JS-6/STAYED

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	SACV 19-264 JVS (ADSx)	Date	June 10, 2019
Title	David Sponheim v. Citibank, N.A.		

Present: The Honorable	**James V. Selna, U.S. District Court Judge**

Lisa Bredahl	Sharon Seffens
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Brittany Casola	David Moon Julia Strickland

Proceedings: **Defendant Citibank, N.A.'s Motion to Compel Arbitration and Stay Action [13] and Scheduling Conference**

Cause is called for hearing and counsel make their appearances. Motion is argued. The Court orders that the tentative ruling shall become the order of the Court and hereby rules as follows:

Defendant Citibank, N.A. ("Citibank") filed a motion to compel Plaintiff David Sponheim ("Sponheim") to arbitrate his claims against Citibank on an individual basis and to stay this action pending arbitration. Mot., Docket No. 13. Sponheim filed an opposition. Opp'n, Docket No. 14. Citibank replied. Reply, Docket No. 15.

For the following reasons, the Court grants the motion and stays this action pending arbitration.

I. BACKGROUND

A. The Complaint

This is a putative class action concerning Citibank's practice of charging foreign transaction fees to customers who enter online transactions with foreign merchants, even though the customers are physically present in the United States.

The Complaint alleges the following. Sponheim is a resident of Los Alamitos, California, and is the holder of a Citibank checking account. Compl., Docket No. 1 ¶ 31.

Citibank's "Marketplace Addendum" contains fee disclosures which govern its standard account agreements. Id. ¶ 3. As set forth in the Marketplace Addendum, Citibank charges account holders a 3% Foreign Exchange Fee on all foreign transactions "made outside of the U.S." Id. ¶ 4, Ex. 1 at 67 n.7 (pagination per docket).

On March 15, 2018, Sponheim made an online purchase on a foreign merchant's website using his home computer. Id. Sponheim paid approximately $238.31 for his purchase to King Seed, based in Vancouver, Canada. Id. ¶ 31. Sponheim was also assessed a $7.15 "Foreign Transaction Fee" for the purchase, which is the subject of this lawsuit. Id. ¶ 32. Sponheim alleges that the foreign transaction fee was not authorized by his account agreement because he was not physically present in a foreign country when he made his purchase. Id. ¶¶ 31–32.

Sponheim asserts claims for breach of contract and for violation of California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200, et seq., on behalf of himself and a putative class defined as:

> All holders of a [Citibank] checking account in California who, within the applicable statute of limitation preceding the filing of this lawsuit, incurred a Foreign Exchange Fee on an online debit card purchase transaction (the "Foreign Exchange Fee Class").

Id. ¶ 37. Sponheim seeks actual, statutory, punitive, and exemplary damages, restitution, disgorgement of profits, a declaration that Citibank's foreign transaction fee is "wrong, unfair, and a breach of contract," and attorneys' fees and costs. Id. at 15 (Prayer for Relief) ¶¶ (c)–(g), (j). Sponheim also seeks an "order on behalf of the general public enjoining [Citibank] from continuing to misrepresent its Foreign Exchange Fee policies in its publicly available documents and marketing materials, such as its 'Client Manual' and 'Addendum.'" Id. ¶ (i).

B. Sponheim's Checking Account and the Arbitration Provision

On March 15, 2005, Plaintiff opened a checking account at Citibank's

Huntington Beach, California financial center ("Account"). Declaration of Joan Haslam ("Haslam Decl."), Docket No. 13-2 ¶ 3. At that time, Sponheim executed a signature card for the account with the following acknowledgment:

> I . . . (3) agree to be bound by any agreement governing the account I opened in the title indicated on this card and (4) understand and acknowledge that such account agreement provides that either Citibank or I can require that any disputes between us concerning the Citibank account I have opened or concerning my other Citibank deposit, Checking Plus, or Ready Credit accounts will be resolved by binding arbitration.

Id. ¶ 3, Ex. 1.

The Account is also subject to Citibank's Client Manual Consumer Accounts ("Client Manual" or "Account Agreement"). Id. ¶ 4, Ex. 2. The Account Agreement permits Citibank to make changes to its terms and conditions in certain circumstances, and Sponheim's Account is governed by the current version of the Account Agreement. Id. ¶ 4, Ex. 2 at 23; Compl. ¶¶ 3, 49. Sponheim attaches copies of the most recent version of the Client Manual, effective November 15, 2018. Compl., Ex. 1.

The Account Agreement includes an arbitration provision ("Arbitration Provision") requiring arbitration of claims related to Sponheim's Account. See Haslam Decl., Ex. 2 at 23 ("[A]ny claim relating to or arising out of [the] account . . . will be subject to arbitration."); Compl., Ex. 1 at 47 (pagination per docket) (requiring arbitration of "any claims, dispute or controversy between you and us arising out of or related to your account"). The Arbitration Provision provides that arbitration must take place on an individual, non-class basis, and that the arbitrator may award only individual relief. See Haslam Decl., Ex. 2 at 24 ("no class action, private attorney general or other representative claims may be pursued in arbitration," and arbitrator will "not have the power to award relief to, or against, any person who is not a party to the arbitration"); Compl., Ex. 1 at 47 ("Disputes brought as part of a class action, private attorney general or other representative action can be arbitrated only on an

individual basis. The arbitrator has no authority to arbitrate any claim on a class or representative basis and may award relief only on an individual basis.").

Citibank now moves to compel arbitration pursuant to the Arbitration Provision, and to stay this action pending the completion of arbitration. Mot., Docket No. 13.

II. LEGAL STANDARD

Under the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1 et seq., a party to an arbitration agreement may bring a motion in federal district court to compel arbitration and stay the proceeding pending resolution of the arbitration. 9 U.S.C. §§ 3–4. Ambiguities as to the scope of the arbitration provision must be interpreted in favor of arbitration. Mastrobuono v. Shearson Lehman Hutton, Inc., 514 U.S. 52, 62 (1995); see also AT&T Techs. Inc. v. Commc'n Workers of Am., 475 U.S. 643, 650 (1986). The FAA also requires "district courts to compel arbitration even where the result would be the possibly inefficient maintenance of separate proceedings in different forums." Fisher v. A.G. Becker Paribas, Inc., 791 F.2d 691, 698 (9th Cir. 1986).

The FAA creates a "national policy favoring arbitration." Nitro-Lift Techs, LLC v. Howard, 568 U.S. 17, 20 (2012). "The 'principal purpose' of the FAA is to 'ensur[e] that private arbitration agreements are enforced according to their terms.'" AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 344 (2011) citing Volt Info. Scis., Inc. v. Bd. of Trustees of Leland Stanford Junior Univ., 489 U.S. 468, 478 (1989). The FAA states that a written agreement to arbitrate "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. "By its terms, the [FAA] leaves no place for the exercise of discretion by a district court, but instead mandates that district courts shall direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed." Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213, 218 (1985).

A district court may not review the merits of the dispute when determining whether to compel arbitration. Cox v. Ocean View Hotel, Corp., 533 F.3d 1114, 1119 (9th Cir. 2008). Instead, the FAA limits the district court's role "to determining (1) whether a valid agreement to arbitrate exists and, if it does (2) whether the agreement encompasses the dispute at issue." Id. (internal citation and quotation omitted). If a

valid arbitration agreement exists, a district court must enforce the arbitration agreements according to its terms. Lifescan, Inc. v. Premier Diabetic Servs., Inc., 363 F.3d 1010, 1012 (9th Cir. 2004).

A district court applies state contract law to determine whether the parties are required to arbitrate and may consider state-law challenges to the arbitration agreement's validity, such as unconscionability. Cox, 533 F.3d at 1121. A court may consider evidence beyond the complaint in ruling on a motion to compel. See Guadagno v. E*Trade Bank, 592 F. Supp. 2d 1263, 1266–69 (C.D. Cal. 2008) (examining declarations and exhibits in ruling on a motion to compel arbitration under the FAA). The party seeking to compel arbitration must prove the existence of an agreement to arbitrate by a preponderance of the evidence standard. Knutson v. Sirius XM Radio Inc., 771 F.3d 559, 565 (9th Cir. 2014). If the moving party carries this burden, the opposing party must prove any contrary facts by the same burden. Castillo v. CleanNet USA, Inc., No. 17-CV-07277-JCS, 2018 WL 6619986, at *10 (N.D. Cal. Dec. 18, 2018) (citing Bruni v. Didion, 160 Cal. App. 4th 1272, 1282 (Cal. App. 2008) ("The petitioner bears the burden of proving the existence of a valid arbitration agreement by the preponderance of the evidence, and a party opposing the petition bears the burden of proving by a preponderance of the evidence any fact necessary to its defense.")). "In these summary proceedings, the trial court sits as a trier of fact, weighing all the affidavits, declarations, and other documentary evidence, as well as oral testimony received at the court's discretion, to reach a final determination." Bruni, 160 Cal. App. 4th at 1282.

III. DISCUSSION

A. Motion to Compel Arbitration

Under the FAA, arbitration must be compelled where (1) a valid agreement to arbitrate exists, and (2) the agreement encompasses the claims at issue. See Chiron Corp. v. Ortho Diagnostic Sys., Inc., 207 F.3d 1126, 1130 (9th Cir. 2000). There is no dispute that the Arbitration Provision encompasses the claims at issue and prevents Sponheim from representing a class or seeking public injunctive relief. Therefore, the only dispute is whether the Arbitration Provision is unenforceable because it waives Citibank customers' rights to seek public injunctive relief in violation of the

California Supreme Court's decision in McGill v. Citibank, N.A., 2 Cal. 5th 945 (2017).

Citibank argues that (1) McGill is inapplicable because Sponheim does not actually seek public injunctive relief as defined in McGill, and that in any event, (2) the holding in McGill is preempted by federal law. Mot., Docket No. 13-1 at 9–20. Sponheim argues in opposition that the Arbitration Provision is unenforceable under McGill because it improperly deprives consumers of the right to seek public injunctive relief in any forum. Opp'n, Docket No. 14 at 4–12. Sponheim also argues that McGill is not preempted by federal law. Id. at 13–22.

1. California's *McGill* Rule

In McGill, the California Supreme Court held that under the UCL, a private plaintiff who otherwise has standing can file a lawsuit on her own behalf that "seeks, as one of the requested remedies, injunctive relief 'the primary purpose and effect of' which is 'to prohibit and enjoin conduct that is injurious to the general public.'" McGill, 2 Cal. 5th at 959 (citing Broughton, 21 Cal. 4th at 1077). The purpose of public injunctive relief is "to remedy a public wrong, not to resolve a private dispute, and any benefit to the plaintiff requesting such relief likely would be incidental to the general public benefit of enjoining such a practice." Id. at 961 (internal citations, quotation marks, and ellipses omitted). "By definition, the public injunctive relief available under the UCL . . . is primarily for the benefit of the general public." Id.

The court held that an arbitration provision waiving McGill's statutory right to seek public injunctive relief under the UCL was invalid and unenforceable. Relying on California Civil Code § 3513, a "Maxim of Jurisprudence" stating that "[a]ny one may waive the advantage of law intended solely for his benefit[, b]ut a law established for a public reason cannot be contravened by a private agreement," the court held that because "the waiver in a predispute arbitration agreement of the right to seek public injunctive relief under [the UCL] would seriously compromise the public purposes [the UCL was] intended to serve," a waiver of the right to request public injunctive relief in any forum is invalid and unenforceable under California law. Id. at 961. Finally, the McGill court decided that the rule it created is not preempted by the FAA. Id. at 961–66.

B. *McGill* Does Not Apply

Citibank argues that Sponheim cannot rely on McGill to avoid the consequences of the Arbitration Provision because Sponheim does not actually seek public injunctive relief in this case. Mot., Docket No. 13-1 at 10–13. Sponheim argues in opposition that the Complaint "clearly articulates how Citibank's deceptive practices affect both existing customers *and* the public at large who may be deciding with whom to bank." Opp'n, Docket No. 14 at 11.

"Public injunctive relief 'is for the benefit of the general public rather than the party bringing the action.'" Kilgore v. KeyBank, N.A., 673 F.3d 947, 1061 (9th Cir. 2012) (quoting Broughton v. Cigna Healthplans of Cal., 21 Cal. 4th 1066, 1082 (1999)). "Relief that has the primary purpose or effect of redressing or preventing injury to an individual plaintiff—or to a group of individuals similarly situated to the plaintiff—does not constitute public injunctive relief." McGill, 2 Cal. 5th at 955. Thus, public injunctive relief must "by and large benefit[] the general public and . . . the plaintiff, if at all, only incidentally and/or as a member of the general public." Id. "The evident purpose of such relief, therefore, is not to resolve a private dispute, but to remedy a public wrong." Magana v. DoorDash, Inc., 343 F. Supp. 3d 891, 900-01 (N.D. Cal. 2018) (citing McGill, 2 Cal. 5th at 961).

"Merely declaring that a claim seeks a public injunction, however, is not sufficient to bring that claim within the bounds of the rule set forth in McGill." Blair v. Rent-A-Center, Inc., No. C 17-02335 WHA, 2017 WL 4805577, at *2 (N.D. Cal. Oct. 25, 2017); see also Johnson v. JP Morgan Chase Bank, N.A., No. EDCV 172477 JGB (SPx), 2018 WL 4726042, at *6 (C.D. Cal. Sept. 18, 2018) ("Merely requesting relief which would generally enjoin a defendant from wrongdoing does not elevate requests for injunctive relief to requests for public injunctive relief."); Wright v. Sirius XM Radio Inc., No. SACV 16-01688, 2017 WL 4676580, at *9 (C.D. Cal. June 1, 2017) (holding that a request for an injunction against making misrepresentations and omissions in connection with lifetime subscriptions are "vague, generalized allegations [that] do not request public injunctive relief," and that "any benefit to the public is merely 'incidental'").

In Wright, the plaintiff sought an injunction to bar the defendant from certain

conduct relating to a class of plaintiffs holding lifetime subscriptions to Sirius XM radio. Id. Tacked on to this request, the plaintiff requested an order enjoining the defendant "from committing such unlawful, unfair, and fraudulent business practices" and from "making such material misrepresentations and failing to disclose or actively concealing its practice of regularly canceling and limiting or prohibiting transfers of lifetime subscriptions." Id. (internal quotations omitted). The court determined that these requests were "vague, generalized allegations" and that they did not adequately request public injunctive relief. See id. The court further found that the benefit to the public of the requested relief was merely incidental. Id.

Similarly, in Johnson, the Court found that the plaintiff did not seek public injunctive relief despite "craft[ing] their allegations and prayer for relief to request expressly a general injunction and public injunctive relief" because, upon closer inspection, the plaintiff actually intended to seek redress for and prevent further injury to a group of plaintiffs that had already been injured by a bank's imposition of fees, not the general public. Johnson, 2018 WL 4726042, at *7. Because the plaintiffs' prayers for monetary relief were at "the heart" of the claims, the court found that the plaintiff's generalized request for a public injunction was merely incidental to the vindication of the plaintiffs' alleged injuries. Id. ("Based on the construction of the classes, the breach of contract underpinnings of the claims, and the entirety of the requested relief, the Court finds Plaintiffs' generalized request for injunction merely incidental to vindicating Plaintiffs' alleged injuries."). Finally, the court determined that the requested injunctive relief provided "no real benefit to the public at large" because the class of people who stood to benefit from the relief was limited to those who had entered contractual agreements with JPMorgan, not the public at large. Id.; see also McGovern v. U.S. Bank N.A., 362 F. Supp. 3d 850, 859 (S.D. Cal. 2019) (finding that the plaintiff sought no public injunctive relief where it was "questionable whether the general public would receive any benefit from the injunction Plaintiff seeks, as the general public has not been subject to and will not be subject to any of the allegedly improper fees that constitute Plaintiff's injury.").

The Court finds that this case is similar to Johnson, Wright, and McGovern in that Sponheim seeks public injunctive relief as a mere incidental benefit to his primary aim of gaining compensation for injury for himself and others similarly situated. Sponheim's prayer for relief does "not elevate the complaint to a request for public

injunctive relief such that [he] can circumvent arbitration." Johnson, 2018 WL 4726042, at *7. Like those cases, Sponheim brings his claims on behalf of a limited class: California plaintiffs that have held Citibank checking accounts within the applicable statute of limitations. Compl. ¶ 37. Sponheim and the putative class seek compensation for the allegedly improper foreign transaction fees imposed upon them by Citibank. Therefore, upon examination of the Complaint, Sponheim's claims arise out of the contractual rights and obligations between Citibank and its customers, not deceptive advertising or marketing to the general public as in McGill. See generally, id.; McGill, 2 Cal. 5th at 957 (alleging nationwide marketing and sales advertising campaign in which the defendant made various misrepresentations) Moreover, like in the cases noted above, it is far from certain whether the general public would benefit from the injunction sought. Only Citibank customers are parties to the Account Agreement, and thus only Citibank customers may incur a foreign transaction fee. Therefore, it is at least questionable whether the general public would receive any benefit from the injunction sought, as the public has not been subject and will not be subject to any of the allegedly improper fees constituting Sponheim's injury.

Sponheim argues that the prayer for public injunctive relief is based on deceptions to the general public "in publicly available account documents," including its account contracts. Opp'n, Docket No. 14 at 11; see also Compl. ¶¶ 8, 30, 62. However, Sponheim cannot transform the documents forming the alleged contractual agreement between Citibank and its account holders into marketing and advertising materials simply because Citibank posts those agreements in a publicly accessible manner. At bottom, Sponheim's claims arise from alleged breaches of bilateral contracts between Citibank and its California account holders, and those account holders' prayers for monetary relief are at the "heart" of Sponheim's claims. See Johnson, 2018 WL 4726042, at *7. Therefore, the Court finds that Sponheim does not seek public injunctive relief, and Wright does not apply. Accordingly, McGill does not invalidate the Arbitration Provision, and the Court finds that Citibank has demonstrated the existence of a valid agreement to arbitrate on an individual basis.

Sponheim argues that the relief he actually seeks is irrelevant because the existence of a public injunction waiver suffices to invalidate the entire arbitration agreement, i.e., that McGill applies no matter the relief sought. Opp'n, Docket No. 14 at 7–8. The Court disagrees. In Wright, the court determined that the fact that the

plaintiff did not seek public injunctive relief meant that McGill did "not prohibit enforcement of the Agreement's arbitration clause." Wright, 2017 WL 4676580, at *10; see also Johnson, 2018 WL 4726042, at *8 (same). Moreover, many other decisions have first considered whether the plaintiff was actually seeking public injunctive relief before determining whether McGill applied. See, e.g., Bell-Sparrow v. SFG*Proschoicebeauty, No. 18-CV-06707-YGR, 2019 WL 1201835, at *8 (N.D. Cal. Mar. 14, 2019); Kim v. Tinder, Inc., No. 18-cv-03093 JFW (AS), 2018 WL 6694923, at *3–4 (C.D. Cal. July 12, 2018); Croucier v. Credit One Bank, N.A., No. 18-cv-00020 MMA (JMA), 2018 WL 2836889, at *4 (S.D. Cal. June 11, 2018); Rappley v. Portfolio Recovery Assocs., LLC, No. 17-cv-00108-JGB, 2017 WL 3835259, at *6 (C.D. Cal. Aug. 24, 2017).

Furthermore, in a case Sponheim cites to the contrary, Wallace v. Wells Fargo Bank, N.A., No. 2017-1-CV-31775 (Cal. Sup. Ct. Aug. 7, 2018), the court relied on a "poison pill" provision in the arbitration agreement to find the entire agreement unenforceable. Opp'n, Ex. A at 5 (noting provision in arbitration agreement stating in relevant part that if any class action or arbitration provision were found unenforceable, "the entire Arbitration Agreement will be unenforceable"). Here, the Account Agreement contains no similar provision, and instead provides the opposite: "If one or more of these arbitration provisions are deemed invalid or unenforceable, the remaining portions shall nevertheless remain valid and enforceable." Haslam Decl., Ex. 2 at 24. Similarly, the Client Manual provides that the "other terms shall remain in force" if any part of the Arbitration Provision were to be "deemed invalid or unenforceable." Docket No. 1 at 48. Therefore, the Court finds that the existence of the public injunction waiver does not render the entire Arbitration Provision invalid and unenforceable.

Sponheim's right to seek a public injunction is not affected by the Arbitration Provision because he does not actually seek public injunctive relief. Therefore, McGill does not apply. Accordingly, the Court follows Wright and Johnson and holds that the arbitration provision is enforceable against Sponheim despite containing a public injunction waiver.

In sum, a valid arbitration agreement exists which covers the instant dispute.

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Therefore, the motion to compel arbitration is granted.[1]

B. Stay Pending Arbitration

Citibank asks the Court to stay this case pending completion of arbitration. Section 3 of the FAA "requires courts to stay litigation of arbitral claims pending arbitration of those claims 'in accordance with the terms of the agreement.'" Concepcion, 563 U.S. at 344 (quoting 9 U.S.C. § 3); see also Wagner v. Stratton Oakmont, Inc., 83 F.3d 1046, 1048 (9th Cir. 1996) ("The [FAA] requires a court to stay an action whenever the parties to the action have agreed in writing to submit their claims to arbitration."). Accordingly, the Court stays this case in light of its finding that Sponheim's claims are subject to the terms of the Arbitration Provision.

IV. CONCLUSION

For the foregoing reasons, the Court grants the motion to compel arbitration. The action is stayed pending the completion of arbitration. The Scheduling Conference is VACATED.

IT IS SO ORDERED.

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Initials of Preparer **lmb**

[1] Because the Court finds that McGill does not apply, the Court need not reach a conclusion as to whether the FAA preempts the McGill rule.