UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

CHRISTOPHER BALL,
Plaintiff,

v. **Case No. 22-C-0005**

TESLA MOTORS, INC.,
Defendant.

DECISION AND ORDER

Plaintiff Christopher Ball, proceeding pro se, filed this lawsuit against Tesla Motors, Inc. Before me now is Tesla's motion to compel arbitration and dismiss the case.

I. BACKGROUND

According to the allegations of Ball's complaint, in December 2021, Ball attempted to purchase a Tesla Model Y and sought financing for the purchase price from Tesla. The complaint alleges that Tesla processed Ball's credit application by sharing it with several financial institutions, including U.S. Bank, TD Auto Finance, JPMorgan Chase, Wells Fargo, BMO Harris Bank, Alliant Credit Union, and Technology Credit Union. The complaint further alleges that all potential lenders declined to provide financing to Ball due to his low FICO score and delinquencies noted in his credit report.

Ball contends that Tesla's processing of his credit application violated a number of federal statutes, including those regulating consumer credit transactions and credit reporting. Ball's apparent theory is that, because the banks to which Tesla submitted his application lacked the legal authority to make loans, Tesla committed fraud by representing that he could obtain financing through its application process. To support the remarkable proposition that the banks lacked legal authority to make loans, Ball cites

12 U.S.C. § 1431. That is a provision of the Federal Home Loan Bank Act, and it contains no provision that forbids any bank from making a loan. Thus, Ball's suit is frivolous and subject to dismissal on that ground and on the ground that the complaint fails to state a claim upon which relief can be granted. *See* Fed. R. Civ. P. 12(b)(6).

Tesla, however, has not moved to dismiss this case as frivolous or under Rule 12(b)(6). Instead, it has filed a motion to compel arbitration along with a request to dismiss the suit. Attached to Tesla's motion is a declaration of a witness familiar with Tesla's corporate records who explains that Ball placed an order for a Tesla Model Y on its website on December 3, 2021. (Decl. of Raymond Kim ¶¶ 1–3.[1]) When Ball placed the order, he electronically accepted the terms and conditions of Tesla's Motor Vehicle Order Agreement ("MVOA"). (*Id.* ¶¶ 3–4.) The MVOA contains an arbitration provision providing that "any dispute arising out of or relating to any aspect of the relationship between [Ball] and Tesla" will be decided by an arbitrator. (*Id.* ¶ 6.) The arbitration provision states that Tesla will pay all fees associated with the arbitration, and that the arbitration will be held in "the city or county of your [*i.e.,* Ball's] residence." (*Id.*) Although the MVOA allows a customer to opt out of the arbitration provision by sending a letter to Tesla stating an intention to opt out within 30 days of signing the MVOA, Ball did not opt out. (*Id.* ¶¶ 6–7.)

In his response to the motion to arbitrate, the plaintiff does not dispute that he electronically accepted the terms of the MVOA or that the MVOA contains a provision requiring that this matter be arbitrated. Instead, he contends that the MVOA is "voidable"

[1] Ball contends that the Kim Declaration is inadmissible as hearsay. However, the declaration states that it is based on personal knowledge and a review of Tesla's business records (Kim Decl. ¶¶ 1–2, 5), which are exempt from the rule against the admissibility of hearsay. *See* Fed. R. Evid. 803(6).

because Tesla fraudulently induced him to enter into it. (ECF No. 10 at 2.) Although Ball does not precisely identify what the alleged fraud in the inducement consists of, it appears that he is referring to his belief that Tesla's invitation to apply for credit was fraudulent because no bank had the legal authority to extend credit to anyone.

Ball also states in his brief that he intends to amend his complaint to assert claims against the banks who refused to extend him credit. And in fact, he has submitted a proposed amended complaint that purports to assert claims against these banks based on their alleged inability to make loans to any person or entity. I will construe this proposed amended complaint as a motion for leave to amend under Federal Rule of Civil Procedure 15 and address it in this order.

II. DISCUSSION

The Federal Arbitration Act provides that a written agreement to arbitrate is valid and enforceable, 9 U.S.C. § 2, provides that a federal court must stay an action that falls within the scope of an arbitration agreement, *id.* § 3, and directs a federal court to order arbitration once it is satisfied that an agreement for arbitration has been made but has not been honored, *id.* § 4. *See Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 400 (1967).

In the present case, Tesla has shown through undisputed evidence that Ball electronically accepted the terms of Tesla's MVOA by placing an order for a Tesla automobile on Tesla's website. Tesla has also shown that the MVOA contains a provision requiring arbitration of the present dispute. Ball's only response to the motion to compel arbitration is to claim that Tesla fraudulently induced him to enter into the MVOA itself. However, the Supreme Court has held that, when a claim of fraud in the inducement is

directed to the contract in which the arbitration provision appears, rather than to the arbitration provision specifically, the claim must be submitted to the arbitrator for resolution. *Prima Paint*, 388 U.S. at 403–04. Here, Ball contends that Tesla fraudulently induced him to enter into the MVOA by falsely representing to him that his application for credit would be submitted to banks that had the power to extend credit to consumers. As this is a claim of "fraud in the inducement of the contract generally," it must be submitted to the arbitrator. *Id.* at 404. Therefore, I will grant Tesla's motion to compel arbitration.

Tesla also seeks dismissal of this suit based on the arbitration provision. However, when the arbitration must occur within the federal district in which the suit was brought, the proper course is to stay the suit rather than dismiss it outright. *Halim v. Great Gatsby's Auction Gallery, Inc.*, 516 F.3d 557, 561 (7th Cir. 2008); *Tice v. American Airlines, Inc.*, 288 F.3d 313, 318 (7th Cir. 2002); *see also Faulkenberg v. CB Tax Franchise Sys., LP*, 637 F.3d 801, 808 (7th Cir. 2011) ("a Rule 12(b)(3) motion to dismiss for improper venue, rather than a motion to stay or to compel arbitration, is the proper procedure to use when the arbitration clause requires arbitration outside the confines of the district court's district"). Here, the arbitration agreement requires arbitration in "the city or county of [the consumer's] residence." (Kim Decl. ¶ 6.) Because Ball resides in the City of Milwaukee, which is within the Eastern District of Wisconsin, I will stay this suit rather than dismiss it.

Finally, I will construe Ball's proposed amended complaint as a motion for leave to file an amended complaint and deny it on the ground that the amendment would be futile. *See Foman v. Davis*, 371 U.S. 178, 182 (1962). The amendment would be futile because the claims against the banks are based on the plaintiff's baseless assertion that banks lack the legal authority to extend credit to anyone.

III. CONCLUSION

Accordingly, **IT IS ORDERED** that Tesla's motion to compel binding arbitration and dismiss the action is **GRANTED IN PART**. The motion is granted to the extent that the parties are ordered to submit their dispute to arbitration in accordance with the terms of the MVOA. The motion is denied to the extent that it requests that this action be dismissed rather than stayed.

IT IS FURTHER ORDERED that this action is **STAYED** pending the resolution of the arbitration.

IT IS FURTHER ORDERED that the plaintiff's motion for leave to amend his complaint (ECF No. 11) is **DENIED**.

FINALLY, IT IS ORDERED that the Clerk of Court shall close this matter for administrative purposes only.

Dated at Milwaukee, Wisconsin this 31st day of March, 2022.

s/Lynn Adelman
LYNN ADELMAN
District Judge