

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
CLINTON COUNTY

WILLIAM HONCHUL, et al., :
 :
 Plaintiffs-Appellants, : CASE NO. CA2000-09-021
 :
 - vs - : O P I N I O N
 : 3/5/2001
 :
 DRIVER'S MART OF :
 CINCINNATI LLC, et al., :
 :
 Defendants-Appellees. :
 :

Richard L. Hurchanik, 110 N. Third Street, Hamilton, Ohio 45011,
for plaintiffs-appellants, William Honchul and Regina Honchul

Thompson, Hine & Flory LLP, Thomas J. Kirkwood, Kimberly E. Eliot,
312 Walnut Street, Suite 1400, Cincinnati, Ohio 45202, for defen-
dants-appellees, Driver's Mart of Cincinnati LLC, et al.

Frantz Ward LLP, Colleen C. Murnane, 55 Public Square Building,
19th Floor, Cleveland, Ohio 44113, for defendant, Transouth
Financial Corporation

YOUNG, P.J. Plaintiffs-appellants, William and Regina
Honchul, appeal a decision of the Clinton County Court of Common
Pleas which dismissed their complaint for lack of subject matter
jurisdiction.

On January 16, 1999, appellants purchased an automobile from

appellee, Driver's Mart of Cincinnati LLC ("Driver's Mart"). The purchase agreement for the automobile included an arbitration clause stating that the parties agreed that any controversy or claim arising out of or relating to the purchase agreement would be settled by arbitration. At the time appellants signed the purchase agreement, they also signed financing papers and an agreement for supplemental life/disability insurance.

On January 14, 2000, appellants filed a complaint against Driver's Mart, Transouth Corporation ("Transouth"), Resource Life Insurance Company,¹ and John Doe. In their complaint, appellants alleged that Driver's Mart was the agent or apparent agent of Transouth, and that Driver's Mart incorrectly informed appellants that Transouth was financing the purchase of the automobile. Appellants alleged that they made their first payment to Transouth relying on Driver's Mart's representation.

The complaint also alleged that when Regina Honchul became ill and appellants attempted to contact the supplemental insurance company, they found that William's name had been inserted as the "insured," not Regina's name, as represented by Driver's Mart. Appellants apparently contacted Driver's Mart about the insurance problem, and during these conversations discovered that Transouth did not process the financing papers as they were originally informed. Appellants alleged that Transouth refused to return the

1. On March 1, 2000, appellants voluntarily dismissed Resource Life Insurance Company.

payment that was incorrectly sent to them.

Prior to filing the complaint, counsel for appellants sent a letter to Driver's Mart requesting that it correct the note and sales agreement by deleting the extended warranty and supplemental life/disability insurance; refund the sales tax paid for the insurance policy; replace the payment sent to Transouth; and pay the amount the Honchuls lost due to Driver's Mart incorrectly listing William as the insured on the insurance form. Appellants also requested that Driver's Mart pay their attorneys' fees. In their complaint, appellants allege that Driver's Mart refused to comply with these requests, and on December 8, 2000 repossessed the automobile, including personal items which were inside the vehicle.

On March 10, 2000, Driver's Mart filed a motion to dismiss the complaint pursuant to Civ.R. 12(B)(1) for lack of subject matter jurisdiction because the purchase agreement signed by appellants contained an arbitration clause. The trial court granted the motion on August 25, 2000, finding that the arbitration clause divested the court of jurisdiction over the complaint. Appellants appeal the trial court's decision to dismiss the complaint, raising the following two assignments of error:

Assignment of Error No. 1:

THE COURT ERRED WHEN IT DISMISSED PLAINTIFF'S
[sic] CASE BECAUSE OF AN ALLEGED ARBITRATION
CLAUSE RELATING TO "ANY CONTROVERSY OR CLAIM
ARISING OUT OF OR RELATING TO THIS PURCHASE
AGREEMENT OR THE BREACH THEREOF SHALL BE SET-
TLED BY BINDING ARBITRATION . . ."

Assignment of Error No. 2:

THE COURT ERRED WHEN IT DISMISSED PLAINTIFF'S

[sic] CLAIMS AGAINST THE OTHER DEFENDANTS AND IT DISMISSED PLAINTIFF'S [sic] CLAIMS AGAINST THE LENDER BASED ON A CLAUSE IN A PURCHASE CONTRACT.

Because appellants' assignments of error are related and both raise the issue of whether the trial court had jurisdiction over the issues raised in appellants' complaint, they will be discussed together.

The standard of review for a dismissal for lack of subject matter jurisdiction pursuant to Civ.R. 12(B)(1) is whether any cause of action cognizable by the forum has been raised in the complaint. State ex rel. Bush v. Spurlock (1989), 42 Ohio St.3d 77, 80; Prosen v. Dimora (1992), 79 Ohio App.3d 120, 123. This determination involves a question of law that the appellate court reviews de novo. Shockey v. Fouty (1995), 106 Ohio App.3d 420, 424. In determining whether the plaintiff has alleged a cause of action sufficient to withstand a Civ.R. 12(B)(1) motion to dismiss, a court is not confined to the allegations of the complaint and it may consider material pertinent to such inquiry without converting it into a motion for summary judgment. Southgate Dev. Corp. v. Columbia Gas Transmission Corp. (1976), 48 Ohio St.2d 211, paragraph one of the syllabus.

We note that arbitration is encouraged as a method to settle disputes, and a presumption favoring arbitration arises when the claim in dispute falls within the scope of an arbitration provision. Williams v. Aetna Fin. Co. (1998), 83 Ohio St.3d 464, 471. "Nonetheless, arbitration is a matter of contract and, in spite of the strong policy in its favor, a party cannot be compelled to

arbitrate any dispute which he has not agreed to submit." Teramar Corp. v. Rodier Corp. (1987), 40 Ohio App.3d 39, 40.

The arbitration clause in the purchase agreement states: "The parties irrevocably agree that any controversy or claim arising out of or relating to this Purchase Agreement or the breach thereof shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association." The purchase agreement contains the name of the purchaser, information about the vehicle purchased, the purchase price, the price of an extended warranty, and other charges, such as tax, title and fees. The agreement lists the net amount due and reflects a balance due of \$15,991.61.

The other documents signed by the parties include a financing document listing the amount financed as \$18,613.68. This document includes charges for the amounts listed in the purchase agreement and also the amount for supplemental disability/life insurance. The financing amount and monthly payments are listed on this document. The Honchuls also signed a contract for the supplemental disability/life insurance. The policy is issued by Resource Life Insurance Company and lists the terms of the agreement. This document lists Transouth as the creditor on the purchase. Driver's Mart is listed as the "Dealer-Agent." Neither of these documents include an arbitration clause.

The issues appellants allege in their complaint arose not from the purchase agreement, but from the financing and Driver's Mart's actions as agent for Resource Life. After a review of these docu-

ments in conjunction with the arbitration clause, we find that the arbitration clause does not apply to disputes regarding the financing or insurance documents. The arbitration clause applies to controversies or claims "arising out of or relating to this Purchase Agreement." The purchase agreement covers only the purchase price, extended warranty, tax and other fees.

Although Driver's Mart urges us to take an expansive view of the phrase "relating to this Purchase Agreement" so that any controversy in any way related to the purchase of the automobile is covered by the arbitration clause, we decline to do so. The purchase agreement does not include the issues appellants raise in their complaint, as did the purchase agreement discussed in Didado v. Lamson & Sessions Co. (1992), 81 Ohio App.3d 302 (purchase agreement included monthly payment rates); nor does the arbitration clause in the purchase agreement state that it covers all issues related to the purchase and financing of the vehicle, as did the arbitration clause in Burlie v. McCluskey Chevrolet-Geo Inc. (Nov. 30, 2000), S.D. Ohio No. C-1-99-1002, unreported (arbitration clause included a waiver of all jury rights "concerning any and all matters arising out of or in any way associated with the purchase or finance of this motor vehicle").

In addition, the complaint raises claims against entities who were not parties to the purchase agreement, and thus did not agree to the arbitration clause. Because these parties were not involved in the purchase agreement, any claims appellants have against these parties are separate and apart from the arbitration clause. See

Haga v. Martin Homes, Inc. (Aug. 4, 2000), 2000 WL 1133267, at *5, Tuscarawas Ct. App. No. 2000AP020018, unreported.

Accordingly, we find that the issues raised by appellants in their complaint are outside the scope of the arbitration clause and that the trial court erred by dismissing appellants' complaint for lack of jurisdiction. The assignments of error are sustained.

Judgment reversed and remanded to the trial court for further proceedings according to law and consistent with this opinion.

VALEN and WALSH, JJ., concur.

[Cite as *Honchul v. Driver's Mart of Cincinnati, L.L.C.*, 2001-Ohio-4214.]