ORIGINAL

NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

RODNEY HUNTER and APRIL DAVIS,

Plaintiffs/Appellees,

vs.

BADGER VALLEY INVESTMENTS, LLC d/b/a Seth Wadley Ford and AMERICAN CREDIT ACCEPTANCE, LLC,

Defendants/Appellants.

Case No. 120,593

APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY, OKLAHOMA

HONORABLE SHEILA D. STINSON, DISTRICT JUDGE

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED

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OPINION BY GREGORY C. BLACKWELL, PRESIDING JUDGE:

Badger Valley Investments, LLC d/b/a Seth Wadley Ford ("Seth Wadley") and American Credit Acceptance, LLC ("ACA") (collectively, "companies") appeal the district court's denial of their motion to compel arbitration. On review, we find that the trial court properly denied Seth Wadley's motion to dismiss in favor

of arbitration as it was not a party to the arbitration agreement at issue on appeal. However, the trial court should have granted ACA's motion to compel arbitration, in part, because there is some question as to whether the plaintiffs' claim for defamation of credit against ACA was covered by the arbitration agreement, and the parties agreed to arbitrate any issues regarding the scope of the agreement. Accordingly, we affirm the trial court's denial of arbitration as to all claims except plaintiffs' claim for defamation of credit made against ACA.

BACKGROUND

On July 31, 2021, Rodney Hunter purchased a 2015 GMC Sierra at Seth Wadley. Mr. Hunter intended to purchase the truck for the advertised price of $45,804.00. He made a $7,000 down payment and traded in his 2016 Dodge Ram, which Seth Wadley valued at $19,700.00. Mr. Hunter had previously purchased the Ram on credit from a non-party to this action, Southwest Car Sales, a year and a half earlier. The sales contract between Southwest and Mr. Hunter contained an arbitration agreement. Southwest later sold the loan on Mr. Hunter's Ram to ACA. At the time it was traded to Seth Wadley, the Ram had an outstanding loan balance with ACA of $11,700.00, which Seth Wadley agreed to pay as a part of the trade-in agreement.

At closing for the Sierra sale, Mr. Hunter signed the Retail Installment Sales Contract (RISC), which contains an arbitration provision. Additionally, April Davis, Mr. Hunter's wife,[1] agreed to purchase the Sierra's extended

[1] It was undisputed below that Mr. Hunter and Mrs. Davis were common-law spouses.

warranty under her name on a second loan. Seth Wadley later sold the Sierra loan to ACA.[2]

Mr. Hunter began making payments on the Sierra to Seth Wadley. Shortly after, Seth Wadley contacted Mr. Hunter requesting that he return the vehicle. Additionally, ACA began reporting that the Ram loan payments were delinquent because Seth Wadley had not paid off the loan, which harmed the plaintiffs' credit. Mr. Hunter did not return the vehicle and filed suit against Seth Wadley and ACA for fraud, fraudulent inducement, breach of contract, violation of the Oklahoma Consumer Protection Act, violation of Uniform Commercial Code, violation of the Oklahoma Consumer Credit Code, defamation of credit, negligence, negligence per se, conversion, and intentional infliction of emotional distress.

Seth Wadley filed a motion to dismiss in favor of arbitration, or alternatively, for improper venue. It argued that because Mr. Hunter signed the RISC, which contained an arbitration provision, he agreed to arbitrate any claims asserted in relation to the purchase of the Sierra. Meanwhile, ACA also filed a motion to compel arbitration and stay proceedings. ACA claimed that both the Ram contract and the Sierra contract required arbitration.

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[2] According to the petition, shortly after the loan sale, a representative from ACA called Mr. Hunter to confirm the terms of the Sierra contract with Seth Wadley. R. 1-17, *Petition and Emergency Motion for Delivery of Title*, 3. During that call, Mr. Hunter learned that Seth Wadley had inflated the advertised purchase price of the Sierra from $45,804.00 to $53,900.00. *Id.* ACA requested Seth Wadley reduce the purchase price of the GMC to the price that was advertised. *Id.* However, Seth Wadley maintained that the price increase was the only way it could secure financing and that there was no way to adjust it after the fact. *Id.*

The trial court held an evidentiary hearing on May 2, 2022. Each plaintiff offered testimony, but neither company offered any witnesses. The court found that Seth Wadley's representative physically obscured relevant portions of the documents at closing and did not allow the plaintiffs to inspect the purchase agreement and the RISC for the Sierra. R. 338-40, *Order*, 2. The court also found that Seth Wadley did not provide the plaintiffs with full copies of the documents to be signed, including the dispute resolution clause of the GAP addendum and the extended warranty. *Id.* Ultimately, the court found that the Sierra contracts were fraudulently induced such that the arbitration clauses could not be enforced. *Id.* Additionally, the court found that venue was proper. The court therefore denied the companies' motions to compel arbitration.

ACA and Seth Wadley jointly filed a motion to reconsider. Specifically, they argued that the court's order failed to address the effect of the Ram contract's arbitration provision. The court issued an addendum to its order again denying the companies' motions to dismiss and to compel arbitration. The court found that the Ram's purchase agreement and arbitration clause were "not in dispute in this matter," the Ram contract was not executed by the same parties as the later purchased Sierra truck, and the purchase agreement and arbitration clause for the Ram were not "executed in the course of executing agreements" associated with the Sierra. Supp. R. 9, *Addendum Order to Court's June 30, 2022, Order*, 1-2. Therefore, the court held that the Ram's arbitration clause was "not applicable to this matter." *Id.*

The companies jointly appealed but limit their arguments on appeal to whether the trial court erred in failing to order arbitration under the Ram contract alone.[3]

STANDARD OF REVIEW

The question of whether there is a valid enforceable arbitration agreement is a question of law to be reviewed pursuant to a *de novo* standard. *Okla. Oncology & Hematology v. US Oncology Inc.*, 2007 OK 12, ¶ 19, 160 P.3d 936, 944. However, such a determination may present mixed questions of law and fact regarding the existence of an arbitration agreement. *Bruner v. Timberlane Manor Ltd. Partnership*, 2006 OK 90, ¶ 8, 155 P.3d 16, 20. Where the dispute is over the legal conclusion drawn from undisputed facts, *de novo* review is proper. *Signature Leasing, LLC v. Buyer's Grp., LLC*, 2020 OK 50, ¶ 2, 466 P.3d 544, 545. But where the facts are controverted, a more deferential standard of review is required. *Bruner*, 2006 OK 90, ¶ 8. Here, because we are reviewing only the trial court's legal conclusion that the Ram contract could not bind either company to arbitration as to any claim pled, our review is *de novo*.

ANALYSIS

In a proceeding to compel arbitration, a court must first look to whether the parties agreed to arbitrate some dispute. *E.E.O.C. v. Waffle House, Inc.*, 534 U.S. 279, 122 S. Ct. 754, 151 L. Ed. 2d 755 (2002). If an agreement to arbitrate

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[3] There is no dispute about this. *See Appellants' Reply Brief*, 8, n.5. ("The consumers argue that the companies have waived any argument about the GMC contract's arbitration provision or that venue is improper in Oklahoma County. The companies do not dispute this. This is not what their appeal is about.") (citation omitted).

is found, courts then determine whether a specific issue falls within the scope of the arbitration agreement, unless the contract explicitly provides that an arbitrator will make this decision. *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 83, 123 S.Ct. 588, 593, 154 L. Ed 491 (2002). Courts should use state-law principles governing the formation of contracts to evaluate the validity of an arbitration agreement. *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944, 115 S. Ct. 1920, 1924, 131 L. Ed. 2d 985 (1995).

If the language of a contract is clear and free of ambiguity the court is to interpret it as a matter of law, giving effect to the mutual intent of the parties at the time of contracting. *Pitco Prod. Co. v. Chaparral Energy, Inc.*, 2003 OK 5, ¶ 12, 63 P.3d 541, 545. We find that the Ram contract, and therefore, the Ram arbitration provision clearly and unambiguously does not extend to Seth Wadley. There was no agreement between the plaintiffs and Seth Wadley to arbitrate any claims under the Ram contract.

The Ram contract provided that the parties could elect to resolve any claim by neutral, binding arbitration. It reads:

> Claim means any claim, dispute, or controversy between you and us or our employees, agents, successors, assigns, or affiliates arising from or relating to: 1. The credit application 2. The purchase of the Property; 3. The condition of the property; 4. This contract 5. Any insurance, maintenance, service, or other contracts you purchased in connection with this Contract; 6. Any related transaction, occurrence or relationship.

R. 271, *Plaintiffs' Supplemental Response*, Exhibit 3. Only Mr. Hunter, Southwest, and ACA, as an assignee, were parties to the Ram contract. Notably, Seth

Wadley was not an employee, agent, successor, assign, or affiliate of Southwest;[4] therefore, it was not in privity of contract with any of the parties to the Ram agreement. The Oklahoma Supreme Court has held that "it goes without saying that a stranger to a contract neither enjoys the contract benefits nor carries the contract obligation." *Oklahoma Oncology & Hematology P.C.*, 2007 OK 12, ¶ 25. Therefore, Seth Wadley cannot enjoy the benefits of arbitration. On that basis alone, we find that the trial court properly denied Seth Wadley's motion to dismiss in favor of arbitration.

The companies contend, however, that because ACA was an assignee of the Ram contract and plaintiffs[5] brought claims related to defamation of credit against ACA, they can compel arbitration. The Ram arbitration clause mandates arbitration for "any claim" between Mr. Hunter and Southwest's assigns arising

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[4] The Oklahoma Supreme Court has recognized the five theories identified by the Second Circuit for binding nonsignatories to arbitration agreements: "1) incorporation by reference, when a party has entered into a separate contractual relationship with the nonsignatory incorporating the existing arbitration clause; 2) assumption, when subsequent conduct indicates nonsignatory has assumed the obligation to arbitrate; 3) agency, when traditional principles of agency law may bind a nonsignatory to an arbitration agreement; 4) veil-piercing/alter ego, when the corporate relationship between a parent and its subsidiary are sufficiently close to justify piercing the corporate veil and holding one corporation legally accountable for the actions of the other, such as, to prevent fraud or other wrong or when a parent dominates and controls a subsidiary; and 5) estoppel, when the claims are integrally related to the contract containing the arbitration clause." *Carter v. Schuster*, 2009 OK 94, ¶ 14, 227 P.3d 149, 153. None of the five theories are applicable to Seth Wadley.

[5] We note here that while Mr. Hunter was unambiguously a party to the Ram contract, the record presents conflicting evidence regarding Mrs. Davis's involvement with the Ram. However, even though Mrs. Davis was not necessarily a signatory to the Ram contract, she is still required to arbitrate claims against ACA along with Mr. Hunter. As mentioned above, one of the theories for binding nonsignatories to arbitration agreements is estoppel. *Carter*, 2009 OK 94, ¶ 14. Mrs. Davis cannot avoid the Ram contract's arbitration provision while making claims based on the Ram contract. *See Willoughby v. Fid. & Deposit Co. of Md.*, 1906 OK 30, 16 Okla. 546, 85 P. 713, 716, ("It is the well–settled law that a party seeking to recover upon a contract cannot claim the benefits arising therefrom, and at the same time repudiate its burdens.").

from any "related transaction." The parties do not dispute that ACA was an assignee of the Southwest contract.

Here, while Southwest clearly assigned its contractual rights to ACA, there is some doubt that in doing so the parties specifically contemplated arbitration for a claim arising out of a subsequent dealer's agreement to take over loan payments and then failing to actually make those payments. However, as stated above, when a valid agreement to arbitrate is found, we must then determine whether a specific issue falls within the scope of the agreement, unless the contract explicitly provides that an arbitrator will make the decision. *Howsam*, 537 U.S. 79, 83. Here, the Ram contract provides that an arbitrator must make this decision. The Ram arbitration clause states: "To the extent allowed by law, the validity, scope, and interpretation of this Arbitration Provision are to be decided by neutral, binding arbitration."[6] Therefore, we hold that the court should not have denied ACA's motion to compel arbitration, as there is a clear question regarding the scope of this agreement and whether a dispute arising out of ACA's reporting that the Ram loan payments were delinquent because Seth Wadley had not paid off the Sierra loan is bound to arbitration.[7]

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[6] We note the plaintiffs, in their *Supplemental Response to Defendants' Supplement to its Motion to Dismiss & Compel Arbitration*, highlight the contract governing the sale of Southwest's various loans to ACA, the Receivables Purchase Agreement (RPA). The plaintiffs argued that the RPA "supersedes any prior agreement" between the parties. Section 6.06 of that agreement provides that any dispute between the parties would be resolved in a bench trial according to New York Law. However, we find that the RPA does not purport to supersede any prior agreement ever entered into by Southwest; rather, it specifically superseded prior agreements between Southwest and ACA.

[7] Unlike the Sierra contract, the plaintiffs made no argument below that the Ram contract was procured by fraud.

Accordingly, we reverse the trial court's failure to compel arbitration, limited solely to plaintiffs' claims against ACA for defamation of credit. All other claims against both defendants may proceed in district court. *See* 12 O.S. § 1858(G) ("If a claim subject to the arbitration is severable, the court may limit the stay to that claim."). Here, we find the claim for defamation of credit made against ACA is severable from the other claims of the petition. The district court is directed to stay the litigation as to this claim only.

AFFIRMED IN PART, AND REVERSED IN PART, AND REMANDED.

FISCHER, J., and HUBER, J., concur.

December 15, 2023