
NO. 25920

IN THE SUPREME COURT OF THE STATE OF HAWAII

YUN KI CHO, individually and on behalf of all
others similarly situated, Plaintiff-Appellee,

vs.

HAWAII NISSAN, INC., dba NEW CITY NISSAN,
Defendant-Appellant,

and

DOE DEFENDANTS 1-50, Defendants.

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 02-1-1658)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, and Duffy JJ., and
Circuit Judge Cardoza, in place of Acoba, J., recused)

Defendant-appellant Hawaii Nissan, Inc. (Hawaii Nissan)

appeals from the first circuit court's June 12, 2003 order denying Hawaii Nissan's motion to compel arbitration and/or for stay of proceedings.¹ Hawaii Nissan presents a single point of error: that the circuit court erred in concluding that the claims brought by plaintiff-appellee Yun Ki Cho, individually and on behalf of all other similarly situated, are not covered by an arbitration clause contained in the credit sale contract between Cho and Hawaii Nissan.

Upon carefully reviewing the record and the briefs submitted by the parties, and having given due consideration to

¹ The Honorable Victoria S. Marks and the Honorable Sabrina S. McKenna presided over this matter.

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CIRK APPELLATE COURTS
STATE OF HAWAII

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the arguments advocated and the issues raised, we conclude that the circuit court correctly denied Hawaii Nissan's motion. As we have stated:

While we share in the overwhelming support in this jurisdiction in favor of arbitration as a means of dispute resolution, see, e.g., HRS § 658A-6(a) (Supp.2003) ("An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract."); HRS § 658A-23 (Supp.2003) (describing specific and limited circumstances under which a court may vacate an arbitration award); Tatibouet v. Ellsworth, 99 Hawai'i 226, 234, 54 P.3d 397, 405 (2002) ("It is well settled that the legislature overwhelmingly favors arbitration as a means of dispute resolution."), it is axiomatic that there must be an agreement to arbitrate in the first instance.

Luke v. Gentry Realty, Ltd., 105 Hawai'i 241, 249, 96 P.3d 261, 269 (2004). Whether there is a valid agreement to arbitrate a particular dispute is a matter of state contract law. See, e.g., First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 944 (1995) ("When deciding whether the parties agreed to arbitrate a certain matter (including arbitrability), courts generally . . . should apply ordinary state-law principles that govern the formation of contracts.").

The credit sale contract signed by Cho states that, if either party requests arbitration, Cho agrees to arbitrate "any controversy or claim between [Cho] and [Hawaii Nissan] arising out of or related to this Contract." (Emphasis added.) The plain language of the contract refutes Hawaii Nissan's argument that Cho agreed to arbitrate her current dispute: while Cho

agreed to arbitrate any dispute arising out of the credit sale contract, she did not agree to arbitrate any dispute arising from the purchase of the Nissan Pathfinder or the various fees attached thereto. Cho signed two separate agreements, and her agreement to arbitrate disputes arising from one of those agreements does not automatically connote an agreement to arbitrate disputes arising from the other agreement. See, e.g., Luke v. Gentry, 105 Hawai'i at 249, 96 P.3d at 269. The arbitration clause is inapplicable to the parties' dispute. Therefore,

IT IS HEREBY ORDERED that the circuit court's June 12, 2003 order denying Hawaii Nissan's motion to compel arbitration and/or to stay proceedings is affirmed.

DATED: Honolulu, Hawai'i, June 17, 2005.

On the briefs:

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New City Nissan

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for plaintiff-appellee
Yun Ki Cho, individually
and on behalf of all others
similarly situated

