

IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

ROBERT RUTLEDGE AND CAROL BARCLAY ON  
THEIR OWN BEHALF AND ON BEHALF OF  
ALL OTHERS SIMILARLY SITUATED,

Plaintiffs,

Civil Action No. 18-C-364-D  
Honorable Andrew G. Dimlich  
Trial Date:

v.

FRONTLINE ASSET STRATEGIES, LLC,

Defendant.

ORDER DENYING MOTION FOR JUDGMENT ON THE PLEADINGS  
AND COMPELLING ARBITRATION

Defendant filed a motion pursuant to Rule 12(c) of the West Virginia Rules of Civil Procedure seeking dismissal of the above captioned matter and compelling arbitration. Plaintiffs responded to the motion January 28, 2020. Defendant secured an agreement with Plaintiffs to extend the time to reply to February 14, 2020. Defendant replied February 14, 2020. No party requested a hearing on the motion.

I. FINDINGS OF FACT

1. This is a potential class action claim involving two representative Plaintiffs and others similarly situated.
2. Both representative Plaintiffs assert that Defendant engaged in conduct that violated West Virginia law concerning collection of debt.
3. Both representative Plaintiffs had originally incurred debt to assignors of the debt Defendant was attempting to collect.

District of West Virginia March 25, 2018. Plaintiffs' motion to remand the case to this Court was granted December 17, 2019.

The court is required to make the following determinations on the issue of arbitration: (1) The existence of a valid, enforceable agreement to arbitrate between the parties; and (2) That the parties' controversy falls within the substantive scope of that agreement to arbitrate.

Defendant asserts that the original lending agreement in both representative Plaintiff's cases contained arbitration agreements that are triggered at the request of either the borrower or the lender. Defendant further asserts that in both representatives' cases the arbitration agreements include the right to assign the option to arbitrate to assigns of the original lender.

Plaintiffs assert that Defendant has failed to provide evidence that any arbitration agreement exists or was transferred with the right to collect the original debt. Specifically Plaintiffs assert that Defendant has failed to provide evidence of an agreement to arbitrate disputes between Plaintiffs and the original lenders. Further, Plaintiffs claim that each debt has been transferred multiple times prior to being transferred to Defendant and there is no chain of assignments that would permit transfer of the right to arbitrate beginning with the initial transfer from the original lenders ultimately to Defendant.

In its reply Defendant claims that Plaintiffs judicially bind them to arbitration by pleading that both cases involve valid assignments of agreements mandating binding arbitration. The language relied upon, however, is a recitation wherein Defendant is quoted as "asserting that the debt had been turned over to Defendant for collection." The court does not see that as one and the same with Defendant's claim.

Defendant states that Plaintiffs do not deny that a valid arbitration agreement exists. It is unclear to the court upon what basis Defendant makes such a claim. From all appearances it is

documents referenced by Ms. Savage is seven page Credit One Bank Visa/MasterCard Agreement. That agreement on page 6 includes the Arbitration Agreement. This document, however, is not executed by Plaintiff Barclay. Ms. Savage's affidavit notes an exhibit in the form of a collection letter from Defendant to Ms. Barclay. While the letter notes the original lender as Credit One Bank and the Current Creditor as LVNV Funding, it does not indicate to the court that the account had been assigned. While it is clear that the original owner is not Defendant's customer, there is no particular statement of assignment. There is, however, an indication that nothing in the letter changes or alters Plaintiff's rights. Defendant has not provided evidence that Plaintiff executed an agreement which included the binding arbitration clause.

Based upon the foregoing, the court finds that for the purposes of a Rule 12(b)(6) Motion to Dismiss the defendant has not established that Plaintiffs can prove no set of facts to support Plaintiffs' claim that the arbitration clauses were not assigned or transferred when the debts were transferred.

Defendant's motion to dismiss and compel arbitration is therefore DENIED.


Defendant OBJECTS to the court's findings, conclusions and ruling.

The Clerk of this Court shall mail attested copies of this Order to:

STEVEN R BROADWATER JR ESQ  
P O BOX 959  
FAYETTEVILLE WV 25840-0959

JILL D HELBLING ESQ  
1025 MAIN STREET  
SUITE 638  
WHEELING WV 26003

Entered this 25<sup>TH</sup> day of March 2020.

  
Andrew G. Dimlich, Chief Judge  
10<sup>th</sup> Judicial Circuit

The foregoing is a true copy of an order  
entered in the office on the 30 day  
of March, 2020  
PAUL H FLANAGAN, Circuit Clerk of Raleigh Co., WV  
by [Signature] Deputy