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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

DOCKET NO. A-o

JOHN L. ALTAMIRANO,

Plaintiff-Appellant,

v.

MAXON HYUNDAI INC., a

New Jersey Corp., and

MICHAEL CIASULLI, Individually,

Defendants-Respondents.

February 13, 2015

Argued January 5, 2015 – Decided

Before Judges Simonelli and
Leone.

On appeal from the Superior
Court of New Jersey, Law Division,
Union County, Docket No. L-3026-
13.

Mark R. Silber argued the cause
for appellant.

Jay B. Bohn argued the cause for
respondent (Schiller & Pittenger,
P.C., attorneys; Thomas G.
Russomano, of counsel; Mr. Bohn,
on the brief).

PER CURIAM

This appeal involves binding private arbitration of a dispute over a used car. Plaintiff John L. Altamirano appeals from the March 28, 2014 Law Division order, which compelled arbitration, appointed an arbitrator, and dismissed his complaint without prejudice. We affirm.

The facts are straightforward. On May 10, 2011, plaintiff purchased a used 2007 Chrysler Sebring from defendants Maxon Hyundai, Inc. and Michael Ciasulli. The contract of sale contained a binding private arbitration clause, which required that "[t]he arbitration shall be conducted in accordance with any rules of the American Arbitration Association [(AAA)] before a single arbitrator, who shall be [a] retired judge or attorney." The arbitration clause also required defendants to advance the costs of arbitration, including the arbitrator's fee. Plaintiff filed a demand for arbitration with the AAA. When defendants did not respond to the demand, plaintiff filed a complaint in the Superior Court, seeking to compel arbitration.

Defendants filed a motion to compel arbitration and appoint an arbitrator. Plaintiff consented to arbitration, but asserted the arbitration clause required that the arbitration be conducted before the AAA in accordance with the AAA's rules, which specified that payment of the arbitrator's fee must be made to the AAA and not directly to the arbitrator appointed by the court. Plaintiff posited that permitting defendants to pay the arbitrator directly created "both the appearance of and actual improper partiality to the paying party."

In a March 28, 2014 order, the motion judge mirrored the language of the arbitration clause and ordered, in part, that the parties shall proceed to private binding arbitration "which arbitration shall be conducted in accordance with any rules of the [AAA] before a single arbitrator who shall be a retired judge or attorney," and that defendants shall advance the costs of arbitration, including the arbitrator's fee. The judge also appointed an arbitrator "mutually selected by the parties." This appeal followed.

On appeal, plaintiff raises the same argument he raised before the motion judge. Plaintiff also argues the judge erred in ordering private arbitration because such arbitration does not and cannot adhere to the current AAA Consumer Arbitration Rules (Rules),¹ which provide that only the AAA or an individual or organization authorized by the AAA can administer the arbitration and that any arrangement for the compensation of an arbitrator must be made through the AAA.

We review the trial court's decision on a request for arbitration de novo. Alfano v. BDO Seidman, LLP, 393 N.J. Super. 560, 573 (App. Div. 2007). "A 'trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference.'" Ibid. (quoting Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

We discern no error in the judge's ruling. Because the Rules did not become effective until September 1, 2014, over three years after the date of the contract, they do not apply to the

arbitration in this case. Except for these inapplicable Rules, plaintiff cites no authority requiring the arbitration to be administered by the AAA and prohibiting direct payment of the arbitrator's fee from a party to the arbitration. In 2011, when the parties agreed that the arbitration be conducted "in accordance with" the AAA rules, the AAA rules then in force contained no such requirement.² In addition, plaintiff has not shown any prejudice from enforcement of the arbitration clause in this case.

Finally, the arbitration clause clearly and unambiguously required the arbitration to be conducted "in accordance with any rules of the [AAA] before a single arbitrator who shall be [a] retired judge or attorney," and required defendants to advance the costs of arbitration, including the arbitrator's fee. The March 28, 2014 order comports with these requirements.

Affirmed.

¹ Am. Arbitration Ass'n, Consumer Arbitration Rules (amended & eff. Sept. 1, 2014), available at <http://www.adr.org/aaa/ShowProperty?nodeId=/UCM/ADRSTAGE2021425&revision=latestreleased>.

² Am. Arbitration Ass'n, Consumer-Related Disputes, Supplementary Procedures (effective Sept. 15, 2005; fees eff. Mar. 1, 2013), available at https://www.adr.org/cs/idcplg?IdcService=GET_FILE&dDocName=ADRSTAGE2009997&RevisionSelectionMethod=LatestReleased.

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