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December 15, 2025
Christopher M. Troxell, J.S.C.
Chambers

JOHNSON GMC CADILLAC, INC.; CHRISTOPHER MCDONALD; ANNE ESKOW; and JASON PALECCO, Plaintiffs, v. EDWIN B. MINCHIN, III; ABC CORPORATIONS 1-10 (n/b/f); and JOHN DOES 1-10 (n/b/f), Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION WARREN COUNTY DOCKET NO. WRN-L-324-25 Civil Action **ORDER**

THIS MATTER having been opened to the court by Lavery, Selvaggi & Cohen, P.C., William H. Pandos, Esq., appearing, counsel for plaintiffs, Johnson GMC Cadillac, Inc.; Christopher McDonald; Anne Eskow; and Jason Palecco (collectively, "plaintiffs"), on their Motion to Dismiss defendant's Counterclaim and to Compel Arbitration; and upon notice to defendant, Edwin B. Minchin, III ("defendant"), appearing, pro se, and the court having considered the moving papers and any papers filed in opposition to the within Motion, if any; as well as arguments of counsel; and for good and sufficient cause shown;

IT IS on this 15th day of December, 2025;

~~**ORDERED** that the following counts set forth in the Defendant's Counterclaim are hereby dismissed with prejudice:~~

~~**a.** Count 1 (New Jersey Consumer Fraud Act);~~

~~**b.** Count 4 (Common Law Fraud);~~
~~**c.** Count 7 (Civil RICO);~~
~~**d.** Count 9 (Defamation);~~
~~**e.** Count 12 (Abuse of Process / SLAPP);~~
~~**f.** Count 14 (Class Allegations); and it is further,~~

~~**ORDERED** that the remaining counts set forth in the Defendant's Counterclaim are hereby dismissed without prejudice, and Defendant is compelled to submit said claims to the American Arbitration Association for resolution in a binding arbitration proceeding; and it is further~~

ORDERED that plaintiff's application is DENIED; and it is

~~**ORDERED** that a fully conformed copy of the within Order shall be served upon counsel of record, via electronic filing through eCourts.~~

FURTHER ORDERED that service of this Order shall be deemed effectuated upon all parties upon the upload to eCourts. Pursuant to <u>Rule</u> 1:5-1(a), a movant shall serve a copy of this Order on all parties not served electronically within seven days of the date of this Order.

Hon. Christopher M. Troxell, J.S.C.

[X] Opposed

See attached statement of reasons.

Statement of Reasons Under R. 1:6-2(f)

Re: Johnson GMC Cadillac, Inc., et al. v. Edwin B. Minchin III

Docket No. WRN-L-324-25

Motion Type: Motion to Dismiss Counterclaims and to Compel Arbitration

Date: December 15, 2025

I. PARTIES AND RELIEF SOUGHT

This matter comes before the court on plaintiffs' motion to dismiss several counts of defendant's counterclaim pursuant to Rule 4:6-2(e) for failure to state a claim upon which relief can be granted, and to compel arbitration. Plaintiffs, Johnson GMC Cadillac, Inc., Christopher McDonald, Anne Eskow, and Jason Palecco, are represented by counsel. Defendant, Edwin B. Minchin III, proceeds as a self-represented litigant. Plaintiffs seek dismissal of defendant's counterclaims with prejudice as to certain causes of action and further seek to compel defendant to arbitrate the remaining claims before the American Arbitration Association. Defendant opposes both dismissal and arbitration, seeking full adjudication in the Superior Court, preservation of his jury trial rights, and opportunities for discovery.

II. BACKGROUND

Plaintiffs initiated this action in the Superior Court of New Jersey, Law Division, Warren County, by filing a verified complaint on August 22, 2025. Their complaint sought injunctive and compensatory relief against defendant for tortious interference and defamation arising from his consumer website and related speech. Defendant answered the complaint and filed a 19-count counterclaim alleging consumer fraud, breach of contract, statutory claims, RICO violations, class allegations, among other things, and demanded a jury trial as to all issues.

Defendant's counterclaims stem from the sale and attempted purchase of an allegedly Certified Used Cadillac, which allegedly had undisclosed defects. Defendant claims he endured significant stress and time loss, ultimately receiving a $10,000 refund but then facing aggressive litigation. Defendant alleges plaintiffs engaged in systemic consumer deception, initiated legal threats and cease and desist letters to silence him, and now improperly pursue dismissal and arbitration to conceal misconduct. Plaintiffs maintain that defendant knowingly signed two valid arbitration agreements as part of industry-standard sales documents and assert that his claims are legally insufficient under heightened pleading standards. They further contend that the counterclaims are all within the scope of the arbitration agreements and must be submitted to binding arbitration.

III. SUMMARY OF PLAINTIFFS' POSITION

Plaintiffs argue that defendant's counterclaims fail on substantive grounds, particularly those sounding in fraud, defamation, civil RICO, abuse of process/SLAPP, and class allegations. They assert that defendant's pleadings are conclusory, lack particularized facts required under New Jersey law and applicable rules, and do not place plaintiffs on notice of the claims against them. Plaintiffs highlight that Rule 4:5-8 requires fraud-based claims to specify the particulars of the alleged wrongdoing, often including dates and specific acts, which they allege defendant omits. For RICO, plaintiffs argue defendant does not plead a pattern of racketeering activity or proximate harm, rendering the claims unviable. On defamation and SLAPP allegations, plaintiffs stress there is no publication to third parties and that judicial privilege attaches to litigation statements.

Beyond pleading deficiencies, plaintiffs rely on the existence of alleged enforceable arbitration agreements in the Order Contract and the Retail Installment Sale Contract executed by defendant on April 2, 2024. These agreements are presented by plaintiffs as clear, industry-standard provisions that explicitly waive litigation and class action rights and require submission to arbitration. Plaintiffs further assert that, under the Federal Arbitration Act, public policy strongly favors enforcement of arbitration agreements.

Plaintiffs reject defendant's position that they waived rights to arbitration by initiating court action, arguing that their verified complaint contemplated no arbitration and that their request for arbitration relates solely to defendant's counterclaims.

IV. SUMMARY OF DEFENDANT'S POSITION

Defendant's opposition contests both the sufficiency of plaintiffs' pleadings and the enforceability of the arbitration provisions. Defendant denies that he knowingly agreed to arbitrate, asserting that no dealership staff explained waiver of judicial rights, that arbitration language was buried in fine print, and that he was not made to separately acknowledge such waivers.

Defendant further argues that the existence of multiple contract documents with conflicting or overlapping arbitration language renders any agreement ambiguous and unenforceable under New Jersey law. He notes that one contract's arbitration clause cedes control to the other in the event of conflict, creating internal contradiction and defeating the clarity needed for a valid waiver of constitutional rights.

Defendant raises substantial public-interest arguments, asserting that his counterclaims under the Consumer Fraud Act, RICO, Lemon Law, TCCWNA, and related statutes concern conduct affecting the public—and that such claims must receive judicial review and oversight. He points to case law such as Delta Funding Corp. v. Harris, 189 N.J. 28 (2006), emphasizing that arbitration should not deprive consumers of statutory protections or block transparency and discovery. Defendant further notes that plaintiffs voluntarily initiated the court action, demanded a jury trial, and certified that no arbitration was contemplated—thereby waiving any right to force arbitration after forum selection, under Cole v. Jersey City Med. Ctr., 215 N.J. 265 (2013), which holds that parties may waive arbitration by actively participating in litigation. Defendant also highlights the appearance of retaliatory litigation and intimidation tactics as further reason to maintain judicial oversight. He requests full discovery, evidence preservation, and that the court consider the public policy implications should these issues be hidden in a private forum.

V. APPLICABLE LAW

On a motion to dismiss made pursuant to Rule 4:6-2(e) for failure to state a claim upon which relief can be granted, "the inquiry is confined to a consideration of the legal sufficiency of the alleged facts apparent on the face of the challenged claim." Rieder v. State, 221 N.J. Super. 547, 552 (App. Div. 1987) (quoting P. & J. Auto Body v. Miller, 72 N.J. Super. 207, 211 (App. Div. 1962)). "At this preliminary stage of the litigation the Court is not concerned with the ability of plaintiffs to prove the allegation[s] contained in the complaint." Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989) (citing Somers Constr. Co. v. Board of Ed., 198 F. Supp. 732, 734 (D.N.J. 1961)). Rather, all well pleaded allegations contained in the complaint are accepted as true. Holmin v. TRW, Inc., 330 N.J. Super. 30 (App. Div. 2000), aff'd, 167 N.J. 205 (2001). "The test for determining the adequacy of a pleading is whether a cause of action is suggested by the facts." Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988); Nostrame v. Santiago, 213 N.J. 109, 126–27 (2013).

The New Jersey Supreme Court has cautioned that such motions "should be granted in only the rarest of instances." Printing Mart-Morristown, 116 N.J. at 772. When deciding a Rule 4:6-2(e) motion, the reviewing court must "'search[] the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary.'" Id. at 746 (quoting Di Cristofaro v. Laurel Grove Memorial Park, 43 N.J. Super. 244, 252 (App. Div. 1957)). Nonetheless, "the essential facts supporting [the] cause of action must be presented in order for the claim to survive," and "conclusory allegations are insufficient in that regard." Scheidt v. DRS Techs., Inc., 424 N.J. Super. 188, 193 (App. Div. 2012) (citing Printing Mart-Morristown, 116 N.J. at 768). "A complaint should not be dismissed under this rule where a cause of action is suggested by the facts and a theory of actionability may be articulated by way of amendment." Rieder, 221 N.J. Super. at 552 (citing Muniz v. United Hsps. Med. Ctr. Pres. Hsp., 153 N.J. Super. 79, 82–83 (App. Div. 1977)). If a pleading must be dismissed under this rule, "the dismissal should be without prejudice" to the filing of an amended pleading. Printing Mart-Morristown, 116 N.J. at 772.

VI. COURT'S DECISION

The court finds that dismissal of defendant's counterclaims as sought by plaintiffs is not warranted at this juncture. Reviewing the pleadings and counterclaims in depth and with liberality, the court determines that defendant has suggested causes of action under consumer statutes, contract theories, common law, and constitutional grounds that, if proven, may entitle him to relief.

While plaintiffs are correct that heightened pleading standards require particularity in fraud-based claims, at this stage the court is concerned only with the legal sufficiency of alleged facts apparent on the face of the challenged counterclaim. Defendant has incorporated factual allegations regarding the vehicle purchase, alleged defects, course of dealings, refund, and subsequent adverse actions that, when viewed in the most favorable light, suggest the potential for relief under the Consumer Fraud Act, civil RICO, TCCWNA, and/or other causes of action.

Claims such as protected speech, public interest in deceptive practices, and retaliation further sufficiently plead matters of public concern for which discovery will clarify actionable status.

As to arbitration, the court finds that plaintiffs' conduct constitutes knowing and intentional waiver of their arbitration rights. The test outlined in Cole v. Jersey City Medical Center, 215 N.J. 265, 280-81 (2013) is a totality of the circumstances analysis to determine whether a party has waived its right to compel arbitration. The New Jersey Supreme Court emphasized that this analysis is fact-sensitive and focuses on the party's litigation conduct to assess whether it is consistent with the reserved right to arbitrate the dispute. The Court identified seven non-exclusive factors to guide this determination: (1) the delay in making the arbitration request; (2) the filing of any motions, particularly dispositive motions, and their outcomes, (3) whether the delay in seeking arbitration was part of the party's litigation strategy; (4) the extent of discovery conducted; (5) whether the party raised the arbitration issue in its pleadings, particularly as an affirmative defense, or provided other notification of its intent to seek arbitration; (6) the proximity of the date on which the party sought arbitration to the date of trial; and (7) the resulting prejudice suffered by the other party, if any.

Applying the Cole factors to the document record, the court finds that plaintiffs have waived their right to compel arbitration. The delay in seeking arbitration, the engagement of the judicial process, explicit certifications denying pending arbitration, and the lack of notice or reservation of arbitration rights in initial pleadings all weigh strongly in favor of waiver. Plaintiff's conduct is inconsistent with a party intending to reserve the right to arbitrate.

Furthermore, one of the arbitration provisions at issue states, in part, "EITHER YOU OR WE MAY CHOOSE TO HAVE ANY DISPUTE BETWEEN YOU AND US DECIDED BY ARBITRATION AND NOT IN COURT OR BY JURY TRIAL." Notably, the notice provided here is not limited to disputes arising specifically from the sales contract; instead, it applies broadly to any dispute between the parties. Therefore, plaintiffs cannot choose to litigate here only some of their claims—specifically, those claims that do not arise from the sales contract but stem from the defendant's allegedly defamatory conduct. Plaintiffs waived arbitration by electing to file this action and certify that there was no pending or contemplated arbitration.

Finally, defendant's counterclaims implicate significant public-interest statutes designed to protect the public and deter systemic consumer fraud and deception. These matters require judicial oversight, transparency, and discovery, and they should not be shielded from scrutiny. Allowing forum shifting at this stage would encourage gamesmanship and undermine the integrity of the judicial process. Public policy in New Jersey favors the open, transparent, and supervised adjudication of disputes raising allegations of these kinds. Enforcing the arbitration clause would frustrate these critical interests, conceal matters of substantial public importance from view, undermine statutory deterrence, and run counter to the goals of New Jersey's consumer protection laws.

VII. CONCLUSION

For the reasons above and pursuant to Rule 4:6-2(e), the court denies the motion to dismiss defendant's counterclaims and the motion to compel arbitration. The pleadings suggest causes of action and that defendant may be entitled to relief. Legal inferences drawn from the facts pleaded require that this matter proceed to discovery and public adjudication. Plaintiffs' motion to dismiss and to compel arbitration is hereby denied.

For the reasons set forth herein, the matter shall proceed with further litigation consistent with these findings.