UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ULRICH SCHULZ,

Plaintiff,

v.

BMW OF NORTH AMERICA, LLC,

Defendant.

Case No. 5:20-cv-01697-NC

ORDER DENYING BMW'S MOTION TO COMPEL ARBITRATION

Re: Dkt. No. 19.

Plaintiff Ulrich Schulz brings this case against Defendant BMW of North America for breach of warranty claims arising out a car purchase from a dealership. Before the Court is BMW's motion to compel arbitration and stay proceedings. The Court concludes that BMW lacks standing to enforce the arbitration agreement between Schulz and the dealership, Stevens Creek BMW, because equitable estoppel and third-party beneficiary doctrines do not apply here. Accordingly, the Court DENIES BMW's motion to compel arbitration.

I. Background

A. Factual Allegations

In 2016, Plaintiff Ulrich Schulz purchased a new BMW 335Xi GT from Stevens Creek BMW. *See* Dkt. No. 1 ¶ 4. Schulz and the dealership signed a purchase agreement titled "RETAIL INSTALLMENT SALE CONTRACT – SIMPLE FINANCE CHARGE (WITH ARBITRATION PROVISION)" ("Purchase Agreement"). *See* Dkt. No. 19, Att.

1, Ex. A ("Purchase Agreement"). The Purchase Agreement contained an arbitration provision that stated:

> 1. EITHER YOU OR WE MAY CHOOSE TO HAVE ANY DISPUTE BETWEEN US DECIDED BY ARBITRATION AND NOT IN A COURT OR BY JURY TRIAL. . . .
>
> Any claim or dispute, whether in contract, tort, statute or otherwise (including the interpretation and scope of this Arbitration Provision, and the arbitrability of the claim or dispute), between you and us or our employees, agents, successors or assigns, which arises out of or relates to your credit application, purchase or condition of this vehicle, this contract or any resulting transaction or relationship (including any such relationship with third parties who do not sign this contract) shall, at your or our election, be resolved by neutral, binding arbitration and not by a court action.

Id. The Purchase Agreement also included a provision titled "WARRANTIES SELLER DISCLAIMS" which stated:

> If you do not get a written warranty, and the Seller does not enter into a service contract within 90 days from the date of this contract, the Seller makes no warranties, express or implied, on the vehicle, and there will be no implied warranties of merchantability or of fitness for a particular purpose.
> This provision does not affect any warranties covering the vehicle that the vehicle manufacturer may provide. If the Seller has sold you a certified used vehicle, the warranty of merchantability is not disclaimed.

Id.

Defendant BMW manufactured Schulz's vehicle and provided Schulz with an express warranty. *See* Dkt. No. 1 ¶ 5. If the subject vehicle were to malfunction due to a defect within a certain period, the warranty allowed Schulz to bring the vehicle into a BMW-authorized repair facility. *Id.* During the warranty period, Schulz's vehicle exhibited a rattle/metallic buzzing noise and Schulz brought the vehicle to a BMW-authorized repair facility. *Id.* ¶¶ 7–8. However, the facility was unable to repair the vehicle and refused to provide restitution or replace the vehicle. *Id.* ¶¶ 8–9.

B. Procedural Background and Evidentiary Issues

Schulz filed his initial complaint in Santa Clara County Superior Court bringing claims for (1) breach of warranty obligation to provide restitution or replacement, (2)

breach of warranty obligation to commence or complete repairs within thirty days, and (3) breach of implied warranty of merchantability. *See* Dkt. No. 1. After BMW removed the action to this Court, BMW filed the instant motion to compel arbitration. *See* Dkt. No. 19.

BMW filed a statement of recent decision for *Qiu v BMW N. Am. LLC*, and Schulz filed a statement of recent decision for *Wirth v Ford Motor Company*. *See* Dkt. Nos. 28, 30. The Court considered those cases in deciding this order. BMW also requested judicial notice of appellant's opening brief in *Kramer v. Toyota Motor Corp*, 705 F.3d 1122 (9th Cir. 2013). *See* Dkt. No. 23. Concurrently, Schulz requested judicial notice that (1) Exhibit 1 shows that Sonic-Stevens Creek B, Inc. owns and operates Stevens Creek BMW, (2) Exhibit 4 shows that Sonic Automotive Inc. wholly owns Sonic-Stevens Creek B, Inc., (3) Exhibit 5 is an excerpt of Appellant's opening brief from *Kramer v. Toyota Motor Corp.*, (4) the Choi and Del Real purchase agreement from *Kramer v Toyota Motor Corp.* contains arbitration provisions that are nearly identical to the arbitration provisions in this matter, and (5) Reynold and Reynold form 553-CA is a version of Schulz's purchase agreement that does not contain an arbitration clause. *See* Dkt. No. 21. Both parties filed objections to each other's evidence. Dkt. Nos. 24, 25, 26, 29. The Court finds:

- Schulz's request for judicial notice over Exhibits 1 and 4 to the Declaration of Larry Chae at Dkt. No. 21 is GRANTED. All of Schulz's other requests for judicial notice are DENIED. While the Court may take notice of the existence of court filings under Federal Rule of Civil Procedure 201(b)(2), here Schulz appears to request that the Court take notice of Schulz's interpretations, arguments, and conclusions found in those filings. BMW's request for judicial notice of Exhibit A at Dkt. No. 23 is DENIED for the same reason.
- BMW's objections at Dkt. Nos. 24 and 25 are OVERRULED. BMW's objection at Dkt. No. 26 is DENIED AS MOOT based on the Court's denial of Schulz's request for judicial notice over Exhibit 7 to Chae's declaration.
- Schulz's objection at Dkt. No. 27 is OVERRULED. The Court considered

all cases filed by the parties in deciding this Order and took appropriate account of which had authoritative precedential value and which did not.

All parties consented to the jurisdiction of a magistrate judge under 28 U.S.C. § 636(c). *See* Dkt. Nos. 8, 9.

II. Legal Standard

Under the Federal Arbitration Act (FAA), courts are required to enforce contractual arbitration agreements except "upon such grounds as exist at law or in equity for the revocation of any contract." *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1616 (2018). The FAA "reflect[s] both a 'liberal federal policy favoring arbitration,' and the 'fundamental principle that arbitration is a matter of contract.'" *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011). The court's role is to decide: "(1) whether there is an agreement to arbitrate between the parties; and (2) whether the agreement covers the dispute." *Brennan v. Opus Bank*, 796 F.3d 1125, 1130 (9th Cir. 2015). The party seeking to compel arbitration must prove both counts by a preponderance of the evidence. *Knutson v. Sirius XM Radio Inc.*, 771 F.3d 559, 565 (9th Cir. 2014). The scope of an arbitration agreement is governed by federal substantive law. *Kramer v. Toyota Motor Corp.*, 705 F.3d 1122, 1126 (9th Cir. 2013). "If the response is affirmative on both counts, then the Act requires the court to enforce the arbitration agreement in accordance with its terms." *Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000). "[A]ny doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." *Id.* at 1131.

III. Discussion

A. BMW Cannot Invoke the Federal Arbitration Act to Compel Arbitration.

Because "arbitration is a matter of contract," the FAA cannot require a party "to submit to arbitration any dispute which he has not agreed so to submit." *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582 (1960). BMW contends that it can enforce the arbitration provision in Schulz's purchase agreement with the dealership. The Court disagrees and discusses each of BMW's arguments in turn.

1. The Court May Decide the Question of Arbitrability Because BMW Does Not Have the Contractual Right to Enforce the Delegation Clause.

When the parties "delegate[] the arbitrability question to an arbitrator, a court may not override the contract." *Henry Schein, Inc. v. Archer and White Sales, Inc.*, 139 S. Ct. 524, 529 (2019). However, "[c]ourts should not assume that the parties agreed to arbitrate arbitrability unless there is 'clea[r] and unmistakabl[e]' evidence that they did so." *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995) (quoting *AT&T Techs., Inc. v. Commc'ns Workers of Am.*, 475 U.S. 643, 649 (1986)). Thus, the right to compel arbitration generally "may not be invoked by one who is not a party to the agreement." *Britton v. Co-op Banking Grp.*, 4 F.3d 742, 744 (9th Cir. 1993). In *Kramer v. Toyota Motor Corp.*, 705 F.3d 1122, 1126 (9th Cir. 2013), the Ninth Circuit held that an automobile manufacturer cannot compel a plaintiff to arbitrate based on an agreement between the plaintiff and a non-litigant dealership, even if the agreement delegates "issues of interpretation, scope, and applicability of the arbitration provision" to an arbitrator. In that case, the arbitration provision's phrasing, "[e]ither you [buyer] or we [dealership] may choose to have any dispute between you and us decided by arbitration," indicated the plaintiff's intent to delegate the arbitrability issue only in disputes with the dealership. *Id.* at 1127.

Likewise, the arbitration clause here contains the same "you and us" language which implies that Schulz agreed to arbitrate arbitrability only in disputes with the dealership—not with BMW. The arbitration provision here extends the right to arbitrate to disputes between Schulz and the dealerships' "employees, agents, successors, or assigns." Purchase Agreement at 7. This extension does not affect the applicability of *Kramer* because the Ninth Circuit considered similar arbitration agreements in deciding that case. *See In re Toyota Motor Corp. Hybrid Brake Mktg., Sales, Practices & Prod. Liab. Litig.*, No. 810ML02172CJCR NBX, 2011 WL 13160304, at *2 (C.D. Cal. Dec. 20, 2011), aff'd sub nom. *Kramer*, 705 F.3d 1122. Moreover, courts in this district have generally held that

an auto manufacturer is not a dealership's employee, agent, successor, or assign.[1] *See e.g.*, *Pestarino v. Ford Motor Co.*, No. 19-cv-07890–BLF, 2020 WL 3187370, at *2 (N.D. Cal. June 15, 2020) (rejecting Ford's claim that they were the dealership's agent); *Johnson v. Nissan N. Am.*, Inc., No. 17-cv-00517-WHO, 2018 WL 6803741, at *4 (N.D. Cal. Sept. 14, 2018) (determining that car manufactures are not a dealership's "employees, agents, successors, assigns, subsidiaries, parents [or] affiliates" while applying Colorado state contracts law).

Nonetheless, BMW contends that the instant arbitration provision delegates the arbitrability issue between Schulz and third parties to arbitration. Dkt. No. 19 at 8. For support, BMW cites *Arab v. BMW of N. Am., LLC*, No. SACV191303DO CJDEX, 2019 WL 8011713, at *3 (C.D. Cal. Sept. 10, 2019), which evaluated a similar arbitration provision between a car buyer and a dealership. This Court, however is unpersuaded by *Arab* and BMW's reasoning because they conflate the meaning of "disputes arising out of or related to third parties" with "disputes between plaintiff and third parties." *See id*. In the instant arbitration provision, "arising out of" refers exclusively to the subject matter of a dispute, while "between" refers to which parties are involved. *See Vincent v. BMW of N. Am. LLC*, Case No. 19-6439 AS, 2019 WL 8013093, at *4 (C.D. Cal. Nov. 26, 2019). Application of the provision, including the delegation clause, is limited by both subject matter of a dispute and the parties involved. *See id.* Because the provision references third parties only when discussing subject matters delegated to an arbitrator, the arbitration provision will not apply here unless the dealership, its employee, agent, assign, or successor, is also a party. Additionally, *Arab* is not binding precedent on this Court. As such, the Court instead adheres to the Ninth Circuit's holding in *Kramer*.

[1] Courts have held that manufacturers acted as a dealership's "affiliate" when the dealership assigns a lease to a financial service company affiliated with the manufacturer. *See Katz v. BMW of N. Am., LLC*, Case No. 4:19-01553-KAW, 2019 WL 4451014, at *3 (N.D. Cal. Sept. 17, 2019); *Rizvi v. BMW of N. Am. LLC*, Case No. 5:20-00229-EJD, 2020 WL 2992859, at *2 (N.D. Cal. June 4, 2020). In these cases, the arbitration agreement encompassed disputes between buyers and "affiliates" of the signatory dealer. *See id.* Here, the agreement was not a lease, nor did the arbitration provision encompass "affiliates."

2. Defendant May Not Compel Arbitration Under the Doctrine of Equitable Estoppel

"Equitable estoppel is a doctrine that 'precludes a party from claiming the benefits of a contract while simultaneously attempting to avoid the burdens that contract imposes.'" *In re Carrier IQ, Inc. Consumer Privacy Litig.*, Case No. 12-MD-2330-EMC, 2014 WL 1338474, at *5 (N.D. Cal. Mar. 28, 2014) (citing *Murphy v. DirecTV, Inc.*, 724 F.3d 1218, 1229 (9th Cir. 2013)). A litigant may invoke equitable estoppel to enforce an arbitration clause to which it is not a party only if the relevant state contract law allows it. *Kramer*, 705 F.3d at 1128. Under California law, a nonsignatory may enforce an arbitration provision through equitable estoppel in two circumstances: "(1) when a signatory must rely on the terms of the written agreement in asserting its claims against the nonsignatory or the claims are 'intimately founded in and intertwined with' the underlying contract, or (2) when the signatory alleges substantially interdependent and concerted misconduct by the nonsignatory and another signatory and 'the allegations of interdependent misconduct [are] founded in or intimately connected with the obligations of the underlying agreement.'" *Id.* (citing *Goldman v. KPMG LLP*, 173 Cal. App. 4th 209, 219–21 (2009)).

BMW argues that Schulz's breach of warranty claims satisfy the first circumstance because the warranties are terms of the purchase agreement and therefore are obligations imposed by the purchase agreement. *See* Dkt. No. 19 at 9–12. Thus, the warranty claims are intimately founded in and intertwined with the purchase agreement. *Id.* The Court finds this argument to be unpersuasive because the Ninth Circuit rejected a similar argument in *Kramer*. *See* 705 F.3d at 1131. There, the court held that the plaintiff's warranty claims against the manufacturer arose independently from his purchase agreement because the purchase agreement did not affect the manufacturer's warranty. *Id.* Instead, the purchase agreement merely disclaimed and differentiated the manufacturer's warranty from the dealer's warranty. *Id.* The instant purchase agreement does not impose any warranty obligations on either the dealership or BMW. *See* Purchase Agreement at 5. Like the agreement in Kramer, the purchase agreement here merely disclaims, "the seller makes no warranties," and that "[t]his provision does not affect any warranties covering

the vehicle the manufacturer may provide." *Id*. The warranties necessary for Schulz's claims originate from BMW with the purchase of the car. *See* Dkt. No. 1 ¶ 6; *Soto v. Am. Honda Motor Co.*, 946 F. Supp. 2d 949, 956 (N.D. Cal. 2012) ("the plaintiffs' [breach of warranty] claims cannot rely on the Installment Sale Contract, but must rely on warranties issued by [the manufacturer]"). Accordingly, the Court disagrees that Schulz's causes of action are intertwined with the purchase agreement. The second scenario that might warrant equitable estoppel does not apply here either because neither signatory alleges "interdependent and concerted misconduct" by BMW. Thus, BMW may not compel arbitration under equitable estoppel.

3. Defendant May Not Compel Arbitration as a Third-Party Beneficiary

"[T]raditional principles" of state law allow a contract to be enforced by or against nonparties to the contract through . . . third-party beneficiary theories." *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 631, (2009). California law allows a third party to enforce a contract made "expressly for the benefit" of that third party. Cal. Civ. Code § 1559. A third party need not be named in the contract, but needs to be "more than incidentally benefitted by the contract" to qualify as a third-party beneficiary. *Vincent v. BMW of N. Am., LLC*, Case No. 19-6439 AS, 2019 WL 8013093, at *5 (C.D. Cal. Nov. 26, 2019) (citing *Gilbert Fin. Corp. v. Steelform Contracting Co.*, 82 Cal. App. 3d 65, 69 (1978)). The contract had to be formed with the intent to benefit the third party specifically. *Norcia v. Samsung Telecommunications Am., LLC*, 845 F.3d 1279, 1291 (9th Cir. 2017).

BMW argues that the Purchase Agreement, in Provision 4, anticipates BMW's warranty of the vehicle. Dkt. No. 19 at 13. Therefore, BMW benefitted when the signatories agreed to potentially arbitrate claims related to the condition of the vehicle. *Id.* There are two problems with this argument. First, the signatories expressly limit their agreement to arbitrate disputes "between you and us or employees, agents, successors, or assigns." Purchase Agreement at 7. While the provision encompasses disputes that arise out of or relate to the condition of the vehicle, it did not extend to disputes against third parties, especially because the signatories had to elect to exercise the right. *Vincent v.*

BMW of N. Am., LLC, No. cv-19-6439 AS, 2019 WL 8013093, at *5 (C.D. Cal. Nov. 26, 2019). Therefore, it is difficult to see what benefit BMW receives from the purchase agreement. Second, even assuming that the signatories' agreement to arbitrate vehicle condition claims benefits BMW, this benefit is merely incidental. Provision 4 acknowledges the potential existence of manufacturer warranties, but the purpose of that reference is to disclaim the dealership's warranty and protect the dealership from unwanted claims. The dealer, rather than BMW, is the beneficiary of that provision.

BMW contends that another indicator of their third-party beneficiary status is that the arbitration provision covers "claim or dispute . . . which arises out of . . . relationship with third parties." This clause refers to the subject matter of the dispute, not to the parties involved in the dispute. As discussed before, regardless of the matter of dispute, the provision expressly limits application to disputes between Schulz and the dealership or its "employee, agents, successors, or assigns." Purchase Agreement at 7. Thus, BMW receives no benefit unless the dealership is also a party to the dispute and such benefit would be incidental anyway.

Accordingly, the Court finds that BMW may not enforce the contract as a third-party beneficiary.

B. It is Unnecessary to Decide Whether Defendant Fraudulently Coerced Plaintiff into Signing Arbitration Agreement.

Because the Court rejects BMW's arguments to compel arbitration, BMW cannot enforce the arbitration agreement. Thus, the Court need not determine whether the agreement itself is valid. The Court therefore does not address whether any party was fraudulently coerced into signing the arbitration agreement.

IV. Conclusion

BMW cannot enforce the Purchase Agreement's arbitration provisions under equitable estoppel or the third-party beneficiary doctrine. Because BMW has no basis to enforce the arbitration agreement, it may not compel arbitration in this case. BMW's motion to compel arbitration is hereby DENIED.

IT IS SO ORDERED.

Dated: July 15, 2020

NATHANAEL M. COUSINS
United States Magistrate Judge