga Metro. Hous. Auth. v. Roth Bros.* the court affirmed the trial court's decision denying the motion to stay and compel arbitration, because the arbitration provision was contained in the warranty issued by the manufacturer of the roofing materials, and not in the sales contract by and between the purchaser and the roofing contractor. Indeed, the Court noted that "nowhere in the contract is the warranty provided...mentioned or otherwise incorporated", the sales contract provided that it "and all documents and clauses in [it] shall constitute the entire agreement between the parties," and "[t]here [was] also no mention in the contract of the manufacturer, the manufacturer's roofing materials, or that [the roofing contractor] was skilled in installing the manufacturer's materials." *Id.* at P8-10. The Court rejected the roofing contractor's "attempt[] to bind CMHA to arbitration through the warranty that was neither expressly nor impliedly incorporated in the contract." *Id.* at P10.

Although *Patton* does not involve the enforceability of a stand-alone arbitration clause, Plaintiff is correct that in *Patton*, the court found that the dealer had violated the Truth In Lending Act by using a "Purchase Spot Delivery Agreement" ("PSDA") to attempt to negate the terms of the retail installment sale contract. Although the PSDA provided that it was incorporated by reference into the Buyers' Order, neither the PSDA nor the retail installment sale contract contained language incorporating the terms of one agreement into the other. Also, and despite Defendant's assertion that the RISC in *Patton* contained a more restrictive clause than that contained in its RISC, the *Patton* retail installment sale contract contained language identical to that contained in the RISC at issue herein: "[t]his contract is the entire agreement between you and us relating to this contract."

Finally, both Plaintiff and Defendant contend that *Dunn v. B&B Auto*, 2012 U.S. Dist. LEXIS 77526 (U.S.D.C. ED PA), supports their respective arguments. Defendant maintains that *Dunn* supports its position because: the court rejected the purchaser's argument that since the arbitration agreement was not within the four-corners of the RISC it was unenforceable under the Pennsylvania Motor Vehicle Sales Finance Act ("MVSFA"); the court found that that language in the arbitration

agreement incorporated it into both the RISC and/or the purchase agreement; and the court found the arbitration agreement binding on the dispute at issue. Plaintiff cited *Dunn* because in that case the RISC contained a checked box with the words "Arbitration Agreement Attached" next to the box, that together with the arbitration agreement language incorporating it by reference into the RISC and Purchase Agreement that "further substantiat[ed] that it was intended by the parties to be part and parcel of the entire contract,"[10] supported the court's decision compelling arbitration. Plaintiff emphasizes the fact that there is no mark in the box next to the sentence "If Marked, Please See Attached Arbitration Agreement" on the first page of the Retail Purchase Agreement (Buyers Order) under "Other Material Understandings And Integrated Documents", thereby distinguishing this matter from *Dunn*, and requiring this Court to find the Arbitration Agreement unenforceable.

This Court concludes that *Dunn* supports only part of each party's argument, to wit: Plaintiff's argument that since the RISC does not contain language incorporating the Arbitration Agreement, it is unenforceable to compel arbitration of Plaintiff's claims arising under the RISC; and Defendant's argument that since the Retail Purchase Agreement (Buyers Order) does contain language incorporating by reference the Arbitration Agreement, the Arbitration Agreement is enforceable to compel arbitration of Plaintiff's claims arising under the Retail Purchase Agreement (Buyers Order). The fact that the box is not checked on the first page of the RISC does not defeat Defendant's argument as to the enforceability of the Arbitration Agreement for claims arising under the Retail Purchase Agreement (Buyers Order), since other language contained therein and in the Arbitration Agreement evidences the intent of the parties to have the Arbitration Agreement be part of Retail Purchase Agreement (Buyers Order). Indeed, as already noted earlier in this Opinion, the box next to the sentence "If Marked Please See Attached Spot Delivery Agreement-Limited Right To Cancel" also is not checked, but Plaintiff does not dispute, and in fact relies upon, the execution of that document as part of the contract; and indeed, indisputably took possession of the vehicle pursuant to that agreement.

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[10] *Dunn, Id.* at *9.

In fact, based upon this Court's discussion of the statutory and case law above, as applied to the evidence, this Court concludes that the Arbitration Agreement applies or is enforceable as to claims arising under the Retail Purchase Agreement (Buyers Order), but does not apply or is unenforceable as to claims arising under the Retail Installment Sale Contract. Under Ohio law, this Court is permitted to stay the litigation and compel arbitration of some claims. *See Morris v. Morris* (10th Dist. Franklin Cty. No. 10AP-15), 189 Ohio App.3d 608, 2010-Ohio-4750, 939 N.E.2d 928.

Accordingly, Defendant's Motion is **GRANTED AND DENIED IN PART**. This matter is stayed and the parties are ordered to arbitrate all claims arising under the Retail Purchase Agreement (Buyers Order). Plaintiff's claims arising under the RISC are not subject to arbitration, but will be decided within this litigation subsequent to the arbitration of the claims arising under the Retail Purchase Agreement (Buyers Order).

IT IS SO ORDERED.

Pamela A. Barker 11-16-16

JUDGE PAMELA A. BARKER DATED