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## Fourth Circuit Compels Arbitration Over “Gateway” Issues Of Arbitrability

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This case involved a consumer, Charleene Novic, who obtained a credit card from Credit One. The card holder agreement contained an arbitration clause that stated “[c]laims subject to arbitration include ... disputes related to ... enforceability or interpretation of this Agreement.” After Novic accrued a past-due balance, Credit One sold the account to a debt collector. Novic claimed that the past-due balance was the result of fraudulent charges. The debt collector sued Novic in Maryland state court regarding the outstanding balance, and the Maryland court ruled in favor of Novic. Novic then initiated an action against Credit One in Maryland state court, alleging violations of the Fair Credit Reporting Act by failing to conduct a reasonable investigation of her claim that she did not owe the past-due balance. The action was removed to federal court. Credit One moved to compel arbitration under the terms of the card holder agreement. The Maryland district court denied the motion to compel, finding that Credit One lost its right to compel arbitration after it assigned Novic’s account for collection. Credit One appealed to the Fourth Circuit, arguing that an arbitrator should decide the “gateway” issue of whether Novic’s claims are subject to arbitration.

The Fourth Circuit agreed with Credit One. The Court noted that parties may consent to arbitrate the gateway issue of arbitrability, which allows the arbitrator, rather than the courts, to determine the arbitrator’s jurisdiction. The Court, however, noted that any delegation of the issue of arbitrability must be set out in “clear and unmistakable” language in the parties’ agreement. With respect to the arbitration clause at issue, the Fourth Circuit then concluded that it “unambiguously require[d] arbitration of any issues concerning the ‘enforceability’ of the arbitration provisions entered into by the respective parties.” Thus, the Fourth Circuit vacated the Maryland district court’s judgment and remanded to the district court for entry of a stay of court proceedings and for an order compelling arbitration.

[Novic v. Credit One Bank](#), No. 17-2168 (4th Cir. Jan. 4, 2019).

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[Jeanne M. Kohler](#) [Reinsurance Focus](#)

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