NOT RECOMMENDED FOR PUBLICATION
File Name: 22a0195n.06

No. 21-3570

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LORRAINE ADELL, individually and on behalf of all others similarly situated,	)	**FILED** May 11, 2022 DEBORAH S. HUNT, Clerk
Plaintiff-Appellant,	)	
v.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO
CELLCO PARTNERSHIP, doing business as Verizon Wireless,	)	OPINION
Defendant-Appellee.	)	

BEFORE: GILMAN, STRANCH, and NALBANDIAN, Circuit Judges.

JANE B. STRANCH, Circuit Judge. Lorraine Adell challenges the district court's decision compelling her to arbitrate her claims against Cellco Partnership based on an arbitration clause in her Customer Agreement with Verizon Wireless. Adell asserts that the waiver of her Article III right to bring her state-law claims through diversity jurisdiction in federal court was not voluntary and that the Class Action Fairness Act of 2005 overrides the Federal Arbitration Act with respect to the arbitration of class action claims. The district court rejected these arguments in granting Verizon's motion to compel arbitration, granting Verizon's request to confirm the arbitration award, and rejecting Adell's motion to vacate the arbitration reward. For the reasons that follow, we **AFFIRM** the district court's judgments.

I. BACKGROUND

Adell became a Verizon Wireless customer in September 2015. When signing up for Verizon service, Adell accepted Verizon's Customer Agreement, which included a statement agreeing that both parties would resolve disputes exclusively through arbitration or in small-claims court. In March 2018, she sued Verizon in the U.S. District Court for the Northern District of Ohio. **(**Adell alleged that, in October 2005, Verizon introduced a monthly administrative charge on wireless customers for each line. This charge was, at some point, as much as $1.23 per line monthly. In 2010, the charge was $0.92 per line and generated approximately $84 million in revenue per month. According to Adell, Verizon first noted the administrative charge in its November 2006 Customer Agreement, explaining that the company "may also include Federal Universal Service, Regulatory and Administrative Charges, and may also include other charges related to our governmental costs." (R. 7-1, Verizon Customer Agreement, PageID 43) Adell alleged that these charges must be put toward governmental costs. However, "Verizon has used the Administrative Charge as a discretionary pass-through of Verizon's general costs," such as the cost of building cell sites. (R. 1, Complaint, PageID 3) The complaint asserted that using the costs in this way allows Verizon to increase the monthly rate for service without disclosure to its customers, breaching Verizon's contracts with Ohio and nationwide customers.

Adell sought to challenge the charge both individually and through a class action on behalf of two classes. The first class would include "all Verizon wireless telephone customers." Adell brought a declaratory judgment on behalf of this class, seeking a declaration that the arbitration clause in the Customer Agreement was, as applied to state-law claims against Verizon for breach of contract under the Class Action Fairness Act of 2005 (CAFA), not voluntary or enforceable. This class also sought a declaration that the agreements to arbitrate state-law claims that CAFA allows plaintiffs to bring in federal courts through diversity jurisdiction "are not enforceable

because of the 'inherent conflict' between arbitration under the FAA and CAFA's express purposes as stated by Congress." The second class included "all Verizon wireless telephone customers whose wireless phones have an Ohio area code." Adell sought damages for breach of contract based on Verizon's imposition of the administrative charge.

In June 2018, Adell moved for partial summary judgment on her individual claims for declaratory judgment, including her arguments that the waiver of her right to bring a case in an Article III court against Verizon was not voluntary, conflicted with CAFA, and was therefore not enforceable. Later in June, Verizon moved the district court to compel Adell's state-law claims to arbitration and to stay the case until the end of the arbitration process. In March 2019, the district court granted Verizon's motion to compel arbitration, denied Adell's motion for partial summary judgment, and stayed the case pending the completion of arbitration.

Adell and Verizon arbitrated their dispute through the American Arbitration Association. They agreed to a summary disposition based on pre-hearing motions on Adell's breach of contract claim. On August 22, 2020, the arbitrator concluded, based on Ohio law, that "the Agreement in its entirety does not appear to require that Administrative Charges be related to government costs and cannot be said to be ambiguous as it relates to administrative charges." Therefore, Adell's claim for breach based on Verizon's imposition of administrative charges unrelated to government costs failed. The arbitrator denied Adell's claims for breach of contract, specific performance, and partial summary disposition, and granted Verizon's motion for summary adjudication. The arbitrator ordered the parties to pay $1,900.00 in administrative fees and expenses to the American Arbitration Association and $2,500.00 as compensation to the arbitrator.

After the district court confirmed the arbitration award and denied Adell's motion to vacate that award, Adell brought this appeal. She challenges both the district court's March 2019 opinion

and order compelling arbitration and the opinion and order denying her motion to vacate the arbitration award.

II. ANALYSIS

The Arbitration Agreement Adell signed as part of her Customer Agreement with Verizon states, in pertinent part:

> **YOU AND VERIZON WIRELESS BOTH AGREE TO RESOLVE DISPUTES ONLY BY ARBITRATION OR IN SMALL CLAIMS COURT. YOU UNDERSTAND THAT BY THIS AGREEMENT YOU ARE GIVING UP THE RIGHT TO BRING A CLAIM IN COURT OR IN FRONT OF A JURY. . . . WE ALSO BOTH AGREE THAT:**
>
> (1) THE FEDERAL ARBITRATION ACT APPLIES TO THIS AGREEMENT. EXCEPT FOR SMALL CLAIMS COURT CASES THAT QUALIFY, ANY DISPUTE THAT IN ANY WAY RELATES TO OR ARISES OUT OF THIS AGREEMENT OR FROM ANY EQUIPMENT, PRODUCTS AND SERVICES YOU RECEIVE FROM US (OR FROM ANY ADVERTISING FOR ANY SUCH PRODUCTS OR SERVICES), INCLUDING ANY DISPUTES YOU HAVE WITH OUR EMPLOYEES OR AGENTS, WILL BE RESOLVED BY ONE OR MORE NEUTRAL ARBITRATORS BEFORE THE AMERICAN ARBITRATION ASSOCIATION ("AAA") OR BETTER BUSINESS BUREAU ("BBB"). YOU CAN ALSO BRING ANY ISSUES YOU MAY HAVE TO THE ATTENTION OF FEDERAL, STATE OR LOCAL GOVERNMENT AGENCIES, AND IF THE LAW ALLOWS, THEY CAN SEEK RELIEF AGAINST US FOR YOU. . . .
>
> **(3) THIS AGREEMENT DOESN'T ALLOW CLASS OR COLLECTIVE ARBITRATIONS EVEN IF THE AAA OR BBB PROCEDURES OR RULES WOULD. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE ARBITRATOR MAY AWARD MONEY OR INJUNCTIVE RELIEF ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF WARRANTED BY THAT PARTY'S INDIVIDUAL CLAIM. NO CLASS OR REPRESENTATIVE OR PRIVATE ATTORNEY GENERAL THEORIES OF LIABILITY OR PRAYERS FOR RELIEF MAY BE MAINTAINED IN ANY ARBITRATION HELD UNDER THIS AGREEMENT. ANY QUESTION REGARDING THE ENFORCEABILITY OR INTERPRETATION OF THIS PARAGRAPH SHALL BE DECIDED BY A COURT AND NOT THE ARBITRATOR. . . .**

(R. 21-2, Sandoval Declaration, PageID 263–64) The parties do not dispute that Adell's Customer Agreement with Verizon from September 2015 includes an arbitration clause that covers Adell's

breach of contract claim. Adell also concedes that the clause requires the bilateral, rather than class, arbitration of disputes and limits her to individual relief in that process. The disagreement lies with whether this clause is enforceable under federal law.

Arbitration agreements fall under the ambit of the Federal Arbitration Act (FAA), which provides than an arbitration clause in "a transaction involving commerce . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. The FAA evinces "a liberal federal policy favoring arbitration agreements." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983). As arbitration agreements are contracts, "courts must 'rigorously enforce' arbitration agreements according to their terms." *Am. Exp. Co. v. Italian Colors Rest.*, 570 U.S. 228, 233 (2013) (quoting *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213, 221 (1985)). If a court is "satisfied that the making of the agreement for arbitration . . . is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement." 9 U.S.C. § 4.

The district court entered such an order, and Adell asserts on appeal that two independent reasons show the decision to be erroneous. First, Adell insists that she did not voluntarily waive an Article III adjudication of her breach of contract claim against Verizon. Second, she argues that the "inherent conflict" between CAFA and the FAA means that claims falling within a federal court's diversity jurisdiction through CAFA are no longer within the FAA's bounds. We take each argument in turn.

"When reviewing a district court's decision to confirm or vacate an arbitration award, we review factual findings for clear error and questions of law de novo." *Uhl v. Komatsu Forklift Co., Ltd.*, 512 F.3d 294, 303 (6th Cir. 2008) (quoting *Green v. Ameritech Corp.*, 200 F.3d 967, 974 (6th Cir. 2000)). We review both denials of motions for summary judgment and decisions to compel

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.