Circuit Court for Prince George's County
Case No. CAL16-07226
Circuit Court for Howard County
Case No. 13-C-16107507

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

CONSOLIDATED CASES

No. 957
September Term, 2016

FOTEIN BALASIORI
v.
DARCARS OF AUTH WAY, INC.

No. 1837
September Term, 2016

FOTEIN BALASIORI
v.
SANTANDER CONSUMER USA, INC., *et al.*

Leahy,
Shaw Geter,
Kenney, James A., III
(Senior Judge, Specially Assigned),
JJ.

Opinion by Kenney, J.

Filed: August 9, 2018

On March 31, 2014, appellant, Fotein Balasiori, purchased a vehicle from appellee, Darcars of Auth Way, Inc. ("Darcars" or "dealer"), an automobile dealership in Prince George's County, and financed the purchase with appellee, Santander Consumer USA, Inc. ("Santander" or "lender"). In this consolidated appeal, appellant challenges the orders of two circuit courts compelling arbitration of a dispute arising out of that transaction. She asks a single question, which we have rephrased as follows:[1]

> Did the Circuit Courts for Prince George's County and Howard County err when they ordered appellant to arbitrate her dispute that her signature was forged on a financing document with Darcars and Santander?

For the reasons that follow, we affirm both judgments.

FACTUAL AND PROCEDURAL BACKGROUND

To purchase the vehicle, appellant signed a Buyer's Order and a Retail Installment Sales Contract ("RISC"). We will refer to that RISC as the "First RISC." In general, the Buyer's Order, in addition to other terms, set forth the purchase price; the RISC provided the financing terms. When her monthly payments for the purchase were higher than what she had expected, appellant requested and received a copy of the financing paperwork from Santander. Alleging that her signature on the RISC document transmitted by

[1] Appellant presented the question as:

> Did the Circuit Courts for Howard and Prince George's County err by putting Appellant out of court without even holding an oral hearing where, as here (1) Appellant alleged under oath that the signature had been forged on the loan document Santander seeks to enforce; (2) that fact [is] not controverted by any competent evidence in the record; and, (3) the record is devoid of competent evidence of an operative, enforceable contract containing an arbitration clause[?]

Darcars to Santander was forged and that its terms were materially less favorable than those that she had agreed to, appellant sued both Darcars and Santander. We will refer to that RISC as the "Second RISC."

Appellant, on March 9, 2016, filed suit against Darcars and Santander in the Circuit Court for Prince George's County, alleging that Darcars had forged appellant's signature on the RISC assigned to Santander. Her complaint advanced claims for fraud and violation of the Maryland Consumer Protection Act, and requested a declaratory judgment.

Darcars responded with a "Motion to Dismiss and/or in the Alternative to Compel Arbitration" on May 4, 2016 ("May 4th motion"), along with a supporting memorandum, contending that, under an arbitration provision in the Buyer's Order, the dispute must be submitted to arbitration. Attached to the motion was a copy of the Buyer's Order.[2]

Two days later, Santander[3] filed a "Petition to Compel Arbitration and to Stay Pending Proceedings," with the Buyer's Order and Second RISC attached, in the Circuit

[2] Appellant did not attach or reference the Buyer's Order in the complaint. Exhibit A to appellant's verified complaint was a partial copy of the First RISC; Exhibit B was a full copy of the allegedly forged Second RISC. Darcars included a full copy of the First RISC as an exhibit attached to its June 17, 2016 "Reply to Plaintiff's Opposition to Defendant's Motion to Dismiss and/or in the Alternative to Compel Arbitration."

[3] Santander, an Illinois corporation with its principal office in New York, is registered to do business in Maryland.

Court for Howard County.[4] And, on May 9, 2016, Santander notified the Circuit Court for Prince George's County of its petition for arbitration in Howard County, and filed a motion to stay the Prince George's County proceedings and to extend its time to answer appellant's complaint ("May 9th motion").

Appellant opposed both motions. In response to Darcar's motion, she challenged the inclusion of the Buyer's Order in the motion, arguing that, without verification or affidavit, it was not sufficient to compel arbitration or to convert the motion to dismiss into a motion for summary judgment. As to Santander's motion to stay the proceeding and extend its time to answer, appellant asserted that, because the RISC that Darcars sent to Santander (the Second RISC) was a forgery, there was no agreement to arbitrate between her and Santander. Therefore, there was no reason to stay the Prince George's proceeding.

The Circuit Court for Prince George's County, in an order entered on June 13, 2016, granted Darcar's "Motion to Dismiss and/or in the Alternative to Compel Arbitration," and "ordered, that [Darcars] and [appellant] shall proceed to arbitration on any claims alleged." Appellant filed a timely notice of appeal to this Court.[5] In an order

[4] Under Courts and Judicial Proceedings § 3-203 of the Maryland Code, "[i]f the agreement [providing for arbitration] does not provide for a county in which the petition shall be filed," and "[i]f the adverse party has neither a residence nor a place of business in the State," the petition may be filed in "any county." Santander alleged in its petition that appellant resides and works in Virginia.

[5] The order compelling arbitration is a final and appealable judgment. *See Ford v. Antwerpen Motorcars Ltd.*, 443 Md. 470, 476 (2015).

entered on August 2, 2016, the circuit court granted Santander's May 9th motion to stay the proceedings pending a result in Howard County.

In the Howard County case, appellant moved to stay the case pending the outcome of the appeal in the Prince George's County case. Santander opposed appellant's motion and filed a "Cross-Motion for Summary Judgment to Compel Arbitration." Appellant opposed the cross-motion and requested a hearing.

In an order entered on October 3, 2016 without a hearing, the Circuit Court for Howard County granted Santander's cross-motion for summary judgment and the motion to compel arbitration of the dispute between appellant and Santander. Appellant filed a timely appeal, and this Court granted appellant's request to consolidate the two cases for appellate review.

We shall include additional details in our discussion.

STANDARD OF REVIEW

When confronted with a petition to compel arbitration, and a party who "denies existence of an arbitration agreement," the trial court "shall proceed expeditiously to determine if the agreement exists." Md. Code Ann. (1973, 2013 Repl. Vol.), § 3-207 of the Courts and Judicial Proceedings Article ("CJP"). As stated by the Court of Appeals:

> The trial court's conclusion as to whether a particular dispute is subject to arbitration is a conclusion of law, which we review for legal correctness. When reviewing a trial court's decision compelling arbitration, our role extends only to a determination of the existence of an arbitration agreement.

Ford v. Antwerpen Motorcars Ltd., 443 Md. 470, 476 (2015) (reviewing the trial court's granting motion to compel arbitration) (cleaned up).[6]

As to the conversion of a motion to dismiss to a motion for summary judgment, we have written:

> Ordinarily, in reviewing the dismissal of a complaint on a motion to dismiss, "we look only to the allegations in the complaint and any exhibits incorporated in it and assume the truth of all well-pled facts in the complaint as well as the reasonable inferences that may be drawn from those relevant and material facts." *Smith v. Danielczyk*, 400 Md. 98, 103-04 (2007). Maryland Rule 2-322(c) provides, however, that if, on a motion to dismiss for failure to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Maryland Rule 2-501, which governs motions for summary judgment. Thus, Maryland Rule 2-322(c) gives the trial court discretion to convert a motion to dismiss to a motion for summary judgment by considering matters outside the pleading.

Worsham v. Ehrlich, 181 Md. App. 711, 722-23 (2008) (cleaned up).

When a motion to dismiss has been converted to a motion for summary judgment, we review the grant of the motion for summary judgment de novo and determine whether the trial court was legally correct. *Laing v. Volkswagen of Am., Inc.*, 180 Md. App. 136, 152-53 (2008); *Livesay v. Baltimore Cty.*, 384 Md. 1, 9 (2004). The relevant inquiry is:

[6] "Cleaned up" is a new parenthetical intended to simplify quotations from legal sources. (*See* Jack Metzler, *Cleaning Up Quotations*, J. APP. PRAC. & PROCESS (forthcoming 2018), https://perma.cc/JZR7-P85A. Use of "cleaned up" signals that the current author has sought to improve readability by removing extraneous, non-substantive clutter (such as brackets, quotation marks, ellipses, footnote signals, internal citations or made un-bracketed changes to capitalization) without altering the substance of the quotation.)

> [W]hether the parties properly generated a dispute of material fact and, if not, whether the moving party is entitled to judgment as a matter of law. This Court considers the record in the light most favorable to the nonmoving party and construe[s] any reasonable inferences that may be drawn from the facts against the moving party.

Zilichikhis v. Montgomery Cty., 223 Md. App. 158, 176 (2015) (quoting *Blackburn Ltd. P'ship v. Paul*, 438 Md. 100, 107-08 (2014)); *see also* Md. Rule 2-501(f).

DISCUSSION

We begin by setting out the arbitration provisions in both the Buyer's Order and the two RISCs. The Buyer's Order, which appellant does not dispute having signed, provides in pertinent part:

> Buyers(s) . . . and Dealer agree that if any Dispute arises, the Dispute will be resolved by binding arbitration under the applicable rules of an alternative dispute resolution agency by a single arbitrator who shall be an attorney or retired judge, with the arbitrator rendering a written decision with separate findings of fact and conclusions of law.
>
> * * *
>
> The parties understand that they are waiving their rights to jury trial and class consideration of all claims and disputes between them not specifically exempted from arbitration in this Agreement. See additional arbitration terms in paragraph 13 on reverse.[7]

The First RISC, which appellant acknowledges signing, reflects a purchase price of $13,528.00; a financed amount of $13,213.75 with an interest rate of 24%; and a 60-month term. The monthly payment is $383.86. The allegedly forged Second RISC

[7] On the reverse side of the two-page Buyer's Order, paragraph 13 provides that either buyer or dealer may choose to begin mediation, but "this mediation agreement does not apply to and shall not be binding on any assignee thereof." No other clause in the Buyer's Order denies the application of its provisions to an assignee.

assigned by Darcars to Santander reflects a sales price of $15,073.24; a financed amount of $14,759.00 with an interest rate of 24%; and a 72-month term. The monthly payment under the Second RISC is $392.37.

Both RISCs contain an identical arbitration clause, which states:

> 1. EITHER 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, tort, statute or otherwise (including the interpretation and scope of this Arbitration Clause, 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 court action.

Both RISCs provide that the arbitration be governed by the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1 *et seq.*, rather than by any state law concerning arbitration.

We will first discuss the case in the Circuit Court for Prince George's County, and more specifically: (1) the order entered on June 13, 2016 granting Darcars's May 4th motion to dismiss and/or to compel arbitration; and (2) the order entered on August 2, 2016, granting Santander's May 9th motion to stay the proceeding pending resolution of the petition for arbitration in Howard County. We will then discuss the Howard County case and that court's October 3, 2016 order granting Santander's motion for summary judgment and compelling arbitration.

I.

Prince George's County Case

Contentions

Appellant contends that the alleged forgery of her signature on the Second RISC vitiated any prior agreements, including the Buyer's Order, that she might have made, and therefore there was no agreement to arbitrate with either Darcars or Santander. For that reason, the circuit court erred in ordering her to arbitrate whether her signature on the Second RISC was forged, without holding a hearing or ordering discovery.

Darcars responds that the Buyer's Order was not "nullified, superseded, or otherwise disposed of by the signed First RISC" or "voided by the alleged forgery of the Second RISC." Therefore, it contends that the circuit court correctly concluded that the arbitration clause in the Buyer's Order was applicable to the dispute presented in appellant's complaint. In its view, the circuit court did not need to decide whether her signature on the Second RISC was forged because appellant did not deny signing the Buyer's Order and the First RISC, both of which included an agreement to arbitrate all disputes arising out of the vehicle purchase.

Santander, noting that Maryland "strongly favors enforcement of arbitration agreements," also contends that "the arbitration provision in the Buyer's Order, alone, is valid, enforceable, and binding" on the parties, and that the dispute is within the scope of

their agreement. In addition, it asserts that appellant did not dispute or advance the issue of authenticity of the Buyer's Order in the trial courts.[8]

Analysis

In a motion to dismiss for failure to state a claim, the trial court, by considering "matters outside the pleading [that have been] presented to and not excluded by the court," may convert the motion to dismiss into a motion for summary judgment under Maryland Rule 2-322(c). *Worsham*, 181 Md. App. at 722. Generally, the introduction of an affidavit of fact will convert a motion to dismiss into a motion for summary judgment. *See id.* at 716, 723 (treating as a grant of summary judgment, where appellees filed motions to dismiss, and appellant filed a motion for partial summary judgment and attached an affidavit of fact).[9]

On the other hand, uncontroverted, supplemental material may be considered by the trial court without converting a motion to dismiss into a motion for summary

[8] An appellant may not raise for the first time on appeal the competency, materiality, or admissibility of evidence submitted in support of a motion for summary judgment. *See Castiglione v. Johns Hopkins Hosp.*, 69 Md. App. 325, 336 (1986); *see also* Md. Rule 2-517(a) ("An objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived."). Our review of the record indicates that appellant, in her May 31, 2016 opposition memorandum to Darcars's May 4th motion to dismiss, argued that the Buyer's Order was a "new document" and that there was "no affidavit attesting that [appellant] signed the document," and even assuming that she did sign it, that it was the only and final one she signed or when she signed it.

[9] In *Worsham*, the appellant attached the "Affidavit of Michael Worsham." The court does not describe the contents of the affidavit. Presumably, it supported appellant's underlying claim that he received prerecorded political campaign calls soliciting votes, made by or on behalf of appellees, in violation of Maryland law.

judgment. *See Margolis v. Sandy Spring Bank*, 221 Md. App. 703, 710 n.4 (2015) (noting that "Deposit Account Agreement" was an undisputed agreement between plaintiff and bank, where plaintiff referred to it but did not attach it to complaint, and treating it as supplemental material attached to the bank's motion to dismiss); *Smith v. Danielczyk*, 400 Md. 98, 104-05 (2007) (treating as supplemental material several uncontroverted exhibits, including copies of search warrant applications, the warrants themselves, and other documents, attached to memorandum filed in support of motion to dismiss).

In the context of this case, where the threshold concern is arbitrability of the dispute, the Buyer's Order provided to the circuit court by Darcars as an exhibit to its May 4th motion to dismiss could be considered supplemental material to the complaint. But, if it is considered to be a "matter outside the pleading," it would convert the motion to dismiss into a motion for summary judgment under Maryland Rule 2-322(c).[10] Although appellant in her May 31, 2016 opposition memorandum asserted that the Buyer's Order was unverified and that there was no affidavit attesting that she had signed it, she did not seek to exclude it by motion after it was presented to the court. We need not decide which it was in this case because, as we explain, even if the Buyer's Order converted Darcar's May 4th motion to dismiss into a motion for summary judgment, the result is the same.

[10] We assume that the Buyer's Order was considered by the trial court.

Arbitration is a matter of contract, which requires a manifestation of mutual assent, including (1) the intent to be bound, and (2) the definiteness of the terms. *Cochran v. Norkunas*, 398 Md. 1, 14 (2007); 1 Joseph M. Perillo, Corbin on Contracts, § 2.8, p. 131 (Rev. ed. 1993). In Maryland, a party who signs a contract is presumed to have read and understood its terms, and therefore will be bound by them. *See Koons Ford of Balt., Inc. v. Lobach*, 398 Md. 38, 46 (2007). And, "when the language of the contract is plain and unambiguous there is no room for construction, and a court must presume that the parties meant what they expressed." *Id.* at 47.

In addition, our longstanding common law permits multiple documents to be read together as part of a single transaction. *See, e.g.*, *Ford v. Antwerpen Motorcars Ltd.*, 443 Md. 470, 483 (2015) (holding that the RISC and Buyer's Order in that vehicle sales-and-financing transaction "indicate an intention that they are to be read together as constituting one transaction"); *Rourke v. Amchem Prod., Inc.*, 384 Md. 329, 354 (2004) ("Where the contract comprises two or more documents, the documents are to be construed together, harmoniously, so that, to the extent possible, all of the provisions can be given effect."); *Rocks v. Brosius*, 241 Md. 612, 637 (1966) ("Where several instruments are made a part of a single transaction they will all be read and construed together as evidencing the intention of the parties in regard to the single transaction."). Multiple documents may be construed together even though "the instruments were executed at different times and do not in terms refer to each other." *Rocks*, 241 Md. at

637. Here, a Buyer's Order and at least one RISC were signed by the parties to reflect a single transaction, *i.e.*, the purchase of a vehicle by appellant.

As the Court of Appeals stated in *Ford v. Antwerpen Motorcars Ltd.*, "a Buyer's Order and RISC, reviewed and signed . . . on the same day, indicate an intention that the documents be construed together as part of the same transaction."[11] 443 Md. at 482. In *Ford*, the RISC contained no arbitration provision, but the automobile dealer sought arbitration under the arbitration provision in the Buyer's Order. *Id.* at 473-74. Referring to the Code of Maryland Regulations ("COMAR") 11.12.01.15(A)[12] as a "single document rule," the buyers in *Ford* argued that the RISC was the single document representing the transaction, and that it superseded the Buyer's Order. *Id.* at 477-78. The Court of Appeals disagreed, holding that the COMAR provision did not displace common law principles permitting multiple documents to be construed together to evince the entire agreement of the parties, and that the arbitration provision in the Buyer's Order was enforceable as to the entire transaction.[13] *Id.* at 473.

[11] The Buyer's Order and both RISCs reflect the date of March 31, 2014.

[12] "A vehicle sales contract or agreement shall be evidenced by an instrument in writing containing all of the agreements of the parties. It shall be signed by all parties before the seller delivers to the buyer the vehicle covered by the agreement." COMAR 11.12.01.15(A).

[13] We note that the RISC in *Ford* and the RISC in this case are virtually indistinguishable documents, with the exception of an arbitration provision at the end of the latter. The RISC in *Ford* is labeled "LAW FORM NO. 553-MD." *See* 443 Md. at APX. 6. The RISC in this case is labeled "LAW FORM NO. 553-MD-ARB (REV. 4/08)." Both forms were produced by Reynolds and Reynolds Company.

Although appellant does not deny signing the Buyer's Order and admits to signing the First RISC, she attacks the viability of those instruments on several fronts. For example, she rejects the single transaction rationale in *Ford*, arguing that the RISC (presumably the one she signed) superseded the Buyer's Order. She further argues that inconsistencies in the arbitration provisions in the two documents preclude treating them as part of a single transaction. In addition, she argues that the forgery of the Second RISC served to vitiate any instruments reflecting the transactions that she previously signed. Her apparent purpose in doing so is to avoid the arbitration agreements in those instruments, in order to argue that there is no agreement that she signed. And, were that the case, the court would have to resolve the alleged forgery of the Second RISC before it could order arbitration. We will address these arguments in turn.

To avoid the arbitration provision of the Buyer's Order, appellant, citing *Tokarski v. Castle Auto Outlet, LLC*, No. RDB-09-509, 2009 WL 8711121 (D. Md. Sept. 25, 2009), an unpublished federal district court case, argues that the later-in-time signed RISC would supersede it. *Tokarski* involved a RISC that contained an integration clause, which read, "*This contract contains the entire agreement* between you and us relating to this contract." *Id.* at *1 (emphasis added). That RISC did not contain an arbitration clause. The federal district court concluded:

> [T]he Buyer's Order was superseded by the RISC subsequently entered into by the parties. The RISC contains additional terms relating to the financing of the vehicle and increases the total sale price that Tokarski was obligated to pay. Moreover, the RISC is an independent contract, as evidenced by its integration clause and Md. Code Ann., Com. Law II § 12-604, which provides, "An installment sale agreement shall be evidenced by an

> instrument in writing which contains all of the agreements of the parties." Because the RISC, which serves as the operative agreement between the parties, does not contain an arbitration clause, the parties are not obligated to submit the present matter to arbitration.

Id.

The *Ford* Court, after considering *Tokarski*, along with other state and federal trial court cases, stated that these non-binding authorities "offer little more than cursory, unpersuasive assertions lacking support in our jurisprudence." 443 Md. at 480. And, unlike *Tokarski*, the First and Second RISC in this case incorporate, as part of the entire agreement, "**all other documents signed**" in connection with the vehicle purchase, which includes the Buyer's Order.[14] This case is more similar to *Ford*, where the Court noted that the RISC and the Buyer's Order in that case incorporated each other by reference.[15]

And, unlike *Ford*, where only the Buyer's Order contained an arbitration provision, the Buyer's Order and the RISCs in this case provide for arbitration.

[14] Both RISCs state, "This contract, **along with all other documents** signed by you in connection with the purchase of this vehicle, comprise the entire agreement between you and us affecting this purchase." (Emphasis added). And, the Buyer's Order states, "The front and back of this buyer's order, **along with other documents** signed by Purchaser(s) in connection with this order, comprise the entire agreement between the parties affecting this purchase." (Emphasis added).

[15] In *Ford*, the RISC stated, "[T]his contract **along with all other documents** signed by you in connection with the purchase of this vehicle, comprise the entire agreement." 443 Md. at 482 (emphasis added). And, the Buyer's Order stated "[T]he front and back of this buyer's order, **along with other documents** signed by You in connection with this order, comprise the entire agreement between the parties[.]" *Id.* (emphasis added).

Appellant argues that because the arbitration provisions of the Buyer's Order and the RISCs are not identical, they are conflicting and therefore inconsistent with being part of an integrated transaction. We are not persuaded.

Under the Buyer's Order, the parties both waive their rights to a jury trial and agree to resolve "**any Dispute**" by binding arbitration.[16] (Emphasis added.) Although the Buyer's Order expressly states that its mediation provisions "do[] not apply to and shall not be binding on any assignee," there is no language excepting assignees from the arbitration provisions. Both RISCs provide that either party may choose to resolve "ANY DISPUTE" by binding arbitration "whether in contract, tort, statute or otherwise (including the interpretation and scope of this Arbitration Clause, and the arbitrability of the claim or dispute)." The RISCs cover any dispute between the buyer and the dealer, its "employees, agents, successors or assigns." And, whereas the Buyer's Order mandates arbitration, the RISCs require arbitration at election of one of the parties.

These differences are not, in our view, so material or inconsistent as to preclude consideration of the Buyer's Order and the RISC together as part of a single integrated

[16] In *Contract Const., Inc. v. Power Tech. Ctr. Ltd. P'ship*, this Court wrote:

> Although the parties' intention controls, the use of a broad, all encompassing arbitration clause ordinarily leads to the presumption that the parties intended the arbitration of all disputes. Hence, if the arbitration clause calls for the arbitration of any and all disputes arising out of the contract, all issues are arbitrable unless expressly excluded.

100 Md. App. 173, 178 (1994) (citations omitted).

transaction. Under either, Darcars and Santander would be entitled to arbitration of any dispute arising out of that transaction and appellant would be required to arbitrate.

Appellant also argues that this case should not be treated like an ordinary sales-and-financing case because of her sworn allegation of forgery and that the trial court had to resolve that issue prior to reaching the arbitration issue.[17] Before examining the federal cases cited by appellant to support her argument, we note that those cases may be instructive, but we are not bound by the decisions of the federal district courts or federal circuit courts of appeals. *See Comptroller of Treasury v. Jalali*, 235 Md. App. 369, 380 (2018) (citing *Gayety Books, Inc. v. City of Baltimore*, 279 Md. 206, 213 (1977)).

In *Gregory v. Interstate/Johnson Lane Corp.*, 188 F.3d 501 (Table), 1999 WL 674765 (4th Cir. 1999)[18], Mrs. Gregory claimed that her signatures on agreements opening a joint securities account were forgeries. She stated under oath that she had no knowledge of the agreements, which contained an arbitration clause, and that she did not

[17] Appellant also argues that the forgery of the Second RISC invalidated the Buyer's Order because to hold otherwise would be to allow the prospective release of an intentional tort, which is voidable as against public policy. As we will explain in our discussion of the Howard County case, we disagree.

[18] "Notice: This is an unpublished opinion. The Court's decision is referenced in a 'Table of Decisions Without Reported Opinions' appearing in the Federal Reporter. See CTA4 Rule 32.1." Rule 32.1 of the Federal and Local Rules of Appellate Procedure for the United States Court of Appeals for the Fourth Circuit permits the citation of federal judicial opinions that have been designated as "unpublished" and issued on or after January 1, 2007. It notes that "[c]itation of this Court's unpublished dispositions issued prior to January 1, 2007, in briefs and oral arguments in this Court and in the district courts within this Circuit is disfavored." https://www.ca4.uscourts.gov/Rules/Rule32-1.html.

sign or authorize an agent to sign them. The Court held that the trial court had to resolve the question of forgery in order to answer the threshold question of whether the plaintiff was bound by the agreement to arbitrate. *Id.* at *9. In other words, if Mrs. Gregory's signatures were forgeries, there was no agreement to arbitrate. *Id.*

In *Hudson v. Babilonia*, No. 3:14-CV-01646 MPS, 2015 WL 1780879, at *2 (D. Conn. Apr. 20, 2015), the plaintiffs "unequivocally den[ied] that Mr. Hudson ever signed the loan agreement or gave his permission to be included on the loan application" that contained an arbitration clause. They were entitled to conduct discovery on the issue because Mr. Hudson's sworn affidavit "raise[d] genuine disputes of material fact as to whether an arbitration agreement between Mr. Hudson and the Sallie Mae defendants was ever formed." *Id.* The federal district court denied the defendants' motion to compel arbitration, explaining that "[o]n the basis of the limited record made available to the Court, a reasonable fact-finder could conclude . . . that Mr. Hudson was the victim of identity theft and therefore never entered into an arbitration agreement with the Sallie Mae defendants." *Id.*

In *Monk v. Perdue Farms Inc.*, 12 F. Supp. 2d 508 (D. Md. 1998), the defendant, relying on an agreement containing an arbitration clause, moved to stay the case pending arbitration. The plaintiff asserted that his signature on the agreement was a forgery. *Id.* at 508. The federal district court held that where "a party is claiming that he or she never entered into the contract containing an arbitration clause," the trial court must resolve the issue prior to staying an action pending arbitration. *Id.* at 509 ("[A]rbitration is a matter

of contract and . . . a 'party cannot be required to submit to arbitration any dispute which he has not agreed to so submit.'").

These cases stand for the logical proposition that state-law contract defenses like forgery, if proven, will invalidate a purported arbitration agreement. *Compare* FAA, 9 U.S.C. § 2 (an agreement to arbitrate "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract"), *with* CJP § 3-206(a) (an agreement to arbitrate "is valid and enforceable, and is irrevocable, except upon grounds that exist at law or in equity for the revocation of a contract"); *see also Chastain v. Robinson-Humphrey Co., Inc.*, 957 F.2d 851, 854 (11th Cir. 1992) ("If a party has not signed an agreement containing arbitration language, such a party may not have agreed to submit grievances to arbitration at all. Therefore, before sending any such grievances to arbitration, the [trial court] must first decide whether or not the non-signing party can nonetheless be bound by the contractual language.").

To be sure, a proven forgery negates the manifestation of mutual assent needed to form an agreement to arbitrate. When the issue is whether a party actually signed the purported arbitration agreement, the forgery claim must be resolved before compelling arbitration. But here, appellant does not deny signing the Buyer's Order and acknowledges signing the First RISC, both of which require arbitration of any dispute. In

short, the Circuit Court for Prince George's County did not err in ordering appellant and Darcars to arbitration.[19]

II.

Howard County Case

In the Circuit Court for Howard County, Santander first filed a petition to compel arbitration. The petition incorporated the Buyer's Order and the Second RISC, but both RISCs were before that court when Santander filed its cross-motion for summary judgment, with an affidavit of Mark Nerios[20] and an attached verified Prince George's County complaint and exhibits. Appellant responded with a motion to stay, arguing that the Circuit Court for Prince George's County had ordered arbitration between her and Darcars and that she had appealed that decision.[21] Santander opposed appellant's motion

[19] Santander was granted a stay in the Circuit Court for Prince George's County prior to filing an answer in that case. In light of our decision affirming the judgment of the Circuit Court for Howard County, *infra*, a remand to the Circuit Court for Prince George's County for further proceedings is unnecessary under principles of claim and issue preclusion because judgment compelling arbitration is a final judgment on that issue.

[20] In the affidavit, Mark Nerios states that he is employed by Santander as "Senior Vice President of Call Servicing and Recovery Options" and that he is "responsible for . . . managing certain retail installment sales contracts owned and/or serviced by [Santander]." He attests that the exhibits attached are true, accurate, and authentic copies of the Buyer's Order and RISC provided to Santander by Darcars. He also declares, "The Buyer's Order and the RISC were made at the time of the vehicle sales transaction between Ms. Balasiori and the dealer by a person with knowledge of the transaction."

[21] She indicated in this motion that, if the order in Prince George's County to arbitrate with Darcars was upheld on appeal, she would "proceed to arbitration against Darcars and [Santander] without further litigation."

to stay and moved for summary judgment, stating that material facts were not in dispute.[22] The Circuit Court for Howard County, without a hearing, granted Santander's motion for summary judgment and to compel arbitration.

Contentions

Claiming that her signature on the Second RISC, which Darcars transmitted to Santander, was a forgery, appellant contends that there is no contract and no agreement to arbitrate between her and Santander. She contends that "formation of a written financing contract requires a meeting of the minds, as well as execution and delivery of an executed note to the lender." She further contends that if any contract had been formed, the alleged forgery of the Second RISC "voided," "rescinded," or "vitiated any prior agreement she made."

Santander, citing *Ford, supra*, contends that the arbitration provision in the Buyer's Order alone is binding between it and appellant because the vehicle sales-and-financing constitutes a single integrated transaction.

Analysis

Relevant to appellant's request for a hearing, the Maryland Uniform Arbitration Act ("MUAA"), CJP § 3-201 *et seq.*, was "purposefully meant to mirror the language of the FAA," *Walther v. Sovereign Bank*, 386 Md. 412, 423-24 (2005), but it does not track exactly the language of the FAA. FAA § 4 provides:

[22] Santander acknowledges that it is bound to arbitrate the dispute under the arbitration clause of the Buyer's Order.

> A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement. . . . The *court shall hear the parties*, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement.

(Emphasis added.) The comparable provision in the MUAA provides:

> If the opposing party denies existence of an arbitration agreement, the court shall proceed expeditiously to determine if the agreement exists. If the court determines that the agreement exists, it shall order arbitration. Otherwise it shall deny the petition.

CJP § 3-207. Whereas the FAA expressly requires the court to "hear the parties,"[23] the MUAA does not.

[23] We note that federal courts, interpreting § 4 of the FAA, have held that an evidentiary hearing is *not* required before compelling the parties to arbitration. In *Marks 3 Zet-Ernst Marks GMBH v. Presstek, Inc.*, the United States Court of Appeals for the First Circuit stated that the petitioner, having requested a hearing in its petition to compel arbitration, was not necessarily entitled to an evidentiary hearing because "it is not clear that . . . an *evidentiary* hearing is required" and "a 'hearing' on the papers may be all that is required." 455 F.3d 7, 14 (1st Cir. 2006) (emphasis in original). And, in *Dalon v. Ruleville Nursing & Rehab. Ctr., LLC*, 161 F. Supp. 3d 406, 411-12 (N.D. Miss. 2016), when no party had requested a hearing to determine the validity of an arbitration agreement, the federal district court, citing *Armstrong v. Associates Int'l Holdings Corp.*, 242 Fed. Appx. 955 (5th Cir. 2007) and *Howard v. Ferrellgas Partners, L.P.*, 748 F.3d 975 (10th Cir. 2014), determined that validity can be determined without a hearing when "the parties were granted leave to conduct arbitration-related discovery and submitted a thorough evidentiary record" and "there was no factual dispute and the sole issue before the [c]ourt was one of law."

On the other hand, Maryland Rule 2-311(f) prohibits a trial court from "render[ing] a decision that is dispositive of a claim or defense without a hearing if one was requested." A "dispositive decision" is "one that conclusively settles a matter." *Pelletier v. Burson*, 213 Md. App. 284, 292 (2013). To do so, "it must actually and formally dispose of the claim or defense." *Shelton v. Kirson*, 119 Md. App. 325, 330 (1998) (motion for a protective order that did not seek dismissal of complaint was not dispositive). Stated otherwise, "[i]t is not enough to argue that it is the functional equivalent of a dispositive decision or that it lays the inevitable predicate for such a decision." *Id.*

Whether a grant of summary judgment compelling arbitration qualifies as a dispositive decision requiring a hearing appears to be a matter of first impression in Maryland. We conclude that under the MUAA, in the absence of a material factual dispute, whether there is an agreement to arbitrate is a decision that may be made without a hearing and that an order compelling arbitration is not "dispositive of a claim or defense" requiring a hearing under Maryland Rule 2-311(f). Both the Buyer's Order and the First RISC provide for arbitration of any dispute arising out of the transaction. Clearly this is a dispute arising out of the vehicle purchase. That appellant signed the Buyer's Order and First RISC was not disputed. We turn now to whether appellant's agreement to arbitrate in the Buyer's Order was effectively an agreement to arbitrate the financing component of the vehicle purchase with Santander.

Appellant argues that the forged Second RISC voided the Buyer's Order and earlier RISC that she had signed because to hold otherwise would effectively authorize a prospective release of liability for a future tort, which would be voidable as against public policy. She cites *Wolf v. Ford*, 335 Md. 525, 531-32 (1994), for the proposition that the "public interest" would not permit an exculpatory clause in a contract: (1) excusing liability for intentional harms or the more extreme forms of negligence, such as reckless, wanton, or gross; (2) in a contract that is the product of grossly unequal bargaining power; and (3) in transactions "affecting the public interest," including the performance of a public service obligation by public utilities and common carriers.

But, arbitration clauses are not exculpatory clauses. They may dictate the forum, but they do not necessarily release the parties to the arbitration from responsibility or liability for a negligent or wrongful act.

And, as the *Wolf* Court explained, the application of a public policy exception to private contracts involves a strict standard, "in keeping with our general reluctance to invoke the nebulous public interest to disturb private contracts." *Id.* at 532. Here, there is a clear public policy in favor of alternative dispute resolution generally and arbitration in particular as reflected in the MUAA. *See Walther*, 386 Md. at 423-24.

Appellant also advances the argument that a provision in the RISCs renders them the only operative agreement upon assignment. After the "along with all other documents" language[24], the RISC provides:

> Upon assignment of this contract: (i) only this contract and the addenda to this contract comprise the entire agreement between you and assignee relating to this contract; (ii) any change to this contract must be in writing and the assignee must sign it; and (iii) no oral changes are binding.[25]

Appellant contends that this clause means that the Buyer's Order and RISC cease to be an integrated whole once the RISC has been assigned, and that the RISC then "comprise[s] the entire agreement between [buyer] and assignee." This argument is inconsistent with her contention that there was no valid assignment from Darcars to Santander because the transmitted RISC was a forgery. Nevertheless, we conclude that the Buyer's Order remained a valid and enforceable agreement that bound both appellant and Santander, even if the Second RISC is determined to be invalid.

The *Ford* Court discussed *Rota-McLarty v. Santander Consumer USA, Inc.*, 700 F.3d 690, 700 (4th Cir. 2012), in which the United States Court of Appeals for the Fourth Circuit held that, under Maryland law and the facts of the case, a Buyer's Order and RISC should be interpreted together as part of a single transaction as binding on an assignee. Rota-McLarty had signed a Buyer's Order that included an arbitration

[24] *Supra* note 14.

[25] In *Ford*, the RISC included identical language, but it was not considered by the Court of Appeals because no assignee was a party in that case. The dispute was between buyers and dealer. *See* 443 Md. at APX. 6.

provision and a RISC that did not. *Id.* at 694-95. The RISC contained an integration clause, which read: "This contract contains the entire agreement between you and us relating to this contract." *Id.* at 695. The dealer assigned the RISC to the lender, which in that case was Santander. When a dispute arose, Santander moved to compel arbitration. The issue was whether Santander, who was not an assignee of the Buyer's Order, could invoke arbitration under the Buyer's Order. *Id.* at 699. The court held that the arbitration provision in the Buyer's Order was enforceable by Santander. *Id.* at 701. The *Rota-McLarty* Court explained that the Buyer's Order was conditional on approval of the financing and defined the agreement "collectively with other documents made in connection." *Id.* at 700.

As previously discussed in the Prince George's County case, the Buyer's Order provided the terms of sale and the RISC the financing terms, which permitted reading the instruments together. And, we were not persuaded that the differences between the Buyer's Order and the RISCs precluded treating the sales-and-financing of the vehicle as a single integrated contractual transaction, of which the Buyer's Order is a part. Santander, as the lender who extended credit to appellant, is an essential party to the transaction and to the resulting dispute. In these circumstances, and even if Santander cannot rely on the arbitration provision in the RISCs, it can, in our view, invoke the arbitration provision in the Buyer's Order to compel arbitration.

Therefore, the only material fact at issue was whether there was an agreement to arbitrate the dispute alleged in appellant's complaint. Appellant agreed under the

Buyer's Order to arbitrate "if any Dispute arises." The Buyer's Order defines a dispute, in relevant part, as "any allegation concerning a violation of a sale state or federal statute that may be the subject of . . . any monetary claim, whether contract, tort, or other, arising from the negotiation of and terms of the Buyer's Order . . . or any retail installment sale contract." And, the complaint advances claims for fraud and violation of the Maryland Consumer Protection Act. The factual predicate for these claims is that Darcars forged appellant's signature on the Second RISC, on which Santander has relied in providing the financing. Appellant cannot deny that the Buyer's Order was conditioned on approved financing and that this is clearly a dispute about the "negotiation" and "terms" of a RISC. Although appellant challenges the validity of the assignment of the Second RISC, Santander is the purported assignee of the Second RISC and is engaged in the financing of appellant's purchase.

In sum, we are persuaded that appellant is bound by the Buyer's Order to arbitrate the dispute, even if the Buyer's Order was not assigned to Santander. Moreover, in her response in the Howard County case, appellant affirmatively stated that if she lost her appeal in the Prince George's County case, she would "proceed to arbitration against Darcars and [Santander] without further litigation." For these reasons, we hold that the Circuit Court for Howard County did not err in compelling arbitration between appellant and Santander.

JUDGMENTS AFFIRMED. COSTS TO BE PAID BY APPELLANT.