

**IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION**

IN RE: CHRISTINE A. BLOK

**No. 5:11-bk-70960
Ch. 7**

CHRISTINE A. BLOK

PLAINTIFF

v.

No. 5:11-ap-07104

**THE COLLEGE NETWORK, INC. and
SOUTHEAST FINANCIAL FEDERAL CREDIT UNION**

DEFENDANTS

ORDER

On July 15, 2011, the debtor, Christine A. Blok [Blok], filed her adversary proceeding seeking damages from The College Network, Inc. [TCN] and Southeast Financial Federal Credit Union [Southeast Financial] for an alleged violation of the automatic stay under 11 U.S.C. § 362, as well as damages for alleged violations of the Fair Debt Collection Practices Act, the Arkansas Deceptive Trade Practices Act, Regulation Z, and 18 U.S.C. § 1962(c) and (d) [RICO statutes].¹ On August 29, 2011, TCN filed a *Motion to Compel Arbitration or, in the Alternative, Motion to Dismiss* [Motion to Compel or Dismiss] and a supporting brief in which it argued that the claims made in Blok's complaint were subject to an arbitration clause found within a purchase agreement entered into between Blok and TCN.² For that reason, TCN requested that the Court compel arbitration pursuant to the terms of the purchase agreement, or, alternatively, dismiss the case under Federal Rule of Civil Procedure 12(b)(1) and (b)(6), made applicable by Federal Rule of Bankruptcy Procedure 7012. On September 15, 2011, Blok filed a response to TCN's Motion to Compel or Dismiss, and the Court set TCN's Motion to Compel or Dismiss and Blok's

¹ Of the six claims listed in her complaint, Blok alleges that TCN violated each listed statute except Regulation Z and that Southeast Financial violated each listed statute except the Fair Debt Collection Practices Act.

² In addition, Southeast Financial Federal Credit Union filed its answer to Blok's complaint on August 29, 2011. On August 31, 2011, TCN also filed an answer to Blok's complaint.

response for hearing on October 5, 2011. At the conclusion of the October 5 hearing, the Court took the matter under advisement. For the reasons stated below, the Court grants TCN's Motion to Compel or Dismiss in favor of compelling arbitration for Blok's claim for an alleged violation of the automatic stay against TCN. The remaining claims are dismissed for lack of subject matter jurisdiction.

Background

On June 3, 2010, Blok entered into a Purchase Agreement with TCN for 15 Comprehensive Learning Modules for the total purchase price of \$10,465.00. The learning modules are educational courses offered by TCN through the internet that prepare purchasers to take examinations to earn college credit. Within the Purchase Agreement between Blok and TCN, the following portion of a clause entitled "Governing Law and Dispute Resolution" appeared:

Any and all disputes, claims, or controversies (Claims) arising from, out of, or relating to this Agreement, or the relationships between Buyer and TCN which result from this Agreement, or the breach, termination, enforcement, interpretation or validity thereof, shall be determined, confidentially, by binding arbitration in Marion County, Indiana, before one neutral arbitrator selected by TCN, and with the consent of Buyer (and no other person); provided, however, that either party may assert an action in small claims court. Any arbitration or small claims action (including any appeal if allowed) shall be conducted between Buyer and TCN only (and only in Buyer's individual capacity), and shall not resolve, seek to resolve, nor purpose to resolve any disputes, claims, or controversies of any person other than Buyer and TCN. This agreement to arbitrate shall not preclude either Buyer or TCN from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction

While not entered into evidence at the October 5 hearing but stated here for contextual purposes, Blok alleges in her complaint that on the same day she entered into the Purchase Agreement with TCN, she also signed a promissory note and security agreement with Southeast Financial for a loan to pay for the Comprehensive Learning Modules purchased from TCN.³ Less than a year after entering into the Purchase Agreement with TCN, Blok

³ The referenced promissory note and security agreement entered into between Blok and Southeast Financial was attached to Blok's complaint as "Attachment 'B'". In its

filed her chapter 7 bankruptcy petition on March 4, 2011. Also for contextual purposes only, Blok alleges in her complaint that she was later denied access to TCN's online educational materials in May 2011.⁴ On June 1, 2011, Southeast Financial faxed a proposed reaffirmation agreement to Blok's counsel to reaffirm \$8496.86 for a "student loan" with Southeast Financial related to the education modules with TCN. Blok's counsel stated at the October 5 hearing that he had advised Blok against entering into the reaffirmation agreement, and Blok chose not to reaffirm the debt. On June 7, 2011, Blok received her discharge; she subsequently filed her complaint against TCN and Southeast Financial on July 15, 2011.

Issues

TCN argues that the Court should compel arbitration of the alleged claims in Blok's complaint because the claims against TCN are subject to the arbitration clause found within the Purchase Agreement entered into between TCN and Blok. Alternatively, TCN argues that the Court should dismiss Blok's adversary proceeding under Federal Rule of Civil Procedure 12(b)(1) and (b)(6), made applicable by Federal Rule of Bankruptcy Procedure 7012. Other than the assertion that all matters should be arbitrated, TCN's main argument in support of dismissal is that Blok should be judicially estopped from bringing the claims because she did not list the alleged claims against TCN in her schedules. In response, Blok asserts that arbitration is not proper for three reasons: first, the law does not require enforcement of the arbitration clause; second, the language of the arbitration clause does not apply to the claims made within her complaint; and third, justice will not be served by enforcing the arbitration clause. In addition, Blok argues that because any injury resulting from her alleged claims occurred post-petition, her claims were not property of the estate and did not need to be listed in Blok's petition and schedules.

answer to the complaint, TCN "admits only that it presented to [Blok] and executed" the document.

⁴ TCN's answer to Blok's complaint admits this allegation.

Analysis

I. Claims two, three, five, and six⁵

Although Blok's claim for a § 362 automatic stay violation (claim one) is the only cause of action brought pursuant to the bankruptcy code, Blok argues that all of the alleged causes of action stem from the abusive reaffirmation practices of TCN and Southeast Financial, and, therefore, all alleged causes of action relate directly to the bankruptcy code and should be heard by this Court rather than an arbitrator. Despite Blok's argument that her alleged causes of action under the Fair Debt Collection Practices Act, the Arkansas Deceptive Trade Practices Act, and 18 U.S.C. § 1962(c) and (d) should be framed under § 524 in relation to the proposed reaffirmation agreement, these claims are brought under non-bankruptcy statutes and are not core proceedings arising in or under title 11, as referenced in 28 U.S.C. § 157(b). The Eighth Circuit has stated that a bankruptcy court still may have "related to" jurisdiction in a non-core proceeding when

"the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy. An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action and which in any way impacts upon the handling and administration of the bankrupt estate."

Dogpatch Prop., Inc. v. Dogpatch U.S.A., Inc. et al. (In re Dogpatch U.S.A., Inc.), 810 F.2d 782, 786 (8th Cir. 1987) (quoting *Pacor v. Higgins*, 743 F.2d 984, 994 (3rd. Cir. 1984)).

Based on this test, the Court does not have "related to" jurisdiction for these non-core proceedings. The proposed reaffirmation agreement contemplated by Southeast Financial and Blok was never entered into and, therefore, is not before this Court, except as an exhibit for the purposes of the hearing. Even if these non-core claims arise from abusive reaffirmation practices related to § 524, the outcome of claims two, three, five, and six will have no effect upon the handling and administration of Blok's bankruptcy estate because the reaffirmation agreement never came into existence as a binding agreement between Blok and Southeast Financial. Accordingly, the Court dismisses Blok's claims two, three,

⁵ Claim four is the Regulation Z claim, which Blok brought against Southeast Financial only.

five, and six against TCN for lack of subject matter jurisdiction.

II. Claim one

Blok's remaining cause of action for an alleged violation of the automatic stay under § 362 --when Blok was allegedly denied internet access to TCN's educational materials during her bankruptcy case--constitutes the only core proceeding brought by Blok. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and 28 U.S.C. § 157. The Federal Arbitration Act [FAA] supports "the fundamental principle that arbitration is a matter of contract," and, as such, courts must enforce arbitration agreements according to the terms agreed upon by the parties. *Rent-A-Center, West, Inc. v. Jackson*, 130 S.Ct. 2772, 2776 (2010). A party opposing arbitration has the burden of showing "that Congress intended to preclude a waiver of judicial remedies for the statutory rights at issue." *Shearson/American Exp., Inc. v. McMahon*, 482 U.S. 220, 227 (1987). Congressional intent to prohibit waiver of a judicial forum may be ascertained from (1) the statute's text, (2) its legislative history, or (3) "an inherent conflict between arbitration and the statute's underlying purposes." *Id.* Neither the bankruptcy code nor its legislative history addresses arbitration in this context, and other courts have found that without some literal guidance from either source, the relevant prong of the *McMahon* test becomes whether there is an inherent conflict between the FAA and the bankruptcy code. *In re Mintze*, 434 F.3d 222, 231 (3rd Cir. 2006); *In re Rozell*, 357 B.R. 638, 642-43 (Bankr. N.D. Ala., 2006).

Other circuits have noted that even in the case of core proceedings, bankruptcy courts do not have discretion to refuse to compel arbitration without a finding that there is an inherent conflict between the bankruptcy code and the Arbitration Act or that arbitration will jeopardize the objectives of the bankruptcy code. *MBNA Am. Bank v. Hill*, 436 F.3d 104, 108 (2d Cir. 2006); *Ins. Co. of N. Am. v. NGC Settlement Trust & Asbestos Claims Mgmt. Corp. (In re Nat'l Gypsum Co.)*, 118 F.3d 1056, 1069 (5th Cir. 1997). The objectives specific to the automatic stay include protecting the assets of the bankruptcy estate, centralizing disputes concerning the estate, and providing the debtor with a fresh start. *Hill*, 436 F.3d at 109.

Based on the facts in this case, the Court finds that arbitration will not inherently conflict with or jeopardize the objectives of the bankruptcy code. Where arbitration of a core issue will affect the success of the debtor's reorganization, particularly because of the added time or expense needed to complete arbitration separately from other litigation in the bankruptcy case, the objectives of the bankruptcy code may be jeopardized and arbitration should not be enforced. *Phillips v. Congelton, L.L.C. (In re White Mountain Mining Co., L.L.C.)*, 403 F.3d 164, 170 (4th Cir. 2005). However, reorganization was not the purpose of Blok's chapter 7 case, and Blok received her chapter 7 discharge on June 7, 2011. Her complaint alleges that her claim for an automatic stay violation arose from TCN's post-petition denial of her access to online educational materials unless Blok entered into the proposed reaffirmation agreement. Because her claim arises from TCN's post-petition action, any recovery for damages as a result of the claim would inure to Blok's benefit rather than to her estate. Therefore, arbitration of this claim will not hinder the administration of her estate. Any resulting damages from Blok's claim would not have an effect on the administration of her *estate*, even if the complaint had been brought prior to her discharge.

Blok makes two additional arguments against enforcement of the arbitration clause. Blok asserts that the arbitration clause, which is directed at disputes arising out of the relationship between Blok and TCN only, does not apply to her cause of action, which arises from the relationship between TCN and Southeast Financial and their alleged concerted actions to coerce Blok to reaffirm her unsecured debt with Southeast Financial. To the extent this argument is directed at Blok's first claim (claim one, for violation of the automatic stay), the Court finds that the broad language of the arbitration agreement addresses the claim made by Blok against TCN. The fact that this claim against TCN may be intertwined with claims against Southeast Financial does not preclude this Court from compelling arbitration of Blok's claim against TCN. The Supreme Court has recently reiterated that the FAA "has been interpreted to require that if a dispute presents multiple claims, some arbitrable and some not, the former must be sent to arbitration even if this will lead to piecemeal litigation." *KPMG LLP v. Cocchi*, 2011 WL 5299457, at *1 (U.S. Fla. Nov. 7, 2011) (citing *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 217 (1985)). The

Court does not have the discretion to deny arbitration of Blok's claim against TCN on the grounds that her claims against Southeast Financial must be heard separately, even if it is at Blok's inconvenience.

Blok also argues that justice will not be served by enforcing the arbitration clause because she will have to pursue the defendants in two different forums and would be required to travel to Marion County, Indiana. However, the location of potential arbitration is a term of the agreement entered into between Blok and TCN by which Blok is contractually bound. In addition, the Court notes that the arbitration clause also states that "[t]he arbitration proceeding may be conducted telephonically or videographically."

Accordingly, the Court grants TCN's motion to compel arbitration of Blok's first claim against TCN and stays the proceeding as to TCN only, pending arbitration. As stated before, all other claims made by Blok against TCN are dismissed for lack of subject matter jurisdiction.

IT IS SO ORDERED.

January 11, 2012
DATE



BEN T. BARRY
UNITED STATES BANKRUPTCY JUDGE

cc: Todd F. Hertzberg
Seth M. Haines
John M. Blair