

SUPREME COURT OF NEW JERSEY
DOCKET NO.: 089744

GERALD FAZIO, JR.,

CIVIL ACTION

Plaintiff-Petitioner,

OPPOSITION TO PETITION FOR
CERTIFICATION FROM JULY 10, 2024
JUDGMENT OF THE APPELLATE
DIVISION

vs.

ALTICE USA, CABLEVISION, OPTIMUM,
AND OPTIMUM MOBILE,

Docket No.: A-2102-22

Defendants-Respondents.

Sat Below

Hon. Thomas W. Summers, Jr., J.A.D.
Hon. Morris G. Smith, J.A.D.

BRIEF OF RESPONDENTS ALTICE USA, INC. i/s/h/a ALTICE USA,
CABLEVISION SYSTEMS CORPORATION i/s/h/a CABLEVISION, CSC
HOLDINGS, LLC i/s/h/a OPTIMUM and CSC WIRELESS, LLC d/b/a
OPTIMUM MOBILE i/s/h/a OPTIMUM MOBILE'S OPPOSITION TO
PLAINTIFF'S PETITION FOR CERTIFICATION

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Corporation i/s/h/a Cablevision, CSC Holdings, LLC

i/s/h/a Optimum and CSC Wireless, LLC d/b/a Optimum

Mobile i/s/h/a Optimum Mobile

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Re-Submitted: September 12, 2024

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CERTIFICATION SHOULD BE DENIED

Plaintiff's Petition for Certification should be denied because the decisions of both the Trial Court and the Appellate Division correctly found that Plaintiff's sole venue for his claims in this matter is arbitration. The undisputed evidence plainly shows that the Plaintiff and Altice USA, Inc. i/s/h/a Altice USA, Cablevision Systems Corporation i/s/h/a Cablevision, CSC Holdings, LLC i/s/h/a Optimum and CSC Wireless, LLC d/b/a Optimum Mobile i/s/h/a Optimum Mobile (collectively, "Altice") entered into and agreed to both a Customer Service Agreement and a Retail Installment Contract which bound the Plaintiff to arbitrate all claims and disputes with Altice.

Plaintiff attempts to manufacture a new issue for this Court by claiming that the Appellate Division's decision creates ambiguity about the conditions which would constitute knowing waiver. However, this was not the Appellate Division's holding, indeed, this issue was not even addressed by them in their decision. Rather the Court found that the Plaintiff entered into two agreements with Altice and that after entering into these agreements the Plaintiff utilized Altice's services for a year and a half, thus there was a demonstration of mutual assent to a binding agreement between the parties. The Court also correctly affirmed that the subject arbitration provision encompassed the Plaintiff's current claims and there was no substantive

public policy barrier to enforcement of the agreements. Thus, dismissal of the Plaintiff's Complaint was warranted. Plaintiff's attempt to raise non-existent errors clearly misrepresents the Appellate Division's holding and the rationale behind it.

Both Courts' decisions properly enforced the type of common arbitration agreement provisions which companies and consumers enter into on a regular basis. These agreements serve as the most efficient means to resolve disputes and alleviate the immense burden which would be placed on the court system if these types of agreements were not enforced. Indeed, as also noted by the Trial Court, the subject Customer Service Agreement and Retail Installment Contract corresponding arbitration clause are the types of agreements and transactions which occur by the thousands on a daily basis. As such, there is a strong public policy argument for enforcing the subject arbitration provision and its terms as failure to do so could result in a "potential flood of litigation" in the courts.

In the instant action the Plaintiff has alleged a specious claim of discrimination against Altice after he was asked to leave Altice's retail store for refusing to wear a mask during the COVID-19 pandemic. At the time of the alleged incident, Plaintiff was a long-standing customer of Altice and had purchased both mobile phone service and a mobile phone from Altice. During both of these purchases Plaintiff and Altice entered into a Customer Service Agreement and a Retail Installment Contract

which contained a clear and unambiguous binding arbitration provision. At no time since entering into these agreements and accepting Altice's services has Plaintiff ever opted out of the binding arbitration provision. Further, the subject arbitration provision clearly encompasses this matter as it applies to "*claims arising out of or relating to any aspect of the relationship between us, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory.*" The Plaintiff's allegations in this matter both arise out of the relationship between him and Altice and are asserted based upon a legal theory of discrimination. Accordingly, this provision encompasses the Plaintiff's instant claims against Altice.

Altice respectfully submits that the Trial Court and Appellate Division both properly found that the Plaintiff-Appellant must pursue his claims in binding arbitration pursuant to the Customer Service Agreement and Retail Installment Contract. Plaintiff's misrepresentation of the Court's holdings does not warrant granting the instant Petition. As such, it should be denied in its entirety.

STATEMENT OF FACTS

Plaintiff became an Altice¹ mobile service customer through two transactions which occurred on or about November 20, 2019 and November 25, 2019. Plaintiff

¹ Altice USA, Inc. i/s/h/a Altice USA is the parent company of multiple entities including Cablevision Systems Corporation i/s/h/a Cablevision, CSC Holdings, LLC i/s/h/a Optimum and CSC Wireless, LLC d/b/a Optimum Mobile i/s/h/a Optimum Mobile. For the purposes of the instant matter, these entities will be collectively referred to as "Altice."

initiated his mobile service at an Altice retail location, on November 20, 2019. Altice submitted evidence demonstrating that after initiating this service, he would have discussed the Customer Service Agreement with the customer service representative assisting him. He also would have received a copy of the Customer Service Agreement via the email address he provided to Altice. Additionally, the Terms of Service of his new account, which also reference the arbitration provision, were provided by a link on the bottom of the receipt for this transaction.

The second transaction occurred just a few days later on November 25, 2019. At this time Plaintiff purchased a mobile phone from Altice and entered into a Retail Installment Contract. The Retail Installment Contract incorporates the terms, conditions and provisions of Altice's Customer Service Agreement, specifically the binding arbitration provision. On the first page of the Retail Installment Contract, which was executed by the plaintiff, it states in capitalized and bolded font, "**THESE TERMS OF SERVICE CONTAIN A BINDING ARBITRATION AGREEMENT THAT AFFECTS YOUR RIGHTS, INCLUDING THE WAIVER OF CLASS ACTIONS AND JURY TRIALS. THE AGREEMENT ALSO CONTAINS PROVISIONS FOR OPTING OUT OF ARBITRATION. PLEASE REVIEW IT CAREFULLY.**"

The referenced arbitration provision states that “*any and all disputes arising between You and Altice... shall be resolved by binding arbitration on an individual basis in accordance with this arbitration provision.*” The arbitration provision of the two agreements entered into by the Plaintiff states that it is to be broadly interpreted and “*includes, but is not limited to: Claims arising out of or relating to any aspect of the relationship between us, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory; Claims that arose before this or any prior Service Agreement; Claims that may arise after the termination of this Service Agreement.*”

Importantly, Plaintiff does not deny receiving these agreements, executing them or knowing of them. Rather, he simply claims that he was unable to find the Customer Service Agreement in his email when he searched for it two years after the transaction. He does not deny that he executed and is in possession of the Retail Installment Contract which also references the same arbitration provision. Plaintiff also does not deny that he was provided with Altice services for over a year and a half after he entered into these agreements. If he had not entered into both agreements, these services would not have been rendered.

Plaintiff alleges that on June 11, 2021, he was denied service at one of Altice’s retail store locations located at 40 Potash Road, Oakland, New Jersey. On

this day Plaintiff was visiting the Altice retail location to service his mobile phone. At this time, all Altice locations had a policy requiring employees and customers to wear facial coverings due to COVID-19 precautions. Plaintiff claims that, due to a medical condition, he was unable to comply with the store policy and was denied service by the store employees because he refused to wear a facial covering.²

Plaintiff's claims clearly are encompassed by the arbitration provision which requires arbitration of "*claims arising out of or relating to any aspect of the relationship between us, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory.*" Plaintiff claims that because he could not locate a copy of the Customer Service Agreement in his email for the purposes of this litigation, that it now does not apply.³ Notably, he does not contend that he never received it nor that he never consented to it, just that he cannot presently find it in his email account. He also does not make the claim that he was unaware of the binding arbitration provision, rather, he now does not wish to abide by it.

It is undisputed that the Plaintiff was a customer of Altice, bound by the Customer Service Agreement and Retail Installment Contract and their binding

² As noted by the Appellate Division, Plaintiff was able to complete his transaction from outside the retail store.

³ Plaintiff only complains of being unable to locate the Customer Service Agreement in his email. He does not dispute that he executed or is in possession of the Retail Installment Contract which notifies him of the same arbitration provision.

arbitration provision, and that this dispute arises out of and in connection with the Plaintiff-Appellant's status as a customer of Altice. As such, the Trial Court and Appellate Division's decisions dismissing the Plaintiff's Complaint and finding that he must pursue his claims in arbitration should be upheld. There was no error in the prior determinations and there is no basis upon which to grant the Plaintiff's Petition for Certification.

DISMISSAL OF THE COMPLAINT WAS APPROPRIATE

Altice moved for dismissal of the Plaintiff Complaint based on the binding arbitration provision of the Customer Service Agreement and Retail Installment Contract. Altice's motion was granted by the Trial Court and this decision was affirmed by the Appellate Division. This was the correct outcome of the case and Plaintiff has presented no basis to disturb these determinations. Importantly, these determinations do not extinguish the Plaintiff's claims, rather, they just provide him with an alternative venue in which to litigate them.

Both Federal Law, under the Federal Arbitration Act, and New Jersey law strongly favor enforcing arbitration agreements. 9 U.S.C.A § 1 et seq.; N.J.S.A. 2A:23B-1 et seq. The New Jersey legislature codified its support of arbitration in the NJAA (New Jersey Arbitration Act) which provides that "*an agreement contained in a record to submit to arbitration any existing or subsequent controversy*

arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists as law or in equity for the revocation of a contract.”

N.J.S.A. 2A:23B-6(a).

Plaintiff has not provided any facts or case law to counter these statutes and the strong public policy in favor of enforcing arbitration agreements. On the contrary, the facts clearly show that the Plaintiff knowingly entered into at least one, if not two, agreements which clearly indicated that his relationship with Altice would be bound by an agreement to arbitrate any disputes. Both underlying decisions recognized this fact and held that dismissal of the Complaint was warranted pursuant to the terms of the Customer Service Agreement as well as pursuant to 9 U.S.C.A § 1 et seq.; N.J.S.A. 2A:23B-1 et seq. There has been no evidence submitted by the Plaintiff which demonstrates that these decisions were made in error.

Plaintiff has failed to present any evidence which demonstrates that either the Trial Court or Appellate Division’s decisions were in error. His continued claim that he cannot locate the subject agreements does not invalidate them and does not provide a factual basis to disturb the prior holdings. He has failed to demonstrate that either the Trial Court or the Appellate Division misapprehended the law in any way which would warrant reconsideration of the decisions at issue in this Petition. The evidence and case law overwhelmingly support the decisions which have been

entered by the Trial Court and Appellate Division and there is no basis for the Plaintiff's Petition for Certification.

CONCLUSION

Plaintiff should be denied Certification on the basis that he has failed to demonstrate that the facts of this matter were misunderstood by the lower courts or that the prior decisions misapplied the relevant statutes and case law. Indeed, as set forth above, there is a strong public policy argument in favor of enforcing the type of arbitration provision at issue in this matter. Plaintiff's claim that he misplaced the agreements or is uncertain if he ever received them is not a basis upon which the agreements can be invalidated. Plaintiff does not dispute that he received services pursuant to these agreements for over a year and a half and that he was made aware of a binding arbitration provision when he entered into and executed the agreements. As such, Plaintiff's claims are without merit and Certification should be denied.

Dated: September 12, 2024

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