

Chalupka v Long Is. Auto. Group Inc.

2014 NY Slip Op 33214(U)

December 9, 2014

Supreme Court, New York County

Docket Number: 151891/2012

Judge: Anil C. Singh

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 61

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MICHELE CHALUPKA,
Plaintiff,

-against-

LONG ISLAND AUTOMOTIVE GROUP INC. d/b/a
LAND ROVER GLEN COVE and JAGUAR LAND
ROVER NORTH AMERICA, LLC,

Defendant.

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JAGUAR LAND ROVER NORTH AMERICA, LLC,

Third Party Plaintiff,

-against-

AUTOMOBILE PROTECTION CORPORATION,

Third Party Defendant.

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HON. ANIL C. SINGH, J.:

In this action for negligence and fraud, third-party-defendant Automobile Protection Corporation (“APCO”) moves for an order dismissing the third party action pursuant to CPLR §3211, or in the alternative, staying this action and compelling arbitration pursuant to CPLR §§2201 and 7503 respectively. Defendant Long Island Automotive Group Inc., d/b/a Land Rover Glen Cove (“Long Island Auto”) and defendant/third-party-plaintiff Jaguar Land Rover North America, LLC (“JLR”) both partially oppose the motion.

Plaintiff Chalupka alleges in her amended complaint that she purchased a 2006 Range Rover (the “Vehicle”) from defendant Long Island Auto. Defendant JLR is the manufacture of the Vehicle and uses Long Island Auto as an authorized dealer. Plaintiff further alleges that on February 27, 2012 (year assumed from context) she telephonically informed a representative of

defendant Long Island Auto that there was smoke billowing from the exhaust of the Vehicle. The Long Island Auto representative advised plaintiff that the smoke “may have been caused by dirty or water contaminated gas and that the procedure she should adopt was to deplete the gas in the tank.” (Amended Complaint at ¶ 3). Plaintiff thus continued to drive the Vehicle and as a result damaged its engine.

In its third party complaint, defendant JLR impleaded third-party-defendant APCO alleging that the warranty and extended warranty that plaintiff had on the Vehicle was administered by APCO thus it is their responsibility to administer the warranty and reimburse any related claims.

Defendant APCO argues in its motion to dismiss, the action should be compelled to arbitration since the warranty has a mandatory arbitration clause. The Arbitration clause states:

All claims, disputes and controversies of whatever kind between You and US arising from or relating to this Limited Warranty shall be resolved by binding arbitration under the Arbitration Rules For The Resolution Of Consumer-Related Disputes of the American Arbitration Association. If the controversy relates to repair or reimbursement under this Limited Warranty, You must initiate a consumer arbitration within sixty (60) days of the date on which the repair or reimbursement was denied.

For all other controversies, You must first notify the Administrator, in writing, of your intention to initiate a consumer arbitration, and must initiate the consumer arbitration within sixty (60) days after receiving written notice from the Administrator that the controversy cannot be resolved. Each party to the arbitration shall bear the expense of that party’s attorneys, experts, and witnesses, regardless of which party prevails in the arbitration. This arbitration agreement is made pursuant to a transaction involving interstate commerce and shall be governed by the Federal Arbitration Act. You may initiate a consumer arbitration by contacting the American Arbitration Association through its website at <http://www.adr.org>, or at its Dallas Case Management Center at 13455 Noel Road, Suite 1750, Dallas, Texas, 75240, (972) 702-8222.

(Limited Warranty Exh. B of Blank Aff.)

Pursuant to the definitions section of the Limited Warranty, “You” is defined as “the customer who purchased the Vehicle and the holder of this Limited Warranty or a qualified

transferee.” Id. at ¶ “Definitions.” Here that party is the plaintiff Chalupka. “Us” is defined as “the issuing provider, Land Rover North America, Inc. (Land Rover), a wholly-owned subsidiary of Ford Motor Company.” Id. Therefore, “Us” is defendant/third-party-plaintiff JLR. Lastly, the “Administrator” is defined as third-party defendant APCO. Id.

The question of arbitrability focuses on whether a particular dispute is properly the subject of arbitration. (CPLR 7503(a)). The parties are entitled first to a judicial determination whether there was a valid agreement to arbitrate and then, if the agreement was of limited scope, whether the issue is within the scope of arbitration. (Rockland County v Primiano Const. Co., Inc., 51 NY2d 1, 7 [1980]). The language of the arbitration clause here dictates that claims related to the warranty between plaintiff and defendant/third-party-plaintiff JLR must be resolved in arbitration. Plaintiff seeks to be reimbursed by JLR for the damages caused to her Vehicle’s engine specifically the “replacement of engine to plaintiff’s vehicle pursuant to the Second Defendant’s [JLR’s] schedules for engine replacement.” (See Amended Complaint at Particulars of Damage). Plaintiff thus has a claim arising from “mechanical breakdown or failure” pursuant to the warranty (see Limited Warranty §§ D and E). Thus, her claims against JLR should be subject to arbitration (see Avery v Avery, 81 AD2d 849, 851 [2d Dept 1981]).

On the other hand, defendant Long Island Auto is not a party to the agreement to arbitrate thus cannot be compelled to arbitrate. (Basis Yield Alpha Fund (Master) v Goldman Sachs Group, Inc., 115 AD3d 128, 132-33 [1st Dept 2014]). As such, this action is stayed pending resolution of the arbitration of the claims by the other parties.

Lastly, the arbitration clause in the warranty further states that all other claims against third-party-defendant APCO should also be resolved in arbitration. The only arguments advanced by third-party-defendant APCO for dismissal of defendant/third-party-plaintiff JLR’s

complaint are based upon the warranty's mandatory arbitration provision. Defendant/third-party-plaintiff JLR argues that their complaint should not be dismissed because it is based on a separate indemnification and hold harmless agreement between JLR's corporate predecessor and APCO, which does not have an arbitration provision. Defendant/third-party-plaintiff JLR's argument that their claims are based upon another agreement other than the warranty is belied by their complaint which explicitly states "it is [APCO's] responsibility to administer the extended warranty and reimburse any claims made pursuant to the extended warranty." (Third Party Complaint at ¶ 4). Accordingly, APCO's motion to dismiss the third party complaint is granted with leave for defendant/third-party-plaintiff JLR to replead. Accordingly it is

ORDERED that the third-party-defendant Automobile Protection Corporation's motion to dismiss the third party complaint is granted on condition the parties to proceed to arbitration; and it is further


ORDERED that the third-party-defendant Automobile Protection Corporation's motion to compel arbitration and to stay this action is granted; and it is further

ORDERED that plaintiff Michelle Chalupka shall arbitrate her claims against defendant Jaguar Land Rover North America, LLC and defendant/third-party-plaintiff Jaguar Land Rover North America, LLC shall arbitrate its impleaded claims against third party-defendant Automobile Protection Corporation; and it is further

ORDERED that all proceedings in this action are hereby stayed; and it is further

ORDERED that any party may make an application by order to show cause to vacate or modify this stay upon the final determination of the arbitration.

Date: December 9, 2014
New York, New York


Anil C. Singh
HON. ANIL C. SINGH
SUPREME COURT JUSTICE