

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE  
AT CHATTANOOGA**

MARSHELL J. RICHARDS,

Plaintiff,

v.

THE KRYSTAL COMPANY, AKA THE  
KRYSTAL CO., INC.,

Defendant.

Civil Action No.: 1:17-CV-00228

JURY DEMAND

**THE KRYSTAL COMPANY'S RESPONSE TO  
PLAINTIFF'S MOTION TO REMAND**

Pursuant to Eastern District of Tennessee Local Rule 7.1(a), Defendant The Krystal Company ("Krystal"), hereby responds to Plaintiff's Motion to Remand. Krystal agrees that this Court may remand Plaintiff Richards' case to state court as she has voluntarily dismissed her federal claim arising under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e) *et seq.* ("Title VII"). *See* First Amended Complaint, Doc. No. 10. Krystal submits, however, that dismissal would be appropriate so that an arbitrator can directly decide remaining issues, including whether the case is arbitrable. These arguments are laid out in Krystal's reply in support of its motion to dismiss (Doc. No. 14). For ease of reference, Krystal repeats its arguments here.

Richards argues that the entire arbitration agreement may be invalid. The law is clear that, although a court can determine the validity of an arbitration clause itself, an arbitrator should determine the validity of the entire agreement. *See Nitro-Lift Technologies, L.L.C. v. Howard*, 568 U.S. 17, 20-21 (2012).

When interpreting whether a claim is arbitrable, courts often review an isolated

arbitration clause within a contract containing several provisions unrelated to such arbitration clause. The entire Mutual Agreement to Arbitrate Employment-Related Disputes (“Arbitration Agreement”) at issue in this case pertains to arbitration. Richards thus attacks the validity of the entire Arbitration Agreement itself rather than the delegation of certain claims to an arbitrator. Such issues should be determined by an arbitrator rather than a court where the agreement delegates the review of such claims to the arbitrator. *See Nitro-Lift Technologies*, 568 U.S. at 21; *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63 (2010).

The Arbitration Agreement provides that the agreement to arbitrate includes claims arising under “the law of contract and/or the law of tort.” (Doc. No. 7-1, Ex. A.) Richards does not challenge this delegation provision, but challenges the validity of the entire Arbitration Agreement; thus, an arbitrator is the appropriate party to review this challenge. *See Rent-A-Center, West*, 561 U.S. at 71-72. As the Arbitration Agreement delegates the review of claims arising under contract law or tort to an arbitrator, a court should not review those claims. *See id.*

“[W]hen parties commit to arbitrate contractual disputes, it is a mainstay of the [Federal Arbitration] Act's substantive law that attacks on the validity of the contract, as distinct from attacks on the validity of the arbitration clause itself, are to be resolved ‘by the arbitrator in the first instance, not by a federal or state court.’” *Nitro-Lift Technologies, L.L.C. v. Howard*, 568 U.S. at 20-21 (quoting *Preston v. Ferrer*, 552 U.S. 346 (2008)). Thus, Richards’ attempts to cast doubt on the validity of the agreement itself should be resolved by an arbitrator rather than a court. This Court, therefore, need not remand this case to state court for a ruling on whether this matter is arbitrable. Whether the case is arbitrable will be decided by the arbitrator following dismissal by this Court. Notably, although Richards quibbles with the way the Arbitration Agreement was presented to the Court, she *never denies* that she signed the Arbitration

Agreement or that it arguably covers her state law claim against Krystal.

In conclusion, Krystal continues to request that this Court dismiss Richards' case. The parties may thereafter arbitrate the validity of the Arbitration Agreement itself with an arbitrator in accordance with applicable law.

Respectfully submitted,

BAKER, DONELSON, BEARMAN  
CALDWELL & BERKOWITZ, P.C.

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### **CERTIFICATE OF SERVICE**

I hereby certify that on this day, a copy of the foregoing Reply in Support of Defendant The Krystal Company's Motion to Dismiss was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular Certified Mail, Return Receipt Requested. Parties may access this filing through the Court's electronic filing system.

This 20th day of October, 2017.

BAKER, DONELSON, BEARMAN  
CALDWELL, & BERKOWITZ, P.C.

By: /s/ Russell W. Gray