Published on *The National Law Review* https://natlawreview.com

Reminder: Telephone Consumer Protection Act (TCPA) Claims Are Arbitrable

Article By:

Daniel E. Brewer

Michael P. Daly

The **District of Massachusetts** recently found that **TCPA** claims arising from debt collection calls fall within the scope of an arbitration agreement that covered disputes relating to "violations of statute" or "the impositions or collection of principle." *Cyganiewicz v. Sallie Mae, Inc.*, Nos. 13-40068, 13-40067, 2013 U.S. Dist. LEXIS 153554, 153556, at *7 (D. Mass. Oct. 24, 2013).

In *Cyganiewicz*, plaintiffs brought suit against Sallie Mae, claiming that its collections practices violated the TCPA. Plaintiffs were the borrower and the co-signor on three promissory notes, all of which contained arbitration agreements that could have been (but were not) rejected by sending a signed rejection notice to Sallie Mae within sixty days of the disbursement of the loan. *Id.* at *2. Plaintiffs alleged that Sallie Mae made calls from automated dialing machines to collect the outstanding balance of their loans, including approximately 147 calls after plaintiffs requested that the calls stop. Plaintiffs argued that their arbitration agreements were not enforceable and that, even if they were, their TCPA claims were not arbitrable. The court found otherwise and granted Sallie Mae's motion to dismiss for lack of subject matter jurisdiction.

The court held that plaintiffs' TCPA claims unambiguously fell within the scope of the arbitration agreement because they relate to the collection of debt and to an alleged violation of a statute. In doing so, it rejected the argument that the arbitration agreement did not cover the plaintiffs' claims because it spoke in terms of "violations of statute" generally rather than "violations of the TCPA" specifically—an argument that ignored the strong federal policy that favors arbitration under the FAA.

The court also held that Congress did not preclude waiver of judicial remedies for TCPA claims. Such an intent, the court found, can only be shown by means of statutory text, legislative history, or "some inherent conflict between arbitration and [the statute's] underlying purposes." *Id.* at *13. Plaintiffs argued that Congress intended to preclude waiver of judicial (as opposed to arbitral) remedies because it described TCPA's remedies in terms of court suits. *See* 47 U.S.C. § 227(b)(3) (permitting "an action" to be brought "in an appropriate court"). The court rejected that argument, noting that the Supreme Court recently rejected a substantially similar argument in *CompuCredit Corp. v. Greenwood*, 132 S. Ct. 665 (2012). This should not be surprising, given *ComputCredit*'s straightforward, common-sense holding:

> The flaw in this argument is its premise: that the disclosure provision provides consumers with a right to bring an action in a court of law. It does not…. It is utterly commonplace for statutes that create civil causes of action to describe the details of those causes of action, including the relief available, in the context of a court suit. If the mere formulation of the cause of action in this standard fashion were sufficient to establish the "contrary congressional command" overriding the FAA, valid arbitration agreements covering federal causes of action would be rare indeed. But that is not the law…. ***Thus, we have repeatedly recognized that contractually required arbitration of claims satisfies the statutory prescription of civil liability in court.***

Id. at 669-71 (emphasis added).

A copy of the *Cyganiewicz* decision is available here.

National Law Review, Volume III, Number 304