

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION

| | | |
|-----------------------|---|---------------------|
| NICOLE PEPPERS, |) | |
| |) | |
| Plaintiff, |) | |
| v. |) | Case No. 17-CV-2190 |
| |) | |
| CREDIT ONE BANK N.A., |) | |
| |) | |
| Defendant. |) | |

ORDER

This case is before the court for ruling on Defendant’s Motion to Dismiss and Compel Arbitration (#9). Defendant also filed a Memorandum in Support (#10). Plaintiff filed a Memorandum in Opposition (#13). For the reasons that follow, Defendant’s Motion to Dismiss and Compel Arbitration (#9) is DENIED.

ANALYSIS

Plaintiff’s boyfriend had a credit card with Defendant, Credit One Bank. Plaintiff’s Complaint (#1) alleges that, in violation of the Telephone Consumer Protection Act, Defendant called Plaintiff’s cell phone incessantly in an effort to collect on her boyfriend’s credit card debt. The cardholder agreement applicable to the boyfriend’s account contains an arbitration agreement. The parties dispute whether Plaintiff is bound by that arbitration agreement.

Generally speaking, a non-party to an arbitration agreement cannot be forced to arbitrate, for “a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit.” *United Steelworkers of Am. v. Warrior & Gulf Navigation Co.*,

363 U.S. 574, 582 (1960). However, “there are five doctrines through which a non-signatory can be bound by arbitration agreements entered into by others: (1) assumption; (2) agency; (3) estoppel; (4) veil piercing; and (5) incorporation by reference.” *Zurich Am. Ins. Co. v. Watts Indus., Inc.*, 417 F.3d 682, 687 (7th Cir. 2005).

Defendant contends that the doctrine of estoppel applies in this case. Under the estoppel doctrine, “a nonsignatory party is estopped from avoiding arbitration if it knowingly seeks the benefits of the contract containing the arbitration clause.” *Zurich Am.*, 417 F.3d at 688. Defendant claims that Plaintiff sought the benefits of the cardholder agreement by activating, using, and making a payment on her boyfriend/spouse’s account.

Plaintiff responds that she has no relationship with Defendant, and never agreed to arbitrate any disputes with Defendant. She is not married to the cardholder, her boyfriend. She did not activate her boyfriend’s account, her phone was not used to activate it, she was not an authorized user on the account, and she never used her boyfriend’s credit card. According to Plaintiff, she interacted with the account only by making one \$25.00 payment through Western Union as a favor to her boyfriend, after calling Defendant to ask how to make a payment. Information on how to make a payment is freely available to the public through Defendant’s website.

At the motion to dismiss stage, the Court must accept as true all factual allegations in the Complaint, and draw all inferences in favor of Plaintiff as the non-moving party. See *Bielanski v. County of Kane*, 550 F.3d 632, 633 (7th Cir. 2008). Thus, for the purposes of this motion, Plaintiff's only interaction with her boyfriend's account was making one payment after calling to ask how to do so.

While "a nonsignatory party is estopped from avoiding arbitration if it knowingly seeks the benefits of the contract containing the arbitration clause," *Zurich Am.*, 417 F.3d at 688, Plaintiff did not knowingly seek the benefits of the cardholder agreement when she sent a payment through Western Union to help out her boyfriend. That action clearly benefitted *Defendant*, who accepted the payment. It did not, however, show that Plaintiff sought to benefit herself through the cardholder agreement. She did not use the card to make any purchase, and the information on how to make a payment is freely available to the public online. The Court finds Plaintiff's limited interaction with her boyfriend's account insufficient under the doctrine of estoppel to bind Plaintiff to the arbitration agreement in the cardholder agreement.

Defendant relies upon *A.D. v. Credit One Bank, N.A.*, 2016 WL 4417077 (N.D. Ill. Aug. 19, 2016) to argue that the doctrine of estoppel applies here to prevent Plaintiff from avoiding the arbitration agreement in the cardholder agreement. But, *A.D.* is distinguishable. In *A.D.*, the cardholder's daughter made a purchase using her mother's credit card. *A.D. v. Credit One Bank, N.A.*, 2016 WL 4417077 at *2, *10-11. In so doing, she sought the benefit of the cardholder agreement which allowed her to represent that Defendant would pay for the purchase she made. *Id.* at *11. Having

sought the benefit of the cardholder agreement, the cardholder agreement's arbitration clause applied to the daughter. *Id.* Here, by contrast, Plaintiff did not rely on the cardholder agreement to obtain any benefit. She did not activate or use the card, and the information on how to make a payment that she obtained when she called Defendant was freely available to the public on Defendant's website. The arbitration clause in Plaintiff's boyfriend's cardholder agreement does not apply to Plaintiff.

In a single sentence, Defendant requests that "the Court stay resolution of the motion and allow limited additional discovery relating to the agreement to arbitrate and arbitrability." The Court declines to do so. Plaintiff states "Defendant will clearly be able to file a Motion to Compel Arbitration if, during the course of regular discovery, Defendant uncovers information to support such a motion and timely seeks that relief." The Court agrees. Defendant's request to stay the resolution of the motion to compel arbitration is denied, and Defendant's Motion to Dismiss and Compel Arbitration (#9) is denied without prejudice. The issue may be "revisited, if and as appropriate, at a later stage in the litigation when an appropriate factual record has been assembled and when the applicable procedural rules permit more fulsome and searching analysis." See *Access 4 All, Inc. v. Chicago Grande, Inc.*, 2007 WL 1438167, at *1 (N.D. Ill. May 10, 2007).

IT IS THEREFORE ORDERED THAT:

- (1) Defendant's Motion to Dismiss and Compel Arbitration (#9) is DENIED.
- (2) This case is referred to Magistrate Judge Eric I. Long for further proceedings in accordance with this order.

ENTERED this 18th day of December, 2017.

s/COLIN S. BRUCE
U.S. DISTRICT JUDGE