

Consumer cannot avoid arbitration by suing "DOE" Defendants

Article By:

Brent Owen

Last week in *Gonzales v. Credit One Bank, N.A.*, No. 19-cv-00733-DAD-BAM, 2020 U.S. Dist. LEXIS 46236 (E.D. Cal. March 17, 2020), the court compelled arbitration of a plaintiff's TCPA lawsuit against Credit One. Plaintiff sued Credit One claiming she suffered harm from Credit One's "unauthorized" phone calls made to collect her alleged credit card debt. Plaintiff admitted that she had agreed to arbitrate the dispute. Indeed, Plaintiff initially agreed to arbitration when she signed up for the credit card. Then, in two subsequent notices, Plaintiff did not opt out of arbitration. Critically, Credit One had sent Plaintiff a notice of the binding arbitration agreement in 2018. That notice included a step-by-step explanation about "How to REJECT this Agreement to Arbitration." Plaintiff did not opt out.

Yet, despite admitting that she'd agreed to arbitration, Plaintiff opposed arbitration because she had sued "DOES 1 THROUGH 5." Given the claims against the "DOE" Defendants, Plaintiff argued that she had asserted "claims against 'co-defendant third party vendors' who did not agree to arbitrate." According to Plaintiff, the Court should not compel arbitration with the pending claims against the "DOE" Defendants because it created "a risk of inconsistent rulings were she to in the future pursue her claims against the third-party vendors in court." The Court found Plaintiff's arguments "not at all persuasive."

The Court first explained the complete absence of legal authority for plaintiff's "DOE" argument. "A party cannot avoid arbitration," the Court explained, simply by "adding as a defendant a person not a party to an arbitration agreement." That rule would "seriously compromise" the utility of arbitration agreements. Additionally, Plaintiff did "not otherwise allege any facts" against the DOE Defendants. And, in any event, the Credit One Agreement was broad enough to cover Plaintiff's claims against "third-party vendors." The arbitration agreement reached "all third parties who are regarded as agents or representatives of [Credit One] in connection with the subject matter of the claim or dispute at issue."

This case provides two important lessons. First, a company seeking the benefits of arbitration should keep clear records about its customers' agreements to arbitrate, as Credit One did here. Second, a company should draft its arbitration agreement broad enough to govern conduct by any person "regarded as agents or representatives"; using that sort of broad arbitration clause will protect a company's right to arbitrate against lawsuits that include claims against "DOE" Defendants or

other defendants who did not agree to arbitration.

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