BY THE COURT:

DATE SIGNED: March 31, 2022

Electronically signed by Honorable Pedro A. Colon
Circuit Court Judge

STATE OF WISCONSIN CIRCUIT COURT BRANCH 18 MILWAUKEE COUNTY

PORTFOLIO RECOVERY ASSOC., LLC

Plaintiff,

v.

Case No. 21CV5172

CYNEISHA HANKINS,

Defendant.

DECISION AND ORDER

Portfolio Recovery Associates, LLC (PRA) has brought the present Motion to Compel Arbitration and Stay Proceedings as to Cyneisha Hankins' claims that PRA violated the Fair Debt Collection Practices Act and the Wisconsin Credit Act in attempting to collect on alleged debts incurred by Hankins. Upon review of the parties' submissions to the Court, and for reasons stated herein, the Court **GRANTS** PRA's Motion to Compel Arbitration and to Stay Proceedings pending completion of the arbitration.

BACKGROUND FACTS

Around August 2017, Cyneisha Hankins applied for a "CareCredit" account (the Account) financed by Synchrony Bank (Synchrony) (Doc. 37 at 2). Synchrony approved and opened an account in Hankins' name on August 13, 2017. *Id.* Hankins made purchases and payments on the Account until the last payment she made on December 22, 2017. *Id.* Synchrony "charged off" the Account on April 9, 2019, due to non-payment. *Id* at 2-3.

Hankins was bound to a Credit Card Agreement, which included an Arbitration Agreement, applicable throughout the lifespan of the Account. *Id* at 3. Synchrony mailed the Credit Card Agreement to Hankins along with a credit card after approving her for the Account. *Id.* The Arbitration Agreement, emphasized in bold and capital letters, explicitly states if Hankins does not reject it the section will apply to her account and most disputes will be subject to arbitration (Doc. 39, Ex A-A at 6). Synchrony has no record of Hankins exercising her right to object or opt out of the Arbitration Agreement (Doc. 37 at 6). The Credit Card Agreement also states that Synchrony has the right to "sell, assign or transfer any or all of [its] rights under this Agreement or your account." (Doc. 39, Ex. A-A at 4).

On or about May 22, 2020, PRA purchased Hankins account from Synchrony pursuant to a Forward Flow Accounts Purchase Agreement (the Purchase Agreement) and Bill of Sale (Doc. 87 at 6). According to the Purchase Agreement, Synchrony agreed to sell and PRA agreed to buy "all right, title and interest in and to the Accounts" (Doc. 55, Ex. 2, 2.1). The Bill of Sale "transfers, sells, conveys, grants, and delivers to [PRA], its successors and assigns . . . to the extent of its ownership, the Accounts" (Doc. 55, Ex. A). Synchrony also transferred all relevant electronic records, including Hankins' Account Statements and Credit Card Agreement, to PRA as a part of the sale of the Accounts (Doc. 37 at 6-7). Synchrony notified Hankins of the sale with a letter dated June 1, 2020. *Id* at 7. Synchrony also executed an affidavit stating that it sold Hankins' account to PRA. *Id.*

On or about December 3, 2020, Hankins received a debt collection letter from PRA, informing her of the opportunity to qualify for a permanent hardship by filling out a Permanent Hardship Request Form (Doc. 52 at 2). Hankins completed the hardship form and retuned it to PRA, with the impression that her lack of income would qualify her for hardship status. *Id.* She did not receive a response from PRA until April 2, 2021, when a law firm contact her about her debt. *Id.*

PRA filed this action against Hawkins on May 25, 2021, and Hankins filed counterclaims on August 10, 2021 (Docs. 13 & 11). The counterclaims assert causes of action against PRA for deceptive practices in violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (FDCPA) and the Wisconsin Consumer Act (WCA) (Doc. 11). PRA now moves to compel arbitration under the Credit Card Agreement (Doc. 36).

STANDARD OF REVIEW

Under the Federal Arbitration Act, an agreement to submit to arbitration any existing or subsequent controversy arising between parties to a contract is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract. 9 U.S.C. § 2. The Court decides whether a valid agreement to arbitrate exists and proceedings may continue once the court reaches its final resolution. 9 U.S.C. §§ 3, 4. "The arbitrability of the merits of a dispute depends upon whether the parties agreed to arbitrate that dispute." *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 115 S.Ct. 1920 (1995); *citing Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 115 S.Ct. 1212 (1995). To determine whether the parties agreed to submit to arbitration, the court looks to the four corners of the contract to determine the intentions of the parties. *Central Fl. Investments, Inc., v. Parkwest Assoc.*, 2002 UT 3, ¶12, 40 P.3d 599; *quoting Ron Case Roofing & Asphalt v. Blomquist*, 773 P.2d 1382, 1285 (Utah 1989).[1] If the language of the contract is unambiguous, the parties' intentions are

[1] The Court looks to Utah law in determining this issue because the Credit Card Agreement has a "Governing Law for Arbitration" provision, stating "Utah law shall apply to the extent state law is relevant under the FAA."

determined from the plain meaning of the contractual language. *Central Fl. Investments*, 2002 UT 3 at ¶12*; citing Dixon v. Pro Image, Inc.*, 1999 UT 89, ¶14, 987 P.2d 48. If the language of the contract is ambiguous, courts examine extrinsic evidence to determine the parties' intentions. *Id.*

ANALYSIS

Hankins appears to concede that the arbitration provision in the Credit Card Agreement between her and Synchrony is valid and covers the action. The issue at hand is whether PRA, a non-signatory to the Credit Card Agreement, has the right to compel arbitration, via the assignment to PRA by Synchrony.

I. PRA has a contractual right to enforce arbitration.

Synchrony sold "all right, title and interest in and to" a portfolio of Accounts, including Hankins', to PRA in March 2020. Hankins argues that she did agree to arbitrate with Synchrony, but not with PRA because the Credit Card Agreement states: "[i]f either you or we make a demand for arbitration, you and we arbitrate any dispute or claim between you or any other user of your account, and us . . .' and the Credit Card Agreement identifies "we, us, and our" as Synchrony (Doc. 52 at 3). When deciding whether the parties agreed to arbitrate a certain matter, courts should apply ordinary state-law principles that govern the formation of contracts. *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. at 944.

According to case law, the language of a contracted assignment may permit the enforcement of an arbitration agreement. *See Koch v. Compucredit Corp.*, 543 F.3d 460 (8th Cir. 2008) (stating the existence of an arbitration agreement between the parties depends on whether the assignment is valid under contract law); *see also Kong v. Allied Professional Ins. Co.,* 75 F.3d 1295 (11th Cir. 20014) (stating that Florida courts treat arbitration as a "remedial mechanism that is included in any assignment"). However, the question is whether the sale of the Account assigned the Credit Card Agreement as well. According to Hankins, Synchrony retained the right to arbitrate. She also claims that the plain

language of the Purchase Agreement only conveyed the receivables associated with the Account (debts) and not the Credit Card Agreement (Doc. 52 at 4-5).

In re May, a bankruptcy case, analyzes the same issue regarding the same three documents as the ones in question here (the Credit Card Agreement, the Purchase Agreement, and Bill of Sale). 591 B.R. 712 (E.D. Ark. 2018). The assignment encompasses all aspects of the Account and is not limited to receivables, unless the assignment assigns receivables explicitly. *Id* at 718. The *May* court concluded an almost identical Purchase Agreement between Synchrony and Midland Credit Management assigned Midland the entire account, including the right to enforce arbitration based on the Purchase and Credit Card Agreements' clear and express terms. *Id.* Here, like in *May*, the Credit Card Agreement states, "[w]e may sell, assign or transfer any or all of our rights or duties under this Agreement or your account, including our rights to payments." *Id* at 715. Article II: Purchase and Sale of Accounts of the Purchase Agreement differs slightly. In *May*, the applicable provision states "[b]uyer shall buy all right, (including the right to legally enforce, file suit, collect, settle or take any similar action with respect to such Account) title and interest in and to the Accounts." *Id.* The Purchase Agreement here omits the section in parenthesis, but still includes the word "all."

Shortly after the sale of the Accounts to PRA, as part of the sale, Synchrony provided a copy of the Credit Card Agreement between Synchrony and Hankins. *Id.* In fact, delivery of the Credit Card Agreement was to be provided within a contracted number of days of each closing date (Doc. 55, Ex. 2, 5.3(a)(i)). The Purchase Agreement in *May* required the same. 591 B.R. at 717. Additionally, both Purchase Agreements contemplated that the assignee would service the account post-transfer, and the agreements provided "[a]ll actions or omissions by Buyer with respect to the Accounts, including (but not limited to) all servicing, billing, processing, collections, and recovery operations and any communications or notices to Account Debtors, shall conform in all respects to any and all Applicable Laws." Here, that assignee is PRA.

The court in *May* found the purchase agreement was unambiguous as a matter of law and enforced it according to its terms. *Id* at 718. The law in Utah is similar. *See Grynber v. Questar Pipeline Co.,* 2003 UT 8, ¶36, 70 P.3d 1; *see also Wagner v. Clifton*, 2002 UT 109, ¶12, 62 P.3d 440. As in May, the Credit Card Agreement states "we may sell all or any rights or duties under this agreement or your accounts," which includes the right to convey the right to arbitration because *all* means *all*. There is no indication that Synchrony intended to retain any of its rights or duties in the event of a sale.

This Court now looks to the language both Purchase Agreements. If the language of the contract is unambiguous, the plain language of the contract establishes the intentions of the contracting parties. *Central Fl. Investments*, 2002 UT 3 at ¶12. To determine the parties' intentions when the language of the contract is ambiguous, the court examines extrinsic evidence. *Id.* Here, the language of the Purchase Agreement is unambiguous with respect to the parties' right, title, and interest in the Account. Once the transfer occurred, Synchrony retained no rights or interest in the Accounts. The language of the Purchase Agreement sells the Account and *all* of the rights title and interest; and provides that PRA will service the accounts and "*all* actions or omissions by [PRA] with respect to the Accounts," subject to the Credit Card Agreement (emphasis added). Black's Law Dictionary defines the term "all" as "the whole number of particulars, individuals, or *separate items*; distributively" (emphasis added). The Credit Card Agreement may be considered a separate item related to the Account, therefore including the Credit Card Agreement and the arbitration agreement The Purchase Agreement, by its clear and express use of the word "all," and the required performance of turning over of the Credit Card Agreement, makes clear the act of sale was intended to assign the entirety of the account, including the right to arbitrate, and not just the account receivables. The language of the Bill of Sale also makes clear Synchrony had no intention of retaining any of its ownership in the Account. It states that Synchrony "transfers, sells, conveys, grants, and delivers to [PRA], it successors and assigns . . . to the extent of its ownership, the Accounts" (Doc. 55, Ex. A).

When Synchrony assigned ownership of the Account to PRA, the assignment included the right to enforce arbitration.

The sale of the Account also explicitly included the delivery of the Credit Card Agreement within a set number of days. The requirement and act of turning over the electronic documents and Credit Card Agreement demonstrates that Synchrony intended to assign all aspects of ownership of the Accounts. Further, the evidentiary record reveals that both Synchrony and PRA understood that the sale included the assignment of all aspects of the Account (Docs. 39 & 40). Neither the Purchase Agreement nor Bill of Sale have language limiting the assignment to the receivables. In fact, neither document mentions receivables.

In sum, the plain language of the Credit Card Agreement and the Purchase Agreement demonstrates that PRA has a contractual right to enforce the Arbitration Agreement as Synchrony's assignee. Accordingly, the court need not address PRA's alternative argument that it has a right to enforce the Arbitration Agreement against Haskins pursuant to the doctrine of estoppel.

CONCLUSION

Upon review of the submissions and for the reasons stated herein, the Court **GRANTS** PRA's Motion to Compel Arbitration and Stay Proceedings pending the completion of arbitration.

SO ORDERED.