

FROM :

52,505

**IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, ALABAMA**

**GLORIA HARRIS, individually
and on behalf of similarly situated
Alabama residents as defined herein,**

Plaintiffs,

v.

CASE NO. CV-98-3422

**MONTGOMERY CATALOG SALES;
ALABAMA CATALOG SALES and
CASH TO GO, INC., individually
and on behalf of similarly situated
Alabama individuals and/or entities
as defined herein,**

Defendant.

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ORDER

This lawsuit challenges the legality of the Defendants' practices commonly referred to as "payday lending". The Plaintiff contends that these transactions are illegal because they result in interest rates that violate of the Alabama Small Loan Act and because the Defendants were not properly licensed to make such loans. The three named Defendants each seek to avoid the court's consideration of this matter by compelling arbitration.

According to the Plaintiff, Defendants charged Plaintiff an interest rate that was far in excess of the maximum rate allowed under the Alabama Small Loan Act, § 5-18-15(a). Defendants have refused to comply with the Small Loan Act by becoming properly licensed to lend money;

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therefore, the Plaintiff alleges that Defendants are making illegal payday loans. § 5-18-2(e)(4), (5), and (6).

In Defendants Motions to Compel Arbitration, Defendants argue that Plaintiff signed an arbitration agreement as a part of the loan transaction subjecting all her claims to arbitration. However, Plaintiff contends that Defendants are unlawfully engaged in the business of lending because Defendants lack the requisite license and any and all loan contracts entered into are void and unenforceable. § 5-18-4(d). In Allied Bruce Terminix Inc. v Dobson, 115 S. Ct. 834 (1995), the United States Supreme Court noted that the Federal Arbitration Act gives states a means to protect their consumers against unfair arbitration agreements by allowing states to retain the power to regulate contracts. The Court held: "States may regulate contracts, including arbitration clauses, under general contract law principles and they may invalidate an arbitration clause 'upon such grounds as exist at law or in equity for the revocation of any contract.' 9 U.S.C. § 2 (emphasis added)." Id. at 843.

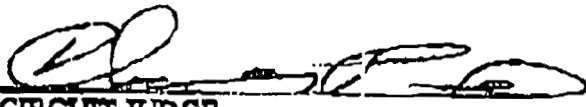
Having reviewed the parties submissions and following oral argument with regard to the Defendant's Motion to Compel Arbitration, it is the opinion of this Court that substantial evidence has been presented that the contracts in question are illegal. Therefore, without addressing the merits of this case, it is also the opinion of this Court that there exists substantial evidence from which this Court concludes that the arbitration agreements signed by Plaintiffs are void under general principles of contract law. This fact is best articulated in Southern Metal Treating Co. v. Goodner, 271 Ala. 510 at 516 (Ala. 1960), where the court stated:

[B]ut an act under the police power, designed to regulate the business, to protect the public against fraud and imposition, requiring a license as evidence of qualification and fitness, and prohibiting any act of business under penalty, unless such license is first obtained, does render such contracts illegal, void, and

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unenforceable in actions for the recovery of compensation and the like.

Whether the contracts are illegal and therefore void is the dispositive issue in this case and the present order is not to be considered as an adjudication on the merits. However, the plaintiff's substantial showing of illegality of the contract in question is a proper contractual defense to compulsion of arbitration and this Court's action should not be considered to treat the agreement to arbitrate differently from other contract clauses. Accordingly, based on general principles of contract law, the Defendants' motions to compel arbitration are DENIED.


CIRCUIT JUDGE

cc: Joseph R. Kemp
Peter S. Fruin
David G. Crockett
George L. Beck, Jr.