

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

LILLIAN EASLEY, *et al.*,)
)
Plaintiff,)
)
v.) CIVIL ACTION NO. 21-0049-KD-MU
)
WLCC II, etc.,)
)
Defendants.)

REPORT AND RECOMMENDATION

On February 5, 2021, Defendant Wakpamni Lake Community Corporation (“WLCC”) filed a Motion to Dismiss for Improper Venue and to Compel Arbitration and supporting brief. (Doc. 2). This motion has been referred to the undersigned Magistrate Judge, pursuant to 28 U.S.C. § 636(b)(1)(B) and S.D. Ala. Gen. LR 72, for entry of a report and recommendation. WLCC seeks dismissal of Easley’s claims against it, pursuant to Rule 12(b)(3) of the Federal Rules of Civil Procedure, for improper venue and to compel arbitration. On March 12, 2021, Plaintiff Lillian Easley filed a response to WLCC’s motion to dismiss and to compel arbitration and, on March 29, 2021, WLCC filed a reply brief. (Docs. 6, 10). Having reviewed these filings and their attachments and conducted oral argument, for the reasons set forth below, it is **RECOMMENDED** that WLCC’s motion to dismiss and to compel arbitration be **DENIED**.

FACTUAL AND PROCEDURAL BACKGROUND

Between August 9, 2018, and November 26, 2019, Plaintiff Lillian Easley entered into ten individual loan agreements with WLCC, an internet provider of high-interest small loans who was doing business as Arrowhead Advance, in amounts ranging from

\$200 to \$950. (Doc. 1-2 at p. 5). The interest rates on the loans varied from 596% to 650%. (*Id.*). The loans contained provisions stating that any dispute between the parties to the agreement would be resolved by binding arbitration. (See, e.g., Doc. 2-1 at p. 10).

On or about March 25, 2020, Plaintiff initiated an arbitration proceeding against WLCC and submitted a Statement of Claim alleging that the loan agreements violated Alabama law and were void *ab initio*. (Doc. 1-2 at p. 9). After conducting an arbitration, on October 8, 2020, the arbitrator rendered the final Arbitration Award, finding that WLCC was not licensed under the ASLA as required and, therefore, declared each of the loans to be “*entirely void* because the ASLA says so.” (Doc. 6-1 at p. 5).

Easley filed this action against WLCC in the Circuit Court of Mobile County, Alabama, on December 16, 2020. (Doc. 1-2). WLCC removed the action to this Court. (Doc. 1). Easley brought this action for herself and on behalf of a class of similarly situated Alabama residents for injunctive relief and damages resulting from the lending practices of WLCC which were in violation of the Alabama Small Loans Act, Ala. Code §§ 5-18-1 through 23 (1975) (“ASLA”). (Doc. 1-2 at p. 2). In her complaint, Easley contends that, because the loans made to her were in violation of the ASLA and, therefore, the making of the loan constituted a crime under the ASLA, each of the loan agreements is void *ab initio*, from its inception, in its entirety. (*Id.* at pp. 5-6). On February 5, 2021, WLCC filed a motion to dismiss Easley’s complaint for improper venue and to compel arbitration pursuant to the arbitration provisions in the loan agreements. (Doc. 2). Easley opposes this motion and claims that, because the arbitrator found the loan agreements to be entirely void, the arbitration provisions in the loan agreements are void and venue is thus proper in this Court. (Doc. 6).

STANDARD OF REVIEW

Motions to dismiss based upon choice of forum clauses are properly analyzed as motions to dismiss for improper venue under Rule 12(b)(3) of the Federal Rules of Civil Procedure. See *Lipcon v. Underwriters at Lloyd's, London*, 148 F.3d 1285, 1290 (11th Cir. 1998). “An agreement to arbitrate before a specified tribunal is, in effect, a specialized kind of forum-selection clause....” *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 519 (1974), *quoted in Liles v. Ginn-La West End, Ltd.*, 631 F.3d 1242, 1250 n.13 (11th Cir. 2011). “Unlike with a Rule 12(b)(6) motion to dismiss, the Court may consider materials outside the pleadings without converting a Rule 12(b)(3) motion to dismiss to a motion for summary judgment.” *Id.* at 1244 n.5.

CONCLUSIONS OF LAW

WLCC contends that Easley’s complaint is due to be dismissed because the claim is subject to mandatory arbitration pursuant to the binding arbitration agreements contained in the loan agreements. (Doc. 2 at p. 7). Easley contends that she is not bound by the arbitration agreements because, as the arbitrator found, the loan agreements are void in their entirety because they are illegal contracts under the ASLA and, therefore, the arbitration agreements contained therein are also void.

Although the presumption in favor of arbitration requires federal courts to “rigorously enforce’ arbitration agreements,” *Matthews v. Ultimate Sports Bar*, 621 F. App’x 569, 571 (11th Cir. 2015) (citations omitted), there must be a valid arbitration agreement to enforce for this rule to apply. The question presented in this case is whether the arbitration agreements contained in the loan agreements remain enforceable, or as WLCC argues, can be severed and survive, given the arbitrator’s

conclusion that the loan agreements are void in their entirety.

It is well settled that an arbitration agreement is an independent, enforceable contract, even when the larger contract is challenged as invalid. See *Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63, 70–71(2010) (“[A] party’s challenge to another provision of the contract, or to the contract as a whole, does not prevent a court from enforcing a specific agreement to arbitrate. ‘[A]s a matter of substantive federal arbitration law, an arbitration provision is severable from the remainder of the contract.’”) (citation omitted). Generally, the arbitration agreement is a separate agreement that is separable from the contract in which it is included. *Prima Paint Corp. v. Flood & Conklin Manufacturing Co.*, 388 U.S. 395, 402-04 (1967). However, in this case, even given the general rule, Easley argues that because the entire subject matter of the loan agreements was premised on illegal activity, by virtue of the Alabama Supreme Court’s opinion in *Macon Cty. Greyhound Park, Inc. v. Hoffman*, 226 So. 3d 152, 169 (Ala 2016), the entire contract, including the arbitration agreement, is void. Easley also argues that the express language in § 5-18-4(d) of the ASLA renders the entire contract void.

In *Macon County*, the court specifically addressed the question of whether an arbitration clause remains enforceable when the contract in which it was contained is void because of illegality. The *Macon County* court held that the invalidation of a contract on grounds of illegality encompasses every aspect of that contract, including specifically the arbitration clause:

To suggest that a court should enforce any provision in a contract that is based on illegal conduct and that is void as a matter of law, particularly when the agreement to arbitrate is itself based on gambling consideration, is unconscionable. What if the contract was for different illegal conduct, for example, the sale of an illegal controlled substance such as cocaine or a murder for hire? Surely, no court would enforce any part of such a contract

by requiring an arbitrator to determine whether such contracts were illegal and void.

Macon Cty., 226 So. 3d at 169.

WLCC argues that *Macon County* is not controlling here because, while it may be illegal under the ASLA to enter into usurious loan agreements like the ones at issue here without being licensed, the arbitration agreements here were not based on illegal consideration. This Court is not persuaded by WLCC's argument in this regard. Like the arbitrator, the Court finds that the practice of issuing usurious loans is conduct expressly determined by the Alabama legislature to be illegal and against public policy. Indeed, the Alabama state legislature expressly enacted the ASLA and required licensing "to protect the public welfare" from "[t]hese evils." Ala. Code § 5-18-2(a)(6) (1975). Section 5-18-4(d) of the Act provides that anyone who violates the licensing requirement "shall be guilty of a misdemeanor and, upon conviction thereof, shall be punishable by a fine ... or by imprisonment for not more than six months, or by both...." This section further provides that "any contract of loan in the making or collection of which any act shall have been done which violates this section shall be void, and the lender shall have no right to collect, receive, or retain any principal, interest, or charges whatsoever." A licensee who deliberately or recklessly makes usurious small loans in violation of the ASLA is also subject to the same misdemeanor charge and punishment. See Ala. Code § 5-18-15(l).

The Alabama Supreme Court was clear in *Macon County* that it would be unconscionable for a court to enforce any provision in a contract that is based on illegal conduct and that is void as a matter of law. 226 So. 2d at 169. This Court agrees. Accordingly, this Court finds that the arbitrator's determination that the loan agreements

were void in their entirety extends to the arbitration agreements contained in those loan agreements.

CONCLUSION

Having reviewed and considered the relevant pleadings, WLCC's motion to dismiss, Easley's response, WLCC's reply, the arguments made during the hearing on this motion, and the relevant law, for the reasons state above, the undersigned Magistrate Judge **RECOMMENDS** that WLCC's motion to dismiss for improper venue and to compel arbitration be **DENIED**.

NOTICE OF RIGHT TO FILE OBJECTIONS

A copy of this report and recommendation shall be served on all parties in the manner provided by law. Any party who objects to this recommendation or anything in it must, within fourteen (14) days of the date of service of this document, file specific written objections with the Clerk of this Court. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); S.D. Ala. Gen. LR 72(c)(1) & (2). The parties should note that under Eleventh Circuit Rule 3-1, "[a] party failing to object to a magistrate judge's findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) waives the right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions if the party was informed of the time period for objecting and the consequences on appeal for failing to object. In the absence of a proper objection, however, the court may review on appeal for plain error if necessary in the interests of justice." 11th Cir. R. 3-1. In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the

Magistrate Judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the Magistrate Judge is not specific.

DONE this the **11th** day of **August, 2021**.

s/P. BRADLEY MURRAY
UNITED STATES MAGISTRATE JUDGE