

Tentative Rulings for March 17, 2022
Department 503

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 503

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(20)

Tentative Ruling

Re: ***Kahlon et al. v. Mercedes-Benz USA, LLC***
Superior Court Case No. 20CECG02301

Hearing Date: March 17, 2022 (Dept. 503)

Motion: Defendant Mercedes-Benz USA, LLC's Motion to Compel Arbitration

Tentative Ruling:

To deny.

Explanation:

On February 26, 2016, plaintiffs purchased a new 2016 Mercedes GL450 from Mercedes-Benz of Fresno, which vehicle was manufactured or distributed by defendant Mercedes-Benz USA, LLC ("MBUSA" or "defendant"). As a part of that transaction, plaintiffs signed a Retail Installment Sales Contract ("RISC") which contained an arbitration clause.

Problems with the vehicle ensued, and this "lemon law" action was filed on August 4, 2020, against MBUSA only. Plaintiffs did not sue the dealer. The complaint alleges the following causes of action:

- (1) Violation of the Song-Beverly Act – Breach of Express Warranty;
- (2) Violation of the Song-Beverly Act – Breach of Implied Warranty;
- (3) Violation of the Song-Beverly Act Section 1793.2(b); and
- (4) Violation of the Song-Beverly Act Section 1793.22.

Defendant now moves to compel plaintiffs to arbitrate their claims against it.

Requests for Judicial Notice

Defendant filed a request for judicial notice of plaintiffs' complaint in this action and four trial court orders granting motions to compel arbitration. With the opposition, plaintiffs filed a request for judicial notice of: (1) this court's order denying a similar motion to compel arbitration in another case last year; and (2) a recent Ninth Circuit Court of Appeals decision, *Ngo v. BMW of North America, LLC* (9th Cir. 2022) 23 F.4th 942. No party has objected to any of the requests for judicial notice, each of which is granted.

Applicable Law

A trial court is required to grant a motion to compel arbitration "if it determines that an agreement to arbitrate the controversy exists." (Code Civ. Proc., § 1281.2.) However, there is "no public policy in favor of forcing arbitration of issues the parties have not agreed to arbitrate." (*Garlach v. Sports Club Co.* (2012) 209 Cal.App.4th 1497, 1505.)

“Thus, in ruling on a motion to compel arbitration, the court must first determine whether the parties actually agreed to arbitrate the dispute.” (*Mendez v. Mid-Wilshire Health Care Center* (2013) 220 Cal.App.4th 534, 541.)

Defendant is not a signatory to the arbitration agreement in question. (See *Tahsildoost Decl., Ex. 2.*) “Generally speaking, one must be a party to an arbitration agreement to be bound by it or invoke it.” (*Westra v. Marcus & Millichap Real Estate Investment Brokerage Co., Inc.* (2005) 129 Cal.App.4th 759, 763.) “The strong public policy in favor of arbitration does not extend to those who are not parties to an arbitration agreement, and a party cannot be compelled to arbitrate a dispute that he has not agreed to resolve by arbitration.” (*Buckner v. Tamarin* (2002) 98 Cal.App.4th 140, 142, internal quotes and citation omitted.) “However, both California and federal courts have recognized limited exceptions to this rule, allowing nonsignatories to an agreement containing an arbitration clause to compel arbitration of, or be compelled to arbitrate, a dispute arising within the scope of that agreement.” (*DMS Services, LLC v. Superior Court* (2012) 205 Cal.App.4th 1346, 1352.) Here, defendant contends it may compel arbitration as a third party beneficiary of the contract or alternatively under the theory of equitable estoppel. (*Jensen v. U-Haul Co. of California* (2017) 18 Cal.App.5th 295, 301, 306; *Goldman v. KPMG, LLP* (2009) 173 Cal.App.4th 209, 230.) These are considered in turn.

Pertinent Language of the Arbitration Agreement

As pertinent to the issue of standing to compel arbitration based on either equitable estoppel or as a third party beneficiary, the arbitration agreement contained in the RISC plaintiffs signed includes the following provisions.

On the front side of the RISC, in a separate box that plaintiffs signed, it states: “Agreement to Arbitrate: By signing below, you agree that, pursuant to the Arbitration Provision on the reverse side of this contract, you or we may elect to resolve any dispute by neutral, binding arbitration and not by a court action. See the Arbitration Provision for additional information concerning the agreement to arbitrate.” (RISC, *Tahsildoost Decl., Ex. 2.*) The RISC further provides in bold, capitalized letters, “YOU ACKNOWLEDGE THAT YOU HAVE READ BOTH SIDES OF THIS CONTRACT, INCLUDING THE ARBITRATION PROVISION ON THE REVERSE SIDE, BEFORE SIGNING BELOW.” (*Ibid.*)

The first full paragraph of the arbitration agreement provides,

Any claim or dispute, whether in contract, tort, statute or otherwise (including the interpretation and scope of this Arbitration Provision, and the arbitrability of the claim or dispute), between you and us or our employees, agents, successors or assigns, which arises out of or relates to your credit application, purchase or condition of this vehicle, this contract or any resulting transaction, or relationship (including any such relationship with third parties who do not sign this contract) shall, at your or our election, be resolved by neutral, binding arbitration and not by a court action.

(*Ibid.*)

The first page of the RISC indicates that the word "you" refers to "the Buyer" and "Co-Buyer" (i.e., plaintiffs), and the words "we" or "us" refers to the "Seller – Creditor" (i.e., MBUSA). (*Ibid.*, p. 1.)

Third-Party Beneficiary

Third-party beneficiaries are permitted to enforce arbitration clauses even if not named in the agreement. (*Cohen v. TNP 2008 Participating Notes Program, LLC* (2019) 31 Cal.App.5th 840, 856.) Defendant contends that it can enforce the arbitration agreement as a third party beneficiary to the RISC. The arbitration agreement expressly states it applies to "any resulting transaction or relationship (including any such relationship with third parties who do not sign this contract)" (RISC, Tahsildoost Decl., Ex. 2, emphasis added.)

"A third party beneficiary is someone who may enforce a contract because the contract is made expressly for his benefit." (*Jensen v. U-Haul Co. of California, supra*, 18 Cal.App.5th at p. 301, citing and quoting *Matthau v. Superior Court* (2007) 151 Cal.App.4th 593, 602.) The intent to benefit that third party must appear from the terms of the contract. (*Ibid.*) The third party must show that the arbitration clause was "made expressly for his benefit." (*Fuentes v. TMCSF, Inc.* (2018) 26 Cal.App.5th 541, 552.) "A nonsignatory is entitled to bring an action to enforce a contract as a third party beneficiary if the nonsignatory establishes that it was likely to benefit from the contract, that a motivating purpose of the contracting parties was to provide a benefit to the third party, and that permitting the third party to enforce the contract against a contracting party is consistent with the objectives of the contract and the reasonable expectations of the contracting parties." (*Hom v. Petrou* (2021) 67 Cal.App.5th 459, citing *Goonewardene v. ADP, LLC* (2019) 6 Cal.5th 817, 821.)

As applied to the facts here, the mere fact that the RISC contains a reference to "third parties" and that MBUSA is a "third party" does not show that the arbitration clause was expressly intended to benefit any particular third party, much less does it show that this provision was made expressly for defendant's benefit. There is nothing in the RISC indicating that the motivating purpose for the parties to the contract was to benefit manufacturer MBUSA, or that allowing defendant to independently compel arbitration was within the parties' reasonable expectations at the time of contracting. The court cannot find defendant to be a third party beneficiary of the arbitration agreement.

Defendant relies on a recent opinion from the Third District Court of Appeal, *Felisilda v. FCA US LLC* (2020) 53 Cal.App.5th 486 ("*Felisilda*") in arguing that it has standing to compel arbitration as a third-party beneficiary. In *Felisilda*, the motion to compel arbitration was filed by the dealership (Elk Grove Dodge), and included a request that its co-defendant, manufacturer FCA, US, LLC ("FCA") also be included as a party to the arbitration. (*Id.* at p. 498.) FCA filed a notice of nonopposition. (*Ibid.*) The trial court granted the motion. After the motion was granted, plaintiff dismissed Elk Grove Dodge. (*Id.* at p. 489.) FCA prevailed at arbitration, and the Felisildas appealed. The appellate court found that it was appropriate to compel arbitration based on the theory of equitable estoppel. (*Id.* at p. 497.) Defendant argues that this case controls, and mandates that this court find that it has standing to compel arbitration pursuant to the RISC which is virtually identical to the one in *Felisilda*.

However, there are important distinctions between the facts of that case and the one at bench. The motion there was by the dealership and not the manufacturer, which took no part in the motion beyond filing a notice of nonopposition. Also, the plaintiffs did not dismiss the dealership until *after* the motion to compel was granted. Here, however, the dealership was never a party to this action. MBUSA is and always has been the only defendant in this action. This makes a difference and limits the application of *Felisilda*. At best, *Felisilda* stands for the proposition that, where a plaintiff buyer files a complaint against both the dealership and the manufacturer, the dealership can compel plaintiff to arbitrate the claims against both. This is consistent with the language of the arbitration agreement, since it provides that any claim or dispute “which arises out of or relates to your . . . purchase or condition of this vehicle . . . or any resulting transaction or relationship (including any such relationship with third parties who do not sign this contract) shall, at your or our election be resolved” by arbitration. (RISC, Tahsildoost Decl., Ex. 2, emphasis added.) As defined by the contract, the word “our” means Mercedes-Benz of Fresno, not MBUSA. Thus, under the express language of the arbitration clause, arbitration could be compelled on behalf of a third party non-signatory, and there is nothing in this language authorizing it to be compelled by a third party non-signatory.

As the appellate court in *Felisilda* clearly stated, “It is the motion that determines the relief that may be granted by the trial court.” (*Felisilda*, *supra*, 53 Cal.App.5th at p. 498.) The motion before the trial court, and, thus, the issue considered on appeal, was whether the dealership’s motion, asking for arbitration to also be compelled on behalf of the nonsignatory manufacturer, was correctly granted. Therefore, the court had no cause to consider whether a nonsignatory manufacturer, as sole defendant, could successfully compel arbitration. That was not the posture of the case. As the court summed up its holding, since *the dealership’s motion* argued that the claim against both defendants should be arbitrated, “the trial court had the prerogative to compel arbitration of the claim against FCA.” (*Id.* at p. 499.) Also, the phrase “had the prerogative” suggests that the court of appeal was supporting the trial court’s *use of discretion* in making its ruling, and was not finding that compelling arbitration was mandated under the equitable estoppel theory. In short, it is not clear how the Third District Court of Appeal would have ruled had the trial court ruling emanated from a motion brought by the sole defendant, the nonsignatory manufacturer, as here. This court will not extend *Felisilda* beyond its borders.

Another important distinction between *Felisilda* and the instant case is that there the plaintiffs’ complaint consisted of one combined cause of action against both defendants. (*Felisilda*, *supra*, 53 Cal.App.5th at p. 491.) No doubt that factor weighed heavily in the court’s finding that the plaintiffs’ claims against the manufacturer were intertwined with their claims against the dealership, such that it was fair to require arbitration to proceed against both. Here, however, not only did plaintiffs never commingle causes of action against the dealership and manufacturer, the dealership has never been a part of this action. Plaintiffs have never asserted the same cause of action against both dealership and manufacturer. And, as discussed above, the claims against defendant do not “depend upon,” nor are they “intimately found in” the contract plaintiffs entered into with the non-party dealership.

When faced with the same procedural posture (complaint only named manufacturer as defendant), and the same arbitration agreement, in January of this

year, the Ninth Circuit Court of Appeals similarly limited the holding of *Felisilda*, rejecting vehicle manufacturer BMW's third-party beneficiary and promissory estoppel arguments. (See *Ngo v. BMW of North America, LLC* (9th Cir. 2022) 23 F.4th 942.)

Equitable Estoppel

“The *sine qua non* for allowing a nonsignatory to enforce an arbitration clause based on equitable estoppel is that the claims the plaintiff asserts against the nonsignatory are dependent on or inextricably bound up with the contractual obligations of the agreement containing the arbitration clause.” (*Goldman v. KPMG, LLP* (2009) 173 Cal.App.4th 209, 213-214.) Even if a plaintiff's claims touch matters relating to the arbitration agreement, the claims are not arbitrable unless the plaintiff relies on the agreement to establish its cause of action. (*Fuentes v. TMCSF, Inc.*, *supra*, 26 Cal.App.5th at p. 552.) “The reason for this equitable rule is plain: One should not be permitted to rely on an agreement containing an arbitration clause for its claims, while at the same time repudiating the arbitration provision contained in the same contract.” (*DMS Services, LLC v. Superior Court*, *supra*, 205 Cal.App.4th at p. 1354.)

None of plaintiffs' claims against defendant are intimately founded in the RISC. Defendant relies on the fact that plaintiffs' claims concern the "condition . . . of the vehicle," which term is mentioned in the RISC as a potential subject of a claim where arbitration could be compelled. However, plaintiffs' claims about the condition of their vehicle clearly do not *depend upon* that language being in the RISC in order to bring them. If plaintiffs had paid cash for the vehicle, and thus would not have signed the RISC, they still could bring claims under the Song-Beverly Act and under common law concerning the "condition of the vehicle." (See, e.g., *Fuentes v. TMCSE, Inc.*, *supra*, 26 Cal.App.5th p. 553 [finding no standing to compel arbitration based on equitable estoppel because "[e]ven if he had paid cash for the motorcycle, his complaint would be identical"].) It is accurate to say that plaintiffs' claim is intimately founded in "the condition of the vehicle," but the fact that this term can also be found in the RISC does not mean their claim is intimately founded *in that contract*. Therefore, it would not be accurate to state that plaintiffs' causes of action against MBUSA rely on the RISC, such that it would be equitable to find plaintiffs estopped from avoiding its terms requiring arbitration.

Waiver

Because the court concludes that MBUSA does not have standing to compel arbitration pursuant to the RISC's arbitration provisions, it is unnecessary to address plaintiffs' waiver argument.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: KAG **on** 3/14/2022
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: **Freitas v. Lowe, et al.**
Superior Court Case No. 20CECG01122

Hearing Date: March 17, 2022 (Dept. 503)

Motions: Defendants' Motions:

- (1) To Compel Attendance at Independent Medical Examination;
- (2) To Compel Responses to Requests for Production of Documents, Set Two;
- (3) To Compel Responses to Requests for Production of Documents, Set Three; and
- (4) For Monetary Sanctions

Tentative Ruling:

To continue the hearing to Wednesday, April 13, 2022, at 3:30 p.m., in Department 503, to allow time for defendants to file a reply to plaintiff's opposition. The deadline for filing a reply is five court days prior to the scheduled hearing.

Explanation:

On March 11, 2022, the court received from plaintiff an untimely opposition to the motions. “All papers opposing a motion so noticed shall be filed with the court and a copy served on each party at least nine court days, and all reply papers at least five court days before the hearing.” (Code Civ. Proc., § 1005, subd. (b).) The court will consider the untimely opposition, but will allow defendants’ to file a reply.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: KAG on 3/16/2022.
(Judge's initials) (Date)