

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANNA TRACTENBERG,	:	
Plaintiff	:	Civil Case
	:	
v.	:	
	:	
CITIGROUP INC. and CITICORP	:	No. 2:10-cv-03092-LS
Defendants	:	

ORDER

AND NOW, this 1st day of September, 2011, upon consideration of plaintiffs' motion opposing mandatory arbitration or to conduct limited arbitration-related discovery (Doc # 30-1), it is hereby ORDERED that the motion is DENIED.¹

BY THE COURT:

/s/ LAWRENCE F. STENGEL
LAWRENCE F. STENGEL , J.

¹ The defendants' motion to compel arbitration will be granted in a separate order. In addition, the cases cited by Ms. Tractenberg do not support discovery in this case. Ms. Tractenberg relies on cases discussing whether the costs of arbitration would be prohibitively expensive, see, e.g., Green Tree Fin. Corp. v. Randolph, 531 U.S. 79, 92 (2000) (finding where "a party seeks to invalidate an arbitration agreement on the ground that arbitration would be prohibitively expensive, that party bears the burden of showing the likelihood of incurring such costs"), and cases allowing discovery to determine whether the parties entered into a contract, see, e.g., Dun v. Shipping Ltd. v. Amerada Hess Shipping Corp., 234 F. Supp. 2d 291, 294-96 (S.D.N.Y. 2002) (allowing limited discovery to determine whether the plaintiff was a party to the contract so that it could enforce the arbitration provisions).

The United States Court of Appeals for the Eleventh Circuit case relied on by Ms. Tractenberg in her reply in support of her motion for leave does not support discovery. In In re Checking Account Overdraft Litig., No. 10-12374 (11th Cir. Apr. 28, 2011), the United States Court of Appeals for the Eleventh Circuit stated:

After oral argument in this case, the United States Supreme Court decided AT&T Mobility LLC v. Conception, No. 09-893, 2011 WL 1561956 (April 27, 2011). The district court's order denying the motion to compel arbitration is VACATED, and this case is remanded to the district court for reconsideration in light of the Supreme Court's opinion.

The Eleventh Circuit did not mention discovery or anything which would "evidenc[e] a desire for a more developed factual record."

Ms. Tractenberg did not challenge the validity of the contract in her initial response to the motion to compel. In her response, Ms. Tractenberg challenged the arbitration provision as unconscionable. It was in the motion opposing mandatory arbitration, filed after the Supreme Court's decision in AT&T Mobility v. Conception, 131 S.Ct. 1740, 1744 (U.S. Apr. 27, 2011), that Ms. Tractenberg argued she never entered into a valid contract. Moreover, Ms. Tractenberg failed to request discovery until she filed her motion opposing mandatory arbitration and for limited discovery, which was filed nine-and-a-half months after Citibank filed its motion to compel arbitration.