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Supreme Court Upholds Agreement to Arbitrate Federal Consumer Claims

Earlier this week, in *Compucredit Corp.* v. *Greenwood*, the Supreme Court again reaffirmed that even when federal statutory claims brought by consumers are at issue, the Federal Arbitration Act ("FAA") requires courts to enforce arbitration agreements as drafted. The Court recognized that the FAA's mandate may be overridden by contrary Congressional command, but it ruled that when a federal statute is "silent on whether claims under the [statute] can proceed in an arbitrable forum, the FAA requires the arbitration agreement to be enforced according to its terms."

In this case, credit card customers filed a class action suit alleging violations of the Credit Repair Organizations Act ("CROA"), and defendants moved to compel arbitration pursuant to an arbitration clause in the customers' applications. The district court denied the motion to arbitrate and the Ninth Circuit affirmed, but the Supreme Court reversed.

The Supreme Court held that the CROA's disclosure and non-waiver provisions, which were alleged to create a "right to sue" sufficient to overcome the FAA, failed to do so and thus did not bar arbitration pursuant to the parties' agreement. The Court ruled that the statutory provision requiring disclosure of the statement, "You have a right to sue a credit repair organization that violates the [CROA]," only created a right to receive notice, not a right to litigate in court. The Court further decided that the non-waiver provision in the CROA neither expanded that disclosure right into a right to sue in court, nor converted a separate private right of action set forth in the CROA into a prohibition against arbitration.

In rejecting the argument that the words "right to sue" in the required disclosure set out a right to litigate in court, the majority explained that the Supreme Court has "repeatedly recognized that contractually required arbitration of claims satisfies the statutory prescription of civil liability in court" and that "mere 'contemplation' of suit in any competent court does not *guarantee* suit in all competent courts, disabling the parties from adopting a reasonable forum-selection clause" (emphasis in original). Arbitration thus may satisfy a statutory right of action, and the inclusion of such a right in a federal statute does not preclude private bargaining over the appropriate forum for dispute resolution.

By reaffirming the efficacy of arbitration agreements and limiting the instances in which such contractual provisions will be set aside, *Compucredit* builds on the Supreme Court's recent decisions in *AT&T Mobility* v. *Concepcion* (2011), *Rent-A-Center, West, Inc.* v. *Jackson* (2010), and *Stolt-Nielsen S.A.* v. *AnimalFeeds Int'l Corp.* (2010). Read together, these decisions emphasize the contractual underpinnings of arbitration and demonstrate the Supreme Court's willingness to uphold agreements to arbitrate, including in consumer contracts. These decisions confirm the viability of arbitration as a dispute resolution method and underscore the importance of carefully crafting arbitration clauses.

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