

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
AT LOUISVILLE

AT&T MOBILITY SERVICES LLC

PLAINTIFF

v.

CIVIL ACTION NO. 3:17-cv-00649-CRS

BRANDY PAYNE

DEFENDANT

**MEMORANDUM OPINION**

This matter is before the Court on motion of Defendant, Brandy Payne, for Leave to Conduct Arbitration-Related Discovery. (DN 13) For the following reasons, Defendant's motion will be **DENIED**.

**I. BACKGROUND**

In February of 2017, Brandy Payne ("Payne") filed a Complaint in Jefferson Circuit Court, Kentucky ("State Court Action") alleging sexual harassment, hostile work environment, and retaliation. (DN 1, Exh. A.) Payne named her previous employer, AT&T Mobility Services LLC ("AT&T"), as the defendant. The State Court Action remains pending in Jefferson Circuit Court.<sup>1</sup>

Plaintiff AT&T filed a Complaint in this court on October 24, 2017, seeking an order compelling the arbitration of Payne's claims against AT&T and for an injunction prohibiting Payne from pursuing the State Court Action while the parties arbitrate. (DN 1.) AT&T simultaneously filed a Motion to Compel Arbitration and Motion for Preliminary Injunction ("Motion to Compel"). (DN 4.)

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<sup>1</sup> Payne v. AT&T Mobility LLC, et al., Case No: 17-CI-000706.

AT&T's Motion to Compel argues that the Federal Arbitration Act ("FAA") requires the parties to arbitrate the claims brought by Payne in the State Court Action. (Id.) The Plaintiff alleges that there exists a valid arbitration agreement between the parties, that Payne's claims fall within the scope of the arbitration agreement, and therefore Payne must be compelled to submit her claims to binding arbitration. (Id.)

Rather than file a response to AT&T's Motion to Compel, Payne filed the motion presently before the court, seeking leave to conduct arbitration-related discovery prior to filing a response to the Plaintiff's Motion to Compel. (DN 13.) Therein, Payne requests limited discovery to establish that "she did not receive Plaintiff's alleged offer to enter into an agreement to arbitrate." (Id.)

## **II. STANDARD**

Courts apply the summary judgment standard under Fed.R.Civ.P. 56 when ruling on a motion to compel arbitration. See *Great Earth Cos. v. Simons*, 288 F.3d 878, 889 (6th Cir. 2002) ("[T]he party opposing arbitration must show a genuine issue of material fact as to the validity of the agreement to arbitrate, a showing that mirrors the summary judgment standard."); See also *Weddle Enters., Inc. v. Treviicos-Soletanche, J.V.*, 2014 WL 5242904, at \*2 (W.D. Ky. Oct. 15, 2014) ("A motion to dismiss based on the existence of a valid arbitration agreement is not evaluated under the usual Fed.R.Civ.P. 12(b)(6) standard. Instead, courts apply the standard applicable to motions for summary judgment." (citations omitted)). Therefore, a party seeking to conduct limited discovery prior to responding to a motion to compel arbitration must show "by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition." Fed.R.Civ.P. 56(d).

### **III. DISCUSSION**

Payne's Motion for Leave to Conduct Arbitration-Related Discovery must be denied pursuant to Fed.R.Civ.P. 56(d). Payne does not show by affidavit or declaration that she cannot present facts essential to opposing AT&T's Motion to Compel. Defendant's unsupported assertion that she lacks the requisite discovery is insufficient. Therefore, the court will deny Payne's motion.

Pursuant to the proposed order tendered by Plaintiff AT&T (DN 16-1), Defendant Payne will be granted seven days from the entry of the court's Order to respond to Plaintiff's Motion to Compel Arbitration and Motion for Preliminary Injunction.

### **IV. CONCLUSION**

For the reasons stated herein, the Defendant's Motion for Leave to Conduct Arbitration-Related Discovery will be **DENIED**.

An order will be entered in accordance with this opinion.

January 18, 2018

A handwritten signature in black ink, appearing to read 'Charles R. Simpson III', is written over a faint circular seal of the United States District Court.

**Charles R. Simpson III, Senior Judge  
United States District Court**