

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Alfonso Estrella and Jane Doe, and Jane Doe, as natural guardian of her minor child Janet Doe

Plaintiffs,

vs.

Lipsey Communications, LLC d/b/a Connectivity Source, T-Mobile USA, Inc., and James Tu, Individually,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL
CIRCUIT

CASE NO.: 2023-CP-07-01982

**ORDER DENYING DEFENDANT
LIPSEY COMMUNICATIONS, LLC
D/B/A CONNECTIVITY SOURCE, T-
MOBILE USA, INC.'S MOTION TO
COMPEL ARBITRATION AND DISMISS
OR IN THE ALTERNATIVE, STAY THE
PROCEEDINGS**

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SC Court of Appeals

THIS CAUSE, having come before the Court on the Defendant, Lipsey Communications, LLC d/b/a Connectivity Source, T-Mobile USA, Inc.'s ("T-Mobile") Motion to Compel Arbitration and Dismiss or in the Alternative, Stay the Proceedings (the "Motion to Compel") and, this Court, having considered the Motion to Compel, and the Plaintiff, Alfonso Estrella and Jane Doe, and Jane Doe, as natural guardian of her minor child Janet Doe ("Plaintiffs") Opposition in defense thereof, and having heard argument of the Parties at a hearing on February 1, 2024, it is **HEREBY ORDERED AND ADJUDGED**:

1. This case arises from an incident which occurred on May 18, 2022, at a T-Mobile store in Beaufort, South Carolina where it is alleged that a T-Mobile employee viewed and sent himself private and personal videos and photos contained on Plaintiffs' mobile device without her permission, consent, or knowledge. According to the Plaintiffs, the employee had engaged in these or similar acts on multiple

prior occasions, and T-Mobile was on actual or constructive notice of the same, yet failed to take action to prevent the conduct, train or supervise its employees, or develop sufficient policies, procedures, and guidelines to deter the conduct.

2. In response to these allegations, T-Mobile filed its Motion to Compel, based upon a signed "Service Agreement" and/or online "Terms and Conditions" which, per T-Mobile, apply to the instant dispute and require Plaintiffs to submit to arbitration under the Federal Arbitration Act (the "FAA").
3. The "Service Agreement" was executed by Plaintiffs on June 27, 2018, and amounts to a single page document that covers topics such as (a) when the "service cycle" begins; (b) rates for "roaming" and accessories; (c) paperless billing"; (d) the "Rate Plan"; and (e) cancellation of services. The Service Agreement also contains a single sentence indicating that disputes must be arbitrated, unless the customer "opts out" within a certain number of days of the activation of their cellular service.
4. The Service Agreement indicates that it "includes . . . T-Mobiles 'Terms and Conditions'" but does not require that Plaintiffs "click the box" acknowledging receipt or review of those Terms and Conditions. Furthermore, there was no evidence presented that Plaintiffs were shown or directed to view the apparently online "Terms and Conditions" at the time that they executed the Service Agreement.
5. The Terms and Conditions (which were before the court, as evidence) are dated May 15, 2023, and contain additional parameters for arbitration of disputes.

6. T-Mobile argued in the Motion to Compel that the Service Agreement, including the “incorporated” website Terms and Conditions required the Plaintiffs to arbitrate this dispute. This Court, however, disagrees.
7. First and foremost, the decision of the South Carolina Supreme Court in Aiken v. World Fin. Corp., dictates the result in this case. 373 S.C. 144, 151 (S.C. 2007). In Aiken, the Court emphasized that arbitration is “a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed to submit. Id. As such, South Carolina courts uniformly hold that “broadly worded arbitration agreements apply [only] to disputes in which a ‘significant relationship’ exists between the asserted claims and the contract in which the arbitration clause is contained.” Id. In determining whether such a “significant relationship” exists, the Aiken court announced a “definitive rule”, stating: “Because even the most broadly worded arbitration agreements still have limits founded in general principles of contract law, this Court will refuse to interpret any arbitration agreement as applying to outrageous torts that are unforeseeable to a reasonable consumer in the context of normal business dealings.” Aiken, 373 S.C. at 151.
8. The Aiken court then stated that “theft of [plaintiff’s] personal information by [defendant’s] employee [was] outrageous conduct that [plaintiff] could not possibly have foreseen when he agreed to do business with [defendant].” Aiken, 373 S.C. at 151.
9. The rule announced by the South Carolina Supreme Court in Aiken is controlling here. The court finds:

- a. That the wording of the arbitration clause in the Service Agreement and/or Terms and Conditions falls within the definition of a “broadly worded” arbitration provision; and
- b. That the alleged conversion of Plaintiffs personal videos and photographs, depicting Plaintiff and her minor daughter in various states of disrobe by T-Mobile’s employee is an outrageous tort and the parties could not have possibly foreseen this set of circumstances when entering into the Service Agreement.

10. For this reason, the factual circumstances set forth in the Complaint are not subject to arbitration.

Given the foregoing findings of fact and conclusions of law, the Motion to Compel and alternative request to Stay are each denied.

DONE AND ORDERED this ____ day of February 2024.

IT IS SO ORDERED.

R. Lawton McIntosh
Court of Common Pleas

February ____, 2024
Beaufort County, South Carolina



Beaufort Common Pleas

Case Caption: Alfonso Estrella , plaintiff, et al VS Lipsey Communications Llc ,
defendant, et al

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S/R. LAWTON McINTOSH

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