

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

FILED

OCT 19 2001 *gl*

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS OFFICE

CLAUDINE WILFONG, LISA ADAMS,
TERRY BLACKBURN, LISA
CHENELLE, TONI COHEN,
MARSHA CROMWELL, DeELLEN
DICKERSON, VERONICA
DROPTMORE, KIM HAMMER,
MARY JOHNSON, KATHLEEN LIPHART,
TEIA MALONE, KAREN DUEKER MEYER,
DAWN PEMBERTON, HERMANETTE
PORTIS, AMY PRATT, LINDA SHEATTLER,
MICHELLE SMITH, MELANIE WATSON,
LINDA WIGGER and ROBIN YEUBANKS,

Plaintiffs,

and

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff-Intervenor

vs.

RENT-A-CENTER, INC.,

Defendant.

No. 00-CV-0680-DRH

MEMORANDUM AND ORDER

HERNDON, District Judge:

I. Introduction and Background

This matter comes before the Court on Rent-A-Center's renewed motion to stay proceedings and compel arbitration of claims made by Plaintiff Marsha Cromwell (Doc 111). Because Rent-A-Center has not presented any new evidence that it has standing to enforce the

arbitration agreement between Cromwell and Thorn as Thorn's successor, the Court denies the motion

In August 2000, Plaintiffs brought this action pursuant to Title VII of the Civil Rights Act of 1964, **42 U.S.C. § 2000e et seq.** (Doc 1) The Plaintiffs are residents of various states and allegedly have all been employed or have applied for employment with Defendant Rent-A-Center, Inc ("Rent-A-Center") On October 18, 2000, Plaintiffs filed an amended complaint adding additional Plaintiffs (Doc 15) Rent-A-Center, a corporation with its headquarters in Plano, Texas, operates rent-to-own stores in various locations throughout the United States Plaintiffs seek to be certified as representatives of a class, alleging that Rent-A-Center has maintained a pattern and practice of sex discrimination against women employees and women applicants for employment On May 14, 2001, the Court allowed the Equal Employment Opportunity Commission to intervene in this matter (Doc 77).

On June 28, 2001, the Court denied without prejudice Rent-A-Center's motion to stay and compel arbitration (Doc). The Court found Marsha Cromwell need not arbitrate her claims against Rent-A-Center because the arbitration agreement was between Cromwell and Thorn Americas, Inc. ("Thorn") and that Rent-A-Center does not have standing to enforce the arbitration agreement as Thorn's successor Now before the Court is Rent-A-Center's renewed motion to stay proceedings and compel arbitration of claims made by Plaintiff Marsha Cromwell (Doc. 111) Specifically, Rent-A-Center renews the motion because it claims there is new evidence which establishes that Rent-A-Center assumed all of Thorn's debt and liabilities giving Rent-A-Center the absolute and unqualified right to enforce the arbitration agreement. Cromwell responds that Rent-A-Center has not propounded any new evidence which supports the Court overturning its previous

decision and that Rent-A-Center has clearly waived any right to compel Cromwell to arbitrate her claims.¹ Based on the following the Court denies Rent-A-Center's motion to stay and compel arbitration.

II. Facts

On December 18, 1997, Marsha Cromwell applied for a job with Thorn. At that time Thorn owned and operated the Rent-A-Center stores. The application form that Cromwell signed contains the name "THORN" in all capital letters in the upper left hand corner. It states:

"I HEREBY ACKNOWLEDGE THAT I HAVE APPLIED FOR EMPLOYMENT, OR AM BEING CONSIDERED FOR EMPLOYMENT OR PROMOTION WITH THORN AMERICAS, INC. INCLUDING RENT-A-CENTER, REMCO, U CAN RENT, ADVANTEDGE, ADVANTEDGE QUALITY CARS, AND ANY OTHER OF ITS OPERATING UNITS OR FRANCHISEES (THORN)."

Further, Cromwell's application contained an arbitration clause that provided the following.

ARBITRATION. (A) AGREEMENT TO ARBITRATE UPON REQUEST In the event the parties have a dispute, claim or controversy arising from or relating to this application or any issue surrounding subsequent employment and either party asserts a claim or counterclaim against the other, the party against whom the claim or counterclaim is asserted has the right to require that the entire dispute between the parties, including any dispute over the enforcement and applicability of this arbitration clause and the validity of this agreement, be resolved by binding arbitration by and under the code of procedure of the national arbitration forum in effect at the time the claim or counterclaim is filed or by such other arbitrator as the parties may agree to in writing. This agreement to arbitrate shall apply to all disputes arising under case law, statutory law and all other laws. Judgement upon the award may be entered in any court having jurisdiction. **(B) NO RIGHT TO TRIAL BY COURT OR JURY. THE PARTIES UNDERSTAND THE [SIC] AGREE THAT THEY HAVE WAIVED ANY RIGHT TO A TRIAL BEFORE A COURT OR JURY IF ARBITRATION IS REQUIRED.**

In August 1998, six months after Cromwell began her employment at the Thorn-owned Rent-A-Center, a company then known as Renters Choice bought Rent-A-Center stores from

¹ The parties agree that Missouri law applies.

Thorn, and then eventually took the Rent-A-Center name from Thorn (Doc. 81, Deposition of Marc Tuckey, ps 74 & 82-83) Specifically, Renters Choice purchased 100% of the capital stock of Thorn for approximately \$900 million (including the repayment of certain debt of Thorn) (Doc 83, Exhibit B).

III. Analysis

When a party moves to compel arbitration, the court must determine whether there is an agreement between those parties which commits the subject matter of the dispute to arbitration *ITT Hartford Life & Annuity Insurance Co. v. Amerishare Investors, Inc.*, 133 F.3d 664, 668 (8th Cir. 1998)(citing *I.S. Joseph Co v. Michigan Sugar Co.*, 803 F.2d 396, 399 (8th Cir. 1986)) An agreement to arbitrate a dispute is a contract *Prickett v. Lucy Lee Hospital, Inc.*, 986 S.W.2d 947, 948 (Mo. App. 1999)(citing *Thatcher Implement & Mercantile Co. v. Brubaker*, 187 S.W. 117, 120 (1916)) “A contract generally binds no one but the parties thereto, and it cannot impose any contractual obligation on one not a party to it.” *Wallace, Saunders, Austin, Brown v. Rahm*, 963 S.W.2d 419, 422 (Mo. App. 1998). “Conversely, one not a party to a contract cannot enforce the contractual terms upon one of the parties to the contract.” *Prickett*, 986 S.W.2d at 948

Here, Cromwell’s claims arise solely from the actions of Rent-A-Center formerly known as Renters Choice which purchased Thorn’s stores. Cromwell has not made any claims against Thorn The application form that Cromwell signed was an agreement between Cromwell and Thorn and not with Rent-A-Center. The Court finds that the arbitration agreement between Cromwell and Thorn is not enforceable between Cromwell and Rent-A-Center because Rent-A-Center is not a party to the arbitration agreement

However, the inquiry does not end here. The Court must address Rent-A-Center’s

argument that as successor to Thorn it has standing to enforce the arbitration provision. Based on the record before the Court, the Court finds that Rent-A-Center does not have standing to enforce the arbitration agreement between Cromwell and Thorn as Thorn's successor

“The general rule in Missouri is that when all of the assets of a corporation are sold or transferred the transferee is not liable for the transferor's debts and liabilities.” *Chemical Design, Inc. v. American Standard, Inc.*, 847 S.W.2d 488, 491 (Mo. App. 1993)(citing *Young v. Fulton Iron Works Co.*, 709 S.W.2d 927, 938 (Mo. App. 1986)). However, there are four exceptions to the rule:

(1) when the purchaser expressly or impliedly agrees to assume the debts and liabilities, (2) when the transaction amounts to a consolidation or merger of the corporation, (3) when the purchasing corporation is merely a continuation of the selling corporation, and (4) when the transaction is entered into fraudulently in order to escape liability for the debts and liabilities

Id

Here, the record is devoid of any evidence to suggest that any of the exceptions to the general rule are present. Rent-A-Center's August 25, 1998 filing indicates under the “ACQUISITION OF ASSETS” section that “On August 5, 1998, the Registrant purchased 100% of the capital stock of Thorn Americas, Inc. (‘Thorn Americas’) for approximately \$900 million (including the repayment of certain debt of Thorn Americas) . . .” (Doc. 83, Exhibit B). The record does reveal that Rent-A-Center did accept “certain debt of Thorn Americas,” however, the record does not reveal that Rent-A-Center accepted all of the debt and liabilities of Thorn or that it accepted the previous arbitration agreements entered between Thorn and its employees.

Rent-A-Center maintains that because Renters and Rent-A-Center (formerly known as Thorn) merged into one company named Rent-A-Center in December 1998 it is the surviving

corporation. As the surviving corporation, Rent-A-Center maintains that by operation of law it assumed all liabilities and obligations and all assets and property of both Rent-A-Center and Renters, therefore, it is entitled to enforce the arbitration agreement between Cromwell and Thorn

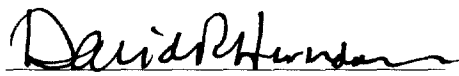
The Court finds that Rent-A-Center's argument misses the mark. The new evidence submitted by Rent-A-Center *only* establishes that Rent-A-Center, as the surviving corporation, assumed by operation of law all liabilities and obligations and all assets and property of both Rent-A-Center and Renters. As stated in the Court's June 28, 2001 Order, the record does not reveal that Rent-A-Center did accept all of the debt and liabilities of Thorn or that it accepted the previous arbitration agreements entered between Thorn and its employees. Rent-A-Center has not submitted any new evidence to require the Court to reverse its June 28, 2001 Order. Based on the record Rent-A-Center does not have standing to enforce the arbitration entered between Cromwell and Thorn. Thus, Cromwell need not arbitrate her claims against Rent-A-Center. The Court notes that in light of its findings herein, the Court need not address Plaintiffs' waiver argument.

IV. Conclusion

Accordingly, the Court **DENIES** Rent-A-Center's renewed motion to stay and compel arbitration of claims made by Plaintiff Marsha Cromwell (Doc. 111)

IT IS SO ORDERED.

Signed this 19th day of October, 2001.


DAVID R. HERNDON
United States District Judge