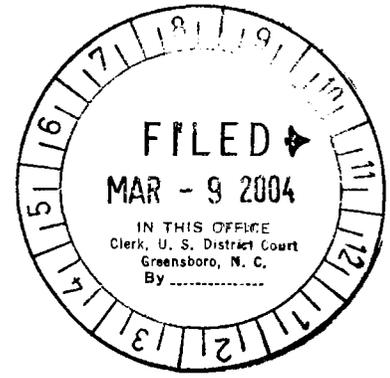


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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

ANN MAILLY, individually and on)
 behalf of all others similarly situated,)
)
 Plaintiff,)
)
 v.)
)
 WACHOVIA CORPORATION, surviving)
 entity of a merger between First Union)
 Corporation and Wachovia Corporation;)
 FIRST CARD CORPORATION, formerly)
 known as First Union ATM Solutions, Inc.,)
 and WACHOVIA BANK, National)
 Association, f/k/a First Union National Bank,)
)
 Defendants.)

Case No. 1:03CV309



MEMORANDUM OPINION

TILLEY, Chief Judge

This matter is now before the Court on Defendants' Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(1) [Doc. #8]; and Defendants' Alternative Motion to Stay Pending Arbitration [Doc. #9]. For the reasons discussed below, Defendants' Motion to Dismiss will be GRANTED. Therefore, Defendants' Motion to Stay is MOOT.

I.

In June 1998, Plaintiff Ann Maily opened a checking account with First Union National Bank, now Wachovia Bank National Association. When she opened the account, Ms. Maily signed a Customer Access Agreement, which incorporated

through reference a document entitled "Deposit Agreement and Disclosures." This Deposit Agreement included an arbitration clause providing that any disputes concerning the account would be decided by arbitration.¹ In April 2002, Ms. Maily incurred twelve dollars (\$12) in service charges for her use of certain automated teller machines.

On April 9, 2002, Ms. Maily filed a class action suit in Forsyth County Superior Court based on her dispute of the \$12 in service charges. (Peres Aff., Ex. 1.) Her complaint alleged various state law claims against Wachovia Corporation, First Card Corporation, and Wachovia Bank.² The defendants did not answer the complaint. Instead, they moved to compel arbitration based on the arbitration provision they claimed was included in the parties' contractual agreement. The Superior Court granted defendants' motion to compel, and ordered that Ms. Maily must submit her claims to arbitration, should she choose to pursue them further.

¹The arbitration provision included in the Deposit Agreement and Disclosures provided as follows:

Arbitration of Disputes Regarding Accounts. If either you or we have any unresolvable dispute or claim concerning your account, it will be decided by binding arbitration under the expedited procedures of the Commercial Financial Disputes Arbitration Rules of the American Arbitration Association (AAA), and Title 9 of the U.S. Code.

(Graham Aff., Ex. B.)

²Ms. Maily's first state law complaint named Wachovia Corporation and First Card Corporation as defendants, but she later amended her complaint to add Wachovia Bank, N.A. as a defendant. Therefore, the ultimate defendants in the state court action are the same as the defendants named in the current action.

To date, Ms. Maily has not submitted her claims to arbitration. Instead, on April 8, 2003, she filed a class action suit against the Defendants in the Middle District of North Carolina. [Doc. #1]. This Complaint asserts the same state law claims as were asserted in the state court action. In addition, the Complaint asserts a federal cause of action, that is, violation of the Electronic Funds Transfer Act (EFTA), 15 U.S.C. § 1693, et seq., that was not asserted in the state court action.

On May 23, 2003, Defendants filed a Motion to Dismiss for lack of subject matter jurisdiction, pursuant to Federal Rule of Civil Procedure 12(b)(1). [Doc. #8]. On that same day, Defendants filed an Alternative Motion to Stay Pending Arbitration pursuant to 9 U.S.C. § 1, et seq. [Doc. #9]. Defendants assert two grounds in support of these motions: (1) this Court lacks subject matter jurisdiction because addressing Ms. Maily's claims would necessarily require the Court to readjudicate the order compelling arbitration entered by the state court, in violation of the Rooker-Feldman doctrine; and (2) even if this Court could consider Ms. Maily's claims, arbitration would be proper and the matter would be stayed.

II.

For the reasons stated below, the Rooker-Feldman doctrine does apply, and subject matter jurisdiction is not proper in this Court. Therefore, consideration of Defendants' second ground for dismissal is unnecessary, and Defendants Motion to Dismiss will be GRANTED.

A.

The Rooker-Feldman doctrine provides that “a United States District Court has no authority to review final judgments of a state court in judicial proceedings.” D.C. Court of Appeals v. Feldman, 460 U.S. 462, 482 (1983); see also Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923). This doctrine “safeguards our dual system of government from federal judicial erosion.” Brown & Root, Inc. v. Breckenridge, 211 F.3d 194, 198 (4th Cir. 2000). In general, if the doctrine applies, the claims before the federal district court must be dismissed for lack of subject matter jurisdiction. See id. The Rooker-Feldman doctrine has been applied in the context of disputes over arbitrability. Specifically, the Fourth Circuit has held that the doctrine bars a federal court’s review of a state court decision regarding a motion to compel arbitration. See Id.; Friedman’s, Inc. v. Dunlap, 290 F.3d 191 (4th Cir. 2002).

The Rooker-Feldman doctrine bars federal review not only of issues actually decided by the state court, but also of any claims which are “inextricably intertwined” with the state court decision. Id. (citing Feldman, 460 U.S. at 486-87). A federal claim is “inextricably intertwined,” and therefore barred, where its adjudication would require a determination that the state court incorrectly decided the issues before it. See id.

Further, the doctrine applies to issues that could have been raised in the prior state court proceedings, not just issues actually raised. Barefoot v. City of

Wilmington, 306 F.3d 113, 119-20 (4th Cir. 2002). An issue could have been raised if the party had “reasonable opportunity” to raise it in the state proceeding. Brown & Root, 211 F.3d at 201.

B.

Here, Defendants argue that the Rooker-Feldman doctrine applies, and therefore Ms. Maily’s claims must be dismissed for lack of subject matter jurisdiction. Plaintiff does not respond directly to Defendants’ contentions. For the reasons discussed below, it is determined that the Rooker-Feldman doctrine does bar this Court’s consideration of Ms. Maily’s claims.

Ms. Maily is not requesting that this Court directly rule on the arbitrability of her claims. However, she is seeking to recover on the very same claims that were ordered to be sent to arbitration in the state court action. Ms. Maily argues that arbitrability was the relevant issue in the state court action, but is not relevant to this action because she now asserts a claim under EFTA.

The addition of the EFTA claim does not prevent application of the Rooker-Feldman doctrine. Ms. Maily’s EFTA claim could have been raised in the state court action. There is no evidence that Ms. Maily lacked a “reasonable opportunity” to do so. State courts have jurisdiction over EFTA claims. 15 U.S.C. § 1693m(g). Further, the EFTA claim is “inextricably intertwined” with the state court’s decision. Because the EFTA claim is a dispute or claim regarding Ms. Maily’s account, the substance of the EFTA claim could only be considered if the

claim was found not to be governed by the arbitration clause.³ As reflected by its order compelling arbitration, the state court already found a valid arbitration clause governing the disputes regarding Ms. Maily's account. Therefore, Ms. Maily is, in essence, seeking review of the state court's order to compel arbitration, and the Rooker-Feldman doctrine applies.

III.

Ms. Maily has requested oral argument. This request is denied. Oral argument is not needed because the facts and legal contentions are adequately presented in the materials before the Court, and arguments would not aid the decisional process.

In conclusion, the Rooker-Feldman doctrine applies to Ms. Maily's claims currently before this Court. Therefore, subject matter jurisdiction is not proper, and Defendants' Motion to Dismiss [Doc. #8] will be GRANTED. Defendants' Motion to Stay [Doc. #9] is, thereby, MOOT.

This 8th day of March, 2004


United States District Judge

³Ms. Maily contends that class action claims under EFTA are not arbitrable. However, as this Court recently discussed in Bates v. Money 24, Inc., (M.D.N.C. Feb. 26, 2004), claims under EFTA, even those brought as purported class actions, are arbitrable.