

FILED
Superior Court Of California
County Of Los Angeles

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John A. ... Executive Officer/Clerk
By B. Garcia Deputy
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APPELLATE DIVISION OF THE SUPERIOR COURT
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

ERNIE LAGUILLES,) No. BV 030244
Plaintiff and Respondent,) Van Nuys Trial Court
v.) No. 12E06792
TIME WARNER CABLE, INC.,)
Defendant and Appellant.) **OPINION**

I. INTRODUCTION

Time Warner Cable, Inc. (TWC) appeals the trial court's denial of its petition to compel arbitration of claims made by Ernie Laguilles in his action against TWC based on the Rosenthal Fair Debt Collection Practices Act (RFDCPA) (Civ. Code, §§ 1788 et seq.).¹ The trial court held that the clause in TWC and Laguilles's residential cable television services subscriber agreement (agreement) that required that disputes be resolved by arbitration was unenforceable because it was contrary to the antiwaiver section of the RFDCPA (§ 1788.33).

As discussed below, we agree with TWC that the court erred in finding the antiwaiver section barred Laguilles from agreeing to arbitrate his claims against TWC because there was nothing in the RFDCPA that barred arbitrating his claims, or that conferred on Laguilles the right to jury trial. We thus reverse the trial court's order denying TWC's petition.

¹All further statutory references are to the Civil Code unless otherwise specified.

1 *II. PROCEDURAL AND FACTUAL BACKGROUND*

2 On July 16, 2012, Laguilles filed an action alleging TWC violated the RFDCPA by
3 pursuing a debt that TWC asserted was owed by Laguilles under their agreement in an abusive,
4 deceptive, and unfair manner. TWC filed its petition to compel arbitration on September 14,
5 2012, alleging that Laguilles applied for cable services with TWC as a new subscriber, and was
6 provided a “welcome kit” which included an agreement with an arbitration clause. The
7 arbitration agreement compelled Laguilles to arbitrate all of the matters embraced by his
8 complaint. Laguilles filed an opposition to the petition, arguing, among other things, that the
9 antiwaiver section of the RFDCPA rendered the arbitration clause in the agreement void and
10 unenforceable.

11 On October 25, 2012, the trial court denied TWC’s petition. In its order regarding the
12 denial of the petition, the court held “as a matter of law, Cal. Civ. § 1788.33 of the [RFDCPA]
13 specifically forbids a waiver of Plaintiff’s right to Trial by Jury. Thus, pursuant to Cal. Civ.
14 § 1788.33, the arbitration clause at issue is contrary to public policy, void and unenforceable.”
15 TWC filed a timely appeal from the denial of the petition.

16 *III. DISCUSSION*

17 The trial court erred in relying on the RFDCPA’s antiwaiver section to deny TWC’s
18 petition for arbitration. Because we resolve this appeal based on exclusively determinations of
19 law, we exercise de novo review. (See *Topanga and Victory Partners v. Toghia* (2002) 103
20 Cal.App.4th 775, 779-780.)

21 The RFDCPA bars debt collectors from engaging in various practices in dealing with
22 debtors, including threatening debtors, using obscene language, and making misrepresentations.
23 (See §§ 1788.10, 1788.11, 1788.13.) The RFDCPA states that a person who is the victim of a
24 debt collector’s unfair or deceptive collection practices may bring an action to obtain statutory
25 and actual damages, and attorney’s fees. (See §§ 1788.1, 1788.30.) The RFDCPA limits
26 actions “brought in any appropriate court of competent jurisdiction” under its provisions to
27 ones brought in a person’s individual capacity within one year from the date of any violation.

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1 (§ 1788.30, subd. (f).) The RFDCPA’s antiwaiver section states, “[a]ny waiver of the
2 provisions of this title is contrary to public policy, and is void and unenforceable.” (§ 1788.33.)

3 Nothing in the RFDCPA provides that a plaintiff has the right to trial by jury, or the right
4 to have a claim decided by a court rather than an arbitrator. There is also nothing in the
5 RFDCPA that bars arbitration of claims brought under its provisions.

6 The Court of Appeal in *County of Solano v. Lionsgate Corp.* (2005) 126 Cal.App.4th
7 741, 747 (*Lionsgate*) found that actions under the False Claims Act (Gov. Code, § 12650
8 et seq.) were subject to arbitration despite “the False Claims Act’s references to ‘a civil action’
9 to recover penalties and damages, and to assessments and findings by ‘the court.’ (Gov. Code,
10 § 12651; see also *id.*, § 12652.)” The Court of Appeal pointed out that “it is settled that
11 statutory claims are not inarbitrable merely because the statute in question includes such
12 provisions. Business and Professions Code section 17204 declares that ‘[a]ctions for any
13 relief pursuant to this chapter shall be prosecuted exclusively in a court of competent
14 jurisdiction. . . .’ Nevertheless, our Supreme Court has held that claims for restitution and
15 disgorgement under Business and Professions Code section 17200 et seq. are arbitrable.
16 [Citations.] Similarly, although Civil Code section 1780, subdivision (c) formerly specified
17 that actions under the Consumers Legal Remedies Act (CLRA) must be filed in ‘any court . . .
18 having jurisdiction of the subject matter,’ the high court ruled that actions for damages under
19 that version of the CLRA could be arbitrated. [Citation.] It has also been established that
20 antitrust claims under the Cartwright Act (Bus. & Prof. Code, § 16700 et seq.) are subject to
21 arbitration, despite language in Business and Professions Code section 16750, subdivision (a)
22 contemplating civil actions ‘in any court having jurisdiction’ [Citation.]” (*Lionsgate*,
23 *supra*, 126 Cal.App.4th at p. 747.)

24 As with the provisions of the sections highlighted by the Court of Appeal, the RFDCPA
25 contains a provision allowing an individual action to be “brought in any appropriate court of
26 competent jurisdiction” (§ 1788.30, subd. (f)), including an action in court for damages and
27 attorney fees (§§ 1788.1, 1788.30). Under *Lionsgate* and cases cited therein, the inclusion of

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1 such provisions does not prevent a litigant from agreeing to pursue an RFDCPA action in the
2 forum of arbitration.

3 Laguilles argues that if he was compelled to arbitrate his claims, he would lose the right
4 to pursue his action directly in civil court and lose his right to jury trial conferred upon him by
5 article I, section 16 of the California Constitution. However, the courts have rejected
6 “arguments that abbreviated discovery, arbitration’s inability to establish binding precedent,
7 and a plaintiff’s right to a jury trial render the arbitral forum inadequate, or that submission of
8 resolution of the claims to arbitration is in any sense a waiver of the substantive rights afforded
9 by statute. [Citations.] ‘By agreeing to arbitrate a statutory claim, a party does not forgo the
10 substantive rights afforded by the statute; it only submits to their resolution in an arbitral, rather
11 than a judicial, forum.’ [Citation.]” (*Broughton v. Cigna Healthplans* (1999) 21 Cal.4th 1066,
12 1084.)²


13 *IV. DISPOSITION*

14 The order denying appellant’s petition to compel arbitration is reversed. Appellant to
15 recover its costs on appeal.

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19 Ricciardulli, J.

20 We concur.

21 
22 Kumar, Acting P. J.

23 
24 Keosian, J.
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28 ²Based on our disposition, we do not address any of TWC’s other arguments regarding why the trial court erred in denying its petition to arbitrate.