STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
BUSINESS COURT

AUTOMOTIVE CREDIT CORPORATION,
Plaintiff,

v. **Case No. 19-175780-CB**
Hon. James M. Alexander

2ND CHANCE AUTO, and
SHAWN RAHRIG SR,
Defendants.
____/

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on Defendants' motion for summary disposition.

According to Plaintiffs' Complaint, the parties entered into a Dealer Agreement. Additionally, the Dealer Agreement contained a Personal Guaranty executed by Defendant Rahrig. The Dealer Agreement provided that if an account for which Plaintiff provided financing to a customer of Defendants became in default, Defendants would be liable for the full amount. Plaintiff alleges that Defendants' customers defaulted, and Plaintiff is exercising its rights under the Dealer Agreement to collect the amount due from Defendants. Further, Plaintiff alleges that Defendants have wrongfully converted Plaintiff's assets and are contractually obligated to indemnify Plaintiff's against any and all claims.

On these general allegations, Plaintiffs filed their Complaint on claims titled: (Count I) breach of contract; and (Count II) conversion pursuant to MCL 600.2919(a); and (Count III) contractual indemnification.

Defendants now move for summary disposition under MCR 2.116(C)(1), (C)(7) and (C)(10). A (C)(1) motion tests whether the Court has personal jurisdiction over a defendant. A (C)(7) motion tests whether a claim is barred, among other grounds, by an agreement to arbitrate. And a (C)(10) motion tests the factual support for a plaintiff's claims. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).[1]

I. Personal Jurisdiction

According to the Complaint, Plaintiff is a Michigan Corporation. Defendant 2nd Chance Auto is a Domestic Profit Corporation doing business in the State of Ohio, and Defendant Shawn Rahrig, Sr., is an individual and resident of Norwalk, Ohio. The Complaint also alleges that the Dealer Agreement contains a venue provision clause for Oakland County, Michigan.

As stated, a (C)(1) motion tests whether the Court has personal jurisdiction over a defendant. Plaintiff has the burden of establishing a prima facie showing of jurisdiction to avoid summary disposition. *Jeffrey v Rapid American Corp*, 448 Mich 178, 184; 529 NW2d 644 (1995). A court reviewing a (C)(1) motion must examine the affidavits, pleadings, depositions, admissions as well as any other documentation submitted by the parties. MCR 2.116(G)(5); *Jeffrey*, 448 Mich 178. All factual disputes are resolved in the non-movant's favor. *Id*. Whether a court has personal jurisdiction over a party is a question of law. *Oberlies v Searchmont Resort, Inc*, 246 Mich App 424, 426; 633 NW2d 408 (2001).

Jurisdiction can be established by way of general personal jurisdiction or specific (limited) personal jurisdiction. *Oberlies*, 246 Mich App at 427. A court has general jurisdiction

[1] In such a motion, the moving party must specifically identify the issues that he believes present no genuine issue of material fact. *Maiden, 461 Mich* at 120. The opposing party may not rest on mere allegations or denials in his pleadings, but must, by affidavits or as otherwise provided in the rule, set forth specific facts showing a genuine issue for trial. *Id.* at 120-121. Where the evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* at 120.

over a corporate defendant if it is incorporated in Michigan, if it consented to the court's exercise of jurisdiction, or if it engages in systematic and continuous business within the state. MCL 600.711[2].

Defendants argue, despite the forum-selection clause, this Court is not a reasonably convenient place for the trial in this action. Specifically, Defendants argues that Michigan is an inconvenient forum because the events that give rise to the case occurred in Ohio. Defendants argue that since the facts of this case do not satisfy MCL 600.745(2)(d), the forum-selection clause should not be enforced.[3] As such, Defendants argue that the case should be dismissed due to lack of jurisdiction.

Conversely, Plaintiff argues that Defendants consented to jurisdiction in Michigan. Further, Plaintiff argues that this action does not involve the events that occurred in Ohio, namely the purchase, customer default, and repossession of a vehicle. Plaintiff argues that this case is based on Defendants failure to repurchase the installment contract after their customer defaulted. Plaintiff argue that the parties can litigate the issue of whether the

---

[2] MCL 600.711 (Michigan's general personal jurisdiction statute for corporations) provides:
The existence of any of the following relationships between a corporation and the state shall constitute a sufficient basis of jurisdiction to enable the courts of record of this state to exercise general personal jurisdiction over the corporation and to enable such courts to render personal judgments against the corporation.

(1) Incorporation under the laws of this state.
(2) Consent, to the extent authorized by the consent and subject to the limitations provided in section 745.
(3) The carrying on of a continuous and systematic part of its general business within the state.

[3] MCL 600.745, provides, in relevant part:

> If the parties agreed in writing that an action on a controversy may be brought in this state and the agreement provides the only basis for the exercise of jurisdiction, a court of this state shall entertain the action if all the following occur:
>
> . . .
>
> (b) This state is a reasonably convenient place for the trial of the action.

recourse/repurchase provision of the contract was breached in Michigan, particularly since the contract provided for jurisdiction in Michigan.

Further, Plaintiff argues that Defendants are barred from claiming that Ohio is a more convenient forum based on the doctrine of equitable estoppel. Plaintiff alleges that it previously filed suit in Ohio, but Defendants moved for dismissal insisting that the action must be brought in Michigan pursuant to the Dealer Agreement. Based on Defendants' request, Plaintiff dismissed the Ohio action and filed suit in this Court. Plaintiff argue that since Defendant has previously acknowledged that Michigan was the proper forum, Defendants are estopped from now arguing that Ohio is the proper forum. The Court agrees.

The doctrine of equitable estoppel provides:

> Where a fact has been asserted, or an admission made, through which an advantage has been derived from another, or upon the faith of which another has been induced to act to his prejudice, so that a denial of such assertion or admission would be a breach of good faith, the law precludes the party from repudiating such representation, or afterwards denying the truth of such admission.

Defendants, in the Ohio action filed a Motion to Dismiss.[4] According to Defendants' motion, the basis of Plaintiff's complaint was a breach of the Dealer Agreement. Defendants sought dismissal of the Ohio action arguing that:

> "[i]t is clear from the documents asserted by Plaintiff to form the basis of Plaintiff's Complaint, that this matter must be commenced in Oakland County Michigan and adjudicated under Michigan law. As such, this case must be dismissed for being improperly venue." (Plaintiff's Response Exhibit 2).

Based on the Ohio pleadings, it is clear that Defendants asserted a fact, namely that Michigan was the proper venue, and the action "must be commenced in Oakland County." *Id.* Based on Defendants' assertion, the Ohio action was dismissed. As such, Defendants were

[4] The Ohio action was filed in the Common Pleas Court of Huron County, Ohio General Division and was captioned Automotive Credit Corporation v. 2nd Chance Auto and Shawn Rahrig Sr, and assigned case number CVH 2017 1203.

advantaged based on their assertion. Plaintiff would be severely prejudiced if Defendants were now able to argue that Michigan is not the proper venue. As such, the doctrine of equitable estoppel precludes Defendants "from repudiating such representation, or afterwards denying the truth of such admission" that Oakland County is the proper venue.

Based on the foregoing, Defendants' motion to dismiss for lack of personal jurisdiction is DENIED.

II. Arbitration

Next Defendants argue that this action must be dismissed because the Dealer Agreement contains an Arbitration Clause. Defendants argue that since they requested arbitration, the matter must be arbitrated. The Dealer Agreement provides (in relevant part):

> [t]he parties agree that instead of litigation in a court, if any dispute, claim or controversy occurs arising out of, connected with or relating to this Agreement, at the request of a party, the parties shall resolve such dispute by binding arbitration administered and conducted under the then current Commercial Arbitration Rules of the American Arbitration Association and Title 9 of the United States Code. (Defendants' Exhibit A, at ¶23).

In response, Plaintiff argues that the although the Dealer Agreement does contain an arbitration provision, the dispute involves a subsequent agreement that provides any dispute shall be determined by a court of competent jurisdiction in the State of Michigan. Specifically, Plaintiff argues that the Recourse and Unconditional Guaranty Agreement (Recourse Agreement) addresses the subject matter of the case.

The Recourse Agreement provides (in relevant part), "[a]ny dispute between the parties shall be determined by a court of competent jurisdiction in the State of Michigan and shall be interpreted under the laws of the State of Michigan." (Plaintiff's Response Exhibit 1, at ¶7).

Further, the Recourse Agreement provides that "[t]o the extent that the terms of this Agreement are inconsistent with any prior agreement, the provisions of this Agreement will control with respect to terms herein." *Id.* at ¶10.

Michigan law is well-established that "a court must construe and apply unambiguous contract provisions as written." *Rory v Cont'l Ins Co*, 473 Mich 457, 461; 703 NW2d 23 (2005). Further, "[a] contract must be interpreted according to its plain and ordinary meaning." *Holmes v Holmes*, 281 Mich App 575, 593; 760 NW2d 300 (2008). "Under ordinary contract principles, if contractual language is clear, construction of the contract is a question of law for the court." *Holmes v Holmes*, 291 Mich App at 594.

Further, in Michigan, "a 'question of arbitrability' is an issue for judicial determination unless the parties unequivocally indicate otherwise." *Gregory J Schwartz & Co v Fagan*, 255 Mich App 229, 232 (2003). MCL 691.1686(1) provides that "[a]n agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except on a ground that exists at law or in equity for the revocation of a contract." And "[t]he court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate." MCL 691.1686(2).

Michigan courts have consistently reasoned that "our Legislature and our courts have strongly endorsed arbitration as an inexpensive and expeditious alternative to litigation." *Rembert v Ryan's Family Steak Houses, Inc*, 235 Mich App 118,133; 596 NW2d 208 (1999). As a result, "any doubts about the arbitrability of an issue should be resolved in favor of arbitration." *DeCaminada v Coopers & Lybrand*, 232 Mich App 492, 499; 591 NW2d 364 (1998).

Here, the Dealer Agreement was executed on April 16, 2014. The Recourse Agreement was executed on July 8, 2016. Defendants admit that Plaintiff rely on both the Dealer

Agreement and the Recourse Agreement as part of its Complaint. (*See* Plaintiff's Response Exhibit 2). Since both agreements for the basis of Plaintiff's Complaint, and since the Recourse Agreement was the subsequent agreement, the terms of the Recourse Agreement control the parties' dispute.

As stated, the Recourse Agreement states that to the extent that there are inconsistent terms with a prior agreement, the terms of the Recourse Agreement control. Here, the inconsistency relates to the arbitration provision found in the Dealer Agreement and the Governing Law provision of the Recourse Agreement. The unambiguous language of the Recourse Agreement, however, provides that "[a]ny dispute between the parties shall be determined by a court of competent jurisdiction in the State of Michigan." (Plaintiff's Response Exhibit 1, at ¶7). As such, pursuant to its own terms, the Recourse Agreement controls the parties' dispute, and the action is not subject to an agreement to arbitrate.

Based on the foregoing, Defendants' motion to dismiss pursuant to an arbitration agreement is DENIED.

III. Conversion

Finally, Defendants argue that Plaintiff's statutory conversion claim should be dismissed pursuant to MCR 2.116(C)(10) because there is no allegation that either Defendant took or possessed any assets belonging to Plaintiff. Rather, Defendants argue that Plaintiff's Complaint alleges that Defendant Rahrig took money from his own company, 2nd Chance Auto. Since there is no allegation that either Defendant wrongfully took property of Plaintiff, Defendants argue there is no conversion.

Conversely, Plaintiff argues that Defendants' argument is inconsistent with MCL 600.2919a. Plaintiff argues that a person can be damaged by an act of conversion even if the property converted does not belong to the person damaged. Plaintiff argues that it was damaged because Rahrig's conversion of 2nd Chance Auto's assets prevents, interferes, or hinders Plaintiff's interests.

Michigan law provides that "[t]he tort of conversion is 'any distinct act of domain wrongfully exerted over another's personal property in denial of or inconsistent with the rights therein.'" *Head v Phillips Camper Sales & Rental, Inc*, 234 Mich App 94, 111; 593 NW2d 595 (1999), quoting *Foremost Ins Co v Allstate Ins Co*, 439 Mich 378, 391; 486 NW2d 600 (1992).

"Statutory conversion, by contrast, consists of knowingly "buying, receiving, or aiding in the concealment of any stolen, embezzled, or converted property." *Head*, 234 Mich App at 111; quoting MCL 600.2919a.

The Court will note, although optional, Defendants did not file a reply in support of their Motion for Summary Disposition. As a result, they have not provided any law contradicting Plaintiff's position regarding its claim for statutory conversion. It is well established that "[t]rial courts are not the research assistants of the litigants; the parties have a duty to fully present their legal arguments to the court for its resolution of their dispute." *Walters v Nadell*, 481 Mich 377, 388; 751 NW2d 431 (2008).

Based on the foregoing, since Defendants have not provided law or evidence contradicting Plaintiff's argument, Plaintiff has established a question of fact remains as to its conversion claim. As such, Defendants' motion to dismiss the same is DENIED.

IV. Conclusion

For all of the foregoing reasons, Defendants' motion for summary disposition is DENIED in its entirety.[5]

It is further ORDERED that Defendant pay $750 in costs to Plaintiff within 14 days of this Opinion and Order.

IT IS SO ORDERED.

_October 30, 2019___	__/s/ James M. Alexander________________
Date	Hon. James M. Alexander, Circuit Court Judge

[5] Based on the Court's ruling, the Court does not need to address Defendants' argument that the case does not meet the monetary jurisdictional requirements of this Court.