**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

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| **NICOLE ZENTNER, individually and on behalf of all others similarly situated,** | : | |
| **ANDREW KIVETT, individually and on behalf of all others similarly situated,** | : | |
| **Plaintiffs** | : | **NO. CV-20-1193** |
| **vs.** | : | |
| **BRENNER CAR CREDIT, LLC and PAXTON SECURITIES CO.,** | : | **CIVIL ACTION – Preliminary Objections** |
| **Defendants** | : | |

**OPINION AND ORDER**

**AND NOW**, this **18th** day of **May**, **2021**, upon consideration of Defendants' Preliminary Objection to Plaintiffs' Complaint and Plaintiffs' response thereto, the Court hereby enters the following Opinion and Order:

## I. Procedural Background

This matter was initiated by the filing of a Class Complaint on December 11, 2020. Defendants filed a single Preliminary Objection to the Complaint on February 19, 2021 pursuant to Pa.R.C.P. 1028(a)(6) to which Plaintiffs answered on March 10, 2021. Defendants filed a reply brief on April 28, 2021 and oral argument was held May 3, 2021.

## II. Relevant Factual Background

This action is based on Defendants' alleged improper notice of disposition of repossessed vehicles. Plaintiffs, who represent the class, purchased vehicles from Defendant, Brenner Car Credit, LLC, who "sold the vehicle, financed the transaction, and took a security interest in the vehicle pursuant to an installment

sales contract entitled Retail Installment Contract and Security Agreement ('RICSA')[1] . . . ." *See Plaintiffs' Complaint at Paragraph 13; see also Plaintiff's Complaint at Paragraph 29.* In addition to the RICSAs, and on the same day the RICSAs were executed, Plaintiffs executed Buyers' Orders in connection with the purchase of their respective vehicles. Defendant, Paxton Securities, Co., became the secured party under the RICSA. Due to failure to make the required payments, Plaintiffs' vehicles were repossessed without proper notice, according to Plaintiffs.

## III. Discussion

Defendants' single preliminary objection is brought pursuant to Pennsylvania Rule of Civil Procedure 1028(a)(6), which states that a preliminary objection may be filed when there is an "agreement for alternative dispute resolution." Defendants focus their argument on the Buyers Orders executed by Plaintiffs which contain an arbitration clause providing, in all capital letters, that "either you [Plaintiffs] or we [Defendants] may choose to have any dispute between us decided by arbitration and not in court or by jury trial" and prohibits Plaintiffs from bringing or participating in any class actions. *See Exhibits A and B of Defendants' Preliminary Objections.* Additionally, there is a section on the Buyers' Orders that states, "buyer acknowledges that if this box is checked, this agreement contains an arbitration clause."[2] *See Exhibits A and B of Defendants'*

[1] Plaintiffs refer to a Retail Installment Contract and Security Agreement, or "RICSA," throughout the Complaint and Defendants refer to a retail installment sales contract, or "RIC," throughout their Preliminary Objections. The parties clarified at argument that these documents are one in the same. For ease of reference, the Court will refer to the document as "RICSA."

[2] On the Buyer's Order that Plaintiff Zentner signed, the box is checked. *See Exhibit A of Defendants' Preliminary Objections.* However, the box is not checked on the Buyer's Order that

*Preliminary Objections.* However, there is no mention of an arbitration agreement on the RICSA itself. The sole issue, therefore, is whether the arbitration clause found in the Buyers' Orders, but not the RICSAs, are valid and enforceable, and therefore binding on the parties.

**a. Plaintiffs' Argument**

Plaintiffs assert that, as it relates to consumer finance contracts, Pennsylvania follows a "single document" contract integration rule, such that all relevant contractual provisions be contained in one single document. That single document, then, is the "only operative agreement between the parties, and all other agreements on the subject are deemed subsumed by the final agreement." *See Plaintiff's Brief in Opposition at page 5.* They argue that the RICSAs is the "single document" and no other agreements or contracts entered into by the parties can be considered when determining whether a binding arbitration clause exists. Plaintiffs primarily rely upon the case of *Knight v. Springfield Hyundai*, *infra*, in support of their argument.

Pursuant to the Motor Vehicle Sales Finance Act ("MVSFA"), installment sales contract shall (1) be in writing; **(2) contain all the agreements between a buyer and an installment seller relating to the installment sale of the motor vehicle sold;** (3) be signed by the buyer and seller; and **(4) be complete as to all essential provisions before the buyer signs the contract.** 12 Pa.C.S.A. § 6221(a) (emphasis added).

In the *Knight* case, the Superior Court of Pennsylvania reversed the trial court's ruling to send the matter to arbitration pursuant to an agreement found in

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Plaintiff Kivett signed. *See Exhibit B of Defendants' Preliminary Objections.* This sub-issue is

the Buyers' Order. *Knight v. Springfield Hyundai*, 81 A.3d 940, 947 (Pa. Super. 2013). The Court recognized that arbitration is favored and encouraged but states that "arbitration agreements are to be strictly construed and . . . should not be extended by implication." *Id.*, *citing Pisano v. Extendicare Homes, Inc.*, 77 A.3d 651, 654 (Pa. Super. 2013). The Plaintiff in the *Knight* case purchased a used vehicle via installment sale, which was financed by one of the named Defendants. *Knight*, 81 A.3d at 948. A Buyer's Order and a Retail Installment Sales Contract were executed. *Id.* The Buyer's Order contained an arbitration agreement and the RISC did not and thus, the Court concluded that there was no enforceable arbitration agreement. *Id.* at 948-49.

**b. Defendants' Argument**

Defendants assert that the *Knight* case is distinguishable from this case and that there is nothing in the MVSFA that precludes an agreement from being in more than one document. First, they argue that Section 6221 of the MVSFA does not define an installment sale contract by a particular name or title, does not specifically state the form of the contract, and nowhere states that a document cannot be integrated. Defendants contend that because the Buyers' Orders incorporate the RICSAs, one cannot be discarded at the expense of the other. The cases that Defendants cite to in support of this contention, however, either do not specifically deal with consumer goods purchased via installment contract[3] or are distinguishable from this case.[4]

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moot given the Court's ruling on the overarching issue.

[3] *Kroblin Refrigerated Xpress, Inc. v. Pitterich*, 805 F.2d 96 (3d Cir. 1986); Amin v. Lammers, 1995 WL 231048 (E.D. Pa. April 18, 1995); *Trombetta v. Raymond James Fin. Serv., Inc.*, 907 A.2d 550 (Pa. Super 2006); *Brown v. Cooke*, 707 A.2d 231 (Pa. Super. 1998).

[4] *Kent v. DriveTime Car Sales, LLC*, 2020 WL 3892978, at *1 (E.D. Pa. July 10, 2020) (holding the facts are distinguishable from *Knight* when the Sales Installment Contract itself incorporated

Next, Defendants argue that even if the RISCAs supersede the Buyers' Orders, the arbitration clause remains valid nevertheless because "arbitration clauses remain in effect after the termination of the agreements in which they are contained." *See Defendants' Reply Brief at page 8.* Again, the cases relied on by Defendants do not relate specifically to the very narrow issue present in the instant case. The Court is satisfied, for the reasons set forth below, this matter is not subject to arbitration.

**c. Analysis**

The undeniable and dispositive fact here is that the arbitration clause is found only in the Buyers' Orders and nowhere in the RICSAs, including any reference to an arbitration agreement. Plaintiffs' claims of Defendants' alleged failure to provide notices regarding repossession of vehicles, as set forth in the Complaint, are based solely on the RICSAs. It is, therefore, irrelevant that the Buyers' Orders refer to the RICSA. Rather, what matters is to what the RICSA includes or refers and to what it does not includes or refers.

The rights to repossess and redeem the vehicles purchased by Plaintiffs are governed by the agreement that creates a secured interest in a party. The RICSAs are the security agreement between the seller/financer and the buyer. The RICSAs do not contain an arbitration clause and it do not reference the Buyers' Order. The terms "Contract" and "this Contract" are used throughout the RICSAs and are undefined. The RICSAs contains no reference or indication that

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an arbitration clause, stating that "[t]he arbitration agreement entered into between you and Dealer is incorporated by reference into an dis a part of this Contract"); *Dunn v. B & B Automotive*, 2012 WL 2005223, at *4 (E.D. Pa. June 5, 2012) (finding that an arbitration agreement was valid when the retail installment sales contract itself incorporated the agreement when it contained a check box with the words "Arbitration Agreement Attached" next to the box).

"this Contract" would include anything other than the RICSA itself. Finally, the section of the RICSAs titled "Entire Agreement" also use the term "this Contract" when stating what the agreement is between the parties.

Defendants' argument that the RICSAs incorporate by reference the Buyers' Orders such that the arbitration clause contained in the Buyers' Orders is made part of the RICSA fails for the following reasons. A RICSA does not have to involve a lender that is also a party to the Buyers Orders. The Defendants acknowledges that a buyer has multiple options in paying for a vehicle that he or she agreed to purchase pursuant to a Buyers Order. Those options include paying cash, financing through a third party, or financing though the seller or related entity. Assuming, *arguendo*, that a buyer chose to finance the purchase through a third party, Defendants assert that the third party lender could be forced by the buyer to arbitrate claims brought pursuant to a Buyers' Order entered into between the buyer and seller of the vehicle. Not only is there no basis in contract law for such a proposition, but there is nothing contained in the RICSAs at issue that would bind either party to the terms of a Buyers' Order in any way, let alone over the rights in regard to the secured interest in the vehicle.

If the Plaintiffs were suing the Defendants under a term contained in both the Buyers' Orders and the RICSAs, it is conceivable that the arbitration clause would apply. However, the Plaintiffs are suing the Defendants under a right that is covered in the RICSA only, namely, secured interests. The Buyers' Orders do not contemplate or govern secured interests at all.

## IV. Conclusion

Since the arbitration clause is found in the Buyers' Orders only and the RICSAs are entirely void of any mention of either the arbitration agreement or even the Buyers' Orders, Defendants' Preliminary Objections are overruled.

**ORDER**

**AND NOW**, this **18th** day of **May, 2021**, for the reasons set forth above, Defendants' Preliminary Objection is **OVERRULED**. The arbitration clause found in the Buyers Order are inapplicable and unenforceable to the claims in the Complaint.

BY THE COURT,

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Hon. Ryan M. Tira, Judge

RMT/ads

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