

[PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 20-13575

WILLIAM ATTIX,
on behalf of himself and all others similarly situated,

Plaintiff-Appellee,

versus

CARRINGTON MORTGAGE SERVICES, LLC,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:20-cv-22183-UU

Before BRANCH, GRANT, and BRASHER, Circuit Judges.

BRANCH, Circuit Judge:

Parties often agree to arbitrate disputes arising from their contracts. They may arbitrate all kinds of disputes, including whether their claims are arbitrable. In other words, parties are free to arbitrate not only the “merits” of their claims, but also the “arbitrability” of their claims. But—wait for it—parties sometimes dispute whether an arbitrator should arbitrate arbitrability. When that happens, a *court* must decide *who* decides whether the parties will arbitrate. This is one such case.

In May 2020, William Attix sued his mortgage servicer, Carrington Mortgage Services, asserting claims under the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692 *et seq.*, and Florida law. Attix’s claims arose from a mortgage payment he made to Carrington using an automated pay-by-phone service provided by Speedpay, a third-party payment service provider. Before making his mortgage payment, Attix agreed to be bound by Speedpay’s terms and conditions. Those terms and conditions—to which Attix, Speedpay, *and* Carrington were parties—provided that “any dispute arising from” Attix’s use of Speedpay’s service “shall be” arbitrated. They also provided that an “arbitrator shall also decide what is subject to arbitration unless prohibited by law,” and incorporated by reference an arbitration provision of the American Arbitration Association (“AAA”) stating that “[t]he arbitrator shall have the power to rule on his or her own jurisdiction.”

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After Attix filed suit, Carrington moved to compel arbitration. Carrington argued that Attix's claims arose from his use of Speedpay's service and therefore must be arbitrated under the terms and conditions to which Attix had agreed. Carrington also argued that, by agreeing that an arbitrator would decide "what is subject to arbitration" and would "rule on his or her own jurisdiction," the parties had contracted to arbitrate any disputes about whether Attix's claims were arbitrable. Attix conceded that he had agreed to arbitrate claims arising from his use of Speedpay's service, including the claims he had asserted against Carrington, but argued that a provision of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Pub. L. No. 111-203, 124 Stat. 1376, prohibited enforcement of the parties' arbitration agreement.

The district court denied Carrington's motion to compel arbitration. The district court found that the parties had entered into a valid agreement to arbitrate claims arising from Attix's use of Speedpay's service and that Attix's claims against Carrington were covered by that agreement. But the district court ruled that the Dodd-Frank Act prohibited enforcement of the parties' arbitration agreement. The district court noted the provision of the Speedpay terms and conditions directing that an arbitrator decide "what is subject to arbitration," but said that provision had no application in this case.

On appeal, Carrington challenges the district court's denial of its motion to compel arbitration on two grounds. First,

Carrington argues that the district court erred in even deciding whether the Dodd-Frank Act prohibits enforcement of the parties' arbitration agreement. Carrington asserts that, by agreeing that an arbitrator would decide "what is subject to arbitration" and would "rule on his or her own jurisdiction," the parties agreed that an arbitrator would decide such threshold arbitrability issues. Second, Carrington argues that, in any case, the district court erred in finding that the Dodd-Frank Act prohibits enforcement of the parties' arbitration agreement.

Carrington is right on the first point, which means the second is not for us to decide. In the terms and conditions governing Attix's use of Speedpay's service, Attix and Carrington clearly and unmistakably agreed that an arbitrator would decide all threshold questions about the arbitrability of Attix's claims, including whether their arbitration agreement is enforceable. Attix argues that the parties agreed to arbitrate only some, but not all, threshold arbitrability issues, but his interpretation of the parties' agreement is unavailing. Moreover, although he claims that he has, Attix has not specifically challenged the enforceability of the parties' agreement to arbitrate threshold questions about the arbitrability of his claims. Attix's Dodd-Frank Act challenge relates only to the enforceability of the parties' separate agreement to arbitrate the *merits* of his claims, and the parties have agreed to submit questions about the enforceability of *that* agreement to an arbitrator. Thus, the arbitrability dispute in this case—*i.e.*, whether

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the Dodd-Frank Act prohibits enforcement of the parties' arbitration agreement—is for an arbitrator to decide.

After review and with the benefit of oral argument, we reverse and remand with instructions to compel arbitration and stay proceedings in the district court.

I. Background

In 2008, William Attix took out a home mortgage loan. Later, after Attix defaulted, Carrington became his mortgage servicer. In May 2020, Attix made a mortgage payment to Carrington using Speedpay's automated phone payment service. When Attix dialed Speedpay's line, Speedpay's automated system informed him that he would be charged a \$10 convenience fee for using Speedpay's service. Through a telephonic prompt, Attix agreed to pay the \$10 fee.

Before Attix completed his mortgage payment, Speedpay's automated system informed him that "the terms and conditions applicable to this payment are located at [Speedpay.com/terms](https://www.speedpay.com/terms)," and directed Attix to press 1 "to complete your transaction and accept these terms." The applicable terms and conditions located on Speedpay's website stated:

THIS PAYMENT SERVICE IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS.

Do not use or access this Website or Service if You do not agree to be bound by these Terms and Conditions.

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