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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

G.D. Morgan, Jr., Circuit Court Judge

Appellate Case No. 2024-000362
Case No. 2023-CP-23-04474

Sonja Willis,..... Respondent,

v.

Rent-A-Center East, Inc., Rent-A-Center Franchising International, Inc.,
Garrett Anderson Road Center, LLC and Does 1 through 20, Inclusive,
Defendants, of which Rent-A-Center East, Inc. is the Appellant .....Appellant.

INITIAL REPLY BRIEF OF APPELLANT RENT-A-CENTER EAST, INC.

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REPLY ARGUMENT

This appeal turns entirely on a fact that has already been admitted by Respondent Sonja Willis ("Willis") – that she entered into an agreement with Rent-A-Center East, Inc. ("RAC").

Instead of addressing this fact in her Initial Brief, Willis summarily argues that: (i) she was not a party to the contracts with RAC, (ii) equitable estoppel does not apply, (iii) the arbitration provision does not delegate gateway issues to the arbitrator, and (iv) the Arbitration Agreement is unconscionable and against South Carolina policy. Even if the Court was required to look further than Willis's admission to rule on this appeal (it is not), it is evident that Willis's arguments still fail.

Willis is wrong and should clearly be ordered to arbitrate this matter because, among other reasons:

- Willis has already admitted that she entered into the Rental Purchase Agreement with RAC which explicitly incorporates the Arbitration Agreement;
- The Arbitration Agreement clearly and unmistakably delegates and reserves all issues for the arbitrator;
- Even if Willis was not a party to the agreements with RAC (she has already admitted she is), the principles of equitable estoppel require she should be subject to the terms of the agreements because: (1) she was not a stranger to the agreements, (2) she paid for the furniture contemplated by the Agreement, (3) the furniture was delivered to her, and (4) she contacted RAC to return the furniture – in other words, she was intimately involved at every stage of the agreement;
- The Arbitration Agreement is not procedurally or substantively unconscionable.

For these reasons, set forth below, the Court should overrule the appealed order and require that Willis uphold her contractual obligations to arbitrate her claims against RAC.

A. Willis's Arguments are Precluded by Her Own Admissions.

This sole issue presented in this appeal is whether Willis is a party to and bound by her agreements with RAC. Willis argues that because the 2020 Rental-Purchase Agreement and 2020

Arbitration Agreement are not signed by Willis, she is not subject to their provisions. Willis's signature, however, is immaterial to this Court's evaluation of this appeal because Willis has already admitted that she entered into the 2020 Rental-Purchase Agreement with RAC which explicitly incorporates the terms of the 2020 Arbitration Agreement. Willis declined to address this fact in her Initial Brief.

Specifically, Willis's Complaint admits the following: "On or about September 3, 2020, Plaintiff SONJA WILLIS entered into an agreement to acquire furniture from Defendant's Rent-A-Center Furniture Rental Store … and Defendant delivered a couch and loveseat to Plaintiff." (Compl., ¶ 8.) In making this allegation, Willis has unmistakably established that she is bound by the 2020 Rental-Purchase Agreement and 2020 Arbitration Agreement.

South Carolina law is clear – Willis's allegation constitutes a judicial admission that prohibits Willis from now arguing that she is not subject to the agreements. Under South Carolina law, judicial admissions act to withdraw a fact from contention. *See Hamilton v. Reg'l Med. Ctr.*, 440 S.C. 605, 636, 891 S.E.2d 682, 699 (Ct. App. 2023), *reh'g denied* (Sept. 21, 2023), *cert. denied* (May 1, 2024). Moreover, "'[a] judicial admission is usually treated as absolutely binding, but such admissions go to matters of fact which, otherwise, would require evidentiary proof.'" *Flexi-Van Leasing, Inc. v. Travelers Indem. Co.*, 837 F. App'x 141, 145 (4th Cir. 2020) (quoting *New Amsterdam Cas. Co. v. Waller*, 323 F.2d 20, 24 (4th Cir. 1963). Judicial admissions are not, however, limited to affirmative statements of fact, but also can include "intentional and unambiguous waivers that release the opposing party from its burden to prove the facts necessary to establish the waived conclusion of law." *Meyer v. Berkshire Life Ins. Co.*, 372 F.3d 261, 264-65 (4th Cir. 2004) (finding judicial admission precluded a defendant from later refuting its status as an ERISA fiduciary after the district court had previously granted summary judgment as to all

state law claims based on the defendant's concession that ERISA applied); *Flexi-Van Leasing,* 837 F. App'x at 145-46.

Willis has admitted that she is bound to the 2020 Rental-Purchase Agreement. (Compl, ¶ 8.) The Rental-Purchase Agreement explicitly and unmistakably incorporates the 2020 Arbitration Agreement. (2020 Rental-Purchase Agreement; 2020 Arbitration Agreement, p. 1 ¶ (A); Tr., pp. 4, 14.) Therefore, Willis is bound to the terms of the 2020 Rental-Purchase Agreement and 2020 Arbitration Agreement. An analysis of whether sufficient evidence exists to determine whether Willis signed the agreements is inconsequential; Willis has already admitted that she bound to the agreements. As such, the Court need not delve into Willis's remaining arguments. RAC, however, responds to each of Willis's arguments below to further demonstrate the futility of her position.

B. The Trial Court Erred in Evaluating the Enforceability and Validity of the Agreement Because the Agreement Delegated the Issue to an Arbitrator.

Willis argues that the trial court did not err in evaluating the enforceability and validity of the 2020 Rental-Purchase Agreement or 2020 Arbitration Agreement. In apparent support of this argument, Willis cites a few South Carolina cases and provides no application of these cases to the facts presented in appeal. Indeed, Willis does not speak directly to the enforceability or validity of the agreements at issue whatsoever. Regardless of these deficiencies, one thing is clear - "The policy of the United States and South Carolina is to favor arbitration of disputes." *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001). This has long been the state's policy, and Willis's failure to properly challenge the agreements requires they be enforced by their terms.

1. When an agreement delegates gateway issues to an arbitrator, a trial court cannot decide them.

Willis mistakenly relies on *Doe v. TCSC, LLC*, 430 S.C. 602, 608, 846 S.E.2d 874, 877 (Ct. App. 2020), to argue that parties cannot delegate issues of whether the arbitration agreement

is valid. (Resp't's Initial Br. at 9.) Although this Court noted that courts should determine gateway or threshold issues when an arbitration agreements invokes the FAA and is generally silent on the delegation of gateway issues, Willis overlooks the remaining portion of the *Doe* opinion, a key holding from the case. "[T]he parties may, of course, delegate these gateway issues to an arbitrator as long as there is 'clear and unmistakable' evidence of such delegation." *Doe,* 430 S.C. at 608, 846 S.E.2d at 877 (citations omitted). Contrary to Willis's assertion, when the parties delegate validity and enforceability issues, "the FAA requires [courts] to honor that agreement and leave resolution of these discrete gateway issues to the arbitrator." *Id.* at 609, 846 S.E.2d at 877.

Additionally, Willis has not directly challenged the delegation clause contained in the 2020 Arbitration Agreement, which is fatal to her challenge at this stage. The United States Supreme Court has instructed courts to view these delegation provisions – which provide the arbitrator the exclusive authority to resolve disputes – separately from the rest of the arbitration agreement. *See Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63, 71–72 (2010). Thus, unless a party challenges the delegation provision specifically, the court must treat it as valid and must enforce it, leaving any challenge to the validity of the arbitration agreement as a whole for the arbitrator—not the court. *See id.* at 72-73. Therefore, where an unchallenged delegation provision exists, the determination of the validity of an arbitration agreement as a whole is for an arbitrator.

2. The agreements' terms delegated the issue to an arbitrator.

Willis next argues that the 2020 Arbitration Agreement does not contain a clause that delegates gateway issues. (Resp't's Initial Br. at 13.) But the text of the agreement demonstrates that Willis's argument is patently false.

Here, the Arbitration Agreement contains both an explicit and implicit delegation provision. Specifically, it states, "any and all disputes relating to the interpretation, applicability, enforceability, scope, waiver, or formation of this Agreement" are arbitrable. (2020 Arbitration

Agreement, p. 1; ¶ (B), Tr. p. 7.) This is the very type of "clear and unmistakable" contemplated in *Doe*. *See Doe,* 430 S.C. at 608, 846 S.E.2d at 877.

Moreover, the 2020 Arbitration Agreement also provides that the Arbitration Process will be administered according to the American Arbitration Association Consumer Arbitration Rules ("AAA Rules"). (2020 Arbitration Agreement, p. 2 ¶ (G).) The paragraph provides clear directions on how to obtain these rules. Specifically, R-14(a) of the AAA Rules provides the following: "The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any claim or counterclaim." *See* AAA Consumer Arbitration Rules, www.adr.org, Rule R-14.

Therefore, based on the: (1) clearly articulated case law of the Unites States Supreme Court and South Carolina; (2) explicit delegation provision in the 2020 Arbitration Agreement; and (3) implicit delegation provision in the 2020 Arbitration Agreement, it is clear and unmistakable that the trial court erred in evaluating the enforceability and validity of the Arbitration Agreement and Willis's arguments to the contrary fail. Accordingly, any evaluation of the agreements' validity and enforceability should have been made by an arbitrator – not the trial court.

C. Equitable Estoppel Requires Willis to Arbitrate Her Claims Against RAC.

Willis next argues that she is not obligated to arbitrate her claims against RAC under principles of equitable estoppel. In light of the facts of this case and applicable law, this position is unpersuasive, at best. Willis relies on two main points in support of her position: (1) that she is not a party to the contract, and therefore state law applies and (2) that she did not directly benefit from the contract. Neither of these points are true nor do they support Willis's position.

First, as demonstrated above, Willis has already admitted to being a party to the agreement and is bound to such admission by South Carolina law. Therefore, Willis's application of state law is entirely misguided.

Second, contrary to Willis's assertions, it is abundantly clear that she was intimately involved in all aspects of the contract and directly benefitted from it. In addition to her admission that she is a party to the agreements, Willis has also admitted that: (1) RAC delivered the furniture to Willis, not Mr. Willis, (2) Willis, not Mr. Willis, called RAC on multiple occasions to discuss the furniture she rented, and (3) Willis paid for the cost of the furniture rental contemplated by the 2020 Rental-Purchase Agreement. (Compl. ¶¶ 8-10.) Indeed, in light of the admissions in Willis's Complaint, she constitutes more of direct beneficiary under the contract than Mr. Willis. Therefore, it is evident that Willis's contest to application of equitable estoppel is baseless and unpersuasive.

Even if the Court were to find that Willis was not a party to the agreements (she is), she is clearly bound to the agreements by virtue of equitable estoppel. The Fourth Circuit has relied on equitable estoppel on numerous occasions to compel a non-signatory to arbitration. *Int'l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411, 417-18 (4th Cir. 2000).

Willis is attempting to avoid the clear terms contract of which she has admitted to being a party and from which she has clearly sought and obtained a direct benefit. Therefore, Willis's arguments fail and this Court should require Willis to arbitrate her claims against RAC arising out of the 2020 Arbitration Agreement.

D. <u>The Arbitration Agreement is Not Unconscionable.</u>

As a last-ditch effort, Willis argues that her agreements with RAC are procedurally and substantively unconscionable. This argument is meritless.

As an initial matter, Willis's argument fails because she has failed to specifically challenge the 2020 Arbitration Agreement's delegation provision as unconscionable. In the landmark decision of *Rent-A-Center West, Inc. v. Jackson*, 561 U.S. 63 (2010), the United States Supreme Court explained that, even when an arbitration agreement is challenged under traditional contract principles, a court may not intervene unless there is a specific challenge to the validity of the

delegation clause itself. In *Jackson*, the plaintiff challenged the entire arbitration agreement by claiming that it "was drawn to provide Rent-A-Center with undue advantage" and arguing that "the *arbitration agreement as a whole* is substantively unconscionable." *Id*. at 73 (internal citations omitted). Based on these arguments, the court characterized the challenge as being "on the ground that the *entire arbitration agreement*, including the delegation clause, was unconscionable." *Id*. at 73. The provision sought to be enforced in that case delegated to the arbitrator "exclusive authority to resolve any dispute relating to the … enforceability … of this agreement." *Id*. at 71. Notably, the Supreme Court stated that it made no difference that the underlying contract was an arbitration agreement. *Id*. at 72. "Application of the severability rule does not depend on the substance of the remainder of the contract" rather, "[s]ection 2 operates on the specific 'written provision' to 'settle by arbitration a controversy' that the party seeks to enforce." *Id*. (citing 9 U.S.C. § 2).

The issue presented to this Court is factually and substantially similar to those presented in *Jackson*. Like *Jackson*, Willis has alleged that the arbitration agreement as a whole is unconscionable. (Resp't's Initial Brief at 14); *see Jackson*, 561 U.S. at 71-73. Also like *Jackson*, Willis has never specifically challenged the delegation provision. As such, this Court should make the same determination as the Court in *Jackson* and reserve all issues of arbitrability for an arbitrator. This Supreme Court authority was adopted and implemented by this Court in *Doe v. TCSC, LLC*, 430 S.C. 602, 609, 846 S.E.2d 874, 877 (Ct. App. 2020), where this Court held that "Consistent with *Rent-A-Center*, because it is clear and unmistakable the delegation clause committed disputes over the 'interpretation and scope' of the Arbitration Agreement and issues of 'arbitrability of the claim or dispute' to the arbitrator, the FAA requires us to honor that agreement and leave resolution of these discrete gateway issues to the arbitrator.

Willis has failed to specifically allege or argue that the delegation clause in the 2020 Arbitration Agreement is unconscionable and unenforceable. Instead, Willis has made unsupported blanket arguments directed to the agreements as a whole. Thus, pursuant to Supreme Court and South Carolina precedent, Willis's unconscionability argument fails on its face.

Moreover, assuming *arguendo* that Willis had properly asserted a challenge based on unconscionability, it would still fail. Arbitration agreements are generally presumed to be valid. *Doe,* 430 S.C. at 607, 846 S.E.2d at 876. Additionally, courts throughout the country routinely enforce arbitration agreements in consumer contracts similar (and identical) to the agreements presented in this suit. (*See* Appellant's Initial Br. at 18.)

For Willis to prove the arbitration agreement is unconscionable, she must show that: "(1) she lacked meaningful choice as to whether to arbitrate because the Agreement's provisions were one-sided, and (2) the terms were so oppressive that no reasonable person would make them and no fair and honest person would accept them." *Doe*, 430 S.C. at 612, 846 S.E.2d at 879. In determining whether an arbitration agreement is unconscionable, courts focus generally on whether the arbitration clause "'is geared towards achieving an unbiased decision by a neutral decision-maker.'" *Green v. Rent-A-Ctr. E., Inc.*, No. 0:15-CV-3245-MGL-TER, 2015 WL 8907452, at *3 (D.S.C. Nov. 24, 2015) (quoting *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 25, 644 S.E.2d 663, 669 (2007)), *R. & R. adopted*, 2015 WL 8967318 (D.S.C. Dec. 15, 2015). There exists no evidence in this case, in the appellate record, or simply before this Court that establishes either of these requirements.

1. Willis did not lack meaningful choice.

When determining whether a meaningful choice existed, courts review the nature of the injuries suffered by the plaintiff; whether the plaintiff is a substantial business concern; the disparity of the parties' bargaining power; the parties' sophistication; the "element of surprise"

with the arbitration clause; and/or the conspicuousness of the clause. *See Kaplan v. RCA Corp.*, 783 F.2d 463, 467 (4th Cir. 1986).

Willis did not lack a meaningful choice. On the contrary, she has admitted that she willingly entered into the agreements with RAC, paid for the furniture contemplated under the agreements, and had the furniture delivered to her. Furthermore, the agreements made it explicitly clear in bold font that Willis had a right to make a meaningful choice—rejection of the 2020 Arbitration Agreement. In bold, on the first page of the 2020 Arbitration Agreement is the following:

> **(A) Your Right to Reject: If you want to reject this Agreement, you must send a written Rejection Notice, by certified mail, return receipt requested, to: Rent-A-Center Legal Department, 5501 Headquarters Drive, Plano, TX 75024-5837. The Rejection Notice must (i) state that you are rejecting this Agreement; (ii) provide your name, address, and phone number; and (iii) provide the agreement number from the Consumer Contract you entered into with RAC, which is incorporated into this Agreement as though fully set forth. A Rejection Notice is effective only if it is signed by all Consumers who signed the Consumer Contract with RAC and postmarked within fifteen (15) days after the date of those signatures. RAC will acknowledge your rejection in writing….**

(2020 Arbitration Agreement at 1, ¶ (A).)

Willis had a clearly articulated choice to reject the Arbitration Agreement and RAC provided specific instructions on how to do so. There is no "element of surprise."

Similarly, the parties' bargaining power does not invalid the agreement. As Rent-A-Center outlined in its opening brief, courts across the country have repeatedly and consistently enforced the same or substantially similar agreements. (*See* Appellant's Initial Br. at 18.). Willis cannot and has not cited any evidence that demonstrates she lacked a meaningful choice.

2. The terms of the Arbitration Agreement are fair and not oppressive**.**

Willis points to a single provision of the Arbitration Agreement in support of her substantive unconscionability argument – the provision setting forth the scope and procedure of how parties will resolve past, present, and future claims. In no way does this provision rise to the

level of substantive unconscionability. An arbitration agreement is substantively unconscionable when it is "so one-sided as to oppress or unfairly surprise an innocent party" or when "there exists an egregious imbalance in the obligations and rights imposed." *Bailey v. Thompson Creek Window Co.*, No. 21-2345, 2023 WL 4787443, at *2 (4th Cir. July 27, 2023) (citation omitted). Here, the parties simply agreed to arbitrate any past, present, or future claims between them. This provision is inherently not one-sided as it applies to both parties and the obligations imposed on both parties are the same. As such, the Willis's unconscionability argument lacks any merit whatsoever.

Therefore, based on these reasons, the 2020 Arbitration Agreement is not unconscionable and should be applied and enforced by its terms against the parties.

CONCLUSION

For these reasons, and for the reasons set forth in the RAC's Initial Brief, RAC respectfully submits that this Court should reverse the appealed order and remand the case for further proceedings.

Respectfully submitted, this 17th day of June 2024.

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PROOF OF SERVICE

I certify that I have served the Initial Reply Brief of Appellant Rent-A-Center East, Inc. on Sonja Willis by depositing a copy of it in the United States Mail, postage prepaid, on June 17, 2024, addressed to her attorney of record, Trevor P. Eddy, Esq., The Eddy Law Firm, LLC, 1516 Richland Street, Suite B, Columbia, SC 29201.

June 17, 2024

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