

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

**FILED**

JUN 28 2001

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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF ILLINOIS  
EAST ST. LOUIS OFFICE

CLAUDINE WILFONG, LISA ADAMS,  
TERRY BLACKBURN, LISA  
CHENELLE, TONI COHEN,  
MARSHA CROMWELL, DeELLEN  
DICKERSON, VERONICA  
DROPTMORE, KIM HAMMER,  
MARY JOHNSON, KATHLEEN LIPHART,  
TEIA MALONE, KAREN DUEKER MEYER,  
DAWN PEMBERTON, HERMANETTE  
PORTIS, AMY PRATT, LINDA SHEATTLER,  
MICHELLE SMITH, MELANIE WATSON,  
LINDA WIGGER and ROBIN YEUBANKS,

**Plaintiffs,**

**and**

**EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,**

**Plaintiff-Intervenor**

**vs.**

**RENT-A-CENTER, INC.,**

**Defendant.**

**No. 00-CV-0680-DRH**

**MEMORANDUM AND ORDER**

**HERNDON, District Judge:**

**I. Introduction**

This matter comes before the Court on Rent-A-Center's motion to stay and compel arbitration (Doc. 57). Because the Court finds that Rent-A-Center and Marsha Cromwell never entered into a contractual agreement to arbitrate, the Court denies the motion.

In August 2000, Plaintiffs brought this action pursuant to Title VII of the Civil Rights Act of 1964, **42 U.S.C. § 2000e et seq.** (Doc. 1). The Plaintiffs are residents of various states and allegedly have all been employed or have applied for employment with Defendant Rent-A-Center, Inc. (“Rent-A-Center”). On October 18, 2000, Plaintiffs filed an amended complaint adding additional Plaintiffs (Doc. 15). Rent-A-Center, a corporation with its headquarters in Plano, Texas, operates rent-to-own stores in various locations throughout the United States. Plaintiffs seek to be certified as representatives of a class, alleging that Rent-A-Center has maintained a pattern and practice of sex discrimination against women employees and women applicants for employment. On May 14, 2001, the Court allowed the Equal Employment Opportunity Commission to intervene in this matter (Doc. 77).

Now before the Court is Rent-A-Center’s motion to stay and compel arbitration (Doc. 57). Specifically, Rent-A-Center moves the Court to stay Plaintiff Marsha Cromwell’s claims against Rent-A-Center and compel arbitration based on Cromwell’s agreement to submit her claims to binding arbitration. Cromwell responds that her claims are not subject to arbitration because the agreement to arbitrate was between her and Thorn Americas, Inc. (“Thorn”), and not Rent-A-Center.<sup>1</sup> Rent-A-Center replies that because it is the successor to Thorn it has standing to enforce the arbitration clause. Based on the following the Court denies Rent-A-Center’s motion to stay and compel arbitration.

## **II. Facts**

On December 18, 1997, Marsha Cromwell applied for a job with Thorn. At that time Thorn owned and operated the Rent-A-Center stores. The application form that Cromwell signed

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<sup>1</sup> The parties agree that Missouri law applies.

contains the name “THORN” in all capital letters in the upper left hand corner. It states:

“I HEREBY ACKNOWLEDGE THAT I HAVE APPLIED FOR EMPLOYMENT, OR AM BEING CONSIDERED FOR EMPLOYMENT OR PROMOTION WITH THORN AMERICAS, INC. INCLUDING RENT-A-CENTER, REMCO, U CAN RENT, ADVANTEDGE, ADVANTEDGE QUALITY CARS, AND ANY OTHER OF ITS OPERATING UNITS OR FRANCHISEES (THORN).”

Further, Cromwell’s application contained an arbitration clause that provided the following:

**ARBITRATION.** (A) AGREEMENT TO ARBITRATE UPON REQUEST. In the event the parties have a dispute, claim or controversy arising from or relating to this application or any issue surrounding subsequent employment and either party asserts a claim or counterclaim against the other, the party against whom the claim or counterclaim is asserted has the right to require that the entire dispute between the parties, including any dispute over the enforcement and applicability of this arbitration clause and the validity of this agreement, be resolved by binding arbitration by and under the code of procedure of the national arbitration forum in effect at the time the claim or counterclaim is filed or by such other arbitrator as the parties may agree to in writing. This agreement to arbitrate shall apply to all disputes arising under case law, statutory law and all other laws. Judgement upon the award may be entered in any court having jurisdiction. (B) NO RIGHT TO TRIAL BY COURT OR JURY. THE PARTIES UNDERSTAND THE [SIC] AGREE THAT THEY HAVE WAIVED ANY RIGHT TO A TRIAL BEFORE A COURT OR JURY IF ARBITRATION IS REQUIRED.

In August 1998, six months after Cromwell began her employment at the Thorn-owned Rent-A-Center, a company then known as Renters Choice bought Rent-A-Center stores from Thorn, and then eventually took the Rent-A-Center name from Thorn (Doc. 81, Deposition of Marc Tuckey, ps. 74 & 82-83). Specifically, Renters Choice purchased 100% of the capital stock of Thorn for approximately \$900 million (including the repayment of certain debt of Thorn) (Doc. 83, Exhibit B).

### **III. Analysis**

When a party moves to compel arbitration, the court must determine whether there is an agreement between those parties which commits the subject matter of the dispute to arbitration.

*ITT Hartford Life & Annuity Insurance Co. v. Amerishare Investors, Inc.*, 133 F.3d 664, 668 (8<sup>th</sup> Cir. 1998)(citing *I.S. Joseph Co v. Michigan Sugar Co.*, 803 F.2d 396, 399 (8<sup>th</sup> Cir. 1986)). An agreement to arbitrate a dispute is a contract. *Prickett v. Lucy Lee Hospital, Inc.*, 986 S.W.2d 947, 948 (Mo. App. 1999)(citing *Thatcher Implement & Mercantile Co. v. Brubaker*, 187 S.W. 117, 120 (1916)). “A contract generally binds no one but the parties thereto, and it cannot impose any contractual obligation on one not a party to it.” *Wallace, Saunders, Austin, Brown v. Rahm*, 963 S.W.2d 419, 422 (Mo. App. 1998). “Conversely, one not a party to a contract cannot enforce the contractual terms upon one of the parties to the contract.” *Prickett*, 986 S.W.2d at 948.

Here, Cromwell’s claims arise solely from the actions of Rent-A-Center formerly known as Renters Choice which purchased Thorn’s stores. Cromwell has not made any claims against Thorn. The application form that Cromwell signed was an agreement between Cromwell and Thorn and not with Rent-A-Center. The Court finds that the arbitration agreement between Cromwell and Thorn is not enforceable between Cromwell and Rent-A-Center because Rent-A-Center is not a party to the arbitration agreement.

However, the inquiry does not end here. The Court must address Rent-A-Center’s argument that as successor to Thorn it has standing to enforce the arbitration provision. Based on the record before the Court, the Court finds that Rent-A-Center does not have standing to enforce the arbitration agreement between Cromwell and Thorn as Thorn’s successor.

“The general rule in Missouri is that when all of the assets of a corporation are sold or transferred the transferee is not liable for the transferor’s debts and liabilities.” *Chemical Design, Inc. v. American Standard, Inc.*, 847 S.W.2d 488, 491 (Mo. App. 1993)(citing *Young v. Fulton Iron Works Co.*, 709 S.W.2d 927, 938 (Mo. App. 1986)). However, there are four exceptions to

the rule:

(1) when the purchaser expressly or impliedly agrees to assume the debts and liabilities; (2) when the transaction amounts to a consolidation or merger of the corporation; (3) when the purchasing corporation is merely a continuation of the selling corporation; and (4) when the transaction is entered into fraudulently in order to escape liability for the debts and liabilities.

*Id.*

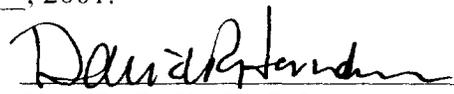
Here, the record is devoid of any evidence to suggest that any of the exceptions to the general rule are present. Rent-A-Center's August 25, 1998 filing indicates under the "ACQUISITION OF ASSETS" section that "On August 5, 1998, the Registrant purchased 100% of the capital stock of Thorn Americas, Inc. ('Thorn Americas') for approximately \$900 million (including the repayment of certain debt of Thorn Americas) . . ." (Doc. 83, Exhibit B). The record does reveal that Rent-A-Center did accept "certain debt of Thorn Americas," however, the record does not reveal that Rent-A-Center accepted all of the debt and liabilities of Thorn or that it accepted the previous arbitration agreements entered between Thorn and its employees. Based on the record Rent-A-Center does not have standing to enforce the arbitration entered between Cromwell and Thorn. Thus, Cromwell need not arbitrate her claims against Rent-A-Center.

#### **IV. Conclusion**

Accordingly, the Court **DENIES *without prejudice*** Rent-A-Center's motion to stay and compel arbitration (Doc. 57).

**IT IS SO ORDERED.**

Signed this 28<sup>th</sup> day of June, 2001.

  
**DAVID R. HERNDON**  
**United States District Judge**