
TENTATIVE RULING

For all the reasons discussed below, the parties are instructed to appear at the hearing and be prepared for oral argument on the impact of Code of Civil Procedure section 1008 on the motion to compel arbitration in Case No. 23CV00183, as well as a discussion on how to move forward.

Santillan v. Hyundai Motor America (Case No. 23CV00183)

On September 1, 2022, plaintiffs Sarah Reed and Robert Santillan (collectively plaintiffs) purchased two 2023 Hyundai Konas. This action involves the Kona with the Vehicle Identification Number KM8K23AG7PU159922. They allege that the vehicle contained or developed ignition defects that defendant Hyundai Motor America (defendant or Hyundai) failed to repair. On January 17, 2023, Plaintiffs filed a complaint against defendant Hyundai, alleging three causes of action based on violations of the Song-Beverly Consumer Warranty Act (Civ. Code, § 1790, et seq) (hereafter, Song Beverly Act), as follows: (1) failure to replace the vehicle or make restitution (Civ. Code, § 1793.2, subd. (d)); (2) failure to conform vehicle within 30 days (Civ. Code, § 1793.2, subd. (b)); and (3) failure to make available to its authorized service facility sufficient literature and parts to effect repairs during the express warranty period (Civ. Code, §1793.2, subd. (a)(3)).

On September 26, 2023 (September 2023 motion), the trial court denied Hyundai's motion to compel arbitration, finding that Hyundai failed to carry its burden of proving the existence of a contract with plaintiffs to arbitrate as a matter of California law under either the Warranty or the Retail Installment Sales Agreement. In doing so, the court acknowledged and respectfully disagreed with other superior courts that found otherwise. A full discussion of the ruling was incorporated into the September 26, 2023 minute order.

On March 22, 2024, Hyundai filed another motion to compel arbitration in this action (March 2024 Motion). The motion is based on the existence of a contract under the Warranty (a claim the court previously rejected) or the Bluelink Connected Service Agreement, a claim that was not raised in the previous motion.

Santillan v. Hyundai Motor America (Case No. 23CV04894)

This action concerns the 2023 Hyundai Kona with the Vehicle Identification Number KM8K23AG4PU160154. This vehicle also allegedly contained or developed ignition defects that defendant Hyundai Motor America (defendant or Hyundai) failed to repair. On November 1, 2023, plaintiffs filed a complaint against defendant Hyundai, alleging the same three causes of action as alleged in their earlier

complaint: (1) failure to replace the vehicle or make restitution (Civ. Code, § 1793.2, subd. (d)); (2) failure to conform vehicle within 30 days (Civ. Code, § 1793.2, subd. (b)); and (3) failure to make available to its authorized service facility sufficient literature and parts to effect repairs during the express warranty period (Civ. Code, §1793.2, subd. (a)(3)).

On February 22, 2024, Hyundai filed a motion to compel arbitration in this action. This motion is based on the existence of a contract under the Warranty (a claim the court previously rejected in Case No. 23CV000184) or the Bluelink Connected Service Agreement.

Related Cases

Neither party fulfilled its independent obligation to file a Notice of Related Case pursuant to California Rules of Court, rule 3.300(b). On April 23, 2024, plaintiff's counsel filed a Notice of Related Case on the court's order. On June 12, 2024, the court ordered the cases related.

On Calendar

1. Case No. 23CV00183
 - Motion to Compel Arbitration
 - Motion to Compel Further Response to Document Request (Stayed pending court ruling on Motion to Compel Arbitration)
 - CMC
2. Case No. 23CV04894
 - Motion to Compel Arbitration
 - CMC

Motions to Compel Arbitration

1. Case No. 23CV00183

As noted above, the court has already considered and rejected the argument that the Owner's Handbook and Warranty created a binding contract to arbitrate. Defendant did not so much as acknowledge the first motion or ruling in this successive attempt. Plaintiffs acknowledged the ruling in their opposition and requested the court take judicial notice of its own ruling in this very matter.

Neither party has considered whether the court has jurisdiction to reconsider this successive motion under Code of Civil Procedure section 1008.¹ Section 1008 represents the Legislature's attempt to regulate what the Supreme Court has referred to as “repetitive motions.” (*Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1103.) It creates two distinct subclasses of repetitive motions: applications (motions) for reconsideration, and renewals of previous motions.

Motions for reconsideration are regulated by section 1008, subdivision (a), which requires that any such motion be (1) filed “within 10 days after service upon the party of written notice of entry of the order” of which reconsideration is sought, (2) supported by new or additional facts, circumstances or law, and (3) accompanied by an affidavit detailing the circumstances of the first motion and the respects in which the new motion differs from it. (*Id.*, subd. (a).) Moreover, it has long been the view that a party seeking reconsideration of a prior order based on “new or different facts” must provide a satisfactory explanation for failing to present the evidence sooner. (*Jones v. P.S. Development Co., Inc.* (2008) 166 Cal.App.4th 707, 725; *New York Times Co. v. Superior Court* (2005) 135 Cal.App.4th 206, 212–213 [information must be such that the moving party could not, with reasonable diligence, have discovered or produced it” in previous motion]; *Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, 690, [“strict requirement of diligence”]; *Robbins v. Los Angeles Unified School Dist.* (1992) 3 Cal.App.4th 313, 317; *Blue Mountain Development Co. v. Carville* (1982) 132 Cal.App.3d 1005, 1013.) This same diligence requirement also is applicable to motions for reconsideration on the basis of “different law.” (*Baldwin, supra*, 59 Cal.App.4th at p. 1200.) A motion for reconsideration asks the court to “reconsider the matter and modify, amend, or revoke the prior order.” (§ 1008, subd. (a).)

Renewed motions are governed by section 1008, subdivision (b) (§ 1008, subd. (b)), which echoes the latter two requirements, but does not impose a time limit. (*Id.*, subd. (b).) Subdivision (b) provides that a party who has previously “made an application for an order which was refused in whole or part . . . may make a subsequent application for the same order upon new or different facts, circumstances, or law,” provided a showing is made to the court “by affidavit what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown.” If no such showing is made, the renewal motion must be denied. (§ 1008, subd. (b).) An “application for the same order” as used in section 1008 subdivision (b) means a motion seeking the same relief as in an earlier motion. (*California Correctional Peace Officers Ass’n v. Virga* (2010) 181 Cal.App.4th 30, 43; see *Randy’s Trucking, Inc. v. Sup.Ct. (Buttram)* (2023) 91 Cal.App.5th 818, 846.) For example, after an earlier motion for attorney fees under a state statute was denied, defendant moved for the identical relief under a federal statute. Although different grounds were asserted, the second motion was subject to section 1008 section (b)’s

¹ All further references are to the Code of Civil Procedure unless stated otherwise.

reasonable diligence requirement: “Defendants may not make seriatim motions that seek the same relief; rather Defendants were obligated to put forth all of their reasons for an award of attorneys' fees when they made their initial request.” (*California Correctional Peace Officers Ass'n v. Virga, supra*, 181 Cal.App.4th at 45 [approving observation made by trial court].) A renewed motion must also be accompanied by a declaration of diligence. (*Id.*, at p. 48—“We conclude that appellants' motion for attorney fees pursuant to section 1988 was a renewed motion for attorney fees governed by section 1008, subdivision (b), and that the trial court did not abuse its discretion in denying the motion in the absence of a sufficient explanation why appellants did not rely on the federal statute in their original motion.”)

Section 1008 applies to a successive motion to compel arbitration. (See *Blake v. Ecker* (2001) 93 Cal.App.4th 728, 739 (disapproved on other grounds by *Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1107, fn. 5)—power to reconsider order to compel based on change in law; see also *Phillips v. Sprint PCS* (2012) 209 Cal.App.4th 758, 763.)

The March 2024 motion appears to be a hybrid of these two procedures. By once again asking the court to consider whether the Owner's Handbook and Warranty created a binding contract to arbitrate, defendant implicitly moves for reconsideration of the court's prior ruling necessitating both a timely motion (e.g., within 10 days of after service upon the party of written notice of entry of the order). To the extent the motion presents a new theory (e.g., under the Bluelink Connected Service Agreement), it is a renewed motion. Under either theory, a declaration of due diligence is required—a requirement for which there has been no compliance.

The parties are instructed to appear at the hearing and be prepared for oral argument on this issue as well as a discussion on how to move forward.

2. Case No. 23CV04894

Since the court has already considered and rejected the argument in Case No. 23CV00183 that the Owner's Handbook and Warranty created a binding contract to arbitrate under the same arguments raised here, the court will simply adopt and incorporate that analysis as if restated here. (See September 26, 2023 minute order.)²

The court will consider whether a binding agreement is created under the Bluelink Connected Service Agreement once the above issue is resolved.

The parties are instructed to appear at the hearing for oral argument. Appearance by Zoom Videoconference is optional and does not require the filing of

² The court wonders how these arguments are warranted under Code Civ. Proc., § 128.7, sub. (b)(2).)

Judicial Council form RA-010, Notice of Remote Appearance. (See [Remote Appearance \(Zoom\) Information | Superior Court of California | County of Santa Barbara.](#))