

**Clarke v American Credit Acceptance**

2023 NY Slip Op 34143(U)

November 14, 2023

Supreme Court, Ulster County

Docket Number: Index No. EF2023-1370

Judge: Julian D. Schreibman

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This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK  
SUPREME COURT  
STACY CLARKE,

ULSTER COUNTY

Plaintiff,

-against-

**Decision & Order**  
**Index No.: EF2023-1370**

AMERICAN CREDIT ACCEPTANCE,

Defendant.

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Supreme Court, Ulster County  
Motion Return Date: September 15, 2023

Present: Julian D. Schreibman, JSC

Appearances:

Knuckles, Komosinski & Manfro, LLP  
Attorneys for Defendant  
565 Taxter Road, Suite 590  
Elmsford, New York 10523  
By: Marc E. Garcia, Esq.

**Schreibman, J.:**

This action was commenced by *pro se* plaintiff, Stacy Clarke (“Clarke”), who alleges claims against defendant, American Credit Acceptance (“ACA”), arising out of a retail installment sales contract (“Contract”) for a vehicle. While the specific claims are not entirely clear, Clarke apparently alleges ACA has violated her consumer rights and engaged in certain unspecified fraudulent conduct. Defendant now moves to compel arbitration and dismiss this action. The Court is not in receipt of any opposition to defendant’s motion. The motion is granted in part.

Plaintiff purchased a used 2018 Nissan Rogue in or about April 2021, and entered into the Contract to finance the purchase. The Contract was between Clarke and non-party ELRAC, LLC d/b/a Enterprise Rent-A-Car (“ELRAC”), which then assigned the Contract to defendant. The Contract contains an arbitration provision (“arbitration clause”) under the heading

“ARBITRATION PROVISION,” with the cautionary language “PLEASE REVIEW – IMPORTANT – AFFECTS YOUR LEGAL RIGHTS” (emphasis in original). The arbitration provision states: “1. EITHER YOU OR WE MAY CHOOSE TO HAVE ANY DISPUTE BETWEEN US DECIDED BY ARBITRATION AND NOT IN COURT OR BY JURY TRIAL” (emphasis in original). It further provides, *inter alia*, that

[a]ny 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.

...Any arbitration under this Arbitration Provision shall be governed by the Federal Arbitration Act (9 U.S.C. § 1 et seq.).]

The plain and definite language of the arbitration clause applies to “any claim or dispute” between the parties. By signing the Contract, plaintiff agreed to be bound by its terms. In addition to signing the Contract, plaintiff took possession of the vehicle, and made certain payments under the terms of the Contract. As set forth in the papers in support of defendant’s motion, including the Affidavit of Danielle Grimstead, Legal Analyst for defendant, ELRAC sold, transferred and assigned all of its rights, title and interest in the Contract to ACA. Further, while plaintiff commenced the instant lawsuit pending before this Court in this jurisdiction, she has not opposed defendant’s motion, which is properly supported.

The general determination of whether a dispute is arbitrable under the FAA is based on whether there is a valid agreement to arbitrate and whether the dispute to be arbitrated is within the scope of the applicable agreement. (*See generally Verizon N.Y. v Broadview Networks, Inc.*, 5 Misc. 3d 346 [Sup.Court, N.Y. County, 2004][internal citations omitted]). The FAA sets forth a

“liberal [national] policy favoring arbitration[,] and the fundamental principle that arbitration is a matter of contract.” (*AT&T Mobility v Concepcion*, 563 US 333, 339 [2011][internal citations and quotations omitted]). It is also well-established that New York public policy favors arbitration. (*See generally e.g., Matter of Ball v SFX Broadcasting*, 236 AD2d 158, 162 [3<sup>rd</sup> Dept. 1997]). Additionally, CPLR §7503(a) provides, in relevant part, that “[w]here there is no substantial question whether a valid agreement was made or complied with...the court shall direct the parties to arbitrate.” Thus, an arbitration agreement under the FAA may be enforced where, as here, the arbitration agreement is written, the transaction involves interstate commerce (such as buying a vehicle), and the agreement covers the claims. (*See* 9 USC §2; *see also generally, Demchick v American Eutectic Welding Alloys Sales Co.*, 22 Misc. 3d 920 [Sup. Ct. Queens Co. 1960]; CPLR §7501).

Here, the plain language of the Contract establishes the broad scope of claims to be covered, including those asserted by plaintiff in this matter, as they “arise[ ] out of or relate[ ] to” the transaction involving her and purchase of the subject vehicle. The arbitration clause unambiguously encompasses the instant matter, including claims of arbitrability. (*See e.g. Henry Schein, Inc. v Archer and White Sales, Inc.*, 139 S. Ct. 524, 530 [2019]). Thus, defendant’s requested relief for an order compelling arbitration is warranted.

While defendant submits the Court should also dismiss the instant action, defendant acknowledges 9 USC §3 “speaks in terms of requiring a stay.” The Court does not find dismissal warranted at this time, and, despite plaintiff’s lack of opposition, denies this branch of defendant’s motion. (*See generally* 9 USC §3).

Any remaining arguments not specifically addressed herein have been considered by the Court and found to be unavailing or unnecessary to reach. Accordingly, it is hereby

ORDERED that defendant's motion is granted in part. The instant action is hereby stayed and the parties are directed to proceed to arbitration pursuant to CPLR §7530(a); and it is further

ORDERED that any relief not specifically granted herein is denied.

This shall constitute the Decision and Order of the Court. The original Decision and Order is being filed with the Ulster County Clerk via NYSCEF. The signing of this Decision and Order shall not constitute entry or filing under CPLR §2220. Counsel is not relieved from the applicable provisions of that rule regarding notice of entry.

**SO ORDERED.**

Dated: November 14, 2023  
Kingston, New York

ENTER,



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**JULIAN D. SCHREIBMAN, JSC**

Papers considered: Notice of Motion and Affirmation in Support by Marc E. Garcia, Esq. dated August 16, 2023, with Exhibits 1-4; and Affidavit of Danielle Grimstead sworn to on August 1, 2023.