Judge Benson – Law & Motion – Wednesday, January 18, 2023 @ 9:00 AM
TENTATIVE RULINGS

1. **22CV02113 Dolzadelli, Shelbie Ann v. Super Shopper Auto Sales, Inc. et al.**

EVENT: Defendants Super Shopper Auto Sales, Inc. and 3G Plus 1, Inc. dba California Auto Finance's Notice of Motion to Compel Arbitration Pursuant to Cal. Code Civ. Proc. §§ 1281.2, 1281.4, and 1281.7; to Stay the Proceedings Pending Completion of Arbitration; Requests for Costs in the Amount of $879.95

Defendants Super Shopper Auto Sales, Inc. and 3G Plus 1, Inc. dba California Auto Finance's Notice of Motion to Compel Arbitration Pursuant to Cal. Code Civ. Proc. §§ 1281.2, 1281.4, and 1281.7; to Stay the Proceedings Pending Completion of Arbitration; Requests for Costs in the Amount of $879.95 is unopposed and is GRANTED in its entirety. The Case Management Conference currently scheduled for March 8, 2023 is continued to July 19, 2023 at 10:30am. Defendants shall prepare and submit a form of order consistent with this ruling.

2. **19CV02574 Najolia, Miriam v. Chavez, Michelle et al**

EVENT: Defendant Joseph Guiffra's Motion to Set Aside Default Judgment

After considering Defendant Jospeh Guiffra's responsive papers filed on January 12, the Court hereby continues the motion to February 15, 2022 at 9:00am. Meanwhile, the Court invites further briefing within a limited scope as set forth herein. Plaintiff shall file her brief no later than January 26, 2022, and Defendant Joseph Guiffra shall file his brief no later than February 3, 2022.

Briefing shall be limited to the issue of whether the default judgment must be set aside on the grounds it exceeds the amount stated in the First Amended Complaint. In reviewing the file, it appears to the Court that neither a statement of damages nor a pleading was served on Defendant Guiffra alleging a specific dollar amount. The Court will allow Plaintiff the opportunity to respond to this specific issue. Likewise, Defendant Guiffra's responsive brief should also be limited to this issue.

3. 22CV01319 Swigart, Barbara et al v. Westhaven, Inc. et al.

EVENT: Defendant Westhaven Inc.'s Motion to Compel Arbitration and to Stay Action

Defendant Westhaven Inc.'s Motion to Compel Arbitration and to Stay Action is GRANTED. Defendant Tesla Motors, Inc. (with whom Defendant Solaredge Technologies joins) and Plaintiffs filed separate oppositions to this motion, and the Court addresses both herein.

Preliminarily, request for judicial notice is GRANTED, see *Joyce v. Ford Motor Co*., (2011) 198 Cal. App. 4th 1478, 1491 fn.5. Westhaven's evidentiary objections are OVERRULED.

Tesla's Opposition

It is undisputed that there are essentially (3) written arbitration clauses related to this case. There are two arbitration agreements between Westhaven Inc. and Plaintiffs – drafted by Westhaven and signed by Plaintiffs, (hereinafter the "Westhaven arbitration clause") and an arbitration clause included in Tesla's warranty executed for the benefit of Plaintiffs (hereinafter the "Tesla arbitration clause")

Tesla is correct that the Westhaven arbitration clause cannot serve as a basis to compel Tesla to arbitration. However, the Court finds Tesla's arbitration clause serves as a basis to compel Tesla to arbitration. Specifically, the Court finds, under the doctrine of equitable estoppel, Tesla is estopped from resisting arbitration.

The sine qua non for application of equitable estoppel as the basis for allowing a nonsignatory to enforce an arbitration clause is, "that the claims plaintiff asserts against the nonsignatory must be dependent upon, or founded in and inextricably intertwined with, the underlying contractual obligations of the agreement containing the arbitration clause." *Goldman v. KPMG, LLP* (2009) 173 Cal.App.4th 209, 217-218)

As it pertains to the Tesla arbitration clause, we have a non-signatory, Westhaven, seeking to enforce it. Importantly, the essence of this case is determining who is at fault when the solar panels malfunctioned leading to the destruction of Plaintiffs' house. The Court finds the Tesla arbitration clause is inextricably intertwined with Plaintiffs' claims against Westhaven.

"The fundamental point is that a party is not entitled to make use of [a contract containing an arbitration clause] as long as it worked to [his or] her advantage, then attempt to avoid its application in defining the forum in which [his or] her dispute . . . should be resolved." *Jensen v. U-Haul Co. of Cal*. (2017) 18 Cal.App.5th 295, 306, quoting *NORCAL Mut. Ins. Co. v. Newton* (2000) 84 Cal.App.4th 64, 84 (internal quotation marks omitted). Essentially, that appears to be the case here, as Tesla is attempting to selectively apply its arbitration clause.

Regarding Defendant Solaredge Technologies, Inc., it appears that, unlike the rest of the parties, it is not a signatory to any arbitration clause. However, the federal rules concerning the interpretation of the scope of arbitration clauses appear to be broad.

> … questions of arbitrability must be addressed with a healthy regard for the federal policy favoring arbitration . . . . The Arbitration Act establishes that, as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself, or an allegation of waiver, delay, or a like defense to arbitrability. *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc*., (1985) 473 U.S. 614, 626

Westhaven asks us to interpret its arbitration clause to extend to SolarEdge because Westhaven's purchase of the Solar Inverter arises from the same project which is the subject of the contract containing the binding arbitration clause.

In reading the Westhaven binding arbitration clause, nowhere does it restrict its application to the contracting parties. To the contrary, it contains very inclusive language "any claim of whatever nature … arising out of or connected with the project, shall be settled by binding arbitration …" Thus, interpreting the Westhaven arbitration clause under the foregoing principles, the Court finds Westhaven's purchase of the Solar Inverter arises from the same project. Consequently, Solaredge is also compelled to arbitration.

Plaintiff's Opposition

The party challenging the validity of a contract or a contractual provision bears the burden of proving unconscionability. (*Grand Prospect Partners, L.P. v. Ross Dress for Less, Inc*., (2015) 232 Cal. App. 4th 1332 The Court finds the Westhaven arbitration clause to be neither procedurally nor substantively unconscionable. Plaintiffs have failed to meet their burden in either respect. Regarding the matter of procedural unconscionability, Plaintiff's contention that the docusign form is essentially an adhesion contract is unpersuasive. Adjacent to the clause are spaces for Plaintiffs to initial and the clause is presented in a conspicuous fashion. The Court finds Plaintiffs had the opportunity and ability to consider the clause and its implications before signing it. It is well settled that whether a term is hidden or conspicuous is a factor in determining whether a term is adhesive, see *Szetela v. Discover Bank*, (2004) 97 Cal. App. 4th 1094, 1099.

On the matter of substantive unconscionability, contrary to Plaintiffs' contentions, the Court sees no evidence in the provisions that "excessively limit discovery." To the contrary the provision states that American Arbitration Rules apply. Further, the Court finds the facts of *Cabatit v. Sunnova Energy Corp*. (2020) 60 Cal.App.5th 317 distinguishable. For example, there is no evidence that Westhaven told Plaintiffs they didn't need to read the contract. Also, there is no evidence that the subject arbitration clause is one sided. Notably, *Cabatit* did not address the excessive limitations on discovery and appealability arguments. The Court has not been presented authority indicating that binding arbitration is substantively unconscionable.

Westhaven shall prepare and submit a form of order consistent with this ruling within 10 days.

4. 21CV00337 Hunt, Kirsten v. Heaven Chaun, Christina, et al.

EVENT: Defendants' Motion for Terminating, Evidentiary, Issue Preclusion, and/or Monetary Sanctions as Against Plaintiff

Pursuant to CCP §§ 2023.030(d), 2030.300(e), and 2031.310(i) Defendants' motion for terminating sanctions is GRANTED. The Court notes in addition to failing to comply with the Court's discovery order, it appears Plaintiff has abandoned the case as she has failed to appear at any of the case management conferences.

The case is hereby dismissed. The case management conference scheduled for January 25, 2023 is hereby vacated.

Defendants shall prepare and submit a form of order consistent with this ruling.

5-6. 22CV00916 Khan, Rukhsana v. Porcayo, Joshua et al.

EVENT: : (1) Joshua Porcayo's Demurrer to First Amended Complaint

(2) Joshua Porcayo's Motion to Strike Portions of Plaintiff's First Amended Complaint

The Court is in receipt of the stipulation to continue the matter to February 8, 2023 at 9:00am. The motion is hereby continued to the aforementioned date and time.

7. 22CV02657 In re: Cazares, Larry Hernandez

EVENT: Change of name (adult) (continued from 1/4/23)

There is no proof of publication on file. Upon the filing of the proof of publication, the Court will sign the decree provided.

8. 22CV02715 In re: Stewart, Michelle DeHaven

EVENT: Change of name (minor)

There is no proof of publication on file. Upon the filing of the proof of publication, the Court will sign the decree provided.