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United States District Court,
N.D. Georgia, Atlanta Division.

James HATCHER, Plaintiff,
v.
CRONIC NISSAN, INC., Defendant.

CIVIL ACTION NO.
1:21-cv-00058-RGV
|
Signed 04/26/2021

Attorneys and Law Firms

Shimshon Wexler, S. Wexler, LLC, Atlanta, GA, for Plaintiff.

Jill Rhodes Dunn, Matthew Nolan Foree, Freeman Mathis & Gary, LLP, Atlanta, GA, for Defendant.

ORDER

RUSSELL G. VINEYARD, UNITED STATES MAGISTRATE JUDGE

***1** Plaintiff James Hatcher ("Hatcher") brings this action against defendant Cronic Nissan, Inc. ("Cronic" or "defendant"), alleging violations of the Truth in Lending Act ("TILA"), 15 U.S.C. § 1601 et seq., in relation to the purchase of a used vehicle. [Doc. 1]. [1] Cronic has filed a "Motion to Dismiss and to Compel Arbitration," [Doc. 6 (emphasis and all caps omitted)], arguing that Hatcher's claims in this case are governed by an arbitration agreement included in the contract he signed in connection with the purchase of the vehicle, [Doc. 6-1 at 2-3]. In his response to the motion, Hatcher concedes that the contract he signed to purchase the vehicle incudes a binding arbitration clause, [Doc. 7 at 1-2 (citation omitted)], and he asks the Court to compel arbitration, but requests that it order the dispute to be arbitrated by JAMS, [id. at 2], and that this action be stayed pending arbitration instead of being dismissed, [id. at 3-4]. In its reply, [Doc. 18], Cronic asserts that although the parties agree that the Court should compel arbitration, it need not order that the dispute be arbitrated by JAMS, and it contends that this case should be dismissed instead of stayed because all of Hatcher's claims are subject to arbitration, [id. at 1]. For the reasons that follow, Cronic's motion to dismiss and to compel arbitration, [Doc. 6], is **GRANTED IN PART** and **DENIED IN PART**. [2]

1 The cited document and page numbers in this Order refer to the document and page numbers shown on the Adobe file reader linked to this Court's electronic filing database (CM/ECF).

2 The parties have consented to have a magistrate judge conduct any and all proceedings, including the entry of final judgment. See [Docs. 19 & 20].

I. BACKGROUND

On November 21, 2020, Hatcher agreed to purchase a vehicle from Cronic for a cash price of $18,015, and he also agreed to purchase a $2,500 service contract.[3] [Doc. 1 at 3 ¶ 10]. Hatcher made a down payment of $3,500 and "was told that in order to obtain a loan for his vehicle he needed to obtain Gap Insurance for $900." [Id. at 3 ¶¶ 11-12]. As part of the purchase and financing of the vehicle, Hatcher entered into a "Retail Installment Contract–Simple Finance Charge (With Arbitration Provision)," referred to as the "Retail Installment Agreement." [Doc. 6-2 at 5-9 (all caps omitted)].[4] The Retail Installment Agreement includes an Arbitration Provision (hereinafter "Arbitration Agreement") that provides, in relevant part:

> 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.

***2** [Id. at 9]. The Arbitration Agreement provides that Hatcher "may choose the American Arbitration Association ... or any other organization to conduct the arbitration subject to [Cronic's] approval." [Id.].

3 The factual background is taken from the pleadings and does not constitute findings of fact by the Court.

4 The Court may "consider evidence outside of the pleadings for purposes of a motion to compel arbitration." Chambers v. Groome Transp. of Ala., 41 F. Supp. 3d 1327, 1334 (M.D. Ala. 2014); see also In re Checking Account Overdraft Litig., 754 F.3d 1290, 1294 (11th Cir. 2014) (describing the standard used to resolve motions to compel arbitration as "summary-judgment-like"). Accordingly, the Court will

> consider the declaration and exhibit submitted by Cronic in ruling on the pending motion. See Schriever v. Navient Sols., Inc., No. 2:14-cv-596-FtM-38CM, 2014 WL 7273915, at *2 (M.D. Fla. Dec. 19, 2014) (considering written arbitration agreement proffered by party seeking to compel arbitration).

Instead of pursuing arbitration under the terms of the Retail Installment Agreement, Hatcher filed this action on January 6, 2021, alleging violations of TILA "for falsely stating the APR on the loan, falsely stating the amount financed and falsely stating the finance charge on a used car loan which he took out." [Doc. 1 at 1]. Specifically, Hatcher complains that Cronic "kept all or some of the amount of money which [he] paid for his service contract but [it] nevertheless listed the full $2,500 as [the] amount financed without disclosing the amount it kept and including that amount in the finance charge." [Id. at 4 ¶ 14]. He further alleges that Cronic "kept all or some of the amount of money which [he] paid for his Gap Insurance," [id. at 4 ¶ 15], and also "listed a $799 dealer services fee which should have been included in the finance charge but [it] included it in the amount financed," [id. at 4 ¶ 16]. Hatcher also claims that Cronic falsely disclosed certain fees. [Id. at 4-5 ¶¶ 17-20]. He seeks statutory and actual damages under TILA, among other relief. [Id. at 5].

Cronic moves to dismiss this action and to compel arbitration under the terms of the Arbitration Agreement in the Retail Installment Agreement that Hatcher signed because the agreement clearly covers his claims in this action. [Doc. 6]. In his response to the motion, Hatcher "admits that the contract provides a binding arbitration clause" that requires, "at the election of either party[, that] this dispute must be decided by means of arbitration and not in Court or by jury trial." [Doc. 7 at 2 (citation omitted)]. Although Hatcher asserts that he "acted within his rights by filing in this Court," he "agrees that because [Cronic] has asked that this dispute be arbitrated, the dispute must be arbitrated." [Id.]. Accordingly, he requests that the Court compel arbitration and order that the dispute be arbitrated by JAMS and "stay[ed] ... rather than dismiss[ed] without prejudice" and that it "require the parties to provide updates on the status of the arbitration every 30 days." [Id. at 2-3]. In reply, Cronic asserts that it "has not approved JAMS as the organization to conduct the arbitration, as the parties have not discussed the matter substantively," and therefore, "it would not be necessary or appropriate for the Court [to] order that a certain organization conduct the arbitration." [Doc. 18 at 2]. Cronic further contends that this action should be dismissed without prejudice because all of Hatcher's claims are subject to mandatory arbitration. [Id. at 3 (citation omitted)]. The Court will address each of these issues.

II. DISCUSSION

A. Legal Standard

***3** The Arbitration Agreement in this case is governed by the Federal Arbitration Act ("FAA"), see [Doc. 6-2 at 9], which provides:

> A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, 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; see also Kong v. Allied Prof'l Ins. Co., 750 F.3d 1295, 1303 (11th Cir. 2014) (citing 9 U.S.C. §§ 1-2) ("The FAA applies to all contracts involving interstate commerce."); Wilson v. O'Charley's, LLC, Civil Action File No. 1:14-CV-1983-TWT, 2014 WL 5716295, at *1 (N.D. Ga. Nov. 4, 2014), adopted at *1 (citations omitted). There is a strong presumption in favor of arbitration under federal law and the FAA, and because "courts rigorously [ ] enforce arbitration agreements," Webb v. DoorDash, Inc., 451 F. Supp. 3d 1360, 1364 (N.D. Ga. 2020) (citations and internal marks omitted); see also Shearson/Am. Exp., Inc. v. McMahon, 482 U.S. 220, 226 (1987) (citation omitted), " '[a]ny doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration,' " Chambers, 41 F. Supp. 3d at 1334 (quoting Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24-25 (1983)).

In resolving a motion to compel arbitration, the Court must determine whether: "(1) there is a valid written agreement to arbitrate; (2) the issue [sought to be arbitrated] is arbitrable under the agreement; and (3) the party asserting the claims has failed or refused to arbitrate the claims."[5] Wallace v. Rick Case Auto, Inc., 979 F. Supp. 2d 1343, 1347 (N.D. Ga. 2013) (alteration in original) (internal marks omitted) (quoting Lomax v. Woodmen of the World Life Ins. Soc'y, 228 F. Supp. 2d 1360, 1362 (N.D. Ga. 2002)). To determine whether there is a binding agreement to arbitrate, the Court "appl[ies] the contract law of the particular state that governs the formation of contracts." Caley v. Gulfstream Aerospace Corp., 428 F.3d 1359, 1368 (11th Cir. 2005).

5 By filing this action, Hatcher failed or refused to arbitrate his claims. See FR 8 Singapore Pte. Ltd. v. Albacore Mar. Inc., 754 F. Supp. 2d 628, 632 (S.D.N.Y. 2010) (first alteration in original) (quoting LAIF X SPRL v. Axtel, S.A. de C.V., 390 F.3d 194, 198 (2d Cir. 2004)) ("In a paradigmatic case, '[a] party has refused to arbitrate if it commences litigation[.]' "). Thus, the issues are whether the parties entered into a valid agreement to arbitrate Hatcher's claims and whether the arbitration provision encompasses his claims.

B. Merits of Cronic's Motion to Compel Arbitration

1. *Valid Agreement to Arbitrate*

The preliminary issue to be addressed is whether the parties entered into a valid agreement to arbitrate. This inquiry is based on contract law governing offer, acceptance, and consideration. See Johnson v. Macy's S., LLC., No. 1:07-cv-1256-WSD, 2007 WL 2904126, at *3 (N.D. Ga. Sept. 27, 2007) (citation omitted). Under Georgia law, which governs in this case, the basic requirements for a binding contract are (1) an offer and (2) acceptance (3) for consideration. Caley v. Gulfstream Aerospace Corp., 333 F. Supp. 2d 1367, 1374 (N.D. Ga. 2004), aff'd, 428 F.3d at 1359 (citing Moreno v. Strickland, 567 S.E.2d 90, 92 (Ga. Ct. App. 2002)).

***4** Cronic has demonstrated, and Hatcher does not dispute, that the parties entered into a Retail Installment Agreement that includes an Arbitration Agreement. [Doc. 6-2 at 5-9]. Thus, there is a valid agreement between the parties, supported by consideration, that specifically provides:

> 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. at 9]. Accordingly, there is a valid agreement to arbitrate that governs the parties in this case.

2. *Claims Covered by the Arbitration Agreement*

The Arbitration Agreement broadly applies to "[a]ny claim or dispute, whether in contract, tort, statute or otherwise" between the parties "which arises out of or relates to [Hatcher's] credit application, purchase or condition of this vehicle, this contract or any resulting transaction or relationship," [id.], which clearly encompasses claims asserted in Hatcher's complaint, alleging violations of TILA related to his purchase of the vehicle, see generally [Doc. 1]. Indeed, the parties do not dispute this point and agree that the Court should compel arbitration. See [Docs. 6 & 7]; see also Fritz v. Fed. Warranty Serv. Corp., CIVIL ACTION FILE NO. 1:20-CV-2210-MHC, 2021 WL 359765, at *8 (N.D. Ga. Feb. 1, 2021). However, they do differ on whether the Court should order arbitration by JAMS. See [Doc. 7 at 2, 4; Doc. 18 at 1-2].

Hatcher "requests that this Court order that this dispute be arbitrated by JAMS," [Doc. 7 at 2], but he acknowledges that counsel for Cronic did not respond to his request that the dispute be heard by JAMS, [id.], and in its reply, Cronic opposes ordering "that a certain organization conduct the arbitration," [Doc. 18 at 2], pointing out that the Arbitration Agreement provides that Hatcher "may choose the American Arbitration Association ... or any other organization to conduct the arbitration subject to [Cronic's] approval," [Doc. 6-2 at 9]; see also [Doc. 18 at 2 (citation omitted)]. Hatcher has provided no authority for ordering arbitration before a particular entity when the process for selection of the arbitrator is specified in the agreement to arbitrate, and under the terms of the Arbitration Agreement, since Cronic has not approved JAMS to conduct the arbitration, Hatcher's request for arbitration by JAMS is **DENIED**. See Thornell v. Performance Imports, LLC, Case No.: 2:16-cv-00397-JHE, 2016 WL 4120775, at *3 (N.D. Ala. Aug. 3, 2016) (denying defendant's motion to appoint arbitrator where there was no indication plaintiff had refused to comply with the arbitration agreement's provision for selecting an arbitrator). The only remaining issue is whether the case should be dismissed or stayed pending arbitration as requested by Hatcher.

3. *Dismissal or Stay Pending Arbitration*

Cronic moves to dismiss this action since all the claims asserted are subject to arbitration, [Doc. 6-1 at 10-11], but Hatcher requests that the Court stay these proceedings pending the outcome of the arbitration proceeding, [Doc. 7 at 3-4]. Section 3 of the FAA provides that, after a court determines that claims in an action are subject to arbitration, the court "shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the

applicant for the stay is not in default in proceeding with such arbitration." 9 U.S.C. § 3. Although the Eleventh Circuit has explained that, "when a dispute is arbitrable, entry of a § 3 stay is mandatory," Advanced Bodycare Sols., LLC v. Thione Int'l, Inc., 524 F.3d 1235, 1238 (11th Cir. 2008) (citation omitted); see also Bender v. A.G. Edwards & Sons, Inc., 971 F.2d 698, 699 (11th Cir. 1992) (per curiam), it also "has more recently affirmed dismissal where all claims were subject to arbitration," Buchanan v. PruittHealth, Inc., CIVIL ACTION NO. 1:19-CV-1695-SCJ-CCB, 2019 WL 5322658, at *4–5 (N.D. Ga. July 19, 2019), adopted by 2019 WL 5387421, at *1 (N.D. Ga. Aug. 15, 2019) (citation omitted); see also Kozma v. Hunter Scott Fin., L.L.C., No. 09-80502-CIV, 2010 WL 724498, at *2 (S.D. Fla. Feb. 25, 2010) (collecting cases) (noting that the Eleventh Circuit has "frequently affirmed where the district court compelled arbitration and dismissed the underlying case"); Caley, 333 F. Supp. 2d at 1379 (emphasis, citation, and internal marks omitted) ("The weight of authority clearly supports dismissal of the case when all of the issues raised in the district court must be submitted to arbitration."). While some district courts in this circuit have concluded that "where all of the issues raised in the action must be submitted to arbitration, the court may dismiss the action," Buchanan, 2019 WL 5322658, at *4 (citation and internal marks omitted); see also Royal v. CEC Ent., Inc., CIVIL ACTION NO.: 4:18-cv-302, 2019 WL 2252151, at *5 (S.D. Ga. May 24, 2019) (citation omitted); Baine v. Citibank, N.A., CIVIL ACTION NO. 1:18-CV-3024-AT-JSA, 2018 WL 6136792, at *8 (N.D. Ga. Oct. 31, 2018), adopted by 2018 WL 7018640, at *2 (N.D. Ga. Dec. 13, 2018) (citations omitted), other courts have reasoned "that dismissal of claims submitted to arbitration is not appropriate because the plain text of the FAA permits only a stay and because the FAA contemplates a judicial role even when claims are submitted to arbitration," Buchanan, 2019 WL 5322658, at *4 (citations omitted); see also Grissom v. Rent-A-Center, CIVIL ACTION FILE NO. 1:07-CV-1530-ODE-AJB, 2007 WL 9710438, at *3 (N.D. Ga. Dec. 5, 2007), adopted by 2007 WL 9710445, at *1 (N.D. Ga. Dec. 28, 2007); Dennis v. Team Dodge, Inc., Civil Action No. 1:07-CV-1849-ODE, 2007 WL 9747789, at *5 (N.D. Ga. Oct. 25, 2007), adopted by 2008 WL 11470917, at *1 (N.D. Ga. May 20, 2008) (citations omitted).

***5** Considering the plain language of section 3 of the FAA, stating that a court shall stay a case ordered to arbitration, and given the Eleventh Circuit's ruling that a stay is mandatory under the FAA even if the Court has the discretion to dismiss this action upon compelling arbitration, "the most appropriate course is to stay this case pending the completion of the arbitration." Buchanan, 2019 WL 5322658, at *4 (citations omitted); see also Everett v. Screening Reps., Inc., 1:17-CV-00071-ELR, 2018 WL 1283679, at *2 (N.D. Ga. Jan. 25, 2018) (administratively

closing a case, as opposed to dismissing it, where the defendant requested a stay if the court deemed dismissal inappropriate, the plaintiff consented to the stay (but not the dismissal), and where neither party would be prejudiced by a stay); Grissom, 2007 WL 9710438, at *4 ("The Court finds that the best course is to stay proceedings instead of dismissing [p]laintiff's civil action given the split in authority, the Eleventh Circuit's silence on this issue, and the statement in § 3 of the FAA that courts should stay proceedings that are referred to arbitration.").

For the reasons stated, Cronic's motion to dismiss and to compel arbitration, [Doc. 6], is **GRANTED IN PART** and **DENIED IN PART**. The motion is granted insofar as it seeks to compel arbitration, but denied insofar as it seeks dismissal, and this action is hereby **STAYED** and shall be **ADMINISTRATIVELY CLOSED** pending completion of arbitration. The parties shall notify the Court upon completion of arbitration, and either party shall have the right to move to reopen this case if necessary.

IT IS SO ORDERED, this 26th day of APRIL, 2021.

All Citations

Not Reported in Fed. Supp., 2021 WL 2587974