No. 101427-9

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

DONALD B. COOK,
Petitioner,

v.

VERIZON COMMUNICATIONS,
Respondent.

ON MOTION FOR DISCRETIONARY REVIEW FROM THE COURT OF APPEALS
No. 83706-1

ANSWER OF RESPONDENT CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS (SUED ERRONEOUSLY AS "VERIZON COMMUNICATIONS")

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I. IDENTITY OF RESPONDENT

Respondent is Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless")[1] who was also the respondent in the Court of Appeals and the defendant in the underlying Superior Court action.

II. INTRODUCTION

Petitioner Donald B. Cook ("Cook") comes nowhere near to establishing any grounds for discretionary review.[2] Cook claims that the trial court and Court of Appeals violated his civil rights by enforcing his arbitration agreement with Verizon Wireless. But as the Court of Appeals correctly held in an unpublished opinion (and affirmed on Cook's Motion for Reconsideration), Washington law is clear that contractual

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[1] Verizon Wireless is erroneously sued in this action as "Verizon Communications." No entity called "Verizon Communications" exists.

[2] Although Cook entitles his submission a "Motion," it is clearly a Petition brought under RAP 13.4(a) and RAP 12.3(a), and this Court has stated its intent to construe it as such.

arbitration agreements like the one Cook signed must be enforced according to their terms.

Cook asserts that his claims against Verizon Wireless are not arbitrable for serval disparate reasons, including that his action is in "essence" a "criminal case" and that the parties' arbitration agreement was somehow "unconscionable." As the Court of Appeals noted, Cook did not raise these arguments in the Superior Court or in his opening brief on appeal, and thus has waived them. Contrary to Cook's characterization, this case involves a garden-variety arbitration provision in a contract for cellular telephone services, governed by the Federal Arbitration Act ("FAA"). Simply put, the case presents no issues to support Cook's request for Supreme Court review.

Accordingly, there is no basis for the Court to grant discretionary review of the Court of Appeals decision.

III. ANSWER TO ISSUES PRESENTED FOR REVIEW

1. The decision of the Court of Appeals does not conflict with any Supreme Court or other Court of Appeals decision because it is unpublished.

2. The decision of the Court of Appeals does not involve a significant question of law under the Constitution of the State of Washington or of the United States because it applies well-settled law on the enforcement of arbitration agreements.

3. The decision of the Court of Appeals does not involve an issue of substantial public interest that should be determined by the Supreme Court because ordering Cook's claims to arbitration did not implicate his civil rights, or those of other Washingtonians.

IV. STATEMENT OF THE CASE

On July 28, 2018, Cook purchased a Samsung Galaxy J7V cellular telephone from Verizon Wireless. The purchase agreement executed at the point of sale stated:

> I have read and agree to the Verizon Wireless Customer Agreement and Verizon Privacy Policy, including settlement of disputes by arbitration instead of jury trial, as well as the terms of my plan and any optional services I have agreed to purchase.

The Verizon Wireless Customer Agreement contains an arbitration provision that states, in pertinent part:

> How do I resolve disputes with Verizon?
>
> WE HOPE TO MAKE YOU A HAPPY CUSTOMER, BUT IF THERE'S AN ISSUE THAT NEEDS TO BE RESOLVED, THIS SECTION OUTLINES WHAT'S EXPECTED OF BOTH OF US.
>
> YOU AND VERIZON BOTH AGREE TO RESOLVE DISPUTES ONLY BY ARBITRATION OR IN SMALL CLAIMS COURT. YOU UNDERSTAND THAT BY THIS AGREEMENT YOU ARE GIVING UP THE RIGHT TO BRING A CLAIM IN COURT OR IN FRONT OF A JURY. [. . .] WE ALSO BOTH AGREE THAT:

> (1)THE FEDERAL ARBITRATION ACT APPLIES TO THIS AGREEMENT. EXCEPT FOR SMALL CLAIMS COURT CASES, ANY DISPUTE THAT IN ANY WAY RELATES TO OR ARISES OUT OF THIS AGREEMENT OR FROM ANY EQUIPMENT, PRODUCTS AND SERVICES YOU RECEIVE FROM US, OR FROM ANY ADVERTISING FOR ANY SUCH PRODUCTS OR SERVICES, OR FROM OUR EFFORTS TO COLLECT AMOUNTS YOU MAY OWE US FOR SUCH PRODUCTS OR SERVICES, INCLUDING ANY DISPUTES YOU HAVE WITH OUR EMPLOYEES OR AGENTS, WILL BE RESOLVED BY ONE OR MORE NEUTRAL ARBITRATORS BEFORE THE AMERICAN ARBITRATION ASSOCIATION ("AAA") OR BETTER BUSINESS BUREAU ("BBB").

The signature line of the purchase agreement provides that "[b]y signing below I accept the agreements above and authorize payment on my next bill[.]" Cook signed the purchase agreement, which includes the arbitration agreement.

On August 6, 2021, Cook filed a complaint for damages against Verizon Wireless alleging claims for (1) breach of contract, (2) breach of the duty of good faith and fair dealing, (3) negligence, (4) fraud, (5) deceptive trade practices, (6)

failure to acknowledge pertinent communications, and (7) misinformation and disinformation on the 5G network. The complaint alleged that the Samsung phone he purchased from Verizon Wireless "would not work" and that Verizon Wireless concealed the fact that the phone's warranty was administered through its manufacturer. It further alleged that Verizon Wireless's 5G network adversely impacts consumer privacy and human health.

On December 7, 2021, Verizon Wireless filed a motion to compel arbitration and stay the case. Verizon Wireless argued, among other things, that the arbitration agreement is valid and that it encompasses Petitioner's claims for relief. On December 17, 2021, the trial court granted the motion and ordered Cook to file for arbitration as required by the customer agreement. Cook moved for reconsideration, which the trial court denied. Cook appealed.

On September 12, 2022, the Court of Appeals issued an unpublished opinion affirming the trial court's order compelling

Cook's claims to arbitration. He once again moved for reconsideration, which the Court of Appeals denied.

V. LEGAL ARGUMENT

Rule 13.4 of the Washington Rules of Appellate Procedure provides the following four grounds for review:

> A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b). Cook repeats some of this language and concludes, without any discussion, that "points [3 and 4] are satisfied." Petition, p.p. 4-5. However, he fails to cite a single case supporting these points, and instead spends most of the brief accusing the Court of "complicit[y] with Verizon [Wireless] in violating the rights of Washingtonians" and promising to seek an

injunction precluding "Washington State Courts" from enforcing arbitration provisions "in Washington State contracts." Petition, pp. 3-4, 6.

Like his opening brief in the Court of Appeals, Cook's Petition "lacks any discussion of issues, arguments, or authority raised by Verizon in the trial court below." Opinion, p. 4. Moreover, Cook "fails to support the majority of his arguments with meaningful legal analysis, pertinent authority, or references to the record." *Id.* Taken together, these deficiencies alone should preclude review. Additionally, Cook's Petition fails on the merits.

A. The *Unpublished* Opinion at Issue Cannot Conflict with Any Supreme Court or Court of Appeals Decision

"Unpublished opinions of the Court of Appeals have no precedential value and are not binding upon any court." GR 14.1. *See also Kitsap Cnty. v. Allstate Ins. Co.*, 136 Wash. 2d 567, 578, 964 P.2d 1173, 1179 (1998) ("Unpublished opinions

have no precedential value and, therefore, we have not considered them."); *Sanchez v. Dep't of Labor & Indus.*, 39 Wn. App. 80, 86, 692 P.2d 192, 196 (1984) (unpublished Court of Appeals decisions "do not become a part of the common law and therefore will not be considered as authority"). Because the Court of Appeals opinion at issue is unpublished, and therefore non-binding, it cannot, as a matter of law, create a conflict with any Supreme Court or Court of Appeals decision.

Further, Cook has failed to identify any Washington Supreme Court or Court of Appels decision that conflicts with the unpublished opinion at issue. In fact, there is none. The opinion fully conforms to both Washington and federal law on arbitrability, as discussed in sections V.B and V.C below.

Finally, "[t]he fact that the Court of Appeals declined to publish [the] decision shows that it considered the analysis not new, not clarifying, and not important" – *i.e.*, not in conflict with any existing law. *Fed. Home Loan Bank of Seattle v. Credit Suisse Sec.*

(USA) LLC, 194 Wn.2d 253, 283, 449 P.3d 1019, 1034 (2019) (*citing* RAP 12.3(d), which identifies the criteria for publishing decisions and states that courts should consider whether "the decision determines an unsettled or new question of law"; whether the decision "modifies, clarifies or reverses an established principle of law"; and whether the decision stands 'in conflict with a prior [decision].").

Accordingly, because the decision at issue is unpublished and straightforwardly applies established law, there is no basis for this Court to review it under RAP 13.4(b)(1) and (2).

B. It Is Well-Settled under Washington Law That Arbitration Agreements Are Enforceable

Cook claims that the lower courts "blindly assign[ed] [his claims to] arbitration while ignoring all the laws put into effect by the State Legislature to protect the consumers in the State of Washington." Petition, pp.

2-3. He believes that Verizon Wireless "is never held responsible for violation of Washington State Laws because arbitration is the end all." *Id.*, p. 3. As the Court of Appeals observed, Cook "appears to challenge arbitration as inherently unfair." Opinion, p. 4.

But "Washington has a strong public policy favoring arbitration." Opinion, p. 4, quoting *Canal Station N. Condo. Ass'n v. Ballard Leary Phase II, LP*, 179 Wn. App. 289, 297, 322 P.3d 1229 (2013). In Washington, "[a]greements to arbitrate are valid, supported by public policy and enforceable." *Harvey v. Univ. of Washington*, 118 Wn. App. 315, 318, 76 P.3d 276, 277 (2003), *disapproved of by on other grounds by Optimer Int'l, Inc. v. RP Bellevue, LLC*, 170 Wn.2d 768, 246 P.3d 785 (2011). Accordingly, "[c]ourts must indulge every presumption in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay,

or a like defense to arbitrability." *Verbeek Properties, LLC v. GreenCo Envtl., Inc.*, 159 Wn. App. 82, 87, 246 P.3d 205, 207 (2010). In other words, "the agreement is construed in favor of arbitration unless the reviewing court is satisfied the agreement cannot be interpreted to cover a particular dispute."

Here, as the Court of Appeals found, "Cook unquestionably accepted the terms of the customer agreement by signing the purchase agreement at the point of sale." Opinion, p. 5. "He thereby expressly agreed that 'the Federal Arbitration Act applies to this agreement' and that he must arbitrate 'any dispute that in any way relates to or arises out of this agreement, or from any equipment, products and services you receive from [Verizon Wireless].'" *Id.*

The United States Supreme Court has also repeatedly rejected Cook's assertion that statutory claims – including those affecting employees and consumers –

are not arbitrable. *See, e.g., Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 20 (1991) ("Statutory claims may be the subject of an arbitration agreement, enforceable pursuant to the FAA."); *Shearson/American Express, Inc. v. McMahon*, 482 U.S. 220, 226 (1987) (holding that the "duty to enforce arbitration agreements is not diminished when a party bound by an agreement raises a claim founded on statutory rights"); *Southland Corp. v. Keating*, 465 U.S. 1 (1984) (where franchisees are parties to a franchise agreement containing an arbitration clause, the Federal Arbitration Act pre-empts a state statute requiring judicial consideration of claims).

Accordingly, the Court of Appeals' decision does not involve a significant question of law under the Constitution of the State of Washington or of the United States because it applies well-settled law on the enforcement of arbitration agreements.

C. The Opinion Does Not Raise Any Issue of Substantial Public Interest, Because It Does Not Implicate Cook's Civil Rights

Finally, the Court of Appeals decision does not raise any issue of substantial public interest. Cook suggests vaguely that by ordering his claims against Verizon Wireless to arbitration, the "Court System" violated his "constitutional rights, natural rights, civil rights, equal protection right, and due process rights." Petition, p. 5. But none of these rights is implicated by contractual arbitration. To the contrary, under both Washington and federal law, arbitration is a creature of contract and statue. *See Godfrey v. Hartford Cas. Ins. Co.*, 142 Wn.2d 885, 900, 16 P.3d 617, 624 (2001) ("Arbitration in Washington is entirely a creature of statute under the purview of the Act."); 9 U.S.C. § 2 (The Federal Arbitration Act makes written agreements to arbitrate "valid, irrevocable, and enforceable" on the same terms as other contracts.). There is no public interest in undermining the contractual and statutory basis of arbitration – which is what Cook asks this Court to do.

Moreover, the U.S. Supreme Court routinely enforces arbitration agreements in consumer contracts like the one here between Cook and Verizon Wireless. *See, e.g., CompuCredit Corp.*, 595 U.S. 95 (2012) (credit card agreement); *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011)(cellular phone services contract); *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440 (2006) (consumer loan agreement); *Green Tree Fin. Corp.-Ala. v. Randolph*, 531 U.S. 79 (2000) (finance contract for purchase of mobile home). The Court of Appeals' decision correctly applies this binding precedent. Thus, there is no public interest in reviewing an otherwise unexceptional Court of Appeals decision, and no merit to Cook's claim that ordering arbitration here violated his or any other Washingtonian's constitutional rights.

VI. CONCLUSION

This Court should deny Cook's Petition because he has failed to establish any grounds for discretionary review.

Accordingly, Verizon Wireless respectfully requests that this Court decline to grant review.

Certification of Word Count Pursuant to RAP 18.17

I, Donald G. Grant, certify that according to the Word Count feature of Microsoft Word, this Answer contains 2,808 words, including footnotes, but not including the table of contents, table of authorities, or this Certification, in compliance with RAP 18.7.

DATED: December 1, 2022.

/s/ Donald G. Grant

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CERTIFICATE OF SERVICE

I certify that I served the foregoing Answer of Respondent Cellco Partnership d/b/a/ Verizon Wireless on the following on December 1, 2022:

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_x_ by directly e-mailing a true copy thereof to his or her e-mail address listed above.

_x_ by mailing a true copy of the pleading to the parties at their addresses listed above.

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