UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

CREDIT ACCEPTANCE CORPORATION PLAINTIFF

VS. CIVIL ACTION NO. 3:17CV644TSL-RHW

ANNA MCDONALD A/K/A ANNA ROSADO DEFENDANT

MEMORANDUM OPINION AND ORDER

This cause is before the court on the motion of plaintiff Credit Acceptance Corporation (CAC) to compel arbitration. Defendant Anna McDonald a/k/a Anna Rosado has responded in opposition to the motion. The court, having considered the memoranda of authorities, together with attachments, submitted by the parties, concludes that plaintiff's motion is well-taken and should be granted.

The following facts appear from the record. On September 12, 2016, defendant McDonald executed a retail installment contract for the purchase of an automobile from Laurel Ford Mississippi. The contract, which was subsequently assigned to CAC, contained an arbitration clause which provided for arbitration of any "dispute" between the parties.[1] "Dispute" was defined as

> any controversy or claim between You and Us arising out of or in any way related to this Contract, including, but not limited to, any default under the Contract, the collection of amounts due under this Contract, the purchase, sale, delivery, set-up, quality of the

[1] The contract included a provision giving defendant a right to reject the arbitration clause. She did not exercise that right.

> Vehicle, advertising of the Vehicle or its financing, or any product or service included in this Contract. "Dispute" shall have the broadest meaning possible, and includes contract claims, and claims based on tort, violations of laws, statutes, ordinances or regulations or any other legal or equitable theories....

On June 27, 2017, McDonald filed suit in the Circuit Court of Smith County against CAC, All Star Recovery, Richard Harrigill and Sterling Gay alleging that All Star Recovery, Harrigill and Gay, acting as agents, servants and employees of CAC, came to her home and attempted to repossess the vehicle, notwithstanding that McDonald did not authorize said repossession and that there was no legal authority for the repossession. She alleged that during the course of the attempted repossession, Harrigill assaulted her verbally and physically when he attempted to obtain the keys to the vehicle from her. She charged that Harrigill made verbal threats, which caused her to be afraid for her safety and the safety of her children, and that he physically grabbed her in an attempt to get the keys, causing her to sustain bruising to her arms and wrists and causing her severe emotional distress, for which she demanded actual and punitive damages.

On August 2, 2017, CAC filed the present action pursuant to the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.* to compel arbitration of McDonald's claims and now, McDonald having been served and her answer filed, CAC has moved pursuant to 9 U.S.C.

§ 4 for entry of an order compelling arbitration.[2] A week later, CAC removed McDonald's underlying lawsuit to this court based on diversity jurisdiction, which case was assigned to Judge Jordan. See McDonald v. Credit Acceptance Corp., et al., No. 3:17CV652DPJ-FKB. On December 22, 2017, the magistrate judge ordered the cases consolidated.[3]

In deciding whether to compel arbitration under the FAA, the court engages in a two-step analysis. Tittle v. Enron Corp., 463 F.3d 410, 418 (5th Cir. 2006). "First, a court must 'determine whether the parties agreed to arbitrate the dispute in question.'" Id. (quoting Webb v. Investacorp, Inc., 89 F.3d 252, 258 (5th Cir. 1996)). "Second, a court must determine 'whether legal constraints external to the parties' agreement foreclose[ ] the arbitration of those claims.'" Id. (quoting Mitsubishi Motors

[2] Section 4 of the FAA states, in relevant part:

> A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement....

9 U.S.C. § 4.

[3] Following removal, McDonald moved to remand. Judge Jordan denied the motion based on uncontroverted evidence by CAC that the named non-diverse defendants, All Star Recovery, Harrigill and Gay, had no involvement in any repossession of McDonald's vehicle and had thus been fraudulently joined. See McDonald v. Credit Acceptance Corp., et al., No. 3:17CV652DPJ-FKP (S.D. Miss. Oct. 23, 2017).

Corp. v. Soler Chrysler-Plymouth, 473 U.S. 614, 105 S. Ct. 3346, 3355, 87 L. Ed. 2d 444 (1985)). With respect to the first issue, i.e, whether the parties agreed to arbitrate a particular dispute, the court asks two questions: "(1) is there a valid agreement to arbitrate the claims and (2) does the dispute in question fall within the scope of that arbitration agreement." Sharpe v. AmeriPlan Corp., 769 F.3d 909, 914 (5th Cir. 2014).

McDonald does not contend that any federal statute or policy would bar arbitration, and she acknowledges there is a valid arbitration agreement. The court's inquiry thus focuses on whether her claims fall within the scope of the arbitration agreement. Whether a dispute is covered by the scope of an arbitration agreement often depends on whether the language of the provisions is broad or narrow: "Broad arbitration language governs disputes 'related to' or 'connected with' a contract, and narrow arbitration language requires arbitration of disputes that directly 'arise out of' a contract." Pennzoil Exploration & Prod. Co. v. Ramco Energy Ltd., 139 F.3d 1061, 1067 (5th Cir. 1998). The language of the arbitration agreement at issue in this case is broad, covering "any controversy or claim ... arising out of or in any way related to this Contract...." In this regard, "'relate' means 'to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with'; with 'to.'" Smith ex rel. Smith v. Captain D's, LLC, 963

So. 2d 1116, 1121 (Miss. 2007) (quoting Black's Law Dictionary 892 (Abridged 6th ed. 1991)). "Because broad arbitration language is capable of expansive reach, courts have held that it is only necessary that the dispute 'touch' matters covered by the contract to be arbitrable." Id. (citing MS Credit Ctr., Inc. v. Horton, 926 So. 2d 167, 176 (Miss. 2006)). When determining whether a dispute comes within the scope of an arbitration agreement, "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration". Safer v. Nelson Fin. Group Inc., 422 F.3d 289, 294 (5th Cir. 2005) (internal quotation marks and citation omitted). The Fifth Circuit has thus held that "a valid agreement to arbitrate applies 'unless it can be said with positive assurance that [the] arbitration clause is not susceptible of an interpretation which would cover the dispute at issue'". Personal Sec. & Safety Sys. Inc. v. Motorola Inc., 297 F.3d 388, 392 (5th Cir. 2002) (quoting Neal v. Hardee's Food Sys., Inc., 918 F.2d 34, 37 (5th Cir. 1990)).

In the case at bar, McDonald acknowledges the broad language of the arbitration clause, and she further expressly acknowledges that her claim for assault and battery "would relate to the fulfillment of the contract." Nevertheless, she argues that under applicable case law, intentional torts are outside the scope of even broad arbitration agreements. Her position is not well-founded.

Whether a claim falls within the scope of a broad arbitration agreement is determined by whether the facts alleged relate to the

contract, "regardless of the label attached to the dispute." See Pennzoil, 139 F.3d at 1067. Thus, the mere fact that plaintiff has asserted an intentional tort claim does not exempt the parties' dispute from the scope of the arbitration agreement. See Colt Unconventional Res., LLC v. Resolute Energy Corp., No. 3:13-CV-1324-K, 2013 WL 3789896, at *5 (N.D. Tex. July 19, 2013) (rejecting a plaintiff's argument that its tort claims were outside scope of arbitration agreement "merely because it [was] alleging intentional torts," because determination "whether a claim falls within the scope of an arbitration agreement depends on the factual allegations of the complaint instead of the legal causes of action asserted"); Campo-Wong v. Hollingsworth, No. CIV. A. 04-1654, 2004 WL 2359302, at *1 (E.D. La. Oct. 15, 2004) (finding that claim involving altercation with coworker was not excepted from scope of arbitration agreement in employment agreement just because it was brought under an intentional tort theory where facts of claim related to her employment).

Plaintiff has offered no authority to the contrary. She does cite two cases – Smith v. Captain D's and Jones v. Halliburton, 583 F.3d 228 (5th Cir. 2009) – both of which involved claims for alleged intentional torts that were found to fall outside the scope of the respective arbitration agreements. However, the courts' decisions in those cases turned not on the fact that the claims were for intentional torts but on the fact that the claims did not relate to the agreements at issue.

In Smith, an employee of Captain D's who was assaulted and raped by her manager, filed suit against her assailant for sexual assault and against Captain D's for negligent hiring, supervision and retention. 963 So. 2d at 1118. Captain D's sought to compel arbitration based on the Captain D's Employment Dispute Resolution Plan executed by the plaintiff which provided for arbitration of "any and all ... claims, disputes, or controversies arising out of or relating to my application for employment, employment and/or cessation of employment with Captain D's...." Id. at 1120. While the court "recogniz[ed] the breadth of the language in the arbitration provision," it found that "a claim of a sexual assault neither pertains to nor has a connection with Tammy's employment" and hence was not within the scope of the arbitration agreement. Id. at 1121.

The employee in Jones, while stationed at a company facility overseas, alleged she was gang raped by co-workers in her bedroom in employer-provided housing. 583 F.3d at 231-32. The Fifth Circuit found that her claims for assault and battery, intentional infliction of emotional distress arising out of the alleged assault, negligent hiring, retention, and supervision of employees involved in the alleged assault, and false imprisonment were not "related to [her] employment" and did not constitute personal injury "arising in the workplace," where the plaintiff alleged that she was sexually assaulted "*in her bedroom, after-hours*, ...

while she was *off-duty*...." Id. at 240. Notably, the court in Jones stated that it "[did] not hold that, as a matter of law, sexual-assault allegations can never 'relate to' someone's employment," id. at 241, but it found that the plaintiff's allegations regarding the assault "[did] not 'touch matters' related to her employment, let alone have a 'significant relationship' to her employment contract," id.

The present case does not bear any resemblance to either Smith or Jones. In this case, no reasonable argument can be made that McDonald's allegations do not "touch matters" related to the retail installment contract. The contract specifically authorizes repossession of the vehicle, stating that CAC "can enter Your property ... so long as it is done peacefully and the law allows it." McDonald's allegations relate to the manner in which CAC attempted repossession of the vehicle, and clearly fall well within the scope of the arbitration agreement. See Alabama Title Loans, Inc. v. White, 80 So. 3d 887, 894 (Ala. 2011) (concluding that claims for wrongful repossession and assault and battery allegedly committed during course of repossession "[fell] squarely within the purview of the broadly worded arbitration clause in the title-loan agreements" so that the trial court erred when it denied the title-loan parties' motions to compel arbitration of those claims). McDonald herself admits in her response that her claim for assault and battery "would relate to the fulfillment of

the contract." It follows that CAC's motion to compel arbitration should be granted.

Accordingly, it is ordered that CAC's motion to compel arbitration is granted and this case is dismissed. See Alford v. Dean Witter Reynolds, Inc., 975 F.2d 1161, 1164 (5th Cir. 1992) (providing that where all claims are referable to arbitration, upon granting motion to compel, district court has discretion to dismiss case, as opposed to imposing stay).

A separate judgment will be entered in accordance with Rule 58 of the Federal Rules of Civil Procedure.

SO ORDERED this 30th day of January, 2018.

/s/ Tom S. Lee
UNITED STATES DISTRICT JUDGE