UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.:	CV 20-09275-AB (JPRx)	Date:	April 8, 2021

Title: *Dijon McFarlane v. Rolls-Royce Motor Cars NA, LLC*

Present: The Honorable	**ANDRÉ BIROTTE JR., United States District Judge**
Carla Badirian Deputy Clerk	N/A Court Reporter
Attorney(s) Present for Plaintiff(s): None Appearing	Attorney(s) Present for Defendant(s): None Appearing

Proceedings: **[In Chambers] ORDER DENYING DEFENDANT'S MOTION TO COMPEL ARBITRATION AND STAY ACTION (DKT. NO. 20)**

Before the Court is Defendant Rolls-Royce Motor Cars NA, LLC's ("Defendant") Motion to Compel Arbitration and Stay the Case. (Dkt. No. 20 ("Motion").) Plaintiff Dijon McFarlane ("Plaintiff") opposed (Dkt. No. 24), and Defendant filed a Reply (Dkt. No. 26). The Court deems this matter appropriate for decision without oral argument and **VACATES** the hearing scheduled for Friday, April 9, 2021. *See* Fed. R. Civ. P. 78; Local Rule 7-15. For the reasons stated below the Court **DENIES** Defendant's Motion.

I. BACKGROUND

On April 9, 2019, Plaintiff signed a Lease Agreement with Desert European Motorcars dealership for a 2019 Rolls-Royce Cullinan. (Mot. at 7, citing Declaration of Kate Lehrman ¶ 3, Exh. 1.) The Lease Agreement contained an arbitration clause. (*Id.*) The arbitration clause states in relevant part:

> **NOTICE**: Either you or I may choose to have any dispute between us decided by arbitration and not in a court or by jury trial. If a dispute is arbitrated, I will give up my right to participate as a class representative or class member on any Claim I may have against you including any right to class arbitration or any consolidation of individual arbitrations. Discovery and rights to appeal in arbitration are generally more limited than in a lawsuit, and other rights you and I would have in court may not be available in arbitration.[1]

(*Id.* at ¶ 41.)

In terms of scope, the arbitration clause states that:

> "**"Claim"** broadly means any claim, dispute or controversy, whether in contract, tort, statute or otherwise, whether preexisting, present or future, between me and you or your employees, officers, directors, affiliates, successors *or* assigns, or between me and any third parties if I assert a Claim against such third parties in connection with a Claim I assert against you, which arises out of or relates to my credit application, lease, purchase or condition of this Vehicle, this Lease or any resulting transaction or relationship (including any such relationship with third parties who do not sign this Lease)."

(*Id.*)

At the same time Plaintiff signed the Lease Agreement, Defendant provided an express written warranty relating to the vehicle. (Compl. ¶ 6.) Plaintiff now seeks damages against Defendant for violations of the Song-Beverly Consumer Warranty Act and for breach of Defendant's implied and express warranty for alleged safety and quality issues with the vehicle. (*See generally* Compl.) Defendant concedes that it was not a signatory to the Lease Agreement but asserts it can enforce the arbitration provision as a third-party beneficiary because it is "an affiliate of the assignee of the Lease Agreement, Financial Services Vehicle Trust ("FSVT").) (Mot. at 8-9, citing Declaration of Travis Brown ("Brown Decl.") ¶¶ 3-8.) Defendant also asserts that the doctrine of equitable estoppel applies such that it can compel arbitration. (Mot. at 9.)

[1] According to the lease, "I," "me," and "my" refer to the Lessee and "you" and "your" refer to the Lessor or the Lessor's assignee. (Exh. 1 at ¶ 2.)

II. LEGAL STANDARD

The Federal Arbitration Act (FAA) "makes agreements to arbitrate 'valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.'" *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 336 (2011) (quoting 9 U.S.C. § 2). "The FAA provides for stays of proceedings in federal district courts when an issue in the proceeding is referable to arbitration, and for orders compelling arbitration when one party has failed or refused to comply with an arbitration agreement." *EEOC v. Waffle House, Inc.,* 534 U.S. 279, 289 (2002) (citing 9 U.S.C. §§ 3, 4).

"By its terms, the [FAA] leaves no place for the exercise of discretion by a district court, but instead mandates that district courts *shall* direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed." *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985) (emphasis in original). "A party seeking to compel arbitration has the burden under the FAA to show (1) the existence of a valid, written agreement to arbitrate; and, if it exists, (2) that the agreement to arbitrate encompasses the dispute at issue." *Ashbey v. Archstone Prop. Mgmt., Inc.*, 785 F.3d 1320, 1323 (9th Cir. 2015). When determining whether a valid contract to arbitrate exists, the court applies "ordinary state law principles that govern contract formation." *Davis v. Nordstrom, Inc.*, 755 F.3d 1089, 1093 (9th Cir. 2014).

III. DISCUSSION

Here, Defendant advances two theories by which it can compel arbitration: (1) as a third-party beneficiary; and (2) under the principles of equitable estoppel. Plaintiff counters that because Defendant is not a party to the Agreement, it cannot compel arbitration under either theory.

"Generally, the contractual right to compel arbitration may not be invoked by one who is not a party to the agreement and does not otherwise possess the right to compel arbitration." *Kramer v. Toyota Motor Corp.,* 705 F.3d 1122, 1126 (9th Cir. 2013) (internal quotation marks omitted). However, both signatories and "nonsignatories of arbitration agreements may be bound by the agreement under ordinary contract and agency principles[,]" including as third-party beneficiaries and under equitable estoppel. *Comer v. Micor, Inc.*, 436 F.3d 1098, 1101 (9th Cir. 2006). "Following the U.S. Supreme Court's decision in *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 129 S. Ct. 1896, 173 L. Ed. 2d 832 (2009), . . . courts must

apply *state* law in determining the applicability of these principles." *Dylag v. W. Las Vegas Surgery Ctr.*, LLC, 719 F. App'x 568, 570 (9th Cir. 2017).

A. Third-Party Beneficiary

A nonsignatory may enforce an arbitration agreement if the nonsignatory is a third-party beneficiary of the agreement. *Jenks v. DLA Piper Rudnick Gray Cary US LLP*, 196 Cal. Rptr. 3d 237 (2015); *see also* Cal. Civ. Code § 1559 ("A contract, made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it."). To claim the benefits of such an agreement, the third party must show that the contract reflects the express or implied intention of the parties to the contract to benefit the third party. *Smith v. Microskills San Diego L.P.*, 63 Cal.Rptr.3d 608 (2007); *see also Gilbert Fin. Corp. v. Steelform Contracting Co.*, 145 Cal. Rptr. 448 (1978) (explaining that the third-party must be "more than incidentally benefitted by the contract").

"Whether the third party is an intended beneficiary or merely an incidental beneficiary involves construction of the intention of the parties, gathered from reading the contract as a whole in light of the circumstances under which it was entered." *Cione v. Foresters Equity Servs., Inc.*, 68 Cal. Rptr. 2d 167 (1997). Doubts regarding the scope of arbitrable issues should be resolved in favor of arbitrability, but where the question is "not whether a particular issue is arbitrable, but whether a particular *party* is bound by the arbitration agreement . . . the liberal federal policy regarding the scope of arbitrable issues is inapposite." *Rajagopalan v. NoteWorld, LLC*, 718 F.3d 844, 847 (9th Cir. 2013) (internal citations and quotation marks omitted).

Here, Defendant argues that it is "an affiliate under the Lease Agreement because it is a subsidiary of the manager of [Financial Services Vehicle Trust ("FSVT")], the assignee of the Lease Agreement." (Mot. at 12-13.) Defendant also asserts that the Lease Agreement contemplates that Defendant provides the warranty covering the vehicle and thus it is an intended third-party beneficiary. (*Id.* at 13.)

First, the Court finds that Defendant has oversimplified and conclusorily summarized the purported affiliate relationship between Defendant and FSVT, the assignee of the lease. Travis Brown, Service Operations Manager at Defendant, provides the following information about the corporate relationship between Defendant and FSVT:

- FSVT is a subsidiary of BMW Financial Services NA, LLC ("BMW FS").
- BMW FS is a subsidiary of BMW of North America, LLC ("BMW NA").
- Defendant and BMW NA are subsidiaries of BMW (US) Holding Corporation ("BMW US").[2]

In other words, FSVT is a subsidiary of a subsidiary of BMW US and Defendant is a subsidiary of BMW US—this purported affiliation for purposes of arbitration involves multiple degrees of separation with no explanation of the relationship between the subsidiaries, let alone a showing of the financial linkage as is required by law. *Flinkkote Co. v. General Acc. Assur. Co.,* 410 F.Supp.2d 875 (N.D. Cal. 2006). The Court refuses to speculate about these relationships, and Defendant, as the moving party, has failed to establish the requisite corporate relationship between the two entities. *See Ashbey*, 785 F.3d at 1323.

Next, Defendant is also not a third-party beneficiary under the clause regarding claims "between [Plaintiff] and any third parties if [Plaintiff] assert[s] a Claim against such third parties in connection with a Claim [Plaintiff] asserts against [the dealership or FSVT], which arises out of or relates to my credit application, lease, purchase or condition of this Vehicle, this Lease or any resulting transaction or relationship (including any such relationship with third parties who do not sign this Lease)." (Lehrman Decl., Exh. 1 at ⁋ 41.) This clause covers claims involving third parties *only if they are brought in connection with a claim against the dealership or its assignee, FSVT*.

In *Kramer*, the Ninth Circuit held that because a purchase agreement "expressly differentiate[d] dealer warranties from manufacturer warranties," an implied warranty claim against the manufacturer "ar[ose] independently from the Purchase Agreements." *Kramer*, 705 F.3d at 1131. Here, the "WARRANTIES" section of the Lease Agreement notes the car is subject to the manufacturer's new vehicle warranty if the car is new or the "standard manufacturer's new vehicle warranty if the Vehicle is not a new vehicle" if a related box is checked. Exh. 1 at ¶ 16. Otherwise, the Lease Agreement disclaims all warranties by the lessor, express or implied, in bold and all-caps. *Id.*

[2] To the extent Defendant seeks to allege an affiliate relationship between BMW FS and Defendant, the Court finds that stating that Defendant is a "business division" of BMW FS does not meet the requisite showing of affiliate. (*See* Brown Decl. ⁋ 7.)

The alleged breach of express or implied warranties as relates to Defendant does not "arise from" any obligations incurred or benefits received by the dealership or FSVT. Plaintiff did not name the dealership as a party and does not mention any of the obligations or terms of the Lease Agreement in his complaint. Plaintiff's claim therefore is not "in connection with a Claim he asserts against [the dealership or FSVT]," (Mot. at 8), so the arbitration agreement does not apply to the dispute. Defendant has not established that it is a third-party beneficiary of the lease.

B. Equitable Estoppel

Defendant argues it may enforce the arbitration provision under equitable estoppel "because of the close relationship between the entities involved, as well as the relationship of the alleged wrongs to the nonsignatory's obligations and duties in the contract and the fact that the claims were intimately founded in and intertwined with the underlying contract obligations." (Mot. at 14 (quoting *Mance v. Mercedes-Benz USA*, 901 F. Supp. 2d 1147, 1155 (N.D. Cal. 2012)).

"The theory behind equitable estoppel is that a plaintiff may not, 'on the one hand, seek to hold the non-signatory liable pursuant to duties imposed by the agreement, which contains an arbitration provision, but, on the other hand, deny arbitration's applicability because the defendant is a non-signatory.'" *In re Henson*, 869 F.3d 1052, 1060 (9th Cir. 2017) (quoting *Murphy v. DirecTV, Inc.,* 724 F.3d 1218, 1229 (9th Cir. 2013)); *see also NORCAL Mut. Ins. Co. v. Newton*, 100 Cal. Rptr. 2d 683 (2000) ("No person can be permitted to adopt that part of an entire transaction which is beneficial to him/her, and then reject its burdens.").

Two kinds of equitable estoppel may support a nonsignatory's right to compel arbitration:

> (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, and
> (2) when the signatory alleges substantially inter-dependent 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."

Kramer, 705 F.3d at 1128-29 (citing *Goldman v. KPMG LLP*, 92 Cal. Rptr. 3d 534 (2009)).

Defendant asserts that Plaintiff's claims are "premised on, and arise out of, the Lease Agreement" because Plaintiff's Complaint "makes reference to or presumes the existence of the written agreement." (Mot. at 13, 15.) Defendant argues that Plaintiff's claims are "intertwined with claims" that are covered by the arbitration agreement. (*Id.* at 14.) Yet, as discussed above, Defendant's warranty obligations are independent from and do not arise out of the Lease Agreement. *Kramer*, 705 F.3d at 1127-3 (equitable estoppel did not apply because "[t]he terms of the arbitration clauses [in purchase agreements between the Plaintiffs and Toyota dealerships] are expressly limited to Plaintiffs and the Dealerships," therefore none of the plaintiffs' claims were intertwined with their purchase agreements with the dealers, nor did they reference or rely upon them). Plaintiff's claims relate to the independent express or implied warranties provided by Defendant and the Complaint does not rely on the separate Lease Agreement. As in *Kramer,* "Plaintiffs' claims [arise] independently of the terms of the agreements containing arbitration provisions." *Id.* at 1132.

Defendant argues that *Kramer* is distinguishable because "the language of the arbitration clause . . . was narrower than in this matter." (Mot. at 15.) But, because the manufacturer's warranty is wholly independent from the Lease Agreement, the breadth of the arbitration clause as to the resolution of claims involving the dealership or FSVT is irrelevant. "'The fundamental point' is that a party is 'not entitled to make use of [a contract containing an arbitration clause] as long as it worked to [his or] her advantage, then attempt to avoid its application in defining the forum in which [his or] her dispute . . . should be resolved.' *" Jensen v. U-Haul Co. of Cal.,* 226 Cal. Rptr. 3d 797 (2017) (quoting NORCAL, 84 Cal. App. 4th at 84, 100 Cal.Rptr.2d 683) (alterations in original). Plaintiff "do[es] not seek to simultaneously invoke the duties and obligations of [Defendant] under the [Lease Agreement], as it has none, while seeking to avoid arbitration. Thus, the inequities that the doctrine of equitable estoppel is designed to address are not present." *Kramer*, 705 F.3d at 1134.

IV. CONCLUSION

For the reasons stated above, the Court **DENIES** Defendant's Motion to Compel Arbitration and Stay the Case.

IT IS SO ORDERED.