[Cite as *Credit Acceptance Corp. v. Beard*, 2024-Ohio-4799.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

CREDIT ACCEPTANCE CORPORATION, :

Plaintiff-Appellee, :

No. 113682

v. :

GLORIA BEARD, ET AL., :

Defendants-Appellants. :

JOURNAL ENTRY AND OPINION

JUDGMENT: DISMISSED
RELEASED AND JOURNALIZED: October 3, 2024

Civil Appeal from the Parma Municipal Court
Case No. 23 CVF 01886

Appearances:

McGlinchey Stafford and James W. Sandy, *for appellee*.

The Legal Aid Society of Cleveland, Philip D. Althouse, and Matthew L. Alden, *for appellants*.

FRANK DANIEL CELEBREZZE, III, J.:

{¶ 1} Appellants Gloria Beard and Jasmine Beard ("appellants") challenge the judgment of the Parma Municipal Court staying the case and compelling arbitration. After a thorough review of the applicable law and facts, we dismiss this appeal for lack of a final, appealable order.

I. Factual and Procedural History

{¶ 2} This appeal arises from Credit Acceptance's suit against appellants based upon a consumer car loan. Northcoast Auto Direct, LLC ("NCAD") sold a 2008 GMC Acadia to appellants in June 2022 through its sales representative, Eddie Chandler ("Chandler"). The sales contract contained an arbitration clause and required appellants to make 46 monthly payments. The contract was later assigned to Credit Acceptance.

{¶ 3} Appellant did not make any payments toward the purchase price of the vehicle, and the vehicle was repossessed by Credit Acceptance.[1] It was later sold at auction for less than the amount owed on the contract, and a deficiency remained.

{¶ 4} Credit Acceptance filed suit against appellants to collect the deficiency balance. Appellants answered the complaint, and pretrial conferences were conducted. Appellants then retained counsel, amended their answers, and asserted counterclaims against Credit Acceptance and new-party defendants NCAD and Chandler.

{¶ 5} Credit Acceptance filed its reply to the counterclaim, along with a motion to compel arbitration, dismiss the case, or alternatively, stay the case pending arbitration.

{¶ 6} Appellants filed a brief opposing the motion to compel/stay, and Credit Acceptance submitted a reply brief in support of its motion. The trial court granted

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[1] The parties dispute whether there were mechanical issues with the vehicle; however, this issue is not currently before us.

Credit Acceptance's motion to compel arbitration and stayed the case pending arbitration proceedings.

{¶ 7} Appellants then filed the instant appeal, raising one assignment of error for our review:

> The trial court erred in failing to find that Credit Acceptance Corporation waived its right to arbitrate the claims in this case.

II. Law and Analysis

{¶ 8} Preliminarily, we must address the issue of appellate jurisdiction. Credit Acceptance moved to dismiss the instant appeal, arguing that the trial court's order granting its motion to stay and compel arbitration was not a final, appealable order. Credit Acceptance contends that this court lacks jurisdiction over the instant appeal because a decision to stay a case and compel arbitration under the Federal Arbitration Act ("FAA") is not a final, appealable order.

{¶ 9} Appellate courts are courts of limited jurisdiction confined to reviewing only final orders from lower courts. *See* Ohio Const., art. IV, § 3(B)(2); R.C. 2505.02. "If an order is not final and appealable, then an appellate court has no jurisdiction to review the matter and the appeal must be dismissed." *Assn. of Cleveland Firefighters, #93 v. Campbell*, 2005-Ohio-1841, ¶ 6 (8th Dist.).

{¶ 10} Appellants do not appear to dispute that the arbitration agreement provides that it is governed by the FAA. However, they argue that the FAA does not preempt Ohio's arbitration law — in particular, R.C. 2711.02(C). This statute

provides that an order granting or denying a stay for arbitration is appealable; thus, appellants assert that, under Ohio law, appellate jurisdiction exists over this appeal.

{¶ 11} Section 3 of the FAA provides that

> [i]f any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, *shall* on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

(Emphasis added.) 9 U.S.C. 3. The FAA further provides that an interlocutory order granting a stay of any action under 9 U.S.C. 3 is not appealable. 9 U.S.C. 16(b).

{¶ 12} Credit Acceptance asserts that the United States Supreme Court has continually, and even recently, held that an order compelling arbitration and staying a case is not an appealable order under the FAA. *See Smith v. Spizzirri*, 601 U.S. 472, 472 (2024). As stated by the *Smith* Court:

> When a court denies a request for arbitration, §16 of the FAA authorizes an immediate interlocutory appeal. *See* 9 U.S.C. §16(a)(1)(C). When a court compels arbitration, by contrast, Congress made clear that, absent certification of a controlling question of law by the district court under 28 U.S.C. §1292(b), the order compelling arbitration is not immediately appealable. *See* 9 U.S.C. §16(b). The choice to "provid[e] for immediate interlocutory appeals of orders denying — but not of orders granting — motions to compel arbitration," *Coinbase, Inc. v. Bielski*, 599 U.S. 736, 740, 143 S.Ct. 1915, 216 L.Ed.2d 671 (2023), is consistent with Congress's purpose in the FAA "to move the parties to an arbitrable dispute out of court and into arbitration as quickly and easily as possible," *Moses H. Cone Memorial Hospital v. Mercury Constr. Corp.*, 460 U. S. 1, 22 (1983).

Id. at 477-478.

{¶ 13} Accordingly, the FAA does not provide for an appeal of an interlocutory order granting a motion compelling arbitration. The trial court's order in this case was not a final order. Further, we find no merit to appellants' argument that the FAA does not preempt Ohio's arbitration statute and we should therefore rely on R.C. 2711.02(C) to determine whether a final, appealable order exists. The arbitration agreement specifically stated that it was "governed by the FAA and not by any state arbitration law." Appellants do not argue otherwise. We cannot disregard the provisions of the FAA when it is clear that Ohio's arbitration statute is not applicable to this matter.

{¶ 14} Because the interlocutory order granting the stay was not a final, appealable order, we lack jurisdiction to review the merits of this appeal. Thus, we grant Credit Acceptance's motion and dismiss the instant appeal.

It is ordered that appellee recover from appellants costs herein taxed.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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FRANK DANIEL CELEBREZZE, III, JUDGE

EILEEN A. GALLAGHER, P.J., and
MICHELLE J. SHEEHAN, J., CONCUR