

14-1215

IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

JENNIFER ROBINETTE,

PLAINTIFF

v.

CIVIL ACTION NO. 14-C-231 (B)

SALLIE MAE, INC. and  
ALLIED INTERSTATE LLC,

DEFENDANTS

**ORDER DENYING DEFENDANT'S  
MOTION TO COMPEL ARBITRATION**

On August 18, 2014, this Court convened for a hearing upon Defendant Sallie Mae, Inc., now known as Navient Solutions, Inc.'s (herein "Navient") Motion to Compel Arbitration. Navient appeared by counsel, Jared Tully, Defendant Allied Interstate, LLC, appeared by counsel, John Meadows, and Plaintiff Jennifer Robinette appeared by counsel, Jed Nolan. Upon consideration of the written filings and oral argument of counsel, this Court hereby **DENIES** Defendant's Motion as follows.

1. Navient's motion alleged that Plaintiff agreed to arbitrate all claims under the terms of a Promissory Note she entered into when applying for her student loans. Plaintiff admitted that she signed a three page loan application, which referenced a "Promissory Note." Plaintiff alleges that she does not recall reading a Promissory Note or any provision regarding arbitration. Navient alleges that the loan application and Promissory Note were presented as a single document. The three page loan application, which is the only document that Plaintiff signed, did not make any specific reference to arbitration. Plaintiff never signed any page that specifically noted it was or contained an arbitration provision.

2. Initially, this Court finds that the loan application is a separate document from the Promissory Note. Defendant Navient argues that the loan application and Promissory Note are one document and were presented simultaneously to the borrower. However, the Court notes that

the loan application pages are numbered 1 through 3, and the Promissory Note begins anew at page 1. Logically, because the numbering is not sequential, the loan application and Promissory Note are two separate documents. Further, the loan application refers to the Promissory Note, which would not be necessary if the loan application and Promissory Note were the same document.

3. The Court notes that the three page loan application did refer the borrower to a Promissory Note. A Promissory Note implies that a borrower has a duty to repay the loan according to agreed upon terms in the Promissory Note, such as number of months, interest rate, and notice that a failure to pay will result in potential collection actions. A Promissory Note does not contemplate the inclusion of an arbitration agreement, which is something new and different beyond a promise to repay a loan. Although it is foolish for a borrower not to thoroughly read a Promissory Note in its entirety, an unsophisticated consumer can expect a Promissory Note to contain a duty to repay the loan. A borrower must be alerted to any additional terms that go beyond this scope of a Promissory Note.

4. Parties are only bound to arbitrate those issues that by clear and unmistakable writing they have agreed to arbitrate. *State ex rel. U-Haul Co. of W. Virginia v. Zakaib*, 232 W. Va. 432, 752 S.E.2d 586, 589 (2013). In the matter of an arbitration clause incorporated by reference, the West Virginia Supreme Court of Appeals has held:

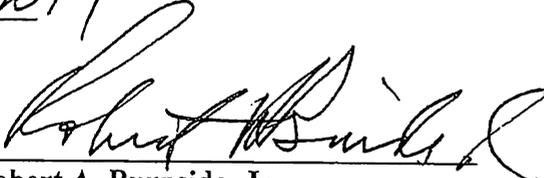
In the law of contracts, parties may incorporate by reference separate writings together into one agreement. However, a general reference in one writing to another document is not sufficient to incorporate that other document into a final agreement. To uphold the validity of terms in a document incorporated by reference, (1) the writing must make a clear reference to the other document so that the parties' assent to the reference is unmistakable; (2) the writing must describe the other document in such terms that its identity may be ascertained beyond doubt; and (3) it must be certain that the parties to the agreement had knowledge of and assented to the incorporated document so that the incorporation will not result in surprise or hardship.

Syl. Pt. 2, *State ex rel. U-Haul Co. of W. Virginia v. Zakaib*, 232 W. Va. 432, 752 S.E.2d 586, 589 (2013).

5. Navient's Promissory Note was incorporated by reference into the loan application. The Promissory Note's inclusion of an arbitration clause went beyond the scope of a Promissory Note. Plaintiff was never warned or advised of the addition of an arbitration agreement to the Promissory Note. There was no indication in Navient's loan application that the Promissory Note included any provisions beyond those typically contained in a Promissory Note. Because Defendant Navient did not include the arbitration agreement in the body of the loan application signed by Plaintiff, and because the incorporation of the Promissory Note did not clearly notify Plaintiff that an arbitration agreement was included in the Promissory Note, Navient cannot now force the Plaintiff to arbitrate.

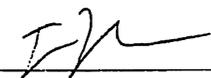
Therefore, Defendant Navient's Motion to Compel Arbitration in this matter is hereby **DENIED**. All parties are saved their objections and exceptions to the Court's ruling. It is further **ORDERED** that the Clerk deliver a copy of this Order to all counsel of record.

ENTERED: October 16, 2014

  
Robert A. Burnside, Jr.  
Chief Judge

The foregoing is a true copy of an order entered in this office on the 16 day of Oct., 2014.  
PAUL H. FLANAGAN, Circuit Clerk of Raleigh Co., WV  
By aw Deputy

**PREPARED BY:**

  
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