

**NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1109-22**

NICOLE PORCELLI,

Plaintiff-Respondent,

v.

GREEN POWER SOLUTION,  
LLC, SIMPLY SOLAR, LLC,  
RICKY GEORGE, PAMELA  
GEORGE, and DOROTHY  
GEORGE,

Defendants,

and

GOODLEAP, LLC, f/k/a  
LOANPAL, LLC,

Defendant-Appellant.

---

Argued October 10, 2023 – Decided October 24, 2023

Before Judges Sabatino, Marczyk and Chase.

On appeal from the Superior Court of New Jersey, Law  
Division, Monmouth County, Docket No. L-1217-21.

Christopher D. Barraza (Phillips Lytle LLP) of the New York bar, admitted pro hac vice, argued the cause for appellant (Windels Marx Lane & Mittendorf, LLP, and Christopher D. Barraza, attorneys; Christopher D. Barraza and Rodman E. Honecker, on the briefs).

Noel Rivers argued the cause for respondent (Rivers Law Firm LLC, attorneys; Noel Rivers, on the brief).

## PER CURIAM

This case arises out of a homeowner's purchase of solar panels. The homeowner, plaintiff Nicole Porcelli, was dissatisfied with the panels after they were installed. She declined to make additional payments she owed to the company that financed the transaction, defendant GoodLeap, LLC. Plaintiff sued GoodLeap and other related parties in the Law Division, alleging, among other things, breach of contract and consumer fraud.

GoodLeap moved to dismiss the lawsuit, invoking an arbitration clause in its form contract. The contract had been electronically signed when a sales representative who identified herself as "Pamela George" solicited plaintiff's business at her home.

Following the trial court's preliminary denial of defendant's motion, limited discovery was conducted. The discovery included the remote deposition of the sales representative, but plaintiff and her husband assert the deponent on the video screen did not physically resemble the "Pamela George" who came to

their home. The witness refused to present photo identification when asked to do so by counsel.

Defendant deposed plaintiff, who recounted she had not been shown or told about the arbitration clause before the sales representative obtained her electronic signature at her home. Defendant disputes plaintiff's assertions. It contends it had emailed plaintiff a copy of the sales contract later in the day after she had signed it at her house, and that she did not exercise her contractual right to opt out of the arbitration clause. Defendant also stresses that plaintiff received the goods, made several installment payments, and had asked for and obtained extensions of some of the payment deadlines, which it says is indicative of plaintiff's assent to all of the contract terms.

GoodLeap renewed its motion. The parties submitted conflicting certifications about what had occurred during and concerning the transaction. They also provided the deposition testimony of plaintiff and the person who was purported to be the sales representative.

In an order dated November 21, 2022, the trial court denied defendant's motion to compel arbitration, but did so explicitly "without prejudice." The court found in its accompanying oral decision that the present record lacked

evidence that plaintiff "assented or knowingly assented to the arbitration agreement."

The court also noted "there are issues of fact which are also problematic at this point in time, [which are] another reason why this [motion] could not be granted." Those unresolved fact issues included "the basic, fundamental dispute as to who signed the agreement and what each person thought they . . . agreed to." The court specifically underscored the parties' dispute as to whether the witness who had been presented by the defense for deposition was actually the same person who dealt with plaintiff at her home. Consequently, the court instructed it was "going to allow discovery to continue [in] that regard."

Defendant appeals the November 21, 2022 order, relying on Rule 2:2-3(b), which classifies "orders compelling or denying arbitration, whether the action is dismissed or stayed" as "appealable as of right." For the reasons that follow, we disagree with defendant's finality argument but grant leave to appeal sua sponte to remand this case to the trial court for a plenary hearing to resolve open disputes concerning the enforceability of the arbitration clause.

When the appellate clerk's office wrote counsel expressing concerns about the finality of the trial court's decision, defense counsel submitted a letter asserting this court had appellate jurisdiction under the Rule. In that regard,

defendant relied on language in GMAC v. Pittella, 205 N.J. 572, 586 (2011), a case in which the trial court had granted an order compelling arbitration, but where there were other unresolved claims involving other parties not covered by the arbitration clause. Plaintiff's counsel did not respond to the clerk's finality inquiry, but her merits brief argues the appeal is "not ripe for appellate review."

After receiving defendant's finality submission, this court allowed the appeal to proceed. However, upon closer inspection by this merits panel and the oral argument of counsel, it is clear that the trial court's "without prejudice" order is not a final order that confers appellate jurisdiction under Rule 2:2-3(b)(8).

As we noted, the trial court's decision to deny arbitration "at this time" and "without prejudice" is subject to further developments, including additional discovery and the resolution of disputed facts, including "the basic, fundamental dispute as to who signed the agreement and what each person thought they . . . agreed to."

Our own review of the record shows that several key credibility-dependent facts concerning the arbitration clause remain unresolved. They include, but are not limited to:

- Whether plaintiff or the sales representative signed the loan agreement on plaintiff's behalf.

- Whether plaintiff had an opportunity to review the loan agreement before an executed copy was emailed to her after the sales representative had left her home.
- Whether the sales representative ever gave her cell phone to plaintiff to complete or sign documents.
- Whether the sales representative, while at plaintiff's home, spoke to anyone at defendant's company on plaintiff's behalf.
- Whether the sales representative left plaintiff's presence at her home to speak with a person at defendant's company.
- Whether the deponent who appeared for the video deposition was actually the sales representative who met with plaintiff at her home.

The resolution of these factual disputes is critical to the pivotal question of whether mutual assent bound the parties to the arbitration clause. See Skuse v. Pfizer, Inc., 244 N.J. 30, 48 (2020); NAACP v. Foulke, 421 N.J. Super. 404, 425 (App. Div. 2011). The trial court should not resolve those issues conclusively based on conflicting certifications and transcripts of deposition testimony. Pami Realty, LLC v. Locations XIX Inc., 468 N.J. Super. 546, 559 (App. Div. 2021), see also Bruno v. Gale, Wentworth & Dillon Realty, 371 N.J. Super. 69, 76-77 (App. Div. 2004). Instead, the issues of mutual assent must be resolved with finality through a plenary hearing conducted by the trial court, evaluating the credibility of plaintiff, the sales representative, and any other

relevant witnesses. During oral argument on the appeal, both counsel agreed they would be amenable to such a plenary hearing if the case were remanded.

The obvious existence of these many fact issues demonstrates that this matter is not ripe for appeal. Defendant's reliance on Pittella to sustain appellate jurisdiction is misplaced. The Supreme Court in that case dealt with the possibility that in some instances an order compelling arbitration of certain claims might leave unresolved additional claims or additional parties not covered by the arbitration. 205 N.J. at 586 (addressing the options, including a stay, where such additional claims or parties remain unresolved). Here, the unresolved matters include the core question of the enforceability of the arbitration clause itself.

In light of the circumstances, we choose not to dismiss defendant's appeal as interlocutory. Instead, we grant leave to appeal, sua sponte, and summarily remand the matter to the trial court for a plenary hearing on the open mutual assent issues the trial court and our opinion have identified. On remand, the trial court shall also address defendant's arguments concerning equitable estoppel, the timeliness of plaintiff's amended complaint, and other remaining issues that may bear on the enforceability of the arbitration clause.

Remanded for further proceedings in accordance with this opinion. We do not retain jurisdiction. The trial court shall hold a case management conference within thirty days.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.



CLERK OF THE APPELLATE DIVISION