No. 22-2948

United States Court of Appeals for the Third Circuit

DANA JENNINGS, on his own behalf and on behalf of other similarly situated persons; JOSEPH A. FURLONG, on his own behalf and on behalf of other similarly situated persons,

Appellees,

v.

CARVANA, LLC,

Appellant.

On Appeal from the United States District Court
for the Eastern District of Pennsylvania, No. 5:21-cv-05400,
Hon. Edward G. Smith, District Judge

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

INTRODUCTION 1

ARGUMENT 4

I. THE ARBITRATION AGREEMENT IS ENFORCEABLE 4

A. The RPA, RISC, and Arbitration Agreement Form A Single Integrated Contract That Satisfies The MVSFA 4

B. Any One-Document Requirement in the MVSFA Applies Only To Financing Terms 10

C. Plaintiffs' Additional Arguments Fail..13

1. The RISC's Integration Clause Does Not Bar Enforcement of the Arbitration Agreement 13

2. The Pennsylvania Supreme Court Would Not Follow *Knight*...19

3. Plaintiffs' Reading Of The MVSFA Is Preempted By The FAA..23

II. THIS COURT HAS JURISDICTION TO REVIEW THE ENTIRE ORDER AND SHOULD DISMISS PLAINTIFFS' CLAIMS 25

CONCLUSION..28

TABLE OF AUTHORITIES

Page(s)

CASES

Baldwin v. University of Pittsburgh Medical Center,
636 F.3d 69 (3d Cir. 2011) 19

BP P.L.C. v. Mayor & City Council of Baltimore,
141 S. Ct. 1532 (2021)....................2, 25

Breckline v. Metropolitan Life Insurance Co.,
178 A.2d 748 (1962)....................22

Carter v. SSC Odin Operating Co.,
927 N.E.2d 1207 (Ill. 2010)....................24

Clark v. Dennison,
129 A. 94 (Pa. 1925)....................5

Daniels v. Allen,
344 U.S. 443 (1953)....................22

Davis v. Glanton,
107 F.3d 1044 (3d Cir. 1997) 26

Doctor's Associates, Inc. v. Hamilton,
150 F.3d 157 (2d Cir. 1998) 24

Domino's Pizza LLC v. Deak,
383 F. App'x 155 (3d Cir. 2010) 18

Donelson v. Ameriprise Financial Services, Inc.,
999 F.3d 1080 (8th Cir. 2021) 26

Estate of Hall,
535 A.2d 47 (Pa. 1987)....................18

Farrell v. Road Ready Used Cars, Inc.,
No. 3:17-CV-2030, 2018 WL 1936143 (D. Conn. Apr. 24, 2018) 17, 19, 22

Ford v. Antwerpen Motorcars Ltd.,
117 A.3d 21 (Md. 2015) 22

Page(s)

Gibbs v. Titelman,
502 F.2d 1107 (3d Cir. 1974) 13

Gregory v. Metro Auto Sales, Inc.,
158 F. Supp. 3d 302 (E.D. Pa. 2016)....................20

International Energy Ventures Management, L.L.C. v. United Energy Group, Ltd.,
999 F.3d 257 (5th Cir. 2021), *cert. denied*, 142 S. Ct. 2752 (2022) 26

International Milling Co. v. Hachmeister, Inc.,
110 A.2d 186 (Pa. 1955)....................2, 18

Johnson ex rel. Johnson v. JF Enterprises, LLC,
400 S.W.3d 763 (Mo. 2013) 17

KKW Enterprises, Inc. v. Gloria Jean's Gourmet Coffees Franchising Corp.,
184 F.3d 42 (1st Cir. 1999)....................24

Knight v. Springfield Hyundai,
81 A.3d 940 (Pa. Super. Ct. 2013)....................19, 20

Kroblin Refrigerated Xpress, Inc. v. Pitterich,
805 F.2d 96 (3d Cir. 1986) 2, 14, 15, 16

Lenzi v. Hahnemann University,
664 A.2d 1375....................14

Lozada v. Dale Baker Oldsmobile, Inc.,
197 F.R.D. 321 (W.D. Mich. 2000)....................21

In re Makowka,
754 F.3d 143 (3d Cir. 2014) 20

Mellouli v. Lynch,
575 U.S. 798 (2015)....................10

Morgan v. Sundance, Inc.,
142 S. Ct. 1708 (2022)....................9

Page(s)

Murphy v. Duquesne University of the Holy Ghost,
777 A.2d 418 (Pa. 2001)..2

Neville v. Scott,
127 A.2d 755 (Pa. Super. Ct. 1956)..2, 14, 15, 16

O'Hanlon v. Uber Technologies, Inc.,
990 F.3d 757 (3d Cir. 2021) 27

Pack v. Damon Corp.,
320 F. Supp. 2d 545 (E.D. Mich. 2004), *rev'd on other grounds*,
434 F.3d 810 (6th Cir. 2006) 21

Palcko v. Airborne Express, Inc.,
372 F.3d 588 (3d Cir. 2004) (FAA)..26

Raleigh v. Credit Management Co.,
549 A.2d 605 (Pa. Super. Ct. 1988)..13

Rota-McLarty v. Santander Consumer USA, Inc.,
700 F.3d 690 (4th Cir. 2012) 16, 17, 22

Rugumbwa v. Betten Motor Sales,
136 F. Supp. 2d 729 (W.D. Mich. 2001) 21

Scott v. Forest Lake Chrysler-Plymouth-Dodge,
611 N.W.2d 346 (Minn. 2000) 11, 18, 23

Shehadi v. Northeastern National Bank of Pennsylvania,
378 A.2d 304 (Pa. 1977)..8

Smith v. Gold,
4 Pa. D. & C.2d 745 (C.P. Phila. 1955)..7, 15

Standard Bent Glass Corp. v. Glassrobots Oy,
333 F.3d 440 (3d Cir. 2003) 4

Virgin Islands v. Martinez,
620 F.3d 321, 327 (3d Cir. 2010) 26

Whiteman v. Degnan Chevrolet Inc.,
272 A.2d 244 (Pa. Super. Ct. 1970)..13

Page(s)

Yamaha Motor Corp., U.S.A. v. Calhoun,
516 U.S. 199 (1996).....3, 25

Yocca v. Pittsburgh Steelers Sports, Inc.,
854 A.2d 425 (Pa. 2004).....18

Zentner v. Brenner Car Credit, LLC,
273 A.3d 1033, 2022 WL 368276 (Pa. Super. Ct. Feb. 8, 2022).....20

FEDERAL STATUTES

9 U.S.C. §2.....24

9 U.S.C. §16(a)(1)(B).....2, 25

STATE STATUTES

12 Pa. C.S. §6201.....10

12 Pa. C.S. §6202.....6, 7, 12

12 Pa. C.S. §6221(a)(2).....4, 10

12 Pa. C.S. §6221(e)(2)(iii)(A).....12

12 Pa. C.S. §6222.....11

12 Pa. C.S. §6242(c).....11

12 Pa. C.S. §6242(c)(1).....12

19 R.I. Gen. Laws Ann. §19-28.1-14.....24

OTHER AUTHORITIES

11 Williston on Contracts (4th ed. 2022, Westlaw).....5, 8

INTRODUCTION

Plaintiffs do not dispute that Carvana can satisfy the Motor Vehicle Sales Finance Act (MVSFA) through express incorporation by reference. *See* Plaintiffs Br. 29-30, 36-37, 41. Nor do Plaintiffs dispute that Carvana's Retail Purchase Agreement (RPA) expressly incorporates both the Retail Installment Sale Contract (RISC) and Arbitration Agreement. *See id.* at 24. Those two facts alone are sufficient to resolve this case in Carvana's favor and compel arbitration.

To reach the contrary result, this Court would have to conclude that the enforceability of the parties' Arbitration Agreement turns on the fact that Carvana labeled the sale's foundational document a "Retail Purchase Agreement," rather than a "Retail Installment Sale Contract." But nothing in the MVSFA requires such an absurdly formalistic result. Just the opposite: The MVSFA purposefully defines "installment sale contract" in sweeping terms that encompass integrated, multi-document contracts like the one at issue here.

Moreover, even setting aside the RPA's express incorporation, Carvana's Arbitration Agreement is *still* enforceable under the MVSFA under principles of implicit incorporation by reference. Pennsylvania law holds that where several contracts were signed by the same parties, at the same time, and as part of the same transaction, they must be read together as one. Plaintiffs do not meaningfully dispute this principle—or even really disagree with its application to the MVSFA.

Instead, Plaintiffs erroneously contend that the RISC's integration clause prevents the application of incorporation-by-reference principles in this case. But Pennsylvania courts have repeatedly held that an integration clause is "not controlling" where the agreement containing the clause does not "fully express the essential elements of the parties' undertaking." *Neville v. Scott*, 127 A.2d 755, 757 (Pa. Super. Ct. 1956); *Int'l Milling Co. v. Hachmeister, Inc.*, 110 A.2d 186, 191 (Pa. 1955); *Kroblin Refrigerated Xpress, Inc. v. Pitterich*, 805 F.2d 96, 108 (3d Cir. 1986). And here, the RISC does not fully express the parties' agreement, as it does not contain (for example) the RPA's right to cancel or an itemization of the fees at issue. Rather than ignore two of the three documents that compose the parties' shared understanding of the deal, this Court should "give effect to the intent of the contracting parties" and enforce the RPA and Arbitration Agreement as written. *Murphy v. Duquesne Univ. of the Holy Ghost*, 777 A.2d 418, 429 (Pa. 2001).

Finally, Plaintiffs are wrong to assert that this Court lacks jurisdiction over the portion of the district court's order denying Carvana's motion to dismiss. The Federal Arbitration Act (FAA) permits parties to immediately appeal "*an order* … denying a petition under section 4 of [the FAA] to order arbitration to proceed." 9 U.S.C. §16(a)(1)(B) (emphasis added). When a statute provides for the interlocutory appeal of "an order," that statute empowers "courts of appeals to examine *the whole* of a district court's 'order,' not just some of its parts or pieces." *BP P.L.C. v. Mayor*

& City Council of Baltimore, 141 S. Ct. 1532, 1538 (2021) (emphasis added); *see Yamaha Motor Corp., U.S.A. v. Calhoun*, 516 U.S. 199, 204-05 (1996). While this Court previously held otherwise, its decision is no longer tenable in light of the Supreme Court's subsequent decision in *BP*. This Court thus can and should address Carvana's dismissal arguments. If the Court holds that the RPA is unenforceable, then it should order dismissal of Plaintiffs' claims because they are dependent on obligations established in the RPA.

Ultimately, while Plaintiffs strive mightily to portray Carvana as seeking an arbitration-specific exception to the usual legal rules, that gets things exactly backwards. It is Plaintiffs, not Carvana, who attempt to circumvent neutral principles of Pennsylvania contract law holding parties to their written agreements. It is Plaintiffs, not Carvana, who ignore basic interpretive principles showing that the MVSFA does not invalidate the parties' agreements here. And it is Plaintiffs, not Carvana, who seek a special exemption from the jurisdictional rules that apply to interlocutory appeals of "an order." For all those reasons, this Court should reverse.

ARGUMENT

I. THE ARBITRATION AGREEMENT IS ENFORCEABLE

A. The RPA, RISC, and Arbitration Agreement Form A Single Integrated Contract That Satisfies The MVSFA

1. The most straightforward way to resolve this case is to hold that the RPA incorporates the RISC and Arbitration Agreement, and the resulting contract satisfies the MVSFA's requirement that an "installment sale contract shall … contain all the agreements between a buyer and an installment seller relating to the installment sale of the motor vehicle sold." 12 Pa. C.S. §6221(a)(2).

The district court held, and Plaintiffs agree, that this requirement can be satisfied by explicit incorporation by reference. *See* JA9 ("[A]ll agreements must be incorporated into the RISC, either in-fact or by reference …." (emphasis omitted)); Plaintiffs Br. 36-37 ("[A]greements not expressly incorporated … are not enforceable."); *see also id.* at 32-39, 41.

And here, Plaintiffs do not meaningfully dispute that Carvana's RPA expressly incorporates its RISC and Arbitration Agreement by reference—nor could they. As this Court has explained, explicit incorporation by reference is effective so long as the "underlying contract makes clear reference to a separate document, the identity of the separate document may be ascertained, and incorporation of the document will not result in surprise or hardship." *Standard Bent Glass Corp. v. Glassrobots Oy*, 333 F.3d 440, 447 (3d Cir. 2003) (summarizing Pennsylvania law).

Carvana's RPA references the RISC six separate times over the course of three pages, including directing car purchasers to "[s]ee Retail Installment Contract for more information" on their financing. JA42-43; JA46-48.[1] That is more than sufficient to incorporate the RISC, especially where both documents were signed at the same time, such that incorporation could hardly result in surprise. Likewise, the RPA's statement that the "arbitration agreement … is incorporated by reference into and is part of this Agreement" suffices to incorporate that document. JA44; JA48. If that were not clear enough, the Arbitration Agreement also expressly incorporates itself into the other two documents, proving that this "Agreement is part of, and is hereby incorporated into, the Contract," where "Contract" is defined to "mean[] the Retail Purchase Agreement … and/or related Retail Installment Contract and Security Agreement." JA64; JA70. Thus, the RPA, RISC, and Arbitration Agreement together "form a single instrument." 11 Williston on Contracts §30.25 (4th ed. 2022, Westlaw); *see also Clark v. Dennison*, 129 A. 94, 95 (Pa. 1925) (contract's "reference … to an extrinsic document or writing incorporates the latter as part of the [contract] itself").

[1] Plaintiffs disingenuously suggest that Carvana's sole argument for incorporation is that the RPA repeats the Finance Charge, *see* Plaintiffs Br. 24, but that is only one of the RPA's many references to the RISC.

Rather than dispute the indisputable, Plaintiffs resist the notion that Carvana's RPA can serve as the "foundational document" that satisfies the MVSFA. *See* Plaintiffs Br. 24. But the basis for Plaintiffs' objection is somewhat obscure. Plaintiffs appear to argue that the RPA cannot satisfy the MVSFA because its four corners "contain[] only some of the installment related information required by the MVSFA," while the RISC "contains all that the statute requires." *Id.* (emphasis omitted).[2] But because the RPA incorporates the RISC—which, again, Plaintiffs do not seriously dispute—it contains everything the RISC does and more.

The true source of Plaintiffs' disagreement would thus seem to be the document's title: "Retail Purchase Agreement," not "Retail Installment Sale Contract." But Plaintiffs provide no justification for this form-over-function rule, and it is fundamentally inconsistent with the MVSFA's text, precedent, and purpose.

The MVSFA defines an "installment sale contract" in extraordinarily broad terms. For sales, the statute defines an "[i]nstallment sale contract" as a "contract for the retail sale of a motor vehicle, *or a contract that has a similar purpose or effect*," where "the purchase price is payable in two or more scheduled payments." 12 Pa. C.S. §6202 (emphasis added). For leases, the statute defines the term as "*any*

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[2] It also unclear what Plaintiffs' position is on whether the RISC, in fact, "contains all that the statute requires." Plaintiffs Br. 24; *compare id.* (stating that it does), *with id.* at 26, 49 (arguing it fails to include itemized terms required by the statute).

form of contract, however nominated, for the bailment or leasing of a motor vehicle," under which the buyer agrees to pay "a sum substantially equivalent to or in excess of the value of the motor vehicle" and "[o]wnership … may be transferred to the buyer," "*or any other arrangement having a similar purpose or effect*." *Id.* (emphasis added).

These purposefully sweeping definitions easily encompass Carvana's RPA, which together with the incorporated RISC and Arbitration Agreement, constitutes a "contract for the retail sale of a motor vehicle," where "the purchase price is payable in two or more scheduled payments." *Id.* True, the document that does the incorporating (the RPA) is not titled an "installment sale contract." But as a Pennsylvania trial court explained less than a decade after the enactment of the MVSFA, a contract that satisfies the statute's statutory definition "*is* an 'installment sales contract' within the meaning of the [MVSFA]," "*regardless of what the parties choose to call it*." *Smith v. Gold*, 4 Pa. D. & C.2d 745, 747 (C.P. Phila. 1955) (emphasis added).

If this Court agrees, that is all that is necessary to resolve this appeal. Because the RPA, RISC, and Arbitration Agreement form a single contract that satisfies the MVSFA, that contract is valid and arbitration is required.

2. But even if Carvana's RPA did not expressly incorporate its RISC and Arbitration Agreement, all three documents would *still* be enforceable. The fact that

all three documents were signed on the same day, at the same time, by the same parties, and as part of the same transaction would yield the same result: the documents must be read together as "one contract." 11 Williston on Contracts §30.26; *see Shehadi v. Ne. Nat'l Bank of Pa.*, 378 A.2d 304, 306 (Pa. 1977).

Plaintiffs do not dispute these basic facts or the legal rule underlying this conclusion. Nor do Plaintiffs even really contend that there is any bar to satisfying the MVSFA through implicit incorporation by reference. *See* Plaintiffs Br. 32-39 (arguing that the MVSFA is consistent with the common law, including the principal of incorporation by reference). Instead, Plaintiffs contend only that the doctrine of implicit incorporation by reference does not apply in this case because the RISC contains an integration clause. *See id.* at 28-32. That argument is incorrect, as explained in greater detail below. *See infra* at 13-19. But with respect to the MVSFA, the key point is that Plaintiffs do not defend the district court's statutorily unsupported "one document" rule, given how straightforward the conflict between that rule and Pennsylvania common law is.

3. Plaintiffs' efforts to resort to the statute's purpose as justification for declining to treat the RPA, RISC, and Arbitration Agreement as a single contract are unavailing. Carvana agrees with Plaintiffs that the purpose of the MVSFA is to protect car buyers, but Plaintiffs' interpretation does not have that effect. Plaintiffs do not dispute that the effect of their interpretation is to invalidate *all* agreements

outside of the RISC, including those that *benefit* car purchasers like Carvana's seven-day cancellation period. *See* Plaintiffs Br. 31 n.13. And while Plaintiffs attempt to downplay the significance of that cancellation period to them, the overarching problem cannot be avoided: Plaintiffs' reading of the MVSFA renders unenforceable terms of the deal that protect *buyers* just as much as *sellers*.

Plaintiffs' apparent concession that either interpretation of the MVSFA would implicate the buyer's right to cancel belies Plaintiffs' insistence that Carvana is seeking an arbitration-specific rule. *See id.* at 15 n.5, 27, 45 (citing *Morgan v. Sundance, Inc.*, 142 S. Ct. 1708 (2022)). Carvana does not seek a rule targeted at arbitration agreements alone. Instead, Carvana seeks the neutral application of state law to *all agreements* explicitly or implicitly incorporated into the installment sale contract. Plaintiffs' repeated invocation of *Morgan* is thus a red herring. Contrary to Plaintiffs' suggestions, Carvana's argument is fundamentally consistent with *Morgan*, including its directive that "a court must hold a party to its arbitration contract just as the court would to any other kind." 142 S. Ct. at 1713.

For all those reasons, this Court should conclude that the integrated contract formed by the RPA, RISC, and Arbitration Agreement satisfies the MVSFA, and should hold Plaintiffs to their agreement to arbitrate this dispute.

B. Any One-Document Requirement in the MVSFA Applies Only To Financing Terms

Even if the MVSFA imposed a one-document requirement that is not satisfied by Carvana's overarching agreement, that rule applies *only* to the parties' financing terms. *See* Carvana Br. 38-44. But an arbitration provision is not a financing term, and so any such one-document requirement would not invalidate the parties' Arbitration Agreement.

1. The MVSFA's text amply demonstrates that the only agreements that "relat[e] to the installment sale of the motor vehicle sold" are financing terms. 12 Pa. C.S. §6221(a)(2). If the statute's title alone were not enough of a clue, its "Scope of Chapter" provision makes that limitation crystal clear: "[t]his Chapter relates to motor vehicle sales *finance*." *Id.* §6201 (emphasis added).

Plaintiffs object that the phrase "all the agreements … relating to the installment sale" must apply to non-financing terms too because the words "relating to" are broad. *See* Plaintiffs Br. 15 n.5 (emphasis omitted). But as the Supreme Court has cautioned, "those words, 'extend[ed] to the furthest stretch of [their] indeterminacy, … stop nowhere.' '[C]ontext,' therefore, may 'tu[g] in favor of a narrower reading.'" *Mellouli v. Lynch*, 575 U.S. 798, 812 (2015) (alterations in original) (citation omitted). And here, context—both within the specific provision and the broader statute—does just that.

As an initial matter, Section 6221 itself is concerned with agreements "relating to" not just the "sale" of a motor vehicle, but the "*installment* sale." And it is the financing aspect of a sale that makes that modifier appropriate.

Looking to the broader statute, three additional textual provisions reinforce that reading. *First*, the MVSFA's list of required "[c]ontents" for installment sale contracts focuses almost exclusively on terms related to financing. *See* 12 Pa. C.S. §6222; Carvana Br. 40. In interpreting a similar state statute, the Minnesota Supreme Court found a comparable list of required contents "all relating to the terms of credit" persuasive in establishing that Minnesota's statute was limited to financing terms. *Scott v. Forest Lake Chrysler-Plymouth-Dodge*, 611 N.W.2d 346, 351-52 (Minn. 2000).

Second, Section 6242 is especially instructive. As previously explained, that provision states that a seller may "contract for, collect, or receive [certain] fees and costs from the buyer *independently of the contract*"—*i.e.*, the RISC—so long as the seller does not "extend credit to the buyer for [those] fees and costs." 12 Pa. C.S. §6242(c). In other words, installment sellers can make *separate* ("independent[]") contracts with buyers for the payment of non-financed fees and costs. Plaintiffs' interpretation of the statute—that *all* agreements must be contained within the RISC—directly conflicts with that provision. And Plaintiffs make no effort to resolve this conflict. Instead, Plaintiffs simply assert that Section 6242 does not

"create[] an exception to the MVSFA's one document rule." Plaintiffs Br. 21 n.8. But that is exactly what Section 6242 does: again, it permits a seller to "*contract for* … fees and costs … *independently* of" the RISC. 12 Pa. C.S. §6242(c)(1) (emphasis added).

Third, the MVSFA provides that the seller shall disclose that the purchase of "specific items," such as a "service contract, warranty, [or] debt cancellation agreement," is not a requirement of the buyer's financing, which similarly indicates that sellers may make agreements separate from the RISC. *Id.* §6221(e)(2)(iii)(A). Plaintiffs contend that these listed agreements are "not material to agreements between buyer and seller," *see* Plaintiffs Br. 38 n.18, but the MVSFA is not limited to "material" agreements.[3] Moreover, while debt cancellation agreements can involve a third-party insurer, they can also be a direct agreement between the buyer and seller, and there is no dispute that a service contract is an agreement between the buyer and seller. *See* 12 Pa. C.S. §6202 & cmt. Thus, Plaintiffs offer no serious response to these statutory provisions demonstrating that the MVSFA is concerned with *financing* agreements, not every possible agreement under the sun.

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[3] Plaintiffs' Counterstatement of the Issues asks whether "all *material* agreements between an installment seller and buyer, including non-financing terms, [must] be contained in a single document." Plaintiffs Br. 7 (emphasis added). Plaintiffs do not explain where the qualifier "material" comes from, and even if the statute included it, service contracts and the like are plainly "material."

2. The statute's history and purpose provide further context counseling in favor of that interpretation. As Plaintiffs concede, the MVSFA does not apply to all vehicle sales, just financed ones. *See* Plaintiffs Br. 12 n.2. And the case law makes clear that the statute "was not intended to create a comprehensive system of regulation for the motor vehicle sale industry." *Raleigh v. Credit Mgmt. Co.*, 549 A.2d 605, 607 (Pa. Super. Ct. 1988) (citation omitted); *see also Whiteman v. Degnan Chevrolet Inc.*, 272 A.2d 244, 246 (Pa. Super. Ct. 1970) (same). Instead, it was meant to solve specific problems related to unfair and deceptive *financing* practices. *See Gibbs v. Titelman*, 502 F.2d 1107, 1110 (3d Cir. 1974) (Legislature "sought to regulate the area of automobile *financing*." (emphasis added)); Carvana Br. 7-8 (recounting these problems). Consistent with that focus, the MVSFA should be read as requiring only that all financing terms be contained within the installment sale contract.

C. Plaintiffs' Additional Arguments Fail

1. The RISC's Integration Clause Does Not Bar Enforcement of the Arbitration Agreement

Unable to persuasively defend the district court's interpretation of the MVSFA in light of Pennsylvania's incorporation-by-reference principles, Plaintiffs shift their focus from that statute to the RISC's integration clause. That clause states: "Your and our entire agreement is contained in this Contract. There are no unwritten agreements regarding this Contract. Any change to this Contract must be in writing

and signed by you and us." JA54; JA61. The RISC further provides that "'Contract' refers to this Retail Installment Contract and Security Agreement." JA52; JA58. Plaintiffs argue that the integration clause bars implicit incorporation by reference. *See* Plaintiffs Br. 33.

But as even the district court acknowledged, that clause is "not determinative" under Pennsylvania law. JA9. That is so for two reasons. First, an integration clause does not control when the document does not contain the essential terms of the parties' agreement. Second, an integration clause generally applies to bar only extrinsic evidence on the same subject matter as the contract. Here, the RISC is not the full expression of the parties' agreement, and even if it were, the subject matter of the RISC is financing, not dispute resolution, so it does not bar evidence of the parties' signed Arbitration Agreement.

a. Under Pennsylvania law, "[t]he presence of [an] integration clause is not controlling" where the agreement does not "fully express the essential elements of the parties' undertaking." *Neville*, 127 A.2d at 757; *see Int'l Milling*, 110 A.2d at 191; *Kroblin Refrigerated Xpress*, 805 F.2d at 108 (collecting Pennsylvania cases); Carvana Br. 27 n.4.[4] In *Neville*, for example, the Pennsylvania Superior Court held

[4] Even Plaintiffs' "modern" case recognizes this rule. Plaintiffs Br. 42; *see Lenzi v. Hahnemann Univ.*, 664 A.2d 1375, 1380 (Pa. Super. Ct. 1995) (acknowledging "two contracts may be construed together … even where the

that the specific construction terms of a house contract could be enforced, despite the fact that a later contract concerning the same house "contained an integration clause" and did not repeat the specific construction terms from the first contract. 127 A.2d at 756-57. This Court has summarized *Neville*'s holding by stating that "where two agreements are made as part of one transaction they will be read together to express the essential elements of the parties' undertaking, notwithstanding the presence of an integration clause in the second agreement." *Kroblin*, 805 F.2d at 108; *see id.* (summarizing *Int'l Milling* in similar terms).[5]

The RISC, standing alone, does not express the essential elements of the parties' agreement. "Without the information supplied by the [RPA], the [RISC] is incomplete" as to several key terms, including the buyer's right to cancel the contract and the license, title, and registration obligations at issue in this case. *Neville*, 127 A.2d at 757. Indeed, Plaintiffs do not dispute that if the RPA is not enforceable, buyers would have no right to return the vehicle within seven days. *See* Plaintiffs Br. 31 n.13. Similarly, Plaintiffs acknowledge that the RISC does not itemize the fees at issue. *See id.* at 26, 47. Thus, as in *Neville* and *Kroblin*, "no single writing

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subsequent contract contains an integration clause" but finding that rule inapplicable on the facts).

[5] Similarly, in *Smith v. Gold*, a Pennsylvania trial court held that the parol evidence rule did not bar the consideration of evidence outside the four corners of a vehicle lease agreement where that agreement was "incomplete on its face." 4 Pa. D. & C.2d at 746.

embodied the whole of the parties' agreement and thus both written agreements should be construed together." *Kroblin*, 805 F.2d at 108; *Neville*, 127 A.2d at 757.

To give effect to both the RPA and the RISC, the better reading of the RISC's integration clause is that the RISC contains the parties' "entire agreement" as to *financing*, not the whole transaction. Recall the RISC states: "Your and our entire agreement is contained in this Contract. There are no unwritten agreements *regarding the Contract*. Any change to this Contract must be in writing and signed by you and us." JA54; JA61 (emphasis added). The clause itself thus indicates that its preclusive effect is limited to "agreements regarding the Contract." *Id.* And the subject of the contract, as previously explained, is financing. Accordingly, the integration clause should be understood merely as clarifying that the parties have reached no additional agreements on financing terms outside of the RISC. Because the Arbitration Agreement is not a financing term, it is not implicated by the RISC's integration clause.

The Fourth Circuit reached the same conclusion with respect to a similar integration clause in a RISC. *See Rota-McLarty v. Santander Consumer USA, Inc.*, 700 F.3d 690, 699-700 (4th Cir. 2012). There, the RISC contained a clause stating: "This contract contains the entire agreement between you and us relating to this contract." *Id.* at 695. Despite that clause, the Fourth Circuit held that the arbitration clause in a separate Buyer's Order could be enforced, because "the Buyer's Order

and RISC were made as part of a single transaction, and should be interpreted together." *Id.* at 700.

Other courts have also reached similar conclusions in the context of financed motor vehicle sales. For example, the Missouri Supreme Court has held that an integration clause in a RISC did not invalidate a "contemporaneously signed" arbitration agreement, because both documents were signed "within minutes of each other, in a single sitting, as part of a single sales transaction." *Johnson ex rel. Johnson v. JF Enters., LLC*, 400 S.W.3d 763, 767 (Mo. 2013). There, the integration clause stated that the RISC was the "complete and exclusive statement" of "any agreements" "to loan money, extend credit or to forbear from enforcing repayment of a debt." *Id.* at 765. The court concluded that this clause could be "harmonized" with the arbitration agreement, because although the arbitration agreement "applie[d] to disputes of all types, including those over financing," that "d[id] not make it a financing clause" covered by the RISC's integration clause. *Id.* at 768-69. Similarly, the district court in *Farrell v. Road Ready Used Cars, Inc.*, held that an integration clause in the RISC did not bar the enforcement of a separate Purchase Order (and accompanying arbitration agreement) where the plaintiff's claims concerned the terms of the Purchase Order. No. 3:17-CV-2030, 2018 WL 1936143, at *4-6 (D. Conn. Apr. 24, 2018).

In short, "[t]he presence of an integration clause cannot invest a writing with any greater sanctity than the writing merits where, as here, it assertedly does not fully express the essential elements of the parties' undertakings" *Int'l Milling*, 110 A.2d at 191. Because the RISC does not express the essential elements of the deal, its integration clause does not bar the enforcement of the contemporaneously signed RPA and Arbitration Agreement.

b. In any event, the authorities that Plaintiffs cite are clear that "[o]nce a writing is determined to be the parties' entire contract, the parol evidence rule" bars "evidence of any previous oral or written negotiations or agreements involving the *same subject matter* as the contract." *Yocca v. Pittsburgh Steelers Sports, Inc.*, 854 A.2d 425, 436-37 (Pa. 2004) (emphasis added); *see also Estate of Hall*, 535 A.2d 47, 55 (Pa. 1987) (indicating that parol evidence rules applies "only if those representations concern a matter specifically dealt with in the contract itself"); *Domino's Pizza LLC v. Deak*, 383 F. App'x 155, 159 (3d Cir. 2010) (citing and applying this case law).

But as previously explained, the RISC and RPA play distinct roles and do not cover the same subject matter. The RISC concerns the financing aspects of the deal, while the RPA (absent the incorporated RISC) concerns the basic purchasing terms. Other courts have previously noted this distinction between these two types of documents. *See, e.g.*, *Scott*, 611 N.W.2d at 352 ("The retail installment contract sets

forth the details of how the financing is to work," while "[t]he vehicle purchase contract sets forth the terms of the actual purchase ...."); *Farrell*, 2018 WL 1936143, at *5 ("[T]he Purchase Order and the Retail Installment Contract concern different subject matters: the items being purchased and the terms for financing that purchase, respectively."). Because the contemporaneously signed RPA and Arbitration Agreement deal with different subject matters than the RISC, the parol evidence rule does not apply.

Ultimately, while Carvana agrees with Plaintiffs that it is not the Court's role to "add terms" to the parties' agreement, Plaintiffs Br. 17, neither is it the Court's role to take enforceable terms away. As Carvana has explained, "[t]he paramount goal of contract interpretation" in Pennsylvania "is to determine the intent of the parties." *Baldwin v. Univ. of Pittsburgh Med. Ctr.*, 636 F.3d 69, 75 (3d Cir. 2011) (citation omitted). And here, the multiple references between the documents, as well as the fact that they were signed at the same time as part of the same transaction, show that the parties meant for all three documents to be read and enforced together. This Court should honor that intent and compel arbitration.

2. The Pennsylvania Supreme Court Would Not Follow *Knight*

Plaintiffs further urge (at 39) that this Court is "[r]equired" to follow *Knight v. Springfield Hyundai*, 81 A.3d 940 (Pa. Super. Ct. 2013), but Third Circuit precedent "is clear that a federal court interpreting state law may discount state

appellate decisions it finds flawed, if it predicts the state supreme court would reach a contrary result," *In re Makowka*, 754 F.3d 143, 148 (3d Cir. 2014). As previously explained, it is highly unlikely that the Pennsylvania Supreme Court would follow *Knight*. *See* Carvana Br. 44-49.

Although Plaintiffs hang their hat on *Knight*, they do little to rehabilitate that decision's sparse reasoning. As noted, *Knight*'s entire textual analysis consists of a single sentence declaring the relevant provision of the MVSFA to be "clear and unambiguous." 81 A.3d at 948; *see* Carvana Br. 45-46. Plaintiffs do not offer much in the way of a more developed interpretation. While Plaintiffs repeatedly invoke the statute's "plain language," *see, e.g.*, Plaintiffs Br. 19, 21, 38, 41, 43, they do little to explain why Carvana's RPA, which incorporates the RISC and Arbitration Agreement, does not satisfy that language; or why provisions like Section 6242, which expressly allow sellers to make certain non-financing contracts "independently of" the RISC, do not show that the MVSFA is limited to financing.

And none of the cases that Plaintiffs cite as following *Knight* fills that gap. *See* Plaintiffs Br. 36. Instead, those cases merely treat *Knight* as "controlling," *Zentner v. Brenner Car Credit, LLC*, 273 A.3d 1033, 2022 WL 368276, at *3 (Pa. Super. Ct. 2022), or rely on the decision without conducting any independent analysis, *see, e.g.*, *Gregory v. Metro Auto Sales, Inc.*, 158 F. Supp. 3d 302, 305 (E.D. Pa. 2016).

Finally, as Carvana has previously explained, *Knight* is an outlier among the cases interpreting similar state statutes. State supreme court decisions from Maryland and Minnesota, a Fourth Circuit decision, and state and federal trial court decisions from Connecticut have all come out the other way. *See* Carvana Br. 36-38, 42-44. By contrast, the sole support Plaintiffs can muster for their interpretation is two federal district court opinions from Michigan. *See* Plaintiffs Br. 45-46 (citing *Rugumbwa v. Betten Motor Sales*, 136 F. Supp. 2d 729 (W.D. Mich. 2001), and *Lozada v. Dale Baker Oldsmobile, Inc.*, 197 F.R.D. 321 (W.D. Mich. 2000)).

And even those opinions do not stand for the broad proposition Plaintiffs suggest. As another Michigan court later explained, "*Rugumbwa* and *Lozada* stand for the more narrow proposition that claims alleged with regard to the subject matter of a retail installment contract are subject only to those agreements expressly set forth in the installment contract." *Pack v. Damon Corp.*, 320 F. Supp. 2d 545, 554 (E.D. Mich. 2004), *rev'd on other grounds*, 434 F.3d 810 (6th Cir. 2006) (reversing summary judgment as to a separate defendant who did not have an arbitration agreement). In Michigan, claims arising from a separate sales agreement, like Plaintiffs' claims here, may be sent to arbitration based on the arbitration clause in that agreement. *See id.* at 554-55. To the extent that *Knight*, *Rugumbwa*, and *Lozada*

involved disputes centered on the terms of the RISC itself, they are all distinguishable from this case, in which Plaintiffs' claims arise from the RPA.[6]

As for the cases on Carvana's side of the ledger, Plaintiffs' efforts to distinguish them are generally unpersuasive. While Plaintiffs are correct that the RISC in *Ford* expressly incorporated the Buyer's Order and arbitration agreement, the RISC in *Rota-McLarty* did not. *Compare Ford v. Antwerpen Motorcars Ltd.*, 117 A.3d 21, 26 (Md. 2015), *with Rota-McLarty*, 700 F.3d at 695. Instead, like the parties' RISC here, the *Rota-McLarty* RISC contained an integration clause providing that it represented the parties' "entire agreement." 700 F.3d at 695; *see supra* at 16.

Plaintiffs' attempt to distinguish *Farrell* fails for reasons Carvana has already explained. This case, like *Farrell*, involves "charges identified" in the separate document "containing the arbitration provision." Plaintiffs' Br. 43; *see also Farrell*, 2018 WL 1936143, at *5 ("While the Purchase Order enumerates the items in the purchase price, the Retail Installment does not reflect the fees Farrell paid for the

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[6] Plaintiffs also seek to draw support from the fact that the Pennsylvania Supreme Court denied certiorari in a follow-on case to *Knight*. *See* Plaintiffs Br. 45 n.22. But as the Pennsylvania Supreme Court has explained in the context of the discussing the U.S. Supreme Court's docket, "[t]he denial of a writ of certiorari imports no expression of opinion upon the merits of the case." *Breckline v. Metro. Life Ins. Co.*, 178 A.2d 748, 751 (1962) (quoting *Daniels v. Allen*, 344 U.S. 443, 491-92 (1953)).

allegedly undelivered services." (citations omitted)). Thus, even if it were true that claims arising out of Carvana's RISC could not be subject to arbitration (which Carvana disputes), that rule would not apply in this case.

Finally, Plaintiffs' attempt to distinguish *Scott* focuses on the wrong document. *See* Plaintiffs' Br. 44. The question in *Scott* was whether the RISC superseded two separate documents stating that the sale was contingent on the acceptance of the financing credit extended. The car purchaser had argued that the RISC itself "did not clarify that the purchase was contingent upon the dealer assigning the contract to a financing institution." *Scott*, 611 N.W.2d at 350. But the Minnesota Supreme Court found that fact irrelevant, given that the two separate documents made the contingent nature of the sale clear. *See id.* at 352. Here too, the question is whether the RISC, which does not contain an arbitration clause, supersedes two separate documents making the arbitration requirement clear. The answer should be the same: the separate RPA and Arbitration Agreement are enforceable.

3. Plaintiffs' Reading Of The MVSFA Is Preempted By The FAA

Finally, even assuming Plaintiffs' reading of the MVSFA is correct (it is not), that would only create a conflict with the FAA. *See* Carvana Br. 49-51. Section 2 of the FAA provides that an arbitration agreement "shall be valid, irrevocable, and enforceable, save upon such grounds as exist in law or in equity for the revocation

of *any contract.*" 9 U.S.C. §2 (emphasis added). As previously explained, the MVSFA is not a ground for the revocation of "any contract" because it applies to only one type of contract (installment sales) in one type of industry (vehicles). *See* Carvana Br. 49-51 (citing *KKW Enters., Inc. v. Gloria Jean's Gourmet Coffees Franchising Corp.*, 184 F.3d 42, 51 (1st Cir. 1999); *Doctor's Assocs., Inc. v. Hamilton*, 150 F.3d 157, 163 (2d Cir. 1998); *Carter v. SSC Odin Operating Co.*, 927 N.E.2d 1207, 1219 (Ill. 2010)).

Plaintiffs' efforts to distinguish *KKW Enterprises* and *Doctor's Associates* are unpersuasive. According to Plaintiffs, those cases are different because they both concerned whether an "arbitration agreement acknowledged by both parties [could] be abrogated by state law." Plaintiffs Br. 24. But that is precisely the issue here too—whether, as Plaintiffs put it, "the MVSFA[] invalidates the arbitration clause between the parties." *Id.* at 23. As in those cases, the answer is no because a law targeted at a particular type of provision, agreement, or industry is not a ground for the revocation of "any contract" under the FAA's savings clause.[7]

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[7] Plaintiffs also misstate the facts of *KKW*, implying that the statute "expressly concerned" arbitration agreements. Plaintiffs Br. 23. But the statute applied to all venue clauses, whether for arbitration or litigation. *See* 19 R.I. Gen. Laws Ann. §19-28.1-14 ("A provision of a franchise agreement restricting jurisdiction or venue to a forum outside this state … is void with respect to a claim otherwise enforceable under this act."). Thus, it did not single out arbitration for special treatment.

II. THIS COURT HAS JURISDICTION TO REVIEW THE ENTIRE ORDER AND SHOULD DISMISS PLAINTIFFS' CLAIMS

Plaintiffs incorrectly contend that this Court lacks jurisdiction to address the district court's denial of Carvana's motion to dismiss. *See id.* at 17-18. Under the FAA, this Court has jurisdiction to review the entire order on appeal, which includes the denial of the motion to dismiss.

The FAA permits parties to immediately appeal "an order … denying a petition under section 4 of [the FAA] to order arbitration to proceed." 9 U.S.C. §16(a)(1)(B). As the Supreme Court recently clarified, when a statute provides for the interlocutory appeal of "'an order,'" that statute "allows courts of appeals to examine the whole of a district court's 'order,' not just some of its parts or pieces." *BP P.L.C. v. Mayor & City Council of Baltimore*, 141 S. Ct. 1532, 1537-38 (2021) (citation omitted). That is so, even where those parts or pieces would not be immediately appealable on their own. *Id.* at 1537-38. Although *BP* addressed the federal-removal statute rather than the FAA, it drew on previous Supreme Court case law reaching the same conclusion with respect to §1292(b)(2), which permits a district court to certify "*an order*" for interlocutory appeal when it involves a "controlling question of law." *Yamaha Motor Corp., U.S.A. v. Calhoun*, 516 U.S. 199, 204-05 (1996) (emphasis added) (citation omitted). Consistent with these cases, this Court should interpret the FAA's permission to appeal "an order" denying a motion to compel arbitration as encompassing the entire order.

Other courts of appeals have done exactly that, relying on *BP* and *Yamaha* to conclude that they have "jurisdiction to review the entire order" appealed under the FAA. *Donelson v. Ameriprise Fin. Servs., Inc.*, 999 F.3d 1080, 1087 (8th Cir. 2021) (reviewing district court's denial of motions to strike class-action allegations, made in the same order as the denial of the motion to compel); *see also Int'l Energy Ventures Mgmt., L.L.C. v. United Energy Grp., Ltd.*, 999 F.3d 257, 263 n.1 (5th Cir. 2021) (reviewing district court's discussion of waiver in the same order).

Prior to *BP*, this Court had held in both the federal-removal context and the FAA context that its jurisdiction was limited to the portion of the order justifying the immediate appeal, with other portions of the order reviewable only if they were "intertwined with" that issue. *Palcko v. Airborne Express, Inc.*, 372 F.3d 588, 594-95 (3d Cir. 2004) (FAA); *see Davis v. Glanton*, 107 F.3d 1044, 1047 (3d Cir. 1997) (federal removal). But those decisions do not survive *BP*. *BP* directly overruled *Davis*, and *Palcko* rests on the same exact mistake of statutory interpretation. The rule that a "panel of [this] Court is bound by the precedential decisions of earlier panels … does not apply 'when the prior decision[s] conflict[] with a Supreme Court decision,'" so this Court is free to, and indeed must, follow *BP*. *Virgin Islands v. Martinez*, 620 F.3d 321, 327 (3d Cir. 2010) (alterations in original) (citation

omitted).[8] Because the district court denied Carvana's motion to dismiss in the same order as it refused to compel arbitration, this Court has jurisdiction to address both issues.

If this Court agrees with the district court that the Arbitration Agreements and RPAs are unenforceable, then Plaintiffs' suit must be dismissed. As previously explained, Plaintiffs' claims are dependent on their RPAs, which are the *only* documents that establish that Plaintiffs paid a $38 registration fee, $55 title fee, and $16 license plate fee. *See* Carvana Br. 51-54.[9] While the RISCs state a total amount "Paid to Public Officials," JA51; JA59, that line item does not state *which* filing tasks Plaintiffs paid for or *how much*. Indeed, it does not even represent the total amount of fees claimed by Plaintiffs in this case, because it includes other fees for which Plaintiffs have no claim. Thus, if the Court concludes that the RPAs cannot be enforced, it should remand with instructions to dismiss the case.

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[8] Even if Plaintiffs were right to treat this as an issue of pendent appellate jurisdiction, this Court would still have jurisdiction because the dismissal issue is "inextricably intertwined" with the arbitration issue. *O'Hanlon v. Uber Techs., Inc.*, 990 F.3d 757, 765 (3d Cir. 2021). If Plaintiffs are correct that their RPAs are not enforceable, then Plaintiffs have no claim on the merits. Thus, the issues are not "independent" of one another. *Id.* (citation omitted).

[9] Plaintiffs suggest that Carvana raised this argument for the first time in its opening brief, *see* Plaintiffs Br. 5, but that is incorrect. Carvana made the same argument below. *See* JA127, 129-33; JA164-66; *see also* Plaintiffs Br. 11 (noting argument that the RISC does not contain an agreement to license and register the vehicles).

CONCLUSION

The Court should reverse.

Dated: April 17, 2023

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COMBINED CERTIFICATIONS

1. CERTIFICATE OF BAR MEMBERSHIP

I, Roman Martinez, counsel for Appellant Carvana, LLC, hereby certify pursuant to Rule 28.3(d) that I am a member in good standing of the bar of the Court of Appeals for the Third Circuit.

2. CERTIFICATE OF WORD COUNT

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(B) and Local Rule 32.1, I hereby certify that the foregoing brief contains 6,500 words as counted using the word-count feature in Microsoft Word, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f). This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 365 and a 14-point Times New Roman font.

3. CERTIFICATE OF IDENTICAL BRIEFS

Pursuant to Local Rule 31.1(c), I certify that the text of the electronic and hard copy forms of this brief are identical.

4. CERTIFICATE OF VIRUS CHECK

Pursuant to Local Rule 31.1(c), I certify that a virus check of the electronic PDF version of this brief was performed using Microsoft Defender Antivirus, which was updated April 17, 2023, and according to that program no virus was detected.

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CERTIFICATE OF SERVICE

I hereby certify that on April 17, 2023, I caused a copy of the foregoing Reply Brief for Appellant to be served by electronic means, via the Court's CM/ECF system, on all counsel registered to receive electronic notices.

Respectfully submitted,

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