Hutchinson v. American Credit Acceptance, LLC et al

2021 | Cited 0 times | W.D. North Carolina | July 27, 2021

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA

CHARLOTTE DIVISION CIVIL ACTION NO. 3:20-CV-00621-RJC-DCK

THIS MATTER IS BEFORE THE COURT on (Document No. 6). This motion has been referred to the undersigned

Magistrate Judge pursuant to 28 U.S.C. § 636(b), and is now ripe for disposition. Having carefully considered the arguments, the record, and the applicable authority, the undersigned will respectfully recommend that the motion be granted.

I. BACKGROUND Pro se (Document No. 1) on November 6, 2020. In the Complaint, Plaintiff asserts that American Credit

. 1, p.

FDCPA and FCRA. Id. Accordingly, Plaintiff alleges tha Id. DIEDRE HUTCHINSON,)

Plaintiff,) v.) MEMORANDUM AND

RECOMMENDATION ABSOLUTE RECOVERY TOWING AMERICAN CREDIT ACCEPTANCE, LLC PAR NORTH AMERICA,

Defendants.)

purchased a used Kia Sorento on credit in May 2020. Id. CarMax, the non-party dealership which sold Plaintiff the car, assigned its interest in the contract to ACA. Id. to have the car

repossessed. Id. Id.

on

argues that a valid arbitration agreement is in place and enforceable under the Federal Arbitration

n which Plaintiff argues she has no

The pending motion has now been fully briefed and is ripe for review and a recommendation to the presiding district judge.

II. STANDARD OF REVIEW The FAA Moses H. Cone Mem'l Hosp. v.

Mercury Constr. Corp., 460 U.S. 1, 24 (1983). Under Section 2 of the FAA, a written arbitration as exist at law or 9 U.S.C. § 2. Furthermore, the Supreme Court has AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 339 (2011).

In the Fourth Circuit, a litigant can compel arbitration under the FAA if he can demonstrate:

(1) the existence of a dispute between the parties, (2) a written agreement that includes an arbitration provision which purports to cover the dispute, (3) a relationship of the transaction, which is evidenced by the agreement, to interstate or foreign commerce, and (4) the failure, neglect or refusal of [a party] to arbitrate the dispute. Galloway v. Santander Consumer USA, Inc., 819 F.3d 79, 84 (4th Cir. 2016); see also Chorley , 807 F.3d 553, 563 (4th Cir. 2015).

Agreements to arbitrate are construed according to the ordinary rules of contract interpretation, as augmented by a federal policy requiring that all ambiguities be resolved in favor of arbitration. Choice Hotels Int'l, Inc. v. BSR Tropicana Resort, Inc., 252 F.3d 707, 710 (4th Cir. 2011). Whether a party agreed to arbitrate a particular dispute is a question of state law governing contract formation. Adkins v. Labor Ready, Inc., 303 F.3d 496, 500-01 (4th Cir. 2002). Green Tree Fin. Corp.-Ala. v. Randolph, 531 U.S. 79, 81 (2000).

III. DISCUSSION A. Presumption of Validity alid, irrevocable, and enforceable, save upon such

(quoting 9 U.S.C. § 2). Defendants further assert that interpretation of the FAA has created a

Id. (citing Moses H. Cone , 460 U.S. at 24-25). In response, Plaintiff asserts that as a consumer under 15 U.S.C. § 1635(a), she was never Id.

In their reply, Defendants argue that 15 U.S.C. § (Document No. 14, p.1); see Jeffries v. Wells Fargo Bank, NA, 2011 U.S. Dist. LEXIS 121405,

at *13 (N.D. Ill. Oct. 19, 2011) financing transactions).

The undersigned recognizes the presumed validity of arbitration agreements. Further, the undersigned finds that Plaintiff has failed to reach the high bar necessary to invalidate such an agreement. The legal grounds that Plaintiff attempts to use to invalidate the agreement, as noted by

Defendants, strike the undersigned as unsuitable for this particular transaction. (See Document No. 13, p.1, Document No. 14, pp, 1-2). Accordingly, the undersigned finds the arbitration agreement to be, on its face, valid.

B. FAA Factors for Enforceability

Defendants next argue the three factors for enforcing arbitration agreements under the FAA are met. (Document No. 7, p. 4). The three factors are: (1) whether the arbitration agreement is written; (2) whether the underlying transaction involves interstate commerce; and (3) whether the arbitration agreement covers the claims. Id.; see 9 U.S.C. § 2.

i. Written Defendants simply state that the agreement is in a written contract. There is no dispute that this factor is met. ii. Interstate Commerce Defendants next argue that the second factor is met for four independent reasons. Id. First, Id. Defendants quote the contract: on Act (9 U.S.C. § Id. (quoting Contract at 3). Defendants argue that the Supreme Court has upheld choice of law

provisions for arbitration, so the first factor is met because the agreement says that the FAA governs. Id. (see Volt Info. Scis. V. Bd. Of Trs., 489 U.S. 468, 478-79 (1989)).

Second, Defendants assert that the transaction involves interstate commerce because the see Citizens Bank v. Alafabco, Inc., 539 U.S. 440, 448-49 (2006). Further, Defendants assert that

such transactions must comply with federal law and regulations, such as the Truth in Lending Act. (Document No. 7 p. 5). Defendants claim the connection to federal law constitutes a second independent reason that interstate commerce is involved in the transaction. Id.

Id. (see Rota-McLarty v. Satander Consumer USA, Inc., 700 F.3d 690, 697-98 (4 th

Finally, Defendants assert that this specific transaction involves interstate commerce. (Document No. 7, p. 5). Defendants highligh Id. at 6. Further, Defendants

coast-to- Id.

Defendants also note that Plaintiff is a North Carolina resident, while ACA is based in South dealership Id.

thereby violating the Fair Debt Collections Practices Act. (Document No. 13, p. 1).

Clearly, this argument has no bearing on whether interstate commerce was involved in the agreement.

iii. Covered by Agreement Id.

the federal policy favoring arbitration, and ambiguities as to the scope of the arbitration clause Id. (quoting Volt, 489 at 476); see Moses H. Cone, 460 U.S. at 24-25 (any doubts about arbitrability should be resolved in favor or arbitration). Defendants note that the arbitration clause at issue covers:

Any claim . . . that in any way arises from or related to this consumer credit sale, the purchase you are financing by way of this Contract, the Vehicle . . . , or the collection or servicing of the Contract, including . . .

Disputes based on contract, tort, consumer rights, fraud

and other intentional torts . . . ; [and] Disputes based on constitutional grounds or on laws,

regulations, ordinances or similar provisions . . . (Document No. 7, pp. 7-8) (quoting Contract at 3). Document No. 1, p. 4). To that end, the arbitration agreement clearly dictates that disputes based

on consumer rights related to the contract are subject to arbitration. (Document No. 7, pp. 7-8) (citing Contract at 3). Plaintiff concedes that this dispute arose over issues related to her consumer Credit Acceptance, LLC has violated my federally protected rights as a ollection

Practices Act and the Fair Credit Reporting Act, which are laws, thus clearly covered by the arbitration agreement. (Document No. 7, p. 8). Plaintiff, again, makes no meaningful counterargument to these arguments set forth by Defendants. The undersigned finds that all factors are met, and the FAA applies to this agreement. Despite the absence of the full contract from the record, Defendants have provided sufficient proof written agreement exists. Both sides refer to the agreement, and Defendants have included sufficient text from the agreement in explicitly covered in the terms of the agreement. (Document No. 1) (Contract at 3).

For the second factor, the undersigned acknowledges that the transaction does involve interstate commerce. Defendant is persuasive and thorough in outlining different ways this transaction affects interstate commerce. Past decisions cited by Defendants, as well as the multiple states specifically implicated in this particular transaction are especially persuasive in leading the undersigned to this conclusion. In Citizens Bank v. Alafabco, Inc., the Supreme Court noted:

No elaborate explanation is needed to make evident the broad power to regulate that activity pursuant to the Commerce Clause. Lewis v. BT Investment Managers, Inc., 447 U.S. 27, 38-39 (1980) concern. . . . Nonetheless, it does not follow that these same Perez v. United States 402 U.S. 146, 154-55 (1 Case 3:20-cv-00621-RJC-DCK Document 15 Filed 07/27/21 Page 7 of 12 transactions, though purely intrastate, may in the judgment of

(539 U.S. 52, 58 (2003)). As made clear by this decision, this kind of commercial transaction in which Plaintiff a North Carolina resident bought a car on credit, thereby owing money to ACA, a South Carolina organization, is clearly interstate in nature. Third, the undersigned concludes that the agreement is sufficiently broad to cover the claims brought by Plaintiff. As suggested by Defendants, the agreement includes disputes based on consumer rights as well as those based on laws and regulations. Additionally, disputes about validity, enforceability, and arbitrability or scope are also subject to arbitration under the agreement. Plaintiff brought claims under federal law, and asserted that her consumer rights were violated, which she believes nullified the agreement. (Document No. 1, p. 4). The undersigned is unconvinced by her argument that the agreement is null and void. However, even if there were a strong case to be made that the agreement is invalid as Plaintiff suggests (Document No. 13, p. 1), goes to the merits of her claims not the issue before the Court. The issue presented by the pending

motion is whether these issues on the merits are subject to arbitration. Clearly, they are. For the above reasons, the undersigned is satisfied that the FAA factors for enforceability are met.

C. Issues of Arbitrability

Next, Defendants assert that even if this Court does not find that the FAA factors are met, not a court Id. Defendants cite a delegation clause wit Id. (citing Contract

at 3). Defendant notes the general acceptance from courts that issues of arbitrability should be delegated to the arbitrator when such delegation has been agreed to by the parties. Id. at 9 (citing Henry Schein, Inc. v. Archer & White Sales, Inc., 139 S. Ct. 524, 528 (2019)).

As explained above, the undersigned is satisfied that the FAA factors are met. The undersigned does note, however, that issues of arbitrability are clearly included as subject to arbitration in the agreement. The undersigned further notes that Plaintiff did not present any agreement. As a result, even if the undersigned had doubt about whether the FAA factors were

met, the claims would still be subject to arbitration because there is a dispute about arbitrability, and questions about arbitrability are for an arbitrator to decide.

D.

a see Setra of N.A., Inc. v.

Schar that when a valid assignment is executed, the assignee stands in

The undersigned recognizes that ACA can enforce the arbitration agreement under assignment principles. The interest was assigned to ACA from CarMax (Document No. 7, p. 10), and Plaintiff

makes no significant argument to refute that which Defendants put forward.

E.

based on agency principles an arbitration agreement applies to non-signatory defendants when the claim is based on conduct that (Document No. 7, p. 10) (citing J.J. Ryan & Sons, Inc. v. Rhone Poulenc Textile, S.A., 863 F.2d

315, 321 (4 th

Cir. 1988)). Defendants Case 3:20-cv-00621-RJC-DCK Document 15 Filed 07/27/21 Page 9 of 12 Id. To that end, Defendants argue that because ACA can enforce the arbitration as an assignee, PAR and Absolute, as agents of ACA, can as well. Id.

assignee, is empowered to enforce the arbitration agreement. The non-signatory repossession

companies were acting under direction and on behalf of ACA. Accordingly, PAR and Absolute has or at least not United States v. Rafiekian, 991 F.3d 529, 539 (4th

of Hum. Res., 296 N.C. 683, 686 (1979). Here, PAR and Absolute acted to repossess the car under

Id. subject of this dispute. The undersigned is satisfied that under this definition, PAR and Absolute

were agents of ACA. Thus, they too can enforce the arbitration agreement.

F. Dismissal

Id. at 12. Defendants arbi Id. (quoting , 252 F.3d at 709-10 (4th Cir. 2001)). Because

dismissed. Id.

No. 13, p. 1).

The undersigned finds all claims brought by Plaintiff are subject to the arbitration agreement. As suggested by Defendants, it is therefore appropriate to dismiss the claims. The

as well as a Supreme Court decision agreed to submit a particular grievance to arbitration, a court is not to rule on the potential merits

AT&T , 475 U.S. 643, 649

arbitration agreement, the undersigned finds dismissal to be the proper outcome. The undersigned finds

IV. RECOMMENDATION FOR THE FOREGOING REASONS, the undersigned respectfully recommends that (Document No. 6) be granted.

V. TIME FOR OBJECTIONS The parties are hereby advised that pursuant to 28 U.S.C. § 636(b)(1)(C), and Rule 72 of the Federal Rules of Civil Procedure, written objections to the proposed findings of fact, conclusions of law, and recommendation contained herein may be filed within fourteen (14) days of service of same. Responses to objections may be filed within fourteen (14) days after service of the objections. Fed.R.Civ.P. 72(b)(2). Failure to file objections to this Memorandum and Recommendation with the District Court constitutes a waiver of the right to de novo review by the District Court. Diamond v. Colonial Life, 416 F.3d 310, 315-16 (4th Cir. 2005); United States v. Benton, 523 F.3d 424, 428 (4th Cir. 2008). Moreover, failure to file timely objections will preclude the parties from raising such objections on appeal. Id. In order to preserve for appeal an issue in a magistrate judge s report, a party must object to the finding or recommendation on that issue with sufficient specificity so as reasonably to alert the district court of the true ground for the objection. Martin v. Duffy, 858 F.3d 239, 245 (4th Cir. 2017) (quoting United States v. Midgette, 478 F.3d 616, 622 (4th Cir. 2007)). IT IS SO RECOMMENDED.

Signed: July 26, 2021