IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

AGATHA DENNIS CANTON **Plaintiff**)))) vs)) TOYOTA MOTOR CORPORATION) TOYOTA MOTOR SALES USA, INC.) TOYOTA MOTOR ENGINEERING &) **Defendant**	CASE NO. SX-10-CV-0000227 ACTION FOR: DAMAGES - CIVIL

NOTICE OF ENTRY OF MEMORANDUM OPINION AND ORDER

TO: JAMES A. EDWARDS, ESQ.
SCOTT J. EDWARDS, ESQ.
SIMONE R.D. FRANCIS, ESQ.
LEE J. ROHN, ESQ.
CHARLES S. RUSSELL, ESQ. & U. JESSICA CHUNG
JUDGES OF THE SUPERIOR COURT
MAGISTRATES OF THE SUPERIOR COURT
ORDER BOOK, LAW CLERKS, LAW LIBRARY, IT

Please take notice that on April 26, 2011 a(n) MEMORANDUM OPINION AND ORDER dated April 20, 2011 was entered by the Clerk in the above-entitled matter.

Dated: April 26, 2011

Venetia H. Velazquez, Esq.
Clerk of the Court

IRIS D. CINTRON
COURT CLERK II

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

AGATHA CANTON AND MARIO CANTON, PLAINTIFF, V. TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES USA, INC., TOYOTA MOTOR ENGINEERING AND MANUFACTURING NORTH AMERICA, INC., TOYOTA OF ST. CROIX, AND TOYOTA DE PUERTO RICO, DEFENDANTS.	)	CIVIL NO. SX-10-CV-227 ACTION FOR DAMAGES JURY TRIAL DEMANDED

ORDER

THIS MATTER is before the Court on Defendant Toyota of St. Croix's "Motion to Compel Arbitration and Stay Litigation Pending Arbitration on Behalf of Defendant Toyota of St. Croix", and Plaintiffs' Opposition thereto. For the reasons more fully set forth in the accompanying Memorandum Opinion, it is hereby

ORDERED that Defendant's Motion is GRANTED in part and DENIED in part. It is further

ORDERED that Plaintiff Agatha Canton is compelled to arbitrate her case pursuant to the Arbitration Agreement.

ORDERED that Defendant's Motion to Stay Litigation Pending Arbitration is DENIED as to Plaintiff Mario Canton; and

ORDERED that the clause limiting punitive damages to ten thousand dollars ($10,000) is SEVERED.

Dated: April 20, 2011.

JULIO A. BRADY
JUDGE

ATTEST:
VENETIA H. VELAZQUEZ, ESQ.
Clerk of the Court

By: Court Clerk Supervisor 4/21/11

CERTIFIED TO BE A TRUE COPY
This 26th day of April 20 11
VENETIA H. VELAZQUEZ, ESQ.
CLERK OF THE COURT

By ______ Court Clerk II

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

AGATHA CANTON AND MARIO CANTON, PLAINTIFFS, V. TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES USA, INC., TOYOTA MOTOR ENGINEERING AND MANUFACTURING NORTH AMERICA, INC., TOYOTA OF ST. CROIX, AND TOYOTA DE PUERTO RICO, DEFENDANTS.	)	CIVIL NO. SX-10-CV-227 ACTION FOR DAMAGES JURY TRIAL DEMANDED

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendant Toyota of St. Croix's "Motion to Compel Arbitration and Stay Litigation Pending Arbitration on Behalf of Defendant Toyota of St. Croix", and Plaintiffs' Opposition thereto. For the following reasons, Defendant's Motion to Compel Arbitration will be granted in part and denied in part.

I. Case History

Plaintiff Agatha Canton purchased a 2009 Toyota Rav-4 from Toyota of St. Croix (hereinafter TOSC) on October 28, 2009. On January 26, 2010, when exiting a parking space, both Plaintiffs were in the car when an alleged defective condition caused the car to accelerate uncontrollably. Applying the breaks did not stop the car, and subsequently, Plaintiffs were involved in an accident and suffered injuries.

When Plaintiff Agatha Canton purchased the vehicle, as part of the paperwork, she signed an agreement to resolve any and all claims via binding arbitration. The document clearly

stated that it was an agreement that affected the legal rights of the individual signing. In its Motion, Defendant seeks to enforce that clause.

However, Plaintiffs argue that the agreement should not be enforced for several reasons. First, they state that the agreement is unenforceable against Plaintiff Mario Canton because he did not sign it. Plaintiffs also claim that it is unenforceable against Plaintiff Agatha Canton because it is substantively and procedurally unconscionable.

II. Analysis

Plaintiffs properly note that Mario Canton cannot be compelled to arbitrate his claim as he is not a party to the Arbitration Agreement. Furthermore, Defendants have not argued that he is subject to the Arbitration Agreement and have not attempted to arbitrate the claim with him. Thus, this Court does not see the need to further analyze this issue as to Plaintiff Mario Canton; his claim will be settled under the purview of this Court, not in arbitration.

a. TOSC's Arbitration Agreement Is Not Both Procedurally And Substantively Unconscionable

It is well established that for an Arbitration Agreement to be unenforceable on grounds of unconscionability, it must be both procedurally and substantively unconscionable. *Alexander v. Anthony Int'l, L.P.*, 341 F.3d 256, 265 (3d Cir. 2003). Procedural unconscionability is concerned with the process by which the agreement is reached and the form of the agreement. *Id.* Substantive unconscionability "refers to terms that unreasonably favor one party to which the disfavored party does not truly assent." *Id.* (emphasis added) (citing *Harris v. Green Tree Fin. Corp.*, 183 F.3d 173, 178 (3d Cir. 1999)).

Procedural unconsionability is "generally satisfied if the agreement constitutes a contract of adhesion." *Id.* at 255. A contract of adhesion "is one which is prepared by the party with

excessive bargaining power who presents it to the other party for signature on a take-it-or-leave-it basis." *Trailer Marine Transp. Corp. v. Charley's Trucking, Inc.*, 20 V.I. 282, 284 (Terr. Ct. 1984). In the instant case, it appears that the contract presented was a standard form contract, and that Plaintiff Agatha Canton, like the Court found in *Alexander*, "may have [had] no realistic ability to modify its terms." *Alexander*, 341 F.3d at 266.

However, a contract is "not unconscionable merely because the parties to it are unequal in bargaining position." Restatement (Second) of Contracts § 208 (1981) cmt. d. Thus, Plaintiff must show that "the provisions of the contract are unreasonably favorable to the drafter and that there is no meaningful choice on the part of the other party regarding acceptance of the provisions." *Harris*, 183 F.3d at 181 (internal citations omitted). Plaintiffs identify four (4) separate issues that they claim renders the agreement substantively unconscionable. They are: (1) that the agreement contains a purportedly unconscionable delegation clause, (2) a purportedly unconscionable limit on punitive damages, (3) a purportedly unconscionable waiver of legitimate consumer claims, and (4) a purportedly unconscionable ban on class action claims. This Court will address each of these issues in turn.

(i) The Delegation Clause Is Not Unconscionable

Plaintiffs' opposition begins by claiming that the delegation clause contained in the Arbitration Agreement is unconscionable, arguing that there is no clear and unmistakable evidence that Plaintiffs agreed to send the question of arbitrability to an arbitrator. However, a quick review of the document reveals language stating exactly that. That Defendant TOSC chose to use seventy-two words as opposed to thirty is inconsequential. Plaintiff cannot possibly be asking this Court to impose a bright-line rule on word count for Arbitration Agreements.

Furthermore, a review of the document in question shows that Plaintiff Agatha Canton chose to sign the document. Thus, in the absence of fraud, even if Plaintiff was ignorant of the language of the agreement, she will still be bound by her signature. *Morales v. Sun Constructors, Inc.*, 541 F.3d 218, 222 (3d Cir. 2008).

Thus, to prove unconscionability, Plaintiff must prove the following elements: "(1) a misrepresentation of fact, opinion, intention or law; (2) knowledge by the maker of the representation that it was false; (3) ignorance of the falsity by the person to whom it was made; (4) an intention that the representations should be acted upon; and (5) detrimental and justifiable reliance." *Fitz v. Island Mechanical Contractor, Inc.*, 2010 WL 2384585, at *9 (D. V.I. 2009). All elements must be met for Plaintiff to prevail. However, as is evident from the record, Plaintiffs have failed to establish element number 1, in that Plaintiffs have not produced any evidence that there was any misrepresentation on the part of Defendant TOSC. Plaintiff Agatha Canton merely states that "she was given a very general, one-sentence or so description of each document[,]" and asserts that she was told that the documents were routine in these types of purchase. However, as Defendant rightly points out, Plaintiffs do not demonstrate that these statements are in any way false or misleading. Thus, Plaintiffs have failed to meet their burden on this issue.

(ii) TOSC's Arbitration Agreement Contains A Substantively Unconscionable Limit On Punitive Damages And Therefore Will Be Stricken

It is undisputed that the Arbitration Agreement limits punitive damages to a maximum of ten thousand dollars ($10,000). Defendant claims that this limit is reasonable, and should not render the agreement unconscionable. While the Court agrees that the entire agreement should

not be rendered unconscionable, this particular provision certainly is. As the *Alexander* court properly noted in the context of an employment contract:

> [Provisions limiting damages] prevent an employee from recovering not only his or her attorney's fees but also such potentially significant relief as punitive damages. An employee therefore is not entitled to complete compensation for any harm done and the company is able to evade full responsibility for its actions. *Alexander v. Anthony Int'l, L.P.*, 341 F.3d 256, 267 (3d Cir. 2003)(emphasis added).

This Court finds that the limit in TOSC's agreement is similarly unconscionable, and therefore will be severed.

(iii) TOSC's Limit on Conversion Is Not Unconscionable

Plaintiffs argue that the language in the Agreement that excuses TOSC from arbitrating a collection claim, but still requires the buyer to waive a counterclaim for wrongful conversion, is unconscionable. To support this claim, Plaintiffs cite this language from the Third Circuit:

> Where, as here, an arbitration provision requires only one side to submit its claims (personal injury or otherwise) to arbitration, but does not alter or limit the rights and remedies available to that party in the arbitral forum, it cannot be said that the parties' agreement is substantively unconscionable. *Edwards v. HOVENSA* 497 F.3d 355, 364 (3d Cir. 2007).

However, this language clearly cuts against Plaintiffs' position. Language like the type in TOSC's Arbitration Agreement on this issue is not unconscionable according to prior case law.

(iv) TOSC's Ban On Class Actions Is Irrelevant To This Case

Because this case is not proceeding as a class action, this Court finds Plaintiffs' argument on class actions to be irrelevant to the case, and therefore will not address it.

III. Conclusion

Upon review of the record, it is clear to this Court that Plaintiff Agatha Canton entered into a valid agreement to arbitrate, as evidenced by her signature. The Arbitration Agreement is not unconscionable, except in regards to the clause limiting recovery of punitive damages to ten thousand dollars ($10,000). Thus, the Court will sever this provision, and order this case to be sent to arbitration as mandated by the Arbitration Agreement. Furthermore, as stated above, as Plaintiff Mario Canton is not subject to the Arbitration Agreement, his case will be allowed to continue in this Court. An appropriate Order and Judgment will accompany this Memorandum Opinion.

Dated: April 20, 2011.

JULIO A. BRADY
JUDGE

ATTEST:
VENETIA H. VELAZQUEZ, ESQ.
Clerk of the Court

By: Court Clerk Supervisor 4/21/11

CERTIFIED TO BE A TRUE COPY
This 26th day of April 2011
VENETIA H. VELAZQUEZ, ESQ.
CLERK OF THE COURT

By ________ Court Clerk II