UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2202

September Term, 2015

SHANNON L. BROWN
n/k/a SHANNON L. HAYES
v.

SANTANDER CONSUMER USA INC.
t/a SANTANDER AUTO FINANCE

Friedman,
*Krauser,
Salmon,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Krauser, J.

Filed: September 13, 2017

**Krauser, J., now retired, participated in the hearing of this case while an active member of this Court, and as its Chief Judge; after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the decision and the preparation of this opinion.

To finance the purchase of an automobile from Carmax Auto Superstores, Inc., Shannon L. Brown, appellant, entered into a "Retail Installment Contract", which was ultimately assigned, by Carmax, to Santander Consumer USA Inc., appellee. That contract contained an arbitration provision, the enforceability of which is the crux of this appeal

When Brown allegedly defaulted under that agreement, Santander repossessed and sold the car that Brown had purchased. In so doing, Santander had violated, claimed Brown in an action she subsequently filed in the Circuit Court for Baltimore City, both Maryland law and the installment contract. In that action, Brown sought a declaratory judgment that the installment contract's arbitration provision and its waiver of class actions were both invalid and unenforceable. Then, when Brown filed a motion for summary judgment, Santander responded with a petition to compel arbitration and a motion to dismiss the portion of Brown's complaint requesting a declaratory judgment as to the class action waiver of the contract. The Baltimore City circuit court granted Santander's petition to compel arbitration and motion to dismiss, after denying Brown's motion for summary judgment, which, in turn, prompted this appeal by Brown. For the reasons set forth below, we affirm.

BACKGROUND

On April 9, 2011, Brown purchased a used 2007 Chrysler Aspen from Carmax. To finance that purchase, she executed Carmax's "Retail Installment Contract." That contract, as noted, contained an arbitration provision, and, as part of that arbitration provision, a class action waiver. Subsequently, Carmax assigned the contract to Santander, who was

then to receive the monthly payments that Brown was required to make, on the balance of the vehicle's purchase price. When Brown purportedly failed to make those payments, Santander repossessed the vehicle and sold it.

Brown thereafter filed suit, in the Circuit Court for Baltimore City, alleging that Santander had violated Maryland law by failing to send her, and other "similarly situated" individuals, pre- and post-repossession notices and to provide her a full accounting of related expenses arising from the repossession and sale of her vehicle. She further asserted that Santander, as part of its "business practices in Maryland," routinely violates various provisions of Maryland's Credit Grantor Closed End Credit Provisions, Title 12, Subtitle 10 of the Maryland Commercial Law Article. And, as a result of Santander's "unlawful collection activities," she requested, in her complaint, a declaratory judgment that she was entitled to bring a class action against Santander and that both the class action waiver and the arbitration provision were invalid and unenforceable. Santander then removed the case to the United States District Court for the District of Maryland, which ultimately remanded the suit back to the Baltimore City circuit court on the grounds that Santander had not satisfied the amount in controversy requirement for federal jurisdiction. *See Brown v. Santander Consumer USA, Inc.*, 2015 WL 4879288 (D. Md. Aug. 13, 2015).

Upon remand to the Baltimore City circuit court, Brown filed a motion for summary judgment, and Santander, in turn, filed a petition to compel arbitration and a motion to dismiss the declaratory judgment action with respect to Brown's class action claim. The circuit court granted Santander's petition and motion, stating that "the Contract contains

both a conspicuous arbitration provision[], and a conspicuous waiver of the Plaintiff's right to participate in a class action[], with respect to any disputes involving the Contract, and . . . that the class action waiver in the contract . . . [and] arbitration agreement, [were] valid and enforceable."

I.

Brown contends that the circuit court erred in granting Santander's petition to compel arbitration. Specifically, she claims that, because the arbitration provision is expressly governed by the Federal Arbitration Act, and because the Federal Arbitration Act does not apply to state law claims, such as hers, the contract's arbitration provision is invalid and unenforceable.

The installment contract was a four-page document, the entire third page of which was devoted to the arbitration provision and initialed by Brown, when she executed the installment contract. That page began with the following advisement:

> This Arbitration Provision describes when and how a Claim (defined below) may be arbitrated. Arbitration is a way of resolving disputes before one or more neutral persons, instead of having a trial in court before a judge and/or jury. By signing this Contact you and we agree to be bound by the terms of this arbitration provision.
> (Emphasis in original).

It then describes the claims that are subject to the arbitration provision, as follows:

> a. What Claims are Covered. A "Claim" is any claim, dispute or controversy between you and us that any way arises from or related to this consumer credit sale, the purchase you are financing by way of this contract, or the Vehicle and related goods, services, and optional contracts that are subject of the purchase and this Contract, and includes:
> - Initial claims, counterclaims, cross-claims and third-party claims;

- Disputes based on contract, tort, consumer rights, fraud and other intentional torts (in law or in equity, including any claim for injunctive or declaratory relief);
- Disputes based on constitutional grounds or on laws, regulations, ordinances or similar provisions; and
- Disputes about the validity, enforceability, arbitrability or scope of this Arbitration Provision of this Contract.

Finally, of particular relevance to Brown's claims on appeal, it specifies the law that is to govern the arbitration provision:

> i. Governing Law. This Arbitration Provision is governed by the Federal Arbitration Act and not by any state arbitration law. The arbitrator must apply applicable statues of limitations and claims of privilege recognized at law, and applicable substantive law consistent with the Federal Arbitration Act. The arbitrator is authorized to award all remedies permitted by the substantive law that would apply if the action were pending in court.

As noted, Brown both initialed this page of the installment contract and signed the fourth page of that four-page document.

"Arbitration is the process by which parties voluntarily agree to substitute a private tribunal for an otherwise available public tribunal to decide specified disputes." *Mandl v. Bailey*, 159 Md. App. 64, 82 (2004). The Federal Arbitration Act ("FAA"), 9 U.S.C. § 2 *et seq.*, and its Maryland analogue, the Maryland Uniform Arbitration Act ("MUAA"), Md. Ann. Code, Cts & Jud. Proc. §§ 3–201 *et seq.*, expressly favor the enforcement of arbitration agreements, *see Walther v. Sovereign Bank*, 386 Md. 412, 424, 425 (2005) ("The same policy favoring enforcement of arbitration agreements is present in both our own and the federal acts"), because, as the *Walther* Court noted, "arbitration

agreements are generally a less expensive and more expeditious means of settling litigation and relieving docket congestion." *Id.*

"Our role in reviewing the trial court's order to compel arbitration," as the *Walther* Court further observed, "extends only to a determination of the existence of an arbitration agreement." 386 Md. 412, 422 (quotations omitted). And, as a trial court's decision to compel or deny arbitration is a conclusion of law, we review *de novo* the determination of whether an agreement to arbitrate exists. *Holloman v. Circuit City Stores, Inc.,* 391 Md. 580, 588 (2006).

Brown does not deny that the contract at issue contains a page-length arbitration provision, nor does she deny that she initialed that page of the contract to confirm that she had read it and agreed to it. And, finally, she does not deny that she signed the installment contract on its fourth and final page. Still, she maintains that she cannot be compelled to arbitrate her claims, because the installment contract provides that the arbitration provision shall be governed by the FAA, and, in her view, the "FAA does not constitutionally extend to state law claims before a state court," such as hers. Moreover, the FAA, she asserts, violates the right of an individual to a jury, as well as the "separation of powers."

However, her claims appear based on a fundamental misunderstanding of the FAA, the nature of arbitration, and the role of the arbitrator. As this Court has previously stated, an arbitrator does not derive his or her authority from the legislature, either federal (FAA) or state (MUAA), but from the agreement between the parties who chose to resolve their disputes through arbitration. *Cf. Mandl v. Bailey*, 159 Md. App. 64, 83 (2004) ("[B]ecause

private arbitration is a matter of contract, an arbitrator derives his power from the arbitration agreement itself."). Consequently, it was the installment contract, which she knowingly and willfully signed, and not the FAA, which required her to submit her claims to arbitration, if either party so elected.[1]

And, as for her claim that the FAA deprived her of her right to a jury, we note that, while a plaintiff, in a civil action, has a right to a jury, under both the Seventh Amendment of the Federal Constitution[2] and both Articles 5(a)[3] and 23[4] of the Maryland Declaration of

[1] In her brief, Brown relies primarily on two United States Supreme Court opinions, *Stern v. Marshall*, 564 U.S. 462 (2011), and *Wellness Int'l Network Ltd. v. Shariff*, 135 S. Ct. 1932 (2015), in support of her claim that the "FAA cannot constitutionally be applied to state law claims before a state court under our federal system." However, these opinions have nothing to do with arbitration, nor do they provide any support for Brown's claim that she should be relieved of her agreement to arbitrate. In fact, *Stern* and *Wellness* only address the power of Congress to create bankruptcy courts, through Article I, and the powers of those courts. Moreover, unlike bankruptcy courts, created by the Congress, which have subject-matter jurisdiction over bankruptcy proceedings, an arbitrator "is [] part of a system of self-government created by and confined to the parties." *United Steelworkers of Am. v. Warrior & Gulf Nav. Co.*, 363 U.S. 574, 581 (1960) (citations omitted). Accordingly, we do not believe that *Stern* or *Wellness* have any applicability to this matter.

[2] U.S. CONST. amend. VII, provides: "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law."

[3] MD. DECL. OF RTS. art. 5(a), provides: "That the Inhabitants of Maryland are entitled to the Common Law of England, and the trial by Jury, according to the course of that Law . . ."

[4] MD. DECL. OF RTS. art. 23, provides: "The right of trial by Jury of all issues of fact in civil proceedings in the several Courts of Law in this State, where the amount in controversy exceeds the sum of $15,000, shall be inviolably preserved."

Rights, an agreement to arbitrate constitutes a waiver of that right. As the Court of Appeals observed, in *Walther*, arbitration does "not unfairly usurp the fundamental right to a jury trial." 386 Md. 412, 445 (2005). On the contrary, an "arbitration clause by its most basic nature waives a party's right to have disputes resolved in litigation and creates the right to have them resolved by arbitration." *Id.*[5]

Brown further contends that there was "no agreement between the parties to arbitrate her state law claims" but only any federal claims she might have. That contention, however, is not supported by an "objective interpretation" of the contract at issue. *See Wells v. Chevy Chase Bank, F.S.B.*, 363 Md. 232, 250 (2001) ("[In Maryland,] courts have long adhered to the principle of the objective interpretation of contracts"). "Under the objective interpretation principle, where the language employed in a contract is unambiguous, a court shall give effect to its plain meaning and there is no need for further construction by the court." *Id.*

In the contract at issue, the parties agreed in clear, plain, and unambiguous language that, if either party "cho[se] arbitration . . . any claim will [then] be decided by arbitration and not in court or by jury trial." Later, the contract defined a "covered" claim as follows: "any claim, dispute or controversy between [the parties] that *in any way arises from or relates* to this consumer credit sale, the purchase you are financing by way of this contract,

[5] Admittedly, in *Walther*, the Court of Appeals expressed that such a waiver may be "unenforceable if the waiver provision itself is dubiously inconspicuous," *id.* at 444, but Brown does not contend that the provision was inconspicuous here.

or this vehicle and related goods, services, and optional contracts that are the subject of the purchase and this Contract." (Emphasis added). The contract then went on to list, as "covered" claims, any "[i]nitial claims, counterclaims, cross-claims and third-party claims"; "[d]isputes *based on contract, tort, consumer rights*, fraud and other intentional torts (in law or in equity, including any claim for injunctive or declaratory relief)"; "[d]isputes based off constitutional grounds or on laws, regulations, ordinances or similar provisions"; and, finally, "[d]isputes about the validity, enforceability, arbitrability or scope of this Arbitration Provision of this Contract." (Emphasis added). As Brown's claims "arise[] from or relate to" the consumer credit sale and are "based on contract, tort, consumer rights," they clearly fall within the arbitration provision. And, by initialing the arbitration provision and signing the final page of the installment contract, it is clear that Brown agreed to arbitrate those claims, federal and state.

Finally, Brown contends that the FAA violates separation of powers, because Congress does not have the authority to direct state law claims, such as hers, to proceed by arbitration, and, in so doing, "abridged" the judicial powers. In support of that claim, she cites *Day v. State*, 162 Md. 221 (1932), where the Court of Appeals struck down a statute granting the judicial power to a judicial officer unauthorized by the Maryland Constitution. However, to dispose of this claim, we once again note that arbitrators, unlike the legislatively created judicial officer in *Day*, do not derive their power from the legislature or the judiciary but from the parties' agreement itself, *cf. Mandl v. Bailey*, 159 Md. App. 64, 83 (2004), and quote the Supreme Court's declaration, in *Commodity Futures Trading*

Comm'n v. Schor, that "it seems self-evident that . . . Congress may encourage parties to settle a dispute out of court or resort to arbitration without impermissible incursions on the separation of powers." 478 U.S. 833, 855 (1986).

II.

Brown further alleges, in her brief, that the "motion to dismiss involved factual issues, i.e., whether [she] knowingly waived her right to a jury trial prior to any dispute," and that these issues were not construed in her favor, as is required in deciding a motion to dismiss. *See RRC Northeast, LLC v. BAA Maryland, Inc.*, 413 Md. 638, 643-44 (2010). However, in her brief, she fails to identify any specific factual issues, concerning the jury trial waiver. Instead, she simply alleges that the contract was "not a knowing and voluntary relinquishment of a right to trial by a jury by the Plaintiff." Santander, in response, points out that Brown signed the contract, and initialed the arbitration provision, thereby establishing that she knowingly and willfully waived her right to a jury trial.

Under similar circumstances, in *Walther v. Sovereign Bank*, 386 Md. 412, 424, 425 (2005), the Court of Appeals upheld the grant of a motion to compel arbitration, explaining that the plaintiffs' "bald assertion that they should not be held to have waived their right to a jury trial after they signed the [contract] because they did not know that the arbitration clause contained such a [jury trial] waiver is fundamentally lacking in persuasive effect," because, "[i]f petitioners did not [read the agreement] before they signed [it], they have no persons to blame but themselves." *Id.* at 443-44. The *Walther* Court added: "[W]e are loath

to rescind a conspicuous arbitration agreement that was signed by a party whom now, for whatever reason, does not desire to fulfill that agreement." *Id.* at 444.

As in *Walther*, here, we have a "bald assertion," by Brown, that her waiver was not knowing and voluntary, though Brown does not deny that she initialed the arbitration provision of the contract, which conspicuously occupied the entire third page of the four-page contract, and which stated that, "if you or we choose arbitration . . . any claim will be decided by arbitration and not in court or by a jury trial." The clear language of the arbitration provision indicates that it was a waiver of her right to a jury trial, and such a waiver is effective. Therefore, Brown's "bald" assertion is not only unreviewable on its face but without any merit whatsoever.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.