

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1953-22**

ROBIN EBLE,

Plaintiff-Appellant,

v.

CARVANA LLC,

Defendant-Respondent.

Submitted September 14, 2023 – Decided September 29, 2023

Before Judges Vernoia and Walcott-Henderson.

On appeal from the Superior Court of New Jersey, Law
Division, Burlington County, Docket No. L-2069-22.

Mark J. Molz, attorney for appellant.

Squire Patton Boggs (US) LLP and Cozen O'Connor
LLP, attorneys for respondent (Elizabeth F. Ahlstrand,
Matthew A. Glazer and Karina Norwood, on the briefs).

PER CURIAM

Plaintiff Robin Eble appeals from an order granting defendant Carvana,
LLC's motion to dismiss the complaint and compel arbitration of plaintiff's

causes of action for violation of the New Jersey Consumer Fraud Act (CFA), N.J.S.A. 56:8-1 to -227, and breach of contract. Plaintiff's claims arise out of her purchase of a motor vehicle from defendant. Plaintiff contends the retail purchase agreement with defendant, which includes by reference a separate arbitration agreement, is void because defendant did not possess valid title to the vehicle as required under N.J.A.C. 13:21-15.6, and therefore the court erred by compelling arbitration of the causes of action asserted in the complaint.¹ Unpersuaded by plaintiff's arguments, we affirm.

Plaintiff's complaint alleges defendant is a used car dealer registered in the State of New Jersey. On May 17, 2021, plaintiff purchased a 2016 Acura LX from defendant for \$21,612.56. The complaint alleges defendant did not deliver title to the vehicle at the time of purchase and thereafter failed to deliver title to plaintiff. According to plaintiff's allegations, defendant's failure to

¹ The complaint alleges defendant violated "N.J.A.C. 13:56-15.6," a non-existent provision of the New Jersey Administrative Code. The record presented to the motion court and plaintiff's brief on appeal otherwise make clear she actually claimed defendant violated N.J.A.C. 13:21-15.6, which, in pertinent part, prohibits a licensee—that is, "any natural person or entity that is licensed to buy, sell, or deal in, or lease motor vehicles pursuant to N.J.S.A. 39:10-19 et. seq.[,]" N.J.A.C. 13:21-15.1,—from selling "any motor vehicle unaccompanied by, or in the absence of, a valid title at the time of the transaction."

provide title violated N.J.A.C. 13:32-15.6 and constitutes an unconscionable business practice and per se violation of the CFA.

The complaint further alleges defendant's failure to deliver title violated the retail purchase agreement. The record shows the retail purchase agreement incorporates by reference a separate arbitration agreement between the parties. The arbitration agreement provides in part that any claim, dispute, or controversy between the parties "arising from or related to" the retail purchase contract or the sale of the vehicle shall be resolved by arbitration. As defined under the agreement, the claims subject to arbitration include "claims of every kind of nature," including "initial claims, . . . statutory claims, . . . contract claims, . . . and tort claims . . . including claims of fraud and other intentional torts." Pertinent here, the arbitration agreement also expressly delegates to the arbitrator the authority to decide "any dispute or argument that concerns the validity or enforceability of the" retail purchase agreement.

Defendant moved to dismiss the complaint for failure to state a claim upon which relief may be granted under Rule 4:6-2(e) and to compel plaintiff to proceed to arbitration. The court granted defendant's motion, finding the plain language of the arbitration agreement required arbitration of the claims—a statutory claim under CFA and breach of the retail purchase contract claim—

asserted in the complaint. The court also noted plaintiff did not challenge the validity of the arbitration agreement, and the court therefore found the agreement required arbitration of plaintiff's claim that the retail purchase agreement was void ab initio.

The court entered a memorializing order, accompanied by a written statement of reasons, dismissing the complaint and compelling arbitration of plaintiff's claims. This appeal followed.²

We conduct a de novo review of an order compelling arbitration. Knight v. Vivint Solar Dev., LLC, 465 N.J. Super. 416, 425 (App. Div. 2020). A trial court order compelling arbitration is not given deference because "[t]he enforceability of arbitration provisions is a question of law." Goffe v. Foulke Mgmt. Corp., 238 N.J. 191, 207 (2019). We consider such orders with a recognition that the Federal Arbitration Act, 9 U.S.C. §§ 1 to 19, and the New Jersey Arbitration Act, N.J.S.A. 2A:23B-1 to -32, reflect policies favoring arbitration. Atalese v. U.S. Legal Servs. Grp., L.P., 219 N.J. 430, 440 (2014).

² Subsequent to the filing of plaintiff's notice of appeal, the motion court issued an amplification of its initial statement of reasons as permitted under Rule 2:5-1. We permitted the parties an opportunity to file supplemental briefs in response to the amplification, and we have fully considered the parties' supplemental submissions as well as their merits briefs.

Plaintiff first presents a precise, but narrowly focused, argument challenging the order dismissing the complaint and compelling arbitration. Plaintiff contends the court erred by compelling arbitration because defendant's failure to deliver title to the vehicle at the time of its purchase and thereafter violated N.J.A.C. 13:21-15.6, constituted a fraud in violation of the CFA, and thereby rendered the retail purchase agreement void ab initio. Plaintiff argues the arbitration agreement is of no legal effect because it is attendant to the retail purchase agreement, which was the product of defendant's alleged fraudulent actions.

Plaintiff's argument rests on the incorrect premise that the enforceability of the retail purchase agreement is an issue that may not be decided by the arbitrator and therefore must be decided by a court. In Goffe, the Supreme Court considered and rejected the identical claim plaintiff makes here. 238 N.J. at 208-11.

In Goffe, the plaintiffs purchased cars from the defendant car dealerships. Id. at 196. In connection with their respective transactions, the plaintiffs executed various documents detailing the terms of their purchases, including agreements requiring they arbitrate any claims related to the transactions. Id. at 196-202.

The plaintiffs later filed complaints against the respective dealerships alleging common law fraud, CFA violations, and violations of the Truth in Consumer Contract Warranty and Notice Act, N.J.S.A. 56:12-14 to -18, the Plain Language Act, N.J.S.A. 56:12-1 to -13, and the Truth in Lending Act, 15 U.S.C. §§ 1601 to 1667f. Id. at 202. The trial court granted the defendants' motions to compel arbitration, and we reversed. Goffe v. Foulke Mgmt. Corp., 454 N.J. Super. 260 (App. Div. 2018).

The Court granted defendants' petitions for certification, Goffe, 238 N.J. at 205, and reinstated the trial court orders compelling arbitration of the merits of the plaintiff's claims. Id. at 217. Relying on a series of United States Supreme Court decisions interpreting the FAA, our Supreme Court held that under circumstances identical to those presented here, "when a plaintiff raises a claim of fraud in the inducement of a contract as a whole—rather than in the making of the arbitration agreement itself—. . . the dispute must be resolved by the arbitrator." Id. at 208-09 (citing Prima Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395, 403-04 (1967)).

The Court explained that a trial court may properly adjudicate a claim there was fraud in the inducement of an arbitration agreement itself but "arbitration agreements are severable from the rest of [a] contract" and "may be

valid separate and apart from the contract as a whole, provided that a party has not challenged the arbitration agreement itself." Id. at 209 (citing Prima Paint, 388 U.S. at 403-04). The Court observed that in Buckeye Check Cashing, Inc., v. Cardegna, 546 U.S. 440 (2006), the United States Supreme Court determined that because "an arbitration provision is severable from the remainder of the contract," "unless the challenge is to the arbitration clause itself, the issue of a contract's validity is considered by the arbitrator in the first instance." Id. at 210 (quoting Buckeye, 546 U.S. at 445-46)). In Buckeye, the United States Supreme Court reasoned that where a party challenges the validity of an agreement as a whole but does "not specifically" challenge the arbitration provision, the arbitration provision is "enforceable apart from the remainder of the contract" and the validity of the contract is a decision for the arbitrator. 546 U.S. at 446.

The Court in Goffe also recognized that where the parties agree to delegate to the arbitrator the authority to determine challenges to the contract as a whole, those issues must be decided by the arbitrator unless there is a challenge made to the delegation clause itself. 238 N.J. at 211 (citing Rent-A-Center, West, Inc. v. Jackson, 561 U.S. 63, 70 (2010)). The Court further explained that a contract which includes an arbitration provision delegating authority to the arbitrator to decide the issue of arbitrability, "the delegation of authority to [an] arbitrator to

resolve disputes relating to the enforceability of the agreement [as a whole is] valid" in the absence of a challenge to the delegation or arbitration clauses. Id. at 211 (citing Rent-A-Center, 561 U.S. at 72-73). In Goffe, the Court held a court may not override the parties' delegation of authority to an arbitrator to determine a particular issue, including an issue as to the enforceability to the contract as a whole. 238 N.J. at 211.

The Court's reasoning and holding in Goffe apply with syllogistic precision here. In her complaint and her arguments before the trial court and on appeal, plaintiff challenges only the validity of the retail purchase agreement, asserting it is void because it was procured through alleged fraud. Plaintiff does not offer any challenge to the validity of the arbitration agreement, which, as noted, expressly delegates to the arbitrator the authority to determine all claims pertaining to validity of the retail purchase agreement. Under such circumstances, an arbitrator is properly vested with the exclusive authority to decide plaintiff's claim that the retail purchase agreement is unenforceable as void, as well as the CFA and contract claims asserted in the complaint. Id. at 211. We therefore affirm the court's order dismissing the complaint and compelling plaintiff to proceed to arbitration on its claims against defendant.

Because plaintiff must litigate the merits of her asserted causes of action before the arbitrator, it is unnecessary to consider or decide plaintiff's arguments that the retail purchase agreement violates the CFA and the complaint asserts cognizable causes of action against defendant. For the reasons noted, those arguments must be presented to and decided by the arbitrator in accordance with the parties' arbitration agreement.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION