UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No.	**EDCV 21-809 JGB (SHKx)**	Date	August 12, 2021
Title	***Vincente Cruz v. Mercedes-Benz USA, LLC***		

Present: The Honorable	JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE

MAYNOR GALVEZ	Not Reported
Deputy Clerk	Court Reporter

Attorney(s) Present for Plaintiff(s):	Attorney(s) Present for Defendant(s):
None Present	None Present

Proceedings: **Order (1) DENYING Defendant's Motion to Compel Arbitration and Stay Litigation (Dkt. No. 16); and (2) VACATING the August 16, 2021 Hearing (IN CHAMBERS)**

Before the Court is a motion to compel arbitration and stay litigation filed by Defendant Mercedes-Benz USA, LLC. ("Motion," Dkt. No. 16.) The Court finds this matter appropriate for resolution without a hearing. See Fed. R. Civ. P. 78; L.R. 7-15. After considering the papers filed in support of and opposition to the Motion, the Court DENIES the Motion. The Court VACATES the hearing set for August 16, 2021.

I. BACKGROUND

On February 17, 2021, Plaintiff Vincente Cruz filed this action in the Superior Court of the State of California for the County of San Bernardino. ("Complaint," Dkt. No. 1-1.) The Complaint alleges that Defendant manufactured and was unable to repair a defective car (the "Vehicle") that Plaintiff leased. (Id. ¶¶ 4-5, 9-12.) Plaintiff does not allege that Defendant directly leased the Vehicle to him. (See generally id.) Plaintiff brings two claims for relief: (1) breach of implied warranty of merchantability under the Song-Beverly Warranty Act ("the Act"); and (2) breach of express warranty under the Act. (See generally id.)

On May 6, 2021, Defendant removed the action to federal court. (Dkt. No. 1.) This Court denied Plaintiff's motion for remand on June 25, 2021. (Dkt. No. 15.) Defendant moved to compel arbitration on July 12, 2021 and filed in support the lease Plaintiff signed with the non-party dealership ("Dealership") for the Vehicle and a request for judicial notice. (See Motion;

"Lease," Dkt. No. 16-3; "RJN," Dkt. No. 17.)[1] Plaintiff opposed the Motion on July 26, 2021. (Dkt. No. 18.) Defendant replied in support of its Motion on August 2, 2021. ("Reply," Dkt. No. 19.) The matter now stands submitted.

II. LEGAL STANDARD

The Federal Arbitration Act (the "FAA") provides that contractual arbitration agreements "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. The FAA establishes a general policy favoring arbitration agreements. AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 339 (2011); Cox v. Ocean View Hotel Corp., 533 F.3d 1114, 1119 (9th Cir. 2008) ("Section 2 of the FAA creates a policy favoring enforcement of agreements to arbitrate.") Its principal purpose is to "ensure that private arbitration agreements are enforced according to their terms." Concepcion, 563 U.S. at 334 (citing Volt Info. Sciences, Inc. v. Bd. of Tr. of Leland Stanford Jr. Univ., 489 U.S. 468 (1989) (internal quotation marks omitted)). "Arbitration is a matter of contract, and the [FAA] requires courts to honor parties' expectations." Id. at 351.

Under the FAA, "[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 . . . for an order directing that such an arbitration proceed in the manner provided for in [the arbitration] agreement." 9 U.S.C. § 4. Upon a showing that a party has failed to comply with a valid arbitration agreement, the district court must issue an order compelling arbitration. Id. If such a showing is made, the district court shall also stay the proceedings pending resolution of the arbitration at the request of one of the parties bound to arbitrate. Id. § 3.

To determine whether to compel arbitration, a district court's involvement is limited to "determining (1) whether a valid agreement to arbitrate exists and, if it does, (2) whether the agreement encompasses the dispute at issue." Cox, 533 F.3d at 1119 (quoting Chiron Corp. v. Ortho Diagnostic Sys., Inc., 207 F.3d 1126, 1130 (9th Cir. 2000)). A party seeking to compel arbitration under the FAA has the burden in this regard. Id. However, "[j]ust as the arbitrability of the merits of a dispute depends upon whether the parties agreed to arbitrate that dispute, so the question who has the primary power to decide arbitrability turns upon what the parties agreed about that matter." First Options of Chi., Inc. v. Kaplan, 514 U.S. 938, 943 (1995).

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[1] "A court shall take judicial notice if requested by a party and supplied with the necessary information." Fed. R. Evid. 201(d). An adjudicative fact may be judicially noticed if it is "not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Id. at (b). Defendant requests that the Court take judicial notice of the Complaint. (See RJN.) The Court need not take judicial notice of items from its own docket. It therefore DENIES the RJN as moot.

III. DISCUSSION

Defendant moves to compel arbitration based upon the following language in the Lease:

> If either you or we choose, any dispute between you and us will be decided by arbitration and not in court. . . . Any claim or dispute, whether in contract, tort or otherwise (including any dispute over the interpretation, scope, or validity of this lease, arbitration section or the arbitrability of any issue), between you and us or any of our employees, agents, successors, or assigns, which arises out of or relates to a credit application, this lease, or any resulting transaction or relationship arising out of this lease shall, at the election of either you or us, or our successors or assigns, be resolved by a neutral, binding arbitration and not by a court action.

("Arbitration Clause," Motion at 4.) Defendant asserts that it can enforce the Arbitration Clause either as a third-party beneficiary or through equitable estoppel. (Motion at 5.)[2]

A. Third-Party Beneficiary

Defendant argues that it has standing to enforce the Arbitration Clause because it is an intended third-party beneficiary of the Lease. (Id. at 5.) "To sue as a third-party beneficiary of a contract, 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." Comer v. Micor, Inc., 436 F.3d 1098, 1102 (9th Cir. 2006) (citing Klamath Water Users Protective Ass'n v. Patterson, 204 F.3d 1206, 1211 (9th Cir. 1999)). Courts generally decline to find intended third-party beneficiaries where sophisticated signatories of a contract could have named the party as a beneficiary and did not. See Murphy v. DirecTV, Inc., 724 F.3d 1218, 1234 (9th Cir. 2013).

The Arbitration Clause provides that "you or us, or our successors or assigns" may elect to arbitrate a claim. "You or us" refers to the Dealership or Plaintiff. Defendant does not argue that it is a "successor or assign" of the Dealership. (See generally Motion.) Clearly, the parties were able to name third parties as beneficiaries, but declined to include Defendant in that list. The Court finds that Defendant is not, therefore, an intended third-party beneficiary. The majority of federal district courts in California to have considered this question agree. See, e.g., Ruderman v. Rolls Royce Motor Cars, LLC, 511 F. Supp. 3d 1055, 1059 (C.D. Cal. 2021), dismissed sub nom. Ruderman v. Rolls Royce Motor Cars Na, LLC, No. 21-55068, 2021 WL

[2] Defendant additionally contends on reply that the arbitrator ought to determine whether Defendant has standing to compel arbitration. (Reply at 3.) Arguments made for the first time in a reply are generally improper. See United States ex rel. Giles v. Sardie, 191 F. Supp. 2d 1117, 1127 (C.D. Cal. 2000) ("It is improper for a moving party to introduce new facts or different legal arguments in the reply brief than those presented in the moving papers."); City of Los Angeles v. U.S. Dep't of Agric., 950 F. Supp. 1005, 1015 n.4 (C.D. Cal. 1996) ("Because this issue is raised for the first time in the Defendants' Replies, it is of course not properly before the court."). Therefore, the Court will not consider this argument here.

3142040 (9th Cir. June 1, 2021) (automotive company was not third-party beneficiary to nearly identical arbitration clause) (collecting cases); Safley v. BMW of N. Am., LLC, No. 20-CV-00366-BAS-MDD, 2021 WL 409722, at *6 (S.D. Cal. Feb. 5, 2021) (similar). Thus, Defendant does not have standing to enforce the Arbitration Clause as a third-party beneficiary.

B. Equitable Estoppel

Defendant additionally contends that it has standing to enforce the Arbitration Clause through equitable estoppel. (Motion at 6.) This question is not new. The Ninth Circuit has long held that car manufacturers cannot enforce similar arbitration provisions through equitable estoppel in contracts between consumers and car dealers where the plaintiff consumer is not seeking to enforce a term of the contract. Kramer v. Toyota Motor Corp., 705 F.3d 1122, 1134 (9th Cir. 2013) (arbitration could not be compelled where "Plaintiffs do not seek to simultaneously invoke the duties and obligations of Toyota under the Purchase Agreement, as it has none, while seeking to avoid arbitration"); see, e.g., Vincent v. BMW of N. Am., LLC, No. CV 19-6439 AS, 2019 WL 8013093, at *8 (C.D. Cal. Nov. 26, 2019) (arbitration could not be compelled where "Plaintiff's claims do not rely on any of the terms in the Purchase Agreement, only the fact that he purchased the vehicle"); Jurosky v. BMW of N. Am., LLC, 441 F. Supp. 3d 963, 970 (S.D. Cal. 2020) (arbitration could not be compelled where "all of Plaintiff's claims expressly reference BMW's warranties, [but] none of them reference the purchase agreement").

Kramer, however, concerned slightly different contractual languge. The arbitration agreement in Kramer read as follows: "If either you or we elect, any claims or disputes arising out of this transaction, or relating to it, will be determined by binding arbitration and not by court action." Kramer, 705 F.3d at 1124–25. Crucially, the Kramer agreement does not include the third-party language at issue in the arbitration provision of the contract that Plaintiff signed. The absence of that language leaves a gap for other courts to fill. Neither the Ninth Circuit nor the California Supreme Court has yet ruled on whether an arbitration agreement identical to the one that Plaintiff signed can be enforced by a nonsignatory under the doctrine of equitable estoppel.

A California appeals court recently waded into the void. Felisilda had similar facts: the Felisildas purchased a used vehicle from a dealer, and, when the vehicle turned out to be a lemon, sued both the dealer and the manufacturer. Felisilda v. FCA US LLC, 53 Cal. App. 5th 486, 489 (2020), review denied (Nov. 24, 2020). The dealer moved to compel arbitration based upon an arbitration contract similar to the one Plaintiff signed, the manufacturer filed a notice of non-opposition, and the trial court compelled the Felisildas to arbitrate their claims against both the dealer and the manufacturer. Id. at491. The California appellate court upheld the decision compelling the Felisildas to arbitrate their claims against the manufacturer "because the Felisildas expressly agreed to arbitrate claims arising out of the condition of the vehicle—even against third party nonsignatories to the sales contract." Id. at 497. Defendant urges the Court to follow this line of reasoning. (Motion at 8.)

But Felisilda is not directly on point, because the Felisildas sued both the manufacturer and the dealer. Plaintiff, on the other hand, sued only Defendant and not the Dealer. Kramer

therefore remains the controlling precedent for this case. Under Kramer, Plaintiff cannot compel Defendant to arbitrate his claims against it under the doctrine of equitable estoppel.

Because the Court finds that Defendant does not have standing to compel performance of the Arbitration Clause, it does not reach Plaintiff's additional arguments concerning the Arbitration Clause.

IV. CONCLUSION

For the reasons above, the Court DENIES Defendants' Motion to Compel Arbitration. The August 16, 2021 hearing is VACATED.

IT IS SO ORDERED.