CLIENT ALERTS & INSIGHTS

DCD Compels Arbitration for TCPA Class Action Despite Being Non-Signatory to Agreement

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The District of Massachusetts's recent decision in Fairfield v. DCD Auto. Holdings, Inc., No. 22-cv-11977, 2023 U.S. Dist. LEXIS 109463 (D. Mass. June 26, 2023) serves as a key reminder for businesses not only to have arbitration provisions in consumer-facing agreements but as importantly to ensure that such provisions are drafted in a clear manner that can encompass their affiliates and related operating entities.

The plaintiff, Heather Fairfield, alleged that DCD Automotive Holdings, Inc. (DCD), a holding company that owns and operates several car dealerships, sent her unwanted text messages. These messages, she claimed, were in violation of the Telephone Consumer Protection Act (TCPA), a federal law designed to protect consumers from unwanted and intrusive communications, and she sought to represent a nationwide putative class.

DCD moved to compel arbitration on the basis that when Fairfield purchased the car from one of its subsidiaries, Bocha Honda, she signed an arbitration provision contained in a Vehicle Services Contract (VSC). The court's analysis revolved around a question of arbitration. Specifically, the court was tasked with determining whether the VSC Fairfield signed with Boch Honda could be enforced by DCD, a non-signatory to the agreement.

The court's analysis hinged on two key elements: the delegation of arbitrability and the status of DCD as a third-party beneficiary. The arbitration provision in the VSC that Fairfield signed at the time of purchase provided for arbitration under the American Arbitration Association (AAA) rules. And the agreement did not simply provide for arbitration. Rather, it also delegated the question of "arbitrability"-that is, whether a dispute is subject to an arbitration agreement in the first place-to the arbitrator (commonly called a "delegation" provision). The court found that such provisions and language constituted "clear and unmistakable" evidence of the delegation of the determination of arbitrability to the arbitrator.

Fairfield also contested whether DCD could enforce any delegation or arbitration provision because DCD was not a party to the VSC. However, the court found that a non-party to an arbitration agreement can enforce the same if it was an intended third-party beneficiary. The court noted that DCD, as the owner and operator of Boch Honda, arguably had a basis to conclude that it was an intended beneficiary of the agreement to arbitrate. And because of the arbitration provision's delegation clause, the court found that it was up to the arbitrator, not the court, to determine whether the arbitration agreement was enforceable by DCD as a non-signatory.

This case serves as a reminder for businesses to ensure their arbitration agreements are clear and legally sound, and consider the potential implications for third-party beneficiaries and any subsidiaries or affiliated entities. Given recent Supreme Court precedent, there is simply no excuse

for arbitration agreements not to have delegation provisions (and unlike DCD, there are still plenty of arbitration agreements litigated that do not).

Businesses should take note of this ruling and review not only their communication practices to ensure compliance with the TCPA, but also to ensure that any arbitration agreements they have are sufficiently tailored to the scope and nature of their business. When in doubt, consult with your legal counsel to ensure your practices align with the evolving legal landscape. Stay informed, stay compliant, and navigate the TCPA regulations with confidence.

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