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A win for arbitration

Supreme Court ruling in credit repair firm case is latest in favor of arbitration clause.

A 1996 law sought to protect struggling consumers from businesses promising to improve their credit rating, and specifically gave customers the right to sue any firm in violation.

But the U.S. Supreme Court ruled Tuesday that credit repair companies could block such lawsuits and instead force disgruntled customers into binding arbitration if they had agreed to such a provision in the fine print of their agreements.

The 8-1 decision is another in a string of high court rulings in recent years that have backed an arbitration clause over a customer's right to file a lawsuit.

The trend alarms some consumer advocates, who complained that arbitration proceedings typically favor companies and remove the strong deterrent of class-action lawsuits.

"This Supreme Court is just steam-rolling over the American civil justice system and throwing consumers to the wolves," said Doug Heller, executive director of Consumer Watchdog, an education and advocacy group.

But Stanford law professor Michael W. McConnell, who represented the credit card company and a bank involved in the case, said that just because arbitration is good for a company doesn't mean it's bad for a consumer.

Arbitration can be "a fast, cheap, easy, convenient way of resolving small disputes" with companies, McConnell said. And Tuesday's decision further enhances its use by re-emphasizing the high court's view that the right to sue doesn't specifically prohibit arbitration requirements.

The latest case involved three San Francisco Bay Area consumers who received credit cards marketed by Compucredit Corp. of Atlanta and issued by Columbus Bank & Trust, now a division of Synovus Financial Corp. in Columbus, Ga.

The Aspire Visa card was targeted at people with poor credit scores as a way to help them rebuild their credit history. The Aspire's promotional materials said it came with a \$300 credit line. It also did not require a deposit, unlike many cards offered to people with low credit scores.

But the consumers said hidden costs ate away almost all of that credit line. They included a \$29 initial finance fee, a \$6.50 monthly fee and an annual fee of \$150. The total fees for a year were \$257. The fees were buried in the small print of the credit card agreement, where it was also stipulated that either the customer or the company had the right to force a dispute into binding arbitration.

The consumers filed a class-action suit alleging Compucredit and Columbus Bank violated the Credit Repair Organizations Act, which prohibits companies from engaging in deceptive practices and requiring advance payments for such services.

The U.S. District Court in Oakland said arbitration did not satisfy the law's provision of a right to sue. The U.S. 9th Circuit Court of Appeals in San Francisco upheld that ruling.

In overturning those decisions, the Supreme Court relied in part on a high-profile case last year that upheld AT&T Mobility's binding arbitration clauses that prohibited customers from filing class-action lawsuits.

Justice Antonin Scalia, writing for the majority, said that if Congress had intended to prohibit binding arbitration in the consumer credit protection law, it would have specifically done so, rather than implying it in a right-to-sue provision.

"At the time of the CROA'S enactment in 1996, arbitration clauses such as the one at issue were no rarity in consumer contracts generally, or in financial services contracts in particular," Scalia wrote. "Had Congress meant to prohibit these very common provisions in the CROA, it would have done so in a manner less obtuse than what respondents suggest."

Because the law was silent on whether claims could go to arbitration, he reasoned, Compucredit was allowed to force such claims into arbitration under the Federal Arbitration Act.

Justice Ruth Bader Ginsburg, the only dissenter, said the specific right-to-sue wording in the law could not be satisfied by arbitration. She criticized the majority for taking too legalistic an approach in interpreting a law designed for consumers.

She said the finding that the right to sue "merely connotes the vindication of legal rights, whether in court or before an arbitrator," might make sense to someone who was "trained to 'think like a lawyer.' "

“But Congress enacted the CROA with vulnerable consumers in mind — consumers likely to read the words ‘right to sue’ to mean the right to litigate in court, not the obligation to submit disputes to binding arbitration,” she wrote.

Paul F. Kirgis, a law professor at St. John’s University in New York, said the court’s decision was expected given its past rulings on arbitration. Tuesday’s ruling strengthens a legal shield for companies against class-action suits.

“For an individual consumer, going to a state Small Claims Court is not really a more palatable option than arbitration in most cases,” Kirgis said.



“The real risk,” he said, “is that companies will engage in small-scale frauds committed against large numbers of people without the fear of class-action as a deterrent.”

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