Circuit Court for Harford County
Case No. 12-C-16-1603

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0217

September Term, 2017

MARK S. HEWITT

v.

AUTO SHOWCASE OF BEL AIR

Kehoe,
Beachley,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Harrell, J.

Filed: May 30, 2018

Appellant (Plaintiff below), Mark S. Hewitt, challenges a judgment of the Circuit Court for Harford County granting a petition to compel arbitration filed by Appellee (Defendant below), Auto Showcase of Bel Air ("Auto Showcase"). Hewitt contends that the circuit court erred in reasoning that a stand-alone, contemporaneously-executed, arbitration agreement and a nested arbitration provision in the underlying contract of sale of a previously-owned automobile were not rendered void *ab initio* by, but rather survived, Auto Showcase's cancellation of the sales contract and repossession of the vehicle after a third-party lender declined to approve financing. Hewitt frames one question for our consideration.

I. On the uncontroverted facts of this case, can Auto Showcase compel Hewitt to arbitrate a claim he brought against it under Md. Code (2015, 2012 Repl. Vol., 2017 Suppl.), § 15-311.3(d)(2)(ii) of the Transportation Article ("Transp.") (the State's "Spot Delivery Law"), when it canceled the Retail Installment Sales Contract underlying the parties' agreements to arbitrate?

We shall affirm the judgment of the circuit court.

The Relevant "Uncontroverted Facts" (for Purposes of the Question Presented)

On 9 March 2016, Hewitt purchased conditionally from Auto Showcase a previously-owned 2013 Volkswagen CC Sport (the "Vehicle"). Hewitt paid a down-payment of $1,000.00, a $290.00 dealer processing charge, a $155.00 registration fee, and

a $120.00 certificate of title fee. As part of the transaction, Auto Showcase offered dealer-arranged financing[1] to Hewitt. He agreed to this structure of the deal.

Hewitt signed a Retail Installment Sales Contract and a Retail Purchase Agreement (both governing the financing terms of the Vehicle) (collectively referred to hereafter, for the purposes of this opinion, as the "RISC"), and a separate Agreement to Arbitrate. The RISC indicated that Sierra Auto Finance, LLC, would provide (if it approved Hewitt's application) the financing for his purchase of the Vehicle. Maryland Code (2015, 2012 Repl. Vol., 2017 Suppl.), § 15-311.3 of the Transportation Article ("Transp."), governs the terms of this transaction.[2] Specifically, § 15-311.3(a)(1) provides, in the context of a dealer-arranged financing agreement where the buyer is given possession before action on the financing application is in hand, that

> the following notice shall be provided to the buyer in a separate document and signed by the dealer and the buyer:

[1] With dealer-arranged financing, the dealer collects information as the point of sale from a buyer and transmits that information to one or more prospective auto lenders. The prospective auto lender or lenders assess the quality of the investment and the erstwhile borrower's credit worthiness to determine if it/they wish to finance the purchase. Under the transaction in this case, the seller allowed the erstwhile buyer to take possession of the vehicle before a final response from the prospective auto lender was in hand.

[2] The statute was designed to spell-out the seller's and purchaser's respective rights and responsibilities in a transaction of this structure in order to forestall abusive sales practices following the "spot delivery" of a vehicle, in which a customer takes delivery of a vehicle before all financial and other arrangements have been finalized. The statute was designed also to remedy abuses where dealers who refused to return down payments or traded-in vehicles to consumers after they were turned down for financing and required to return the vehicle to the dealer. *See* MD Fisc. Note, 2015 Sess. S.B. 298; MD Fisc. Note, 2015 Sess. H.B. 313.

> For finance or lease sales: The financing or lease agreement you entered into with the dealer is not final and must be approved by a third-party financial institution. If the terms are approved, the sale cannot be canceled. If the terms are not approved, the dealer must notify you in writing within 4 days of delivery of the vehicle to you, and you or the dealer may cancel this sale. If the sale is canceled, the vehicle delivered to you must be returned to the dealer in the same condition it was given to you, except for normal wear and tear, within 2 days of your receipt of a written notice of the third-party rejection. Unless you and the dealer agree on different terms, any down payment, titling fee, excise tax, dealer processing charge, or any other fee, tax, or charge associated with the transaction, and any trade-in vehicle, in the same condition in which the dealer received the vehicle, will be returned to you immediately and you may not be charged a fee for use of the vehicle that was the subject of the sale. You may not waive any of these rights. If you feel the dealer has failed to comply with the terms of this notice, you may contact the Motor Vehicle Administration or the Consumer Protection Division of the Office of the Attorney General.

The RISC here contained, in addition to the contemporaneously – executed separate Arbitration Agreement,[3] a broad arbitration provision,[4] to which Hewitt agreed. He executed the documents and took possession of the Vehicle the same day.

[3] The separately-executed Arbitration Agreement provided, in relevant part, that:

> [t]o settle by binding arbitration any dispute between them regarding . . . (3) any financing obtained in connection with the transaction; and/or (4) any dispute with respect to the existence, scope or validity of this Agreement. Matters that the parties agree to arbitrate include, but are not limited to, disputes related to the Retail Purchase Agreement and any documents incorporated therein by reference, the application for and terms of financing for the transaction, the finance contract, and alleged promises, representation and/or warranties made to or relied upon by the Parties, and any alleged unfair, deceptive, or unconscionable acts or practices.

[4] The RISC arbitration provision stated that

> [e]ither you or we may choose to have any dispute between us decided by arbitration and not in court or by jury trial . . . Any claim or dispute, whether in contract,[or] statute . . . between you and us or our employees, agents, successors, or assigns, which arises out of or related to your credit application, purchase or condition of this vehicle [or this contract] . . . shall,

On 6 April 2016, Sierra Auto Finance, LLC, informed Auto Showcase that it declined to finance Hewitt's purchase of the Vehicle. The parties did not renegotiate a new financing arrangement. Auto Showcase canceled the RISC. It also repossessed the Vehicle.[5]

On 17 May 2016, Hewitt filed a putative class action suit in the Circuit Court for Harford County against Auto Showcase alleging that it failed to comply with Transp. § 15.311(d)(2)(ii), which mandated certain fees be refunded to purchasers in the event of the cancellation of a sales agreement.[6] Auto Showcase, in response, filed a petition to compel arbitration and a motion to stay the class action suit pending adjudication of its petition. Hewitt moved for summary judgment, contending that the arbitration provisions in the RISC and the stand-alone Arbitration Agreement were unenforceable because Auto

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at your or our election, be resolved by neutral, binding arbitration and not be a court action.

[5] Hewitt claims that on "April 6, 2016, Auto Showcase advised [] Hewitt that the dealer-arranged financing had not been approved[,] and repossessed the subject vehicle [on the same day] while it was on Auto Showcase's property for repairs."

[6] § 15.311(d)(2)(i-ii) provides that

(i) If a dealer and a buyer do not agree on new financing or leasing terms, the dealer or the buyer may cancel the sale.

(ii) If a sale is canceled under subparagraph (i) of this paragraph, the dealer:

1. Shall return to the buyer:

A. Any trade-in vehicle in the same condition in which the dealer received the vehicle;

B. Any down payment;

C. The titling fee and excise tax paid under Title 13, Subtitle 8 of this article;

D. Any dealer processing charge; and

E. Any other fee, tax, or charge associated with the transaction; and

2. May not charge the buyer a fee for the use of the vehicle.

Showcase canceled the RISC pursuant to §15.311.3(d)(2), thus rendering void both agreements to arbitrate. Auto Showcase responded that the agreements to arbitrate were severable and enforceable under Maryland law, notwithstanding its cancellation of the RISC.

The circuit court denied Hewitt's motion and granted Auto Showcase's petition, holding that

> a valid contract to arbitrate exists and that it was the intent of the parties to arbitrate all issues that arose if the contract for any reason was breached or faulty. [Auto Showcase] signed a Retail Installment Sales Contract, a Retail Purchase Agreement, and an Agreement to Arbitrate. A valid arbitration contract exists in the plain language of the contract, where, "any claim or dispute… which arises out of or relates to your credit application… shall, at your or our election, be resolved by neutral, binding arbitration and not by a court action." Additionally the separate arbitration agreement specifically provided that, "by entering into this Agreement to Arbitrate… to settle by binding arbitration any dispute between them regarding…(3) any financing obtained in connection with the transaction; and/or (4) any dispute with respect to the existence, scope or validity of this agreement." The court therefore believes that the parties are bound by the terms despite the fact that the contract was cancel[]ed.
>
> This court will compel the parties to engage in binding arbitration. No grounds exist under the law that void the contract and no grounds in equity were asserted by [Hewitt]. The lapse of financing cancel[]ed the contract by the scope of the arbitration clause which expressly covered said cancellation. This court finds, pursuant to *Holmes v. Coverall North America. Inc.* [336 Md. 534, 649 A.2d 365 (1994)] that the arbitration terms were severable from the contract's cancellation because of the mutual promises to arbitrate.

Analysis

Hewitt underscores for us that Transp. § 15-311.3(d)(2)(ii) provides a right for either party to void a "spot delivery," conditional agreement to purchase a vehicle, if financing is not approved. Hewitt contends therefore that, once the RISC was canceled by Auto

Showcase, under Transp. § 15.311.3(d)(2), the agreements to arbitrate disputes arising under and from the RISC, appearing in both the RISC and the separate Arbitration Agreement, became void *ab initio*. Hewitt, in support of this contention, relies primarily on a sentence in a footnote in *Dialist Co. v. Pulford*, 42 Md. App. 173 n.3, 177, 399 A.2d 1374, 1378 n.3 (1979), stating "[t]he rescission of a contract involves voiding it *ab initio* and returning the parties to the status quo ante."

Hewitt asserts, additionally, that the arbitration agreements are unenforceable for lack of consideration. Central to this contention is that Auto Showcase repossessed the Vehicle. Once it did, any consideration supporting the formation of the RISC or the separate Arbitration Agreement vanished. In this regard, Hewitt maintains that his claims for relief are derived from Transp. § 15-311.3, and are not traceable to the RISC, i.e., no language in the RISC contemplates the relief he sought. Thus, as his argument goes, his claims are beyond the scope of what he agreed to arbitrate.

Auto Showcase ripostes that an agreement to arbitrate exists between the parties, sweeping up Hewitt's complaints in the putative class action suit. Auto Showcase avers, citing *Cheek v. United Healthcare of Mid-Atlantic, Inc.*, 378 Md. 139, 835 A.2d 656 (2003), that the arbitration clause, included within the RISC, is severable and enforceable, surviving the cancellation of the RISC. More abundantly, the separate Arbitration Agreement, as well as the companion provision in the RISC, evidence mutual promises, i.e., consideration, between the parties to arbitrate disputes arising from the attempted sale of the Vehicle.

Whether an agreement to arbitrate exists is a question of law that Maryland appellate courts review *de novo*. *Holloman v. Circuit City Stores, Inc*., 391 Md. 580, 588 (2006). Neither we (nor trial courts) assess, however (as the circuit court purported to do, going beyond its initial determination that arbitration was appropriate), whether the RISC was rendered void or voidable by an alleged violation of Transp. § 15-311.3(d)(2)(ii). Answering that query is left, in the first instance, to the arbitrator.

Maryland appellate courts consider arbitration (when selected by the parties) as a favored method of dispute resolution, as it is "'generally a less expensive and more expeditious means of settling litigation and relieving docket congestion.'" *Baltimore County Fraternal Order of Police Lodge No. 4 v. Baltimore County*, 429 Md. 533, 549, 57 A.3d 425, 434 (2012) (quoting *Walther v. Sovereign Bank*, 386 Md. 412, 425, 872 A.2d 735, 743 (2005)). The Maryland Uniform Arbitration Act, enacted in 1965, Maryland Code (1974, 2013 Repl.Vol.) §§ 3–201 through 3–234 of the Courts and Judicial Proceedings Article (Cts. & Jud. Proc.), embodies a legislative policy favoring enforcement of executory agreements to arbitrate. *Charles J. Frank, Inc. v. Associated Jewish Charities of Baltimore, Inc.*, 294 Md. 443, 448, 450 A.2d 1304, 1306 (1982); *Aetna Casualty & Surety Co. v. Insurance Commissioner*, 293 Md. 409, 421, 445 A.2d 14, 19 (1982); *Maietta v. Greenfield*, 267 Md. 287, 291, 297 A.2d 244, 246 (1972).

A "trial court's order compelling arbitration constitutes a final and appealable judgment." *Walther*, 386 Md. at 422, 872 A.2d at 74. An appellate court's role in reviewing the circuit court's order is limited to a determination of whether a valid and enforceable

arbitration agreement exists. *Baltimore County Fraternal Order of Police Lodge No. 4*, 429 Md. at 550, 57 A.3d at 435; *see also Gold Coast Mall, Inc. v. Larmar Corp*., 298 Md. 96, 103–04, 468 A.2d 91, 95 (1983) (§ 3-207 of the Courts and Judicial Proceedings Article (Cts. & Jud. Proc.) confines strictly the function of the court in suits to compel arbitration to the resolution of a single issue—is there an agreement to arbitrate the subject matter of a particular dispute). This duty, moreover, may include an assessment of whether the agreement to arbitrate encompasses the subject matter of the particular dispute, if challenged. *Id*. (citing Cts. & Jud. Proc. § 3-207).

Our courts avoid, however, analysis of the merits of any underlying disputes, leaving that to the arbitrator. *Cheek*, 378 Md. at 155, 159–60, 835 A.2d at 666–68 ("we must not stray into the merits of any underlying disagreements[,] [t]o do so [w]ould eclipse the role of the arbitrator, should a valid agreement exist, and therefore run afoul of strong Federal and Maryland policies favoring arbitration as a viable method of dispute resolution"); *Holmes v. Coverall N. Am., Inc*., 336 Md. 534, 546, 649 A.2d 365, 370–71 (1994) ("The scope of the court's involvement extends only to a determination of the existence of an arbitration agreement"). This avoidance, however, becomes challenging when (as here) the question of whether the parties agreed to arbitrate the dispute overlaps with the merits of the dispute, i.e., issues "arising after the formation of the arbitration agreement[,]" such as a "termination of the contract." *Baltimore County Fraternal Order of Police Lodge No. 4*, 429 Md. at 551, 57 A.3d at 435 (quoting *Holmes*, 336 Md. at 534, 649 A.2d at 368) (internal quotation marks omitted). In such circumstances, "[w]hether

the party seeking arbitration is right or wrong is a question of contract application and interpretation for the arbitrator . . . and the court should not deprive the party seeking arbitration of the arbitrator's skilled judgment by attempting to resolve the ambiguity." *Id.* (quoting *NRT Mid–Atl., Inc. v. Innovative Props., Inc.*, 144 Md. App. 263, 281, 797 A.2d 824, 834 (2002)). Thus, a determination as to the validity or enforceability of the terms of a contract as a whole is left to the sound discretion of the arbitrator. *Baltimore County Fraternal Order of Police Lodge No. 4*, 429 Md. at 557–58, 57 A.3d at 439 (leaving for the arbitrator to determine whether a retirees' rights to a 85/15 health-insurance premium split, as per its expired memoranda of understanding ("MOU"), vested prior to the MOU's expiration); *Holmes*, 336 Md. at 534, 649 A.2d at 371 (explaining that allegations of fraudulent inducement go to the validity of the contract, and because the party resisting arbitration "has not alleged fraud in the inducement as to the arbitration clause itself or that the parties did not intend to arbitrate this type of a dispute," the underlying dispute is one for the arbitrator); *Gold Coast Mall, Inc.*, 298 Md. at 107–08, 468 A.2d at 97 (the Court, unable to address issue of arbitratability without analyzing the contract concomitantly, held that "the question of substantive arbitrability should be left to the decision of the arbitrator"); *Nowak v. NAHB Research Ctr., Inc.*, 157 Md. App. 24, 34, 848 A.2d 705, 711 (2004) (appellant's argument that the arbitration agreement contained within an employment contract was no longer valid when the appellee was terminated as an employee went to the merits of the contract and was a question for the arbitrator).

Hewitt operates, it appears to us, under the mistaken premise that Maryland courts, for purposes of analysis, approach arbitration provisions like any other contractual clause. He relies on out-of-state trial and intermediate appellate court holdings to endorse this premise, explaining that if the underlying and encompassing contract is void, then the arbitration provision contained within is void as well. The out-of-state cases he cites are irrelevant to the question before us.

It is well-settled in Maryland that an arbitration clause is severable from an underlying contract and immune to other alleged contractual infirmities. *Baltimore County Fraternal Order of Police Lodge No. 4*, 429 Md. at 556, 57 A.3d at 438 (severing an arbitration provision from a contract that had expired in the context of a health-insurance premium for retired police officers); *Cheek*, 378 Md. at 153, 835 A.2d at 664 (agreeing that an arbitration provision was severable from an employment contract); *Holmes*, 336 Md. at 543, 649 A.2d at 369 (followed *Prima Paint Corp. v. Flood & Conklin Mfg. Co*., 388 U.S. 395, 87 S. Ct. 1801, (1967), and considered an arbitration clause in a franchise agreement to be severable therefrom); *Nowak*, 157 Md. App. at 33–34, 848 A.2d at 711 (holding an arbitration provision severable from an underlying employment contract).

> [a]greements to arbitrate are separable from the contracts in which they are placed unless the parties have expressed a contrary intention. Therefore, when a broad arbitration clause is adopted evidencing an intent to arbitrate all disputes between the parties, issues relating to the negotiation and making of the contract, such as fraudulent inducement, are referable to arbitration, unless the arbitration clause itself was improperly transacted.

Holmes, 336 Md. at 543, 649 A.2d at 369 (quoting *Pinkis v. Network Cinema Corp*., 512 P.2d 751, 757 (Wash. Ct. App. 1973)).

When contracting parties exchange reciprocal promises to arbitrate disputes, each promise provides consideration for the other. *Baltimore County Fraternal Order of Police Lodge No. 4*, 429 Md. at 556, 57 A.3d at 438; *Cheek*, 378 Md. at 153, 835 A.2d at 664; *Holmes*, 336 Md. at 544, 649 A.2d at 370; *Nowak*, 157 Md. App. at 33, 848 A.2d at 711. Thus, if a court finds a "mutual exchange of promises to arbitrate" to exist, "its inquiry ceases, as the agreement to arbitrate has been established as a valid and enforceable contract." *Cheek*, 378 Md. at 153-54, 835 A.2d 664 (quoting *Holmes*, 336 Md. at 544, 649 A.2d 365).

In the instant case, a mutually agreed upon (and enforceable) arbitration provision exists in the RISC, which contains also plain language indicating that it "shall survive any termination . . . of this contract." Moreover, the parties executed an additional, stand-alone Agreement to Arbitrate (containing language paralleling that in the RISC arbitration provision), calling-out as it does specifically, *inter alia*, the financing of Hewitt's purchase of the Vehicle.

In any event, Hewitt does not assert any contract formation defenses,[7] but rather avers that the exercise by Auto Showcase of the right to cancel the RISC under Transp. §

[7] Hewitt contended at oral argument that Auto Showcase did not provide him with the statutorily-required notice (mandated in a dealer-arranged financing transaction) under Transp. §15-311.3(a)(1). The parties' briefs, however, are devoid of any argument to this effect. Moreover, at oral argument, Auto Showcase refuted Hewitt's contention that he was

15-311.3(d)(2)(ii) "renders it void *ab initio*." He contends that cancellation is akin to rescission and requires all parties be returned to the status quo ante. This contention is meritless. *Holmes* held that rescission of a contract is a threshold issue to be decided in the arbitration in the first instance. *See Holmes v. Coverall N. Am., Inc.*, 98 Md. App. 519, 528, 633 A.2d 932, 936 (1993), *aff'd*, 336 Md. 534, 649 A.2d 365 ("If this Court were to hold that the issues regarding *rescission* of the Agreement must be decided by the trial court in the first instance, we would frustrate the legislative policy favoring enforcement of executory agreements to arbitrate.").

To determine whether Auto Showcase's cancellation of the RISC rendered it (as well as the separate and contemporaneously – executed Arbitration Agreement) void is a question assessing their validity as a whole. This pronouncement requires interpreting Transp. § 15-311.3(d)(2)(ii) to appraise whether its violation voids the RISC, i.e., one going to the merits of the present dispute. If we were to entertain this inquiry here, we would be determining effectively whether Hewitt is entitled to relief based on his contention that Auto Showcase failed to comply with Transp. § 15-311.3(d)(2)(ii). As was explained in *Holmes* and its progeny, this is a question for the arbitrator to decide in the first instance.[8]

not provided with notice under Transp. § 15.311.3(a)(1). Auto Showcase elucidated that Hewitt's claim in this regard was un-briefed, was never presented in the filings in the circuit court proceedings on Auto Showcase's petition to compel arbitration, and that discovery in this matter had yet to occur. We decline to review the merits of Hewitt's contention in this regard. *See* Md. Rule 8-131(a).

[8] Hewitt cites, in support of his argument that the RISC became void *ab initio*, a footnote from *Dialist Co. v. Pulford*, 42 Md. App. 173 n.3, 177, 399 A.2d 1374, 1378 n.3 (1979), stating "[t]he rescission of a contract involves voiding it *ab initio* and returning the

Hewitt misconstrues Maryland law when arguing

> that once the RISC was not approved by the financing company and Auto Showcase cancel[]ed repossessed the subject vehicle, there was no longer any consideration supporting the arbitration clause. *[Auto Showcase] does not dispute this and failed to identify any consideration that supports either the RISC in its entirety or the arbitration clause contained therein.* . . . by treating the arbitration clause as severable, [*Cheek*] created a higher burden[[9]] for establishing an arbitration agreement because it rejected the concept that the consideration underlying the agreement - employment - was sufficient to support an arbitration clause that could not survive when evaluated separately from the entire agreement.

Hewitt's reliance on *Cheek* is untenable. He argues that, once Auto Showcase repossessed the Vehicle, any consideration supporting the arbitration agreements ceased. Thus, the RISC should be unenforceable for lack of consideration. This is inconsistent with his later argument where he cites correctly *Cheek*'s rejection of the assertion that the consideration supporting the consideration for the underlying transaction is sufficient to support an arbitration clause. *Cheek* stated bluntly that, if it

> were to conclude that consideration from the underlying agreement was sufficient to support the arbitration agreement, we would be precluded from ever finding an arbitration agreement invalid for lack of consideration when

parties to the status quo ante." Hewitt's reliance is misplaced. *Dialist* cites *Ryan v. Brady*, 34 Md. App. 41, 49, 366 A.2d 745, 750 (1976), to support the contract law principle that the goal of rescission is to return the parties to the status quo ante. Rescission, however, is extraordinary relief and will be granted only upon proof of a justifiable reliance on a material misrepresentation. *Chesapeake Homes, Inc. v. McGrath*, 249 Md. 480, 488, 240 A.2d 245, 249 (1968); *Carozza v. Peacock Land Corp*., 231 Md. 112, 121, 188 A.2d 917, 921 (1963). Neither party here claimed rescission as relief, nor are facts present suggesting that Auto Showcase misrepresented materially critical components of the RISC.

[9] This is a mistaken premise. *Cheek* lowered, in fact, the burden to establish an enforceable, separately-executed arbitration agreement. *Cheek* explained that to find consideration supporting an arbitration agreement, there must exist simply a mutual exchange of promises to arbitrate.

> performance of a contract has already occurred, no matter how illusory the arbitration agreement was.

Cheek, 378 Md. at 160, 835 A.2d at 669. *Cheek*, in fact, *disagreed* with cases from our sister states when it concluded that consideration supporting an underlying contract can support simultaneously a nested arbitration clause and render it enforceable.

Maryland law is clear that an arbitration agreement may be enforceable notwithstanding a finding of invalidity of the underlying contract. *Holmes*, 336 Md. at 547, 649 A.2d at 371 ("By enforcing the arbitration agreement, we merely hold that the mutual promises to arbitrate constitute a separate agreement contained in the contract in question and that the arbitration clause itself is not in dispute. *The validity of the contract as a whole is a question left for the arbitrators.*" (emphasis added)); *see also Nowak*, 157 Md. App. at 33–34, 848 A.2d at 711. If Hewitt's position were to prevail,

> any party to a contract containing an arbitration agreement could attempt to avoid the binding nature of the arbitration agreement by *merely alleging that the formation of the entire contract was faulty.* Such a rule of law would wreak havoc on well-settled principles of arbitration law. The Legislature clearly intended that only issues relating to the existence of the arbitration agreement, and not the underlying contract, be decided by the trial court in the first instance.

Holmes, 98 Md. App. at 532, 633 A.2d at 938 (emphasis added).[10]

[10] In *Holmes*, a violation of §365(b) of the Franchise Act rendered the contract voidable, but not void *ab initio* (affirmed by the Court of Appeals, *see Holmes v. Coverall N. Am., Inc.*, 336 Md. 534, 547, 649 A.2d 365, 371 (1994)). *Holmes v. Coverall N. Am., Inc.*, 98 Md. App. 519, 531–32, 633 A.2d 932, 938 (1993), *aff'd*, 336 Md. 534, 649 A.2d 365 (1994). *Homes* did not intend to subrogate the role of the arbitrator, but rather reaffirmed *Bagel Enterprises, Inc. v. Baskin & Sears*, 56 Md. App. 184, 201 n. 5, 467 A.2d

Hewitt alleges that a violation of the Spot Delivery Law rendered void *ab initio* (similar to the outcome when rescission occurs) the RISC, but makes no significant argument that the plain language of the statute endorses his desired outcome. Nor does he identify any relevant recorded intent by the Legislature, when it adopted the Spot Delivery Law, to diminish Maryland's favoritism toward arbitration arising under it. *See Holmes*, 336 Md. at 549, 649 A.2d at 372 (the "burden is on the party opposing arbitration to show a clear legislative intent to preclude arbitration of disputes under the particular statutory scheme").

Hewitt contends additionally that the gravamen of his complaint exceeds the scope of the arbitration agreements. Specifically, it neither arises from the RISC nor is governed by the language of the arbitration agreements, but derives solely from the Spot Delivery Law.[11] Hewitt insists that his claim derives from Transp. § 15-311.3(d)(2)(ii), independent of any financing terms governing his Vehicle purchase.[12]

533, 542 n. 5 (1983), *cert. denied*, 299 Md. 136, 472 A.2d 999 (1984), where we held that violations of the Franchise Act rendered a contract only voidable.

[11] Hewitt argues this, presumably, because if we found enforceable the arbitration agreement, then (as per the agreement) Hewitt will be unable to bring, or be a class representative of, a class action suit before an arbitrator.

[12] Hewitt argued mistakenly at oral argument that the RISC does not import the authority to repossess the Vehicle under the circumstances of this case. The RISC provides, in the "OTHER IMPORTANT AGREEMENTS" subsection 2. c. "security interest," "you give us a security interest in: [t]he [V]hicle . . . and [this security agreement] secures your other agreements in this contract. (emphasis omitted). Under Md. Code. (1995, 2013 Repl. Vol.) §14-2008 of the Commercial Law Article (Com. Law), provides that a "lessor may repossess a leased motor vehicle if the lessee is in default." Moreover, the RISC expresses also in subsection 3. d. "we may take the vehicle from you" "if you default, we may take (repossess) the vehicle from you." (emphasis omitted).

Questions of whether the dispute is subject to arbitration are ones of intent. "No one is under a duty to resort to [arbitration] tribunals, however helpful their processes, except to the extent that [an agreeing party] has signified his[or her] willingness." *Stephen L. Messersmith, Inc. v. Barclay Townhouse Associates*, 313 Md. 652, 658, 547 A.2d 1048, 1051 (1988). It is well-settled that if an arbitration agreement is clear, "and it is plain that the dispute sought to be arbitrated falls within the scope of the arbitration clause," it is for the courts initially to determine whether the subject matter of a dispute falls within the scope of the arbitration agreement. *Gold Coast Mall, Inc.*, 298 Md. at 104, 468 A.2d at 95. "Where there is a broad arbitration clause, calling for the arbitration of any and all disputes arising out of the contract, all issues are arbitrable unless expressly and specifically excluded." *Id.*; *Baltimore County Fraternal Order of Police Lodge No. 4*, 429 Md. 533, 544, 57 A.3d 425, 431 (2012) (stating that the Court of Appeals has treated "broad arbitration clauses as encompassing any and all disputes not specifically excluded"). Conversely, if the language of the arbitration agreement is vague or unclear as to whether it covers the subject matter of the dispute, the question of substantive arbitratability should be left to the arbitrator. *Gold Coast Mall, Inc.*, 298 Md. at 105, 468 A.2d at 96.

The RISC arbitration provision in the present case explained that

> [e]ither you or we may choose to have any dispute between us decided by arbitration and not in court or by jury trial . . . *Any claim or dispute, whether in contract,[or] statute* . . . between you and us or our employees, agents, successors, or assigns, *which arises out of or related to your credit application*, purchase or condition of this vehicle [or this contract] . . . shall, at your or our election, be resolved by neutral, binding arbitration and not be a court action.

(emphasis added). Moreover, in the separately-executed Arbitration Agreement, the parties provided that:

> [t]o settle by binding arbitration any dispute between them regarding . . . (3) any financing obtained in connection with the transaction; and/or (4) any dispute with respect to the existence, scope or validity of this Agreement. Matters that the parties agree to arbitrate include, but are not limited to, disputes related to the Retail Purchase Agreement and any documents incorporated therein by reference, *the application for and terms of financing for the transaction, the finance contract*, and alleged promises, representation and/or warranties made to or relied upon by the Parties, and *any alleged unfair, deceptive, or unconscionable acts or practices.*

(emphasis added).

Hewitt asserted a claim for a refund of monies owed allegedly to him under Transp. § 15-311.3(d)(2)(i-ii), which provides that "[i]f a dealer and a buyer do not agree *on new financing or leasing terms*, the dealer or the buyer may cancel the sale" and, if so canceled, Auto Showcase shall return to Hewitt a specified list of his paid fees. Hewitt avers that his claim (and the relief sought) derives from the statute, not the language of the RISC. He is mistaken. Hewitt's claim for a refund of money Auto Showcase owes allegedly to him under Transp. § 15-311.3(d)(2)(ii), following the denial of his financing application and cancellation of the transaction, is related to the RISC's dealer-arranged financing terms.

Transp. § 15-311.3 is titled "[n]otice to buyer prior to third-party approval of *dealer-arranged financing or leasing agreement*." (emphasis added). The RISC dictates all financing terms of Hewitt's Vehicle purchase, including the identity of the hoped-for, third-party financer. Moreover, the purpose of the Spot Delivery Law is to prevent abusive sales

practices following the delivery of a vehicle. When Sierra Auto Finance, LLC declined to finance Hewitt's purchase of the Vehicle, no renegotiation of the RISC occurred; rather, Auto Showcase canceled the RISC and repossessed the Vehicle. Had the parties renegotiated the RISC, there may have been no repossession, and thus, no demand for a refund of monies paid to which Hewitt claims an entitlement. The proximate cause of Hewitt's complaint is traced to the declination of the third-party financer to finance Hewitt's purchase of the Vehicle.

The arbitration provision in the RISC delineates that "[*a*]*ny claim or dispute, whether in contract,*[*or*] *statute* . . . between you and us . . . *which arises out of or related to your credit application*" will be submitted to arbitration. This language makes clear that, even if Hewitt's claim were not traceable to the RISC, a claim under the Spot Delivery Law is subject to arbitration. "Where there is a broad arbitration clause, calling for the arbitration of any and all disputes arising out of the contract, all issues are arbitrable unless expressly and specifically excluded." *Gold Coast Mall, Inc.*, 298 Md. at 104, 468 A.2d at 95; *see also See Holmes*, 336 Md. at 544, 649 A.2d at 369 (when a broad arbitration clause is adopted, evidencing an intent to arbitrate all disputes between the parties, issues relating to the negotiation and making of the contract (such as fraudulent inducement) are referable to arbitration, unless the arbitration clause itself was transacted improperly). As noted earlier, the Spot Delivery Law does not seek, by its terms or history, to place above arbitration disputes arising purportedly under it.

Of some import in this regard is the 13 April 2015 Fiscal and Policy note to the Spot Delivery Law, which provides that "a violation of the bill is an *unfair and deceptive trade practice* under the Maryland Consumer Protection Act (MCPA), subject to MCPA's civil and criminal penalty provisions." Maryland Fiscal Note, 2015 Sess. S.B. 298 (emphasis added); *see also* Transp. 15-311.3(g) ("A violation of this section by a dealer: (1) Is an unfair and deceptive trade practice under Title 13 of the Commercial Law Article"). The parties agreed, in the separately executed Arbitration Agreement, that they would "settle by binding arbitration any dispute between them regarding . . . any alleged unfair, deceptive, or unconscionable acts or practices" as it relates to the financing of Hewitt's purchase of the Vehicle. Hewitt's claim against Auto Showcase for a violation of Transp. § 15-311.3(d)(2)(ii) is, in fact, an unfair and deceptive trade practice claim – one which the parties agreed to arbitrate. Thus, Hewitt's claim for a Transp. § 15-311.3 violation by Auto Showcase is not the escape mechanism he imagines. In fact, the Spot Delivery Law and what disputes the parties intend to arbitrate are consistent. Hewitt's allegations against Auto Showcase fall within the scope of the arbitration agreements.

JUDGMENT OF THE CIRCUIT COURT FOR HARFORD COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.