

[Cite as *Vanyo v. Citifinancial, Inc.*, 2009-Ohio-3905.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 91257

WILLIAM VANYO

PLAINTIFF-APPELLEE

vs.

CITIFINANCIAL, INC., ET AL.

DEFENDANTS-APPELLANTS

JUDGMENT:
REVERSED AND REMANDED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-604060

BEFORE: Cooney, A.J., Rocco, J., and Kilbane, J.

RELEASED: August 6, 2009

JOURNALIZED:
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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

COLLEEN CONWAY COONEY, A.J.:

{¶ 1} Defendants-appellants, Citigroup Inc. and Citifinancial Inc. (collectively “Citi”), appeal the trial court’s denial of their motion to compel arbitration. Finding merit to the appeal, we reverse and remand.

{¶ 2} In October 2006, William Vanyo (“Vanyo”) brought a class action against Citi, claiming that it violated R.C. 1309.513 by failing to file timely termination statements after Vanyo and others paid off secured loans from Citi. Citi moved to compel arbitration. It claimed that the loan agreement bound Vanyo to arbitrate all claims arising from the lending relationship. The trial court denied Citi’s motion.

{¶ 3} Citi now appeals. In its sole assignment of error, Citi claims that the trial court erred in denying its motion.

{¶ 4} R.C. 1309.513 provides, in pertinent part:

“A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods[,] and [t]here is no obligation secured by the collateral covered by the financing statement, and no commitment to make an advance, incur an obligation, or otherwise give value.”

{¶ 5} The secured party must accomplish this within one month after the borrower meets its loan obligations and the secured party’s interest in the collateral is extinguished. R.C. 1309.513(B)(1). A secured party that fails to timely file the termination statement is liable for a \$500 penalty. R.C. 1309.625.

{¶ 6} Vanyo claimed the following events form the basis of his complaint. On October 7, 2002, Vanyo and CitiFinancial, Inc., executed a Note and Security Agreement (“Agreement”), in which CitiFinancial agreed to lend Vanyo the principal amount of \$2,472.27 to cover consumer goods purchases, and Vanyo agreed to repay the principal and interest. CitiFinancial filed a UCC financing statement in an attempt to perfect that interest. Vanyo then fully repaid the loan on April 26, 2006. CitiFinancial, however, failed to file a termination statement within 30 days after the loan was repaid.

{¶ 7} Vanyo brought a class action lawsuit against Citi alleging that it had violated R.C. 1309.513. He also sought \$500 for each failure to timely file a termination statement. Citi claimed that the Agreement bound Vanyo to arbitrate this claim and that the Agreement precluded class actions. Vanyo countered that the Agreement did not cover his statutory claims under R.C. 1309.513 and 1309.625. He maintained that R.C. 1309.513 obligated Citi to file the financing statement after the loan was satisfied. Because the lending transaction had terminated, the arbitration provision no longer had legal effect.

{¶ 8} The Agreement contained the following provision:

“NOTICE OF ARBITRATION PROVISION

“THIS ARBITRATION PROVISION PROVIDES THAT ALL DISPUTES BETWEEN BORROWER AND LENDER, EXCEPT THOSE SPECIFIED BELOW, WILL BE RESOLVED BY MANDATORY, BINDING ARBITRATION. YOU THUS GIVE UP YOUR RIGHT TO GO TO COURT TO ASSERT OR DEFEND YOUR RIGHTS (EXCEPT FOR MATTERS THAT ARE EXCLUDED FROM ARBITRATION AS SPECIFIED BELOW). YOUR RIGHTS WILL BE DETERMINED BY A NEUTRAL ARBITRATOR AND NOT A JUDGE OR JURY. YOU ARE ENTITLED TO A FAIR HEARING BUT THE ARBITRATION PROCEDURES ARE SIMPLER AND MORE LIMITED THAN RULES APPLICABLE IN COURT.

“In consideration of Lender making the extension of credit described above and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by both parties, You and We agree that either You or We have an absolute right to demand that any Claim be submitted to an arbitrator in accordance with this Arbitration Provision. If either You or We file a lawsuit, counterclaim or other action in court, the other party has the absolute right to demand arbitration following the filing of such action. * * *

“‘Claim’ means any case, controversy, dispute, tort, disagreement, lawsuit, or claim now or hereafter existing between You and Us. A Claim includes, without limitation, anything related to:

This Provision, its enforceability, and the arbitrability of any Claim pursuant to this Provision, including but not limited to the scope of this Provision and any defenses to enforcement of this Provision;

Any credit transaction; * * *

Any federal or state statute or regulation, or any alleged violation thereof, including without limitation insurance, usury, and lending laws;

Any party’s execution of this provision and/or willingness to be bound by its terms and provisions; or

Any dispute about closing, servicing, collecting, or enforcing a Credit Transaction.”

{¶ 9} Based on the Ohio Supreme Court’s recent holding in *Alexander v. Wells Fargo Financial Ohio 1, Inc.*, Slip Opinion No. 2009-Ohio-2962, we must conclude that the arbitration clause covers Vanyo’s claim.

{¶ 10} In *Alexander*, the Supreme Court considered an arbitration clause in a secured loan agreement to determine whether it covered claims under R.C. 1309.513 and 1309.625.¹ It first examined language of the arbitration agreement to determine whether the parties had agreed to arbitrate the claim. It then explained that its holding complied with *Academy of Medicine of Cincinnati v. Aetna Health, Inc.*, 108 Ohio St.3d 185, 2006-Ohio-657, 842 N.E.2d 488, which provided an analytical framework that courts should use to determine whether an arbitration clause covers a particular dispute.

{¶ 11} The *Alexander* court observed that the arbitration clause in question covered “all claims and disputes arising out of, in connection with, or relating to” the loan. The clause also stated that mandatory arbitration applied to any claims that “arise under any federal or state statute or rule,” and “even if [the] loan has been * * * paid in full.”

¹*Alexander* reversed two cases, *Coleman v. Am. Gen. Financial Servs.*, Cuyahoga App. No. 89311, 2008-Ohio-1403, and *Alexander v. Wells Fargo Financial Ohio 1, Inc.*, Cuyahoga App. No. 89277, 2008-Ohio-1402. The latter case involved R.C. 5301.36, which requires mortgage lenders to file an entry of satisfaction within 90 days after a mortgage loan is paid in full. We focus on the court’s analysis in *Coleman*, however, as that case involved R.C. 1309.513 and 1309.625 and a secured loan agreement similar to Vanyo’s.

{¶ 12} After evaluating this language in the arbitration clause, the Supreme Court concluded that it covered the plaintiff's claims under R.C. 1309.513 and 1309.625. The court declared:

“Our holding comports with the standard articulated in *Academy of Medicine of Cincinnati v. Aetna Health, Inc.*, 108 Ohio St.3d 185, 2006-Ohio-657, 842 N.E.2d 488. In that case, we held that Ohio courts may determine whether a cause of action is within the scope of an arbitration agreement based on the federal standard found in *Fazio v. Lehman Bros., Inc.* (C.A.6, 2003), 340 F.3d 386.

“*Fazio* held that ‘[a] proper method of analysis here is to ask if an action could be maintained without reference to the contract or relationship at issue. If it could, it is likely outside the scope of the arbitration agreement.’ *Fazio*, 340 F.3d at 395. Later in that paragraph, *Fazio* continued: ‘Even real torts can be covered by arbitration clauses “[i]f the allegations underlying the claims ‘touch matters’ covered by the [agreement].” *Genesco, Inc. v. T. Kakiuchi & Co., Ltd.*, 815 F.2d 840, 846 (2d Cir.1987).’ (Brackets sic.) *Fazio*, id.

“The *Aetna* standard asks whether an action can be maintained without reference to the contract or relationship at issue. We hold that neither Alexander’s action for failure to timely file an entry of satisfaction of the mortgage nor Coleman’s action for failure to timely file a termination statement can be maintained without reference to the contract or relationship at issue.” *Alexander* at ¶23-25.

{¶ 13} Thus, the court held that the arbitration clause covered the plaintiff's statutory claims.

{¶ 14} Applying the *Aetna* standard, we conclude that Citi's arbitration clause covers Vanyo's claim. To prove that Citi violated R.C. 1309.513, Vanyo would have to refer to the Agreement. Without it, a court would not know that the parties had a contractual relationship or that Citi retained a security

interest in Vanyo's goods. It would not know the amount of the loan and could not determine whether Vanyo had paid the loan in full. Moreover, the language of the clause covers any lawsuit related to "[a]ny federal or state statute or regulation, or any alleged violation thereof."

{¶ 15} Based on the foregoing, we sustain the sole assignment of error.²

{¶ 16} Judgment is reversed, and the case is remanded for further proceedings.

It is ordered that appellants recover of said appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

COLLEEN CONWAY COONEY, ADMINISTRATIVE JUDGE

KENNETH A. ROCCO, J., and
MARY EILEEN KILBANE, J., CONCUR

²We do not reach Vanyo's argument regarding unconscionability because the trial court did not reach this issue. See *Alexander* at ¶32.