

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Baltimore Division

CHRISTOPHER JAMES LAMBERT *
*
v. * Civil Action WMN-10-3522
*
NATIONAL MOTORS, INC. *
*
* * * * *

MEMORANDUM

Before the Court is a motion to dismiss filed by Defendant, National Motors, Inc. (National). ECF No. 7. The motion is ripe for review. Upon review of the pleadings and the applicable case law, the Court determines that no hearing is necessary, Local Rule 105.6, and that the motion will be denied.

I. FACTUAL AND PROCEDURAL BACKGROUND

This action arises from the purchase of a motor vehicle by Plaintiff Christopher Lambert. As set forth in Plaintiff's response, on October 22, 2010, Lambert entered into a retail purchase agreement with National for a 2009 Chevrolet HHR for \$13,091.94. Shortly thereafter, Lambert and National entered into a Retail Installment Sales Contract (installment contract) as a final agreement to purchase the vehicle and finance the sale. After the purchase, Lambert experienced some problems with the vehicle and obtained a Carfax vehicle history report. In that report, Lambert discovered that the vehicle was a former

rental vehicle. That fact was not disclosed in the installment contract.

After discovering the undisclosed prior use, Lambert filed a complaint in this Court on December 16, 2010, asserting violations of the Truth in Lending Act, 15 U.S.C. §§ 1601 et seq, and the Maryland Consumer Protection Act, Md. Code Ann., Com. Law §§ 13-101 et seq, and two counts of fraud. Specifically, Lambert argued that National failed to disclose required information in the installment contract and misrepresented the value of the vehicle. On January 11, 2011, the owner of National, Gabriela Doroudian, communicated to Lambert's attorney that Lambert had entered into an arbitration agreement with National at the time of the purchase. Doroudian faxed to Lambert a copy of the agreement. Subsequently, Lambert amended his complaint to include a fifth count for forgery. That count alleges that Lambert never saw or signed the stand-alone arbitration agreement. Lambert supported this allegation with a sworn affidavit. Pl.'s Ex. 2.

On January 30, 2011, National filed a motion to dismiss, arguing that Lambert is bound by the arbitration agreement. In support of its motion, National included a sworn affidavit from Doroudian stating that he provided the arbitration agreement to Lambert and witnessed him signing it. Def.'s Ex. 3. National did not, however, submit a brief with its motion. On February

16, 2011, Lambert filed a response to National's motion to dismiss, arguing that the arbitration agreement is void for forgery, and even if it were validly signed, it was not binding under the requirements for vehicle sales contracts in the Code of Maryland Regulations. Md. Code Regs. 11.12.01.15 (2010). National has not submitted a reply.

II. DISCUSSION

To survive a Rule 12(b)(6) motion to dismiss, "a complaint must contain sufficient factual matter . . . to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, ---- U.S. ----, ----, 129 S. Ct. 1937, 1949 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)). "[O]nce a claim has been stated adequately," however, "it may be supported by showing any set of facts consistent with the allegations in the complaint." Twombly, 550 U.S. at 563. In considering such a motion, the court is required to accept as true all well-pled allegations in the Complaint, and to construe the facts and reasonable inferences from those facts in the light most favorable to the plaintiff. Ibarra v. United States, 120 F.3d 472, 474 (4th Cir. 1997).

The Code of Maryland Regulations provides that "every vehicle sales contract or agreement shall be evidenced by an instrument in writing containing all of the agreements of the

parties.”¹ Md. Code Regs. 11.12.01.15 (2010). This provision requires a single instrument containing every agreement applicable to the sale of the motor vehicle. See Smith v. Rosenthal Toyota, Inc., 573 A.2d 418, 422 n.3 (Md. 1990) (finding an integration clause contained in a separate contemporaneously signed agreement invalid). This requirement is reflected in the motor vehicle and retail installment contract laws of numerous states. See, e.g., Wash. Rev. Code Ann. § 63.14.020 (West 2011); Mich. Comp. Laws § 566.302 (West 2011)(requiring “an instrument” containing “all of the agreements of the parties”); Cal. Civ. Code § 2985.8 (West 2011). These statutes proliferated as legislatures attempted “to protect ignorant and unwary buyers from oppressive business practices that were becoming more apparent with the rising quantity of consumer credit.” Associated Acceptance Corp. v. Bailey, 174 A.2d 440, 443 (Md. 1961) (finding certain requirements of the Retail Installment Sales Act, Md. Code.

¹ Section 12-604 of the Retail Installment Sales Act of Maryland contains similar language. Md. Code. Ann., Com. Law § 12-604 (“An installment sale agreement shall be evidenced by an instrument in writing which contains all of the agreements of the parties.”). The legislature enacted this statute in order to protect Maryland consumers from the abuses of sellers. Brown v. Doug Griffith Dodge City, Inc., 452 A.2d 984, 989 (Md. Ct. Spec. App. 1982). This Act does not apply to the instant matter due to language in the contract electing to apply the Creditor Grantor Closed End Credit Provision, Md. Code Ann., Com. Law § 12-1001 et seq., Pl.’s Ex. 3 at 4, but its language and the legislative intent are instructive.

Ann., Com. Law § 12-604 to be "explicit and mandatory").²

Clearly, the requirement of a single instrument is intended "to protect buyers from the deception and ambiguities which arise when more than one document is utilized to express the contract." Kenworthy v. Bolin, 564 P.2d 835, 838 (Wash. Ct. App. 1977).

National did not include the arbitration clause within the installment contract. The installment contract superseded all other agreements. Tokarski v. Castle Auto Outlet, LLC, No. 09-509, slip op. at 2 (D. Md. Sep. 24, 2009) (finding plaintiff not bound by arbitration clause in earlier buyer's agreement). Moreover, National has failed to file any briefing or assert any arguments to the contrary. The agreements within the four corners of the installment contract are the only agreements that apply to the transaction, and the arbitration clause is not one

²In addition to a single instrument, the vehicle sales contract regulations also require the seller to provide the buyer with his own "exact copy" of the contract. Md. Code Regs. 11.12.01.15 (2010). Lambert argues that he was not provided a copy of the arbitration agreement along with the copy of the installment contract given to him. Pl.'s Resp. at 3. This failure alone would give Lambert the right to cancel the sale. Md. Code Regs. 11.12.01.15 (2010). Moreover, if the arbitration agreement were part of the single instrument containing the entire agreement between the parties, it would have been provided to Lambert along with the rest of the contract.

of them. Therefore, National's motion to dismiss will be denied.³

_____/s/_____
William M. Nickerson
Senior United States District Judge

DATED: May 4, 2011

³ As the Court will deny National's motion to dismiss because National failed to comply with the Code of Maryland Regulations, the Court need not consider the alleged forgery of the arbitration agreement at this time.