SO ORDERED.

SIGNED this 6 day of December, 2021.

Stephani W. Humrickhouse

Stephani W. Humrickhouse
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
WILMINGTON DIVISION

IN RE:

KEITH DAVID MATTOX
and MELISSA MOSS MATTOX

Debtors.

CASE NO. 21-00564-5-SWH

CHAPTER 13

KEITH DAVID MATTOX

Plaintiff,

v.

GRACELAND PROPERTIES, LLC, GRACELAND PORTABLE BUILDINGS, LLC D/B/A GP PORTABLE BUILDINGS, LLC

Defendant.

ADV. PROCEEDING NO. 21-00070-5-SWH

ORDER REGARDING CROSS MOTIONS FOR SUMMARY JUDGMENT

The matters before the court are the Motion for Summary Judgment filed by Keith D. Mattox (the "plaintiff" or "Mr. Mattox") on July 20, 2021, Dkt. 7, 8, 9, and the Motion for Summary Judgment filed by Graceland Properties, LLC (the "defendant" or "Graceland") on

August 4, 2021, Dkt. 11, 12. The plaintiff filed a memorandum in opposition to the defendant's motion for summary judgment on August 27, 2021, Dkt. 15, 16. A hearing was held in Raleigh, North Carolina on September 23, 2021, at the conclusion of which the court took the Motions for Summary Judgment under advisement. For the reasons below, the court will grant Mr. Mattox's Motion for Summary Judgment on the first cause of action and deny Graceland's Motion for Summary Judgment on all causes of action.

BACKGROUND

The subject of this dispute is a purported rent-to-own contract entered into between Mr. Mattox and Graceland for a storage shed. Mr. Mattox wanted to obtain a storage shed to store his household and personal items. On October 24, 2019, Mr. Mattox signed a Rental Purchase Agreement for a storage shed at an authorized Graceland dealer sales lot in Leland, North Carolina. The agreement was thereafter sent to Graceland's corporate office in Kentucky for approval.

Under the terms of the agreement, Mr. Mattox would make payments of $197.24 (including sales tax) for 36 months to Graceland. The agreement stated that the lease term was renewable monthly by making the specified payment. Once the final payment was made, Graceland would be obligated to transfer ownership of the storage shed to Mr. Mattox. The total amount that Mr. Mattox would pay to own the storage shed would be $7,100.64. The estimated fair market value of the storage shed was $3,990.00 plus the applicable sales tax. The agreement also contains a provision within the "Miscellaneous" section which provides that the law of the Commonwealth of Kentucky will govern the agreement in all respects.

Keith David Mattox and Melissa Moss Mattox (the "debtors") filed a voluntary petition for relief under chapter 13 of the Bankruptcy Code on March 12, 2021. Prior to filing for bankruptcy protection, Mr. Mattox had made 15 payments of $197.24 to Graceland. As of the petition date,

Mr. Mattox was current with respect to the monthly lease payments that had come due up until that time. Graceland filed a proof of claim (court claim #8) on April 23, 2021 in the amount of $4,242.12 which Graceland asserts is owed as the balance remaining due under the Rental Purchase Agreement if Mr. Mattox wanted to acquire ownership of the shed.

Mr. Mattox initiated this adversary proceeding on June 4, 2021 asserting the following three causes of action: (1) objection to proof of claim #8 of Graceland, (2) unfair trade practices under North Carolina law, and (3) unfair debt collection practices under North Carolina law. Dkt. 1. Graceland filed an answer on July 23, 2021. Dkt. 4.

The parties filed cross motions for summary judgment on July 20, 2021 and August 4, 2021. Mr. Mattox's motion only seeks summary judgment in his favor on the first claim for relief. Graceland's motion seeks summary judgment in its favor on all of the claims.

Mr. Mattox argues that Graceland's claim should be disallowed because the transaction is a "consumer credit sale" under the North Carolina Retail Installment Sales Act ("RISA"), and the Rental Purchase Agreement is void and unenforceable against Mr. Mattox. Graceland first contends that Kentucky law, not North Carolina law governs the transaction. However, Graceland argues that under either Kentucky or North Carolina law, the agreement is valid and enforceable.

DISCUSSION

I. Standard of Review

The court must grant summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); Fed. R. Bankr. P. 7056. Inferences drawn from the underlying facts must be viewed "in the light most favorable to the party opposing the motion." *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962). At the summary judgment stage, the judge's function is not to weigh the evidence and determine the

truth of the matter but "to determine whether there is a genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986).

II. Choice of Law

The first question is whether the Rental Purchase Agreement is governed by North Carolina or Kentucky law. Graceland argues that under North Carolina's choice of law provisions, Kentucky law would apply because Kentucky is the "situs" of the claim. Graceland further argues that even if the court finds that North Carolina is the "situs" of the claim, the choice of law provision in the Rental Purchase Agreement should prevail which provides that Kentucky law would govern the contract. On the other side, Mr. Mattox contends that RISA explicitly provides that regardless of the "situs" of the claim, a "consumer credit sale" is deemed to have been made in North Carolina and subject to RISA.

When determining state law issues, federal bankruptcy courts apply the forum state's choice of law rules, in the absence of federal policy concerns. *In re Merritt Dredging Co., Inc.*, 839 F.2d 203, 205-06 (4th Cir. 1988). Under North Carolina law, "matters affecting the substantial rights of parties are determined by lex loci, the law of the situs of the claim, and remedial or procedural rights are determined by lex fori, the law of the forum." *Boudreau v. Baughman*, 368 S.E.2d 849, 853-54 (N.C. 1988) (citing *Charnock v. Taylor*, 26 S.E.2d 911 (N.C. 1943)). The "situs" of a contract claim is usually "where the last act to make a binding contract occurred. . . ." *Fortune Ins. v. Owens*, 526 S.E.2d 463, 466 (N.C. 2000) (citing *Roomy v. Allstate Ins. Co.*, 123 S.E.2d 817, 820 (N.C. 1962)). However, a contract's choice-of-law provision could overcome this presumption. *Volvo Constr. Equip. N. Am., Inc. v. CLM Equip. Co.*, 386 F.3d 581, 601 (4th Cir. 2004) (citing *Bueltel v. Lumber Mut. Ins. Co.*, 518 S.E.2d 205, 209 (N.C. Ct. App. 1999)). A choice-of law provision will not be enforced if:

> (a) the chosen state *has no substantial relationship* to the parties or the transaction and there is no other reasonable basis for the parties' choice, or
>
> (b) application of the law of the chosen state would be *contrary to a fundamental policy* of a state which has a materially greater interest than the chosen state in the determination of the particular issue . . . .

Id. at 603 (citing Second Restatement § 187).

The Fourth Circuit has recognized that "not every statutory provision constitutes a fundamental policy of a state." *Id.* at 607 (citing *Cherokee Pump & Equip. In. v. Aurora Pump*, 38 F.3d 246, 252 (5th Cir. 1994)). While not dispositive, the presence of an anti-waiver provision suggests the importance the legislature attached to the statute. *Id.* at 608. The Fourth Circuit has also looked to the legislative history for any indication of whether a statute was intended to embody a fundamental policy of the state. *Id.*

The North Carolina RISA provides that

> For the purposes of this Chapter, a consumer credit sale shall be *deemed to have been made in this State*, and therefore subject to the provisions of this Chapter, if the seller offers or agrees in this State to sell to a buyer who is a resident of this State, or if such buyer accepts or makes the offer in this State to buy, *regardless of the situs of the contract as specified therein*. . . .
>
> Any solicitation or communication to buy, oral or written, originating within this State, from a buyer who is a resident of this State, but forwarded to and received by a retail seller outside of this State, shall be deemed to be an acceptance or offer to buy in this State.

N.C. Gen. Stat. § 25A-2(d) (emphasis added).

It is unnecessary for the court to determine the situs of the contract because RISA dictates that a consumer credit sale must be deemed to be made in North Carolina regardless of the situs of the contract. Graceland does not dispute that this transaction would be a consumer credit sale as

defined by RISA.[1] The court reads the statute's plain language ("regardless of the situs of the contract as specified therein") to mean that even if the agreement contains a choice of law provision, any consumer credit sale in which the seller offers or agrees in North Carolina to sell to a North Carolina resident is deemed to be made in North Carolina.

Effectively, N.C. Gen. Stat. § 25A-2(d) operates as an anti-waiver provision. The language "regardless of the situs of the contract as specified therein" would be rendered meaningless if the court enforced the choice of law provision in this agreement. The plain language of the statute indicates that the North Carolina legislature did not intend for parties to be able to avoid RISA by including a choice of law provision into agreements. The presence of this provision suggests to the court that it would be against the fundamental policy of North Carolina to allow contracting parties to opt-out of RISA through the use of a choice of law provision. Therefore, the court finds that the choice of law provision in the Rental Purchase Agreement is not enforceable and that North Carolina law governs the agreement.

III. Enforceability of the Rental Purchase Agreement

Graceland contends that even if North Carolina law governs the agreement, the Rental Purchase Agreement does not substantively constitute a sales contract and therefore does not come

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[1] [A] "consumer credit sale" is a sale of good or services in which

> (1) The seller is one who in the ordinary course of business regularly extends or arranges for the extension of consumer credit, or offers to extend or arrange for the extension of such credit,
> (2) The buyer is a natural person,
> (3) The goods or services are purchased primarily for a personal, family, household or agricultural purpose,
> (4) Either the debt representing the price of the goods or services is payable in installments or a finance charge is imposed, and
> (5) The amount financed does not exceed seventy-five thousand dollars ($75,000) or, in the case of a debt secured by real property or a manufactured home as defined in G.S. 143-145(7), regardless of the amount financed.

N.C. Gen. Stat. § 25A-2(a).

within the regulatory scope of RISA. Mr. Mattox maintains that the Rental Purchase Agreement meets the definition of a sale as defined by North Carolina's RISA.

RISA defines a "sale" as including but not limited to

> [A]ny contract in the form of a bailment or lease if the bailee or lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the goods and services involved, and it is agreed that the bailee or lessee will become, or for no other or for a nominal consideration, has the option to become, the owner of the goods and services upon full compliance with his obligations under such contract.

N.C. Gen. Stat. § 25A-2(b). RISA extends to the term "sale" to also encompass

> [A] contract in the form of a terminable bailment or lease of goods or services in which the bailee or lessee can renew the bailment or lease contract periodically by making the payment or payments specified in the contract if:
>
> > (1) The contract obligates the bailor or lessor to transfer ownership of the property to the bailee or lessee for no other or a nominal consideration (no more than ten percent (10%) of the cash price of the property at the time the bailor or lessor initially enters into the contract with the bailee or lessee) upon the making of a specified number of payments by the bailee or lessee; and
> >
> > (2) The dollar total of the specified number of payments necessary to exercise the purchase option is more than ten percent (10%) in excess of the aggregate value of the property and services involved. For the purposes of this subsection, the value of goods shall be the average cash retail value of the goods. . . .

N.C. Gen. Stat. § 25A-2(b).

Graceland cites to the *Aaron's* decision for the proposition that agreements of this type are leases and not sales contracts. *See In re Aaron's, Inc.*, 824 S.E.2d 432 (N.C. Ct. App. 2019), *rev. denied,* 831 S.E.2d 72 (N.C. 2019). In that case, the North Carolina Court of Appeals was tasked with determining whether the transfer of possession of property following the execution of a Lease Purchase Agreement was properly categorized as a "sale" for taxing purposes. *Id.* at 434. The Court does not discuss whether the transaction would be considered a "sale" under the definition

provided in RISA. Thus, the *Aaron's* case is not instructive to this court on this issue because the definition of a "sale" is different and explicitly defined under RISA.

The court finds that the Rental Purchase Agreement meets the definition of a "sale" as defined by RISA. Mr. Mattox had the option to renew the agreement periodically by making the payments specified in the agreement. The agreement obligated Graceland to transfer the shed to Mr. Mattox for no additional consideration upon the making of 36 payments. Under the agreement, the total number of payments necessary for Mr. Mattox to obtain ownership of the shed would be $7,100.64 which is more than 10% in excess of the value of the shed of $3,990.00. Graceland does not contest these amounts.

If a consumer credit sale requires the payment of a finance charge[2] more than two times that permitted by RISA,[3] the contract is deemed void and the buyer may at his option "retain without any liability any goods delivered under such a contract and the seller or an assignee of the rights shall not be entitled to recover anything under such contract." N.C. Gen. Stat. § 25A-44(2). The finance charge for the purchase of the storage shed is either 37.799% per annum (if based on the 6.75% sales tax rate of Brunswick County) or 37.604% per annum (if based on the 7.0% sales tax rate of New Hanover County). Either way, the finance charge is more than two times the rate permitted by RISA.

Therefore, the court finds that the Rental Purchase Agreement is void under North Carolina's RISA. Mr. Mattox may, at his option, retain the storage shed without any liability, and Graceland is not entitled to recover anything under the contract.

[2] "Finance charge" is defined as "the sum of all charges payable directly or indirectly by the buyer and imposed by the seller as an incident to the extension of credit . . . ." N.C. Gen. Stat. § 25A-8(a).
[3] If the amount financed is $3,000.00 or greater, the finance charge rate for a consumer credit installment sales contract may not exceed 18% per annum. N.C. Gen. Stat. § 25A-15(b).

CONCLUSION

THEREFORE, IT IS HEREBY ORDERED that Mr. Mattox's Motion for Summary Judgment on the first cause of action is **GRANTED**. The Objection to the Claim of Graceland shall be **ALLOWED**, and Graceland's proof of claim (court claim #8) shall be **DISALLOWED** in the full amount of $4,242.12.

IT IS FURTHER ORDERED that Graceland's Motion for Summary judgment is hereby DENIED on all causes of action.

The debtor is directed to file an amended plan consistent with this opinion.

END OF DOCUMENT