MEMORANDUM DECISION

IN THE
Court of Appeals of Indiana

Theodore Sherratt,
Appellant-Defendant

v.

Jefferson Capital Systems LLC,
Appellee-Plaintiff

March 20, 2024

Court of Appeals Case No.
23A-CC-1276

Appeal from the Gibson Superior Court

The Honorable Roman Ricker, Magistrate

Trial Court Cause No.
26D01-2007-CC-000755

Memorandum Decision by Judge Felix
Judges Bailey and May concur.

Felix, Judge.

Statement of the Case

[1] Theodore Sherratt purchased and financed a vehicle by signing a Retail Installment Contract (the "Contract"). Sherratt later defaulted on the loan, and Jefferson Capital Systems LLC ("Jefferson") filed a lawsuit against Sherratt to collect on the debt. Sherratt filed counterclaims alleging unfair debt collection practices. Jefferson then filed a Motion to Compel Arbitration of the counterclaims. The trial court granted the motion, dismissing Sherratt's counterclaims with prejudice. Sherratt appeals the trial court's decision and presents one issue on appeal: Whether Jefferson can enforce the Contract's Arbitration Provision.

[2] We affirm.

Facts and Procedural History

[3] On January 28, 2013, Sherratt signed the Contract to purchase a 2012 Chevrolet Cruze from a CarMax dealership in Littleton, Colorado. The Contract included the terms of sale, the financing agreement, an Arbitration Provision, and an assignment clause. The Arbitration Provision provides, in relevant part:

> For purposes of this Arbitration Provision, references to we, us and our mean the Seller, including its respective subsidiaries, affiliates, agents, employees and officers, or anyone to whom the Seller transfers its rights under the Contract.

IF YOU OR WE CHOOSE ARBITRATION, THEN ARBITRATION SHALL BE MANDATORY, AND:

- **ANY CLAIM WILL BE DECIDED BY ARBITRATION AND NOT IN COURT OR BY A JURY TRIAL.**

* * *

a. What Claims are Covered. A Claim is any claim, dispute or controversy between you and us that in any way arises from or relates to this consumer credit sale, the purchase you are financing by way of this Contract, the Vehicle and related goods and services that are the subject of the purchase and this Contract, or the collection or servicing of this Contract, including but not limited to:

- Initial claims, counterclaims, cross-claims and third-party claims;

- Disputes based on contract, tort, consumer rights, fraud and other intentional torts (at 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 or this Contract, subject to paragraph (f) of this Arbitration Provision.

* * *

> **f. Class Action Waiver. You give up your right to participate in a class action. This means that you may not be a representative or member of any class of claimants or act as a private attorney general in court or in arbitration with respect to any Claim.** . . .

Appellant's App. Vol. II at 80 (emphases in original). In the assignment clause, CarMax assigned its rights under the Contract to Santander Consumer USA.

[4] In 2017, Sherratt defaulted on the loan, and Santander repossessed the vehicle. Santander sold the vehicle, but the sale price did not cover the balance of the remaining debt; Sherratt still owed a balance of $11,555.03 to Santander. In 2019, Santander assigned its rights to collect on the remaining debt under the Contract to Jefferson.

[5] On July 21 2021, Jefferson filed a complaint against Sherratt in Gibson County, Indiana seeking a judgment for the remaining debt. Allegedly, the parties communicated and agreed to a settlement; thereafter, Jefferson sent Sherratt a copy of an Agreed Judgment to sign. Instead of executing the agreement, Sherratt then filed a putative class action counterclaim against Jefferson alleging that the Agreed Judgment contained additional provisions which were not a part of the original settlement in violation of the Fair Debt Collection Practices Act[1] and the Indiana Deceptive Consumer Sales Act[2].

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[1] 15 U.S.C. §§ 1692c, 1692e–1692f.

[2] Ind. Code §§ 24-5-0.5-2 to 24-5-0.5-4

[6] In response, on June 1, 2021, Jefferson filed a Motion to Compel Arbitration. The motion asked the trial court to compel Sherratt's counterclaims to arbitration and dismiss them with prejudice. Jefferson argued that, by signing the Arbitration Provision, Sherratt had agreed to arbitrate any claims arising out of the Contract and he had waived any class action claims. On May 10, 2023, the trial court dismissed Sherratt's counterclaims and granted Jefferson's Motion to Compel Arbitration. Sherratt now appeals.

Discussion and Decision

[7] Sherratt argues that the trial court erred in granting Jefferson's Motion to Compel Arbitration, and, in doing so, he asks us to interpret the Contract. We review a trial court's decision on a motion to compel arbitration de novo. *Land v. IU Credit Union*, 218 N.E.3d 1282, 1286 (Ind. 2023) (citing *Doe v. Carmel Operator, LLC*, 160 N.E.3d 518, 521 (Ind. 2021)) *aff'd on reh'g*, No. 23S-CP-115, slip op. (Ind. Feb. 1, 2024). Likewise, we review questions of contract interpretation de novo. *Id.* (citing *Lake Imaging, LLC v. Franciscan All., Inc.*, 182 N.E.3d 203, 206 (Ind. 2022)).

[8] "Indiana recognizes a strong policy interest in favor of enforcing arbitration agreements." *Land*, 218 N.E.3d at 1286 (citing *Decker v. Star Fin. Grp., Inc.*, 204 N.E.3d 918, 920 (Ind. 2023)). However, "imposing on parties a policy favoring arbitration before determining whether they agreed to arbitrate could frustrate the parties' intent and their freedom to contract." *MPACT Const. Grp., LLC v. Superior Concrete Constructors, Inc.*, 802 N.E.2d 901, 906 (Ind. 2004)). Thus, we

must first determine whether there is an enforceable arbitration agreement. *See Land*, 218 N.E.3d at 1286–87.

[9] "The party seeking to compel arbitration carries the burden of showing the existence of an enforceable arbitration agreement." *Land*, 218 N.E.3d at 1287 (citing *Progressive Se. Ins. Co. v. Empire Fire & Marine Ins. Co.*, 88 N.E.3d 188, 197 (Ind. Ct. App. 2017)). Jefferson supported its Motion to Compel Arbitration by asserting that (1) by signing the Arbitration Provision, Sherratt entered into an enforceable arbitration agreement with CarMax; (2) the rights under the Contract, including the Arbitration Provision, were assigned to Santander and then to Jefferson; and (3) the Arbitration Provision requires Sherratt's counterclaims be submitted to arbitration.

[10] On appeal, Sherratt argues that he does not have an enforceable arbitration agreement with Jefferson. Here, the parties dispute the meaning of the following portion of the Arbitration Provision: "For purposes of this Arbitration Provision, references to we, us and our mean the Seller including its respective subsidiaries, affiliates, agents, employees and officers, or anyone to whom the Seller transfers its rights under the Contract." Appellant's App. Vol. II at 80.

[11] The goal of contract interpretation is to "determine the intent of the parties at the time that they made the agreement." *Citimortgage, Inc. v. Barabas*, 975 N.E.2d 805, 813 (Ind. 2012) (citing *First Fed. Sav. Bank of Indiana v. Key Mkts., Inc.*, 559 N.E.2d 600, 603 (Ind. 1990)). "We begin with the plain language of the contract, reading it in context and, whenever possible, construing it so as to

render each word, phrase, and term meaningful, unambiguous, and harmonious with the whole." *Id.* (citing *Trustcorp Mortg. Co. v. Metro Mortg. Co.*, 867 N.E.2d 203, 213 (Ind. Ct. App. 2007)). Although only one phrase might be in dispute, we "look at the 'contract as a whole' and 'accept an interpretation of the contract that harmonizes all its provisions.'" *Berg v. Berg*, 170 N.E.3d 224, 231 (Ind. 2021) (quoting *Ryan v. TCI Architects/Eng'rs/Contractors, Inc.*, 72 N.E.3d 908, 914 (Ind. 2017)).

[12] Sherratt contends that the phrase "or anyone to *whom the Seller transfers its rights* under the Contract" limits the ability to assign the rights under the Arbitration Provision. Appellant's Br. at 11–12 (emphasis added) (quoting Appellant's App. Vol. II at 80.) In other words, according to Sherratt, the Arbitration Provision applied to the assignment from CarMax to Santander but, since Santander is not "the Seller," Santander could not further assign the rights under the Arbitration Provision. In contrast, Jefferson argues that the rights under the Arbitration Provision were freely assignable from Santander to Jefferson. We agree with Jefferson's interpretation.

[13] Indiana law generally allows for the assignment of contractual rights unless the contract provides "an expression of contrary intent." *Kuntz v. EVI, LLC*, 999 N.E.2d 425, 429 n.5 (Ind. Ct. App. 2013) (citing *Chrysler Fin. Co. v. Indiana Dep't of State Revenue*, 761 N.E.2d 909, 912 (Ind. T.C. 2002)); *see also Pettit v. Pettit*, 626 N.E.2d 444, 447 (Ind. 1993). Once an assignment occurs,

> a valid and unqualified assignment operates to transfer to the assignee all the right, title, or interest of the assignor in or to the

> property or property rights that are comprehended within the terms of the assignment. Such transfer confers a complete and present right in the subject matter to the assignee . . . . An assignment vests in the assignee all rights, remedies, and contingent benefits which are incidental to the thing assigned, except those which are personal to the assignor and for his benefit only.

Indianapolis-Marion Cnty. Pub. Libr. v. Charlier Clark & Linard, PC, 929 N.E.2d 838, 848 (Ind. Ct. App. 2010) (quoting *Rasp v. Hidden Valley Lake, Inc.*, 519 N.E.2d 153, 158 (Ind. Ct. App. 1988)). Therefore, "the assignee of rights under a contract stands in the shoes of the assignor." *Citimortgage*, 975 N.E.2d at 813 (citing *Lake Cnty. Trust Co. v. Household Merch., Inc.*, 511 N.E.2d 512, 514 (Ind. Ct. App. 1987)).

[14] Here, the language that Sherratt points to does not express an intent to limit assignments. Once "the Seller" transfers their rights by assignment, the assignee possesses all rights under the Contract, including the ability to subsequently transfer contractual rights. Here, the rights under the Contract were transferred twice by two valid assignments. First, CarMax assigned its rights to Santander, and second, Santander assigned the rights to Jefferson. Each assignment transferred the full rights of the Contract, including the Arbitration Provision. Therefore, Jefferson had the same set of rights that CarMax possessed when it executed the Contract and could enforce the

Arbitration Provision.[3] We affirm the trial court's grant of Jefferson's Motion to Compel Arbitration.[4]

[15] Affirmed.

Bailey, J., and May, J., concur.

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[3] In addition to being able to enforce the arbitration provision against Sherrat, Jefferson's allegations should be arbitrated as well. We note under the terms of the arbitration provision in the contract that if one party chooses arbitration, "any claim" will be decided by arbitration. Appellant's App. Vol. II at 80. In its order granting Jefferson's motion to compel arbitration, the trial court correctly determined that both Sherrat's and Jefferson's claims were covered by the arbitration provision. *Id.* at 10–20. Requiring that all related claims be decided in the same forum avoids piece-meal litigation and a waste of judicial resources.

[4] The applicable law clause on page two of the Contract states, "Federal law and the law of the State of Colorado apply to this Contract." Appellant's App. Vol. II at 79. The parties do not cite or argue Colorado law in their briefs. We note that Colorado law applies similar principles for the assignment of contractual rights. Absent "evidence of contrary intent to be found within the transferring document," contract rights are fully assignable. *Hawg Tools, LLC v. Newsco Int'l Energy Servs., Inc.*, 411 P.3d 1126, 1136 (Colo. App. 2016) (quoting *Thistle, Inc. v. Tenneco, Inc.*, 872 P.2d 1302, 1306 (Colo. App. 1993)). Additionally, Colorado contract law also "puts 'the assignee in the assignor's shoes.'" *Oasis Legal Finance Group, LLC v. Coffman*, 361 P.3d 400, 410 (Colo. 2015) (quoting *SDI, Inc. v. Pivotal Parker Commercial, LLC*, 339 P.3d 672, 676 n. 3 (Colo. 2014)).