

timely submitted an affidavit from Brandon Hackeloer, a finance and insurance manager for Defendant Rick Hendrick, stating he personally witnessed Plaintiff sign the retail installment sales contract attached to his affidavit. Despite portions appearing illegible, this Court finds that the contract attached to the affidavit is an accurate copy of the one signed by Plaintiff. The Plaintiff also contest the motion on the grounds that Defendants do not have a right to compel arbitration because the contract was assigned to Santander. This Court agrees.

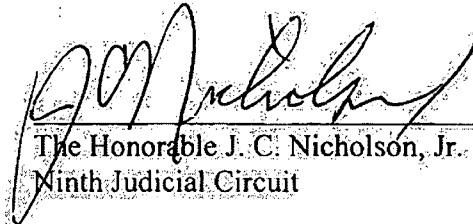
Legal Analysis

The Federal Arbitration Act applies to this dispute because the contract at issue evidences a transaction involving commerce, 9 U.S.C.A. § 2. However, State law governs the issue of assignment as it goes to the enforceability of the arbitration clause. *See Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 24, 644 S.E.2d 663, 668 (2007) (“[g]eneral contract principles of state law apply in a court’s evaluation of the enforceability of an arbitration clause.”). Under South Carolina law, “[a]n assignment of a right is a manifestation of the assignor’s intention to transfer it by virtue of which the assignor’s right to performance by the obligor is extinguished in whole or in part and the assignee acquires a right to such performance.” *Moore v. Weinberg*, 373 S.C. 209, 219–20, 644 S.E.2d 740, 745 (Ct. App. 2007) (quoting Restatement (Second) of Contracts § 317(1) (1981)). Generally, once a contract is properly assigned the assignor retains no interest in the right transferred. *See BAC Home Loan Servicing, L.P. v. Kinder*, 398 S.C. 619, 624, 731 S.E.2d 547, 549 (2012) (“[a]n assignee stands in the shoes of the assignor”); *see also duPont de-Bie v. Vredenburg*, 490 F.2d 1057, 1061 (4th Cir. 1974). It necessarily follows that an assignor’s right to compel arbitration is lost once it assigns a contract containing an arbitration clause. *See In re Wholesale Grocery Prod. Antitrust Litig.*, 97 F. Supp. 3d 1101, 1106 (D. Minn.

2015), *aff'd*, 850 F.3d 344 (8th Cir. 2017) (holding the assignment extinguished assignor's right to compel arbitration); *See also*, *HT of Highlands Ranch, Inc. v. Hollywood Tanning Sys., Inc.*, 590 F. Supp. 2d 677, 684 (D.N.J. 2008) (holding assignor could not compel arbitration in contracts it assigned).

In this case, Rick Hendrick purported to assign all of its interests in the retail installment sales contract to Santander. This is supported by the form contract submitted by Rick Hendrick, which states at the bottom of the front page, "Seller assigns its interest in this contract to Santander Consumer USA (Assignee) under the terms of the Seller's agreement(s) with Assignee." It also does not appear that Defendant retained any rights under the retail installment sales contract or the arbitration clause, specifically. As a result, Defendants' right to compel arbitration was extinguished when contract was assigned to Santander.

For the foregoing reasons, Defendants' motion to compel arbitration is **Denied**.



The Honorable J. C. Nicholson, Jr.
Ninth Judicial Circuit

Charleston, South Carolina

January 9, 2018