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Wells Fargo Can Arbitrate Cardholders' Suit, Conduent Can't

By **Emilie Ruscoe**

Law360 (March 12, 2024, 10:38 PM EDT) -- New Mexico residents who claim Wells Fargo mishandled reports of fraud involving their state-issued debit cards will see their proposed class action claims against the bank sent to arbitration — but their claims against a third-party contractor can stay in court, a federal magistrate judge has determined.

In a Tuesday filing, U.S. Magistrate Judge Laura Fashing found that plaintiffs Ana Munoz and Michael Tilley agreed to arbitrate any claims against Wells Fargo Bank NA prior to bringing their action. The court compelled the Wells Fargo claims to arbitration and stayed the case as to claims against the bank as the arbitration is pending.

At the same time, the magistrate judge found that Munoz and Tilley had no such arbitration agreement with the contractor, Conduent State & Local Solutions Inc., and denied the defendants' request to send the Conduent claims to arbitration alongside the Wells Fargo claims.

"Conduent cannot invoke the doctrine of equitable estoppel to compel plaintiffs to arbitrate under" relevant terms and conditions, Magistrate Judge Fashing said Tuesday.

Wells Fargo and Conduent asked to see the matter sent to arbitration in its entirety in May 2023, arguing that the latest version of the complaint was a "thinly veiled attempt to plead around" binding arbitration agreements and class action waivers that the plaintiffs agreed to when they were given debit cards issued by Wells Fargo and administered by Conduent.

At the time that the defendants requested arbitration, an attorney for the plaintiffs slammed the request, telling Law360 that the arbitration request is "part of a growing trend where unscrupulous businesses seek to avoid responsibility for their actions by hiding arbitration clauses in the fine print of their contracts."

The plaintiffs also formally opposed the arbitration bid last May, contending that under New Mexico law, both parties must agree to arbitration, and there is no exception in this case.

"The agreement specifically forbids joining other parties in arbitration," they said in a response opposing the defendants' motion to compel arbitration. "This is the contract Conduent distributed to plaintiffs on a take-it or leave basis. This is the contract that the court must enforce."

The order splinters allegations that Wells Fargo and Conduent each had roles in the mismanagement of claims of fraud involving refillable, prepaid debit cards called EPPICards that are linked to the accounts New Mexico residents use to receive funds owed by the state — such as unemployment insurance, child support and foster care accounts.

Munoz and Tilley claimed in the latest version of their suit that they were brushed off after seeking help when their accounts saw thousands of dollars in unauthorized losses.

On Tuesday, Nicholas Mattison, an attorney for the plaintiffs, told Law360 via email, "We appreciate the court's thoughtful ruling finding that there was no agreement to arbitrate between the plaintiffs and Conduent. As the court stated, '[t]he arbitration agreement simply does not include Conduent.' The court's ruling recognizes that parties cannot be forced to arbitrate when they did not agree to arbitrate."

He added that the plaintiffs looked forward to continuing their proposed class action claims against Conduent.

"Conduent was entrusted with distributing important benefits to New Mexicans like Ms. Munoz and Mr. Tilley," he said. "Conduent created the 'EPPICard' to fulfill this obligation ... financial institutions like Conduent are obligated to protect cardholders against unauthorized use by following the error resolution procedures and framework for consumer liability set forth in the Electronic Fund Transfer Act."

"When thieves stole money from EPPICard accounts, Conduent ignored its obligations under the EFTA and did nothing to help Ms. Munoz, Mr. Tilley, and many others," he added.

Representatives for the defendants did not immediately respond to requests for comment Tuesday.

Conduent Business Services LLC, Conduent State & Local Solutions Inc. and Wells Fargo Bank NA are represented by Jenny N. Perkins of Ballard Spahr LLP.

Plaintiffs Ana Munoz and Michael Tilley are represented by Nicholas H. Mattison of Feferman Warren & Mattison and Daniel A. Schlanger and Evan S. Rothfarb of the Schlanger Law Group LLP.

The case is Munoz et al. v. Wells Fargo Bank NA et al., case number 1:23-cv-00202, in the U.S. District Court for the District of New Mexico.

--Additional reporting by Sydney Price and Katryna Perera. Editing by Kristen Becker.

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