

THE HIGH COURT

2017 No. 79 CA

BETWEEN:

CYRIL MAGUIRE AND THERESA MAGUIRE

PLAINTIFFS

– AND –

MOTOR SERVICES LIMITED

TRADING UNDER THE TITLE AND STYLE OF MSL PARK MOTORS

– AND –

MAZDA MOTOR LOGISTICS EUROPE NV-LIMITED

TRADING UNDER THE TITLE AND STYLE OF MAZDA MOTOR IRELAND

DEFENDANTS

JUDGMENT of Mr Justice Max Barrett delivered on 7th September, 2017.

1. Mr Maguire is a retired builder. Ms Maguire is a retired nurse. MSL Park Motors is a dealer in motor vehicles on the Navan Road, Dublin 7. Mazda Motor Ireland is the producer and/or manufacturer of the motor-car that is at the centre of the within proceedings.

2. It is claimed by the plaintiffs that: (i) in August, 2013, Mr and Ms Maguire entered into a contract with MSL Park Motors to buy a new Mazda 6 motor-car with a '13 2' registration; (ii) as part of the sale-and-purchase arrangement between the parties, MSL took ownership of a Volvo S40 belonging to the Maguires for a 'trade-in' price of €12k which was set against the close-on €30k cost of the new Mazda, (iii) the new car presented with certain difficulties. As a result of those difficulties, Mr and Ms Maguire commenced the within proceedings claiming relief, *inter alia*, for breach of contract, misrepresentation and negligence. By way of relief, they seek, *inter alia*, rescission of the contract aforesaid and damages. Mazda Motor Ireland is being sued as producer of the Mazda 6.

3. A set of standard terms and conditions have been signed by Ms Maguire (who is the declared owner of the new car). Those standard terms and conditions contain an arbitration agreement that is binding between Ms Maguire and MSL Park Motors only. (It states itself to apply to "*Disputes as between the parties to this agreement*"). There is no arbitration agreement between Ms Maguire and Mazda Motor Ireland. Mr Maguire is not a party to the standard terms and conditions, so whatever contract he is suing on is not a contract that contains an arbitration agreement. Briefly put, the following situation presents:

Person Party to Standard Terms and Conditions?

Party to Law-Suit? Subject of Arbitration Clause?

Mr Maguire NO YES NO

Ms Maguire YES YES YES

MSL Park Motors YES YES YES

Mazda Motor Ireland NO YES NO

4. In the Circuit Court, an order was granted: (i) pursuant to Art. 8 of the Model Law staying the proceedings against MSL Park Motors pending arbitration; and (ii) staying the claim between both of the plaintiffs and Mazda Motor Ireland pending the outcome of the arbitration aforesaid.

5. Under s.11 of the Arbitration Act 2010, there is no appeal from a court determination of a stay application pursuant to Art.8(1) of the Model Law. So order (i) referred to above cannot be appealed. However, Art. 8(1) only operates where "*an action is brought in a matter which is the subject of an arbitration agreement*". Though it is possible for an arbitration agreement to apply to a non-party where sufficient connection presents, and though the court understands Mazda Motor Ireland to have charge of the within proceedings on the defendants' side, there is not between MSL Park Motors and Mazda Motor Ireland that "*more than...bare commercial or legal connection between two entities*" which MacEochaidh J. considered should present before an arbitration agreement would be so applied. (*P. Elliot & Co. Ltd v. FCC Elliot Construction Limited* [2012] IEHC 361, para. 46. So there is only an arbitration agreement between Ms Maguire and MSL Park Motors; and hence it is only to that dimension of the within proceedings that the stay granted by the court below could have been granted "*pursuant to Article 8(1) of the Model Law*". Thus it is only that aspect of the stay that cannot, by virtue of s.11 of the Act of 2010, be appealed. The stay of Mr Maguire's claim against both defendants and the stay of Ms Maguire's claim against Mazda Motor Ireland Limited is appealable.

6. Two questions then arise:

(1) should (a) Mr Maguire's claims against MSL Park Motors and Mazda Motor Ireland Limited, which claims are not based on the standard terms and conditions (to which he is not party) be stayed because (b) his wife's claim against MSL Park Motors has been stayed pending the outcome of contractually-mandated arbitration pursuant to the standard terms and conditions (to which she is party)?

(2) should (a) Ms Maguire's claim against Mazda Motor Ireland, as producer of the Mazda M6 motor-car, be stayed because (b) her claim against the vendor of that motor-car has been the subject of an unappealable stay pending the outcome of contractually-mandated arbitration?

7. The court's answer to each of the questions just posed is 'no'. If parties have validly agreed that a legal dispute should go to arbitration, then to arbitration that dispute must go. But if parties have not agreed that a legal dispute should go to arbitration, then

to the courts that dispute should go. And despite the factually related nature of the disputes that will fall to the arbitrator/court respectively to arbitrate/adjudicate upon in the context of the above-described claims, there does not seem to this Court to be any reason why those factually related but substantively different claims cannot separately be arbitrated/adjudicated upon, either simultaneously or at whatever pace they may respectively proceed without the need for further management by the court.

8. The order of the Circuit Court, pursuant to Art. 8 of the Model Law, staying Ms Maguire's proceedings against MSL Park Motors pending arbitration cannot be appealed to this Court (and, it follows, cannot be varied by this Court). In every other respect, the order of the Circuit Court is appealable, and, for the reasons aforesaid, is respectfully quashed. This has the consequence that (i) Ms Maguire's claim against Mazda Motor Ireland, and (ii) Mr Maguire's claims against MSL Park Motors and Mazda Motor Ireland Limited, may now proceed.