

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

STEVEN G. RAAB, TAMMY L. RAAB,
JARED W. ROBINSON, HILARY D. ROBINSON,
LORI L. FRANK and DEBBIE M. ABRAMSON,

Plaintiffs,

MEMORANDUM AND ORDER

v.

07-C-131-S

VALUED SERVICES OF WISCONSIN, LLC,

Defendant.

LORI L. FRANK,

Plaintiff,

07-C-133-S

v.

CHECKMATE, CASH ADVANCE CENTERS, LLC,

Defendant.

Presently pending before the Court in the above two entitled matters are plaintiffs' motions for remand and defendants' motions to stay and compel arbitration. The first will be denied and the second will be granted.

Jurisdiction

These are actions for damages under the Wisconsin Consumer Act (WCA) to include claims for injunctive and declaratory relief. The cases were removed from the Wisconsin Circuit Court for Eau Claire County on the basis of diversity and that the amount in controversy exceeds \$75,000 in each case. Plaintiffs allege violations of the

Wisconsin Consumer Act and that defendants are liable to the respective plaintiffs for actual damages, statutory damages, costs and disbursements and reasonable attorney's fees for which a jury trial is requested. The requested relief includes actual damages in an unnamed amount, rescission of the contract and/or disgorgement of all payments, \$25.00 statutory damages per violation pursuant to Wis. Stat. § 425.302, \$100 statutory damages per violation pursuant to Wis. Stat. § 425.303, \$1,000 statutory damages per violation pursuant to Wis. Stat. § 425.304, costs and reasonable attorney's fees pursuant to Wis. Stat. § 425.308, injunctive relief, declaratory relief and such other and further relief as the court deems just and equitable.

Defendants have provided evidence by affidavit that an adverse ruling in accordance with the requested relief lowering the annual percentage on the Customer Loan Agreements by 2.5% would cause projected finance charges of more than \$75,000 in each succeeding year based on \$3,000,000 customer loan agreements which are outstanding. These projections suggest a reasonable probability of a dollar amount well in excess of \$75,000 in losses to the defendants. As in Macken ex rel. Macken v. Jensen, 333 F.3d 797 (7th Cir. 2003) the plaintiffs' do not allege the amount of damages which have been requested. Defendants' affidavits, however, support the likelihood that plaintiffs' numerous claims together would cost each defendant substantially more than the \$75,000.

In a suit for injunctive relief, the amount in controversy is measured by the value of the object in litigation. The object, at least in this circuit, may be valued from either perspective, what the plaintiff stands to gain or what it would reasonably cost the defendant to meet the plaintiff's demand. Macken ex rel. Macken v. Jensen, 333 F.3d 797, 799-800 (7th Cir. 2003). In a case for injunctive relief jurisdictional amount is determined by placing a reasonable value on the requested injunctive relief. Defendants have established to a reasonable probability the monetary value of the cost to them of the relief requested by each plaintiff, which although not precise, exceeds the jurisdictional limit. Id. at 799.

Defendants having come forth with facts to establish an estimate of the claim's value, the Court must accept it unless there is a "legal certainty" that the claim is really for less than the jurisdictional amount. Meridian Sec. Ins. Co. v. Sadowski, 441 F.3d 536 (7th Cir. 2006). Plaintiffs have not come forth with persuasive evidence or argument that the defendants evidence of the amount in controversy is inappropriate. The Court determines to a reasonable probability that the amount in controversy is substantially more than the \$75,000 jurisdictional amount.

Motion to Compel Arbitration.

Having determined jurisdiction the Court now turns to the motions offered by defendants, to stay and compel arbitration. It

is undisputed that the agreements between the parties include arbitration provisions. Plaintiffs, however, argue that these provisions are rendered unenforceable by the terms of the Wisconsin Consumer Act because the agreement to arbitrate impermissibly waives their right to a jury trial with attendant protections. While it is true that § 421.106 of the Act provides generally that consumers may not waive rights afforded to them by the WCA, nothing in the WCA expressly guarantees a jury trial.

Furthermore, § 425.306 of the Act expressly preserves the right to agree to matters not in violation of the Act:

- (1) Any charge, practice, term, clause, provision, security interest or other action or conduct in violation of chs. 421 to 427, to the extent that the same is in violation of chs. 421 to 427, shall confer no rights or obligations enforceable by action.
- (2) This section shall not affect the enforcement of any provision that is not prohibited by chs. 421 to 427.

There is nothing in chapters 421 to 427 that binding arbitration is forbidden. Accordingly, the Court finds no prohibition against an agreement to arbitrate in the WCA.

Furthermore, any implied prohibition against arbitration would be preempted by federal law.

In creating a substantive rule applicable in state as well as federal courts, Congress intended to foreclose state legislative attempts to undercut the enforceability of arbitration agreements.

Southland Corp. v. Keatings, 465 U.S. 1, 15-16 (1983). In Southland the Court rejected an attempt to avoid arbitration in

reliance on a similar non-waiver provision in the California Franchise Investment Law, holding that such an attempt to preclude arbitration of disputes would violate the Supremacy Clause. Id.

The arbitration agreements are not foreclosed by the WCA and their enforcement is mandated by the Federal Arbitration Act. Accordingly,

ORDER

IT IS ORDERED that plaintiffs' motions to remand are DENIED and defendants' motions to stay and compel arbitration are GRANTED.

IT IS FURTHER ORDERED that the above entitled matters are referred to arbitration, either the American Arbitration Association or National Arbitration Forum to be selected pursuant to the Arbitration Agreement, with the understanding that in the event arbitration does not completely resolve the issues either party may petition the Court for further relief.

Entered this 29th day of May, 2007.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge