

Corporate & Financial Weekly Digest

August 19, 2011 by [Steven Shiffman](#)

Court Finds Arbitration Clauses Cell Phone Contracts do not Apply to Collection Agency

Customers who had signed cell phone contracts with Verizon and AT&T, brought a class action against the collection agency that the phone companies hired to collect unpaid fees and charges. The complaint alleged that the agency, Collecto, Inc., violated the Fair Debt Collection Practices Act and New York's consumer protection statute and committed common law fraud by seeking payment of collection costs in addition to the unpaid fees owed to phone companies. Collecto moved to compel the plaintiffs to arbitrate their claims, arguing that the mandatory arbitration clauses in the agreements between the plaintiffs and the phone companies should also apply to Collecto.

The U.S. District Court for the Southern District of New York acknowledged the strong public policy favoring arbitration, but held that the arbitration clauses in the customer contracts did not apply to Collecto. Although the agreements between the plaintiffs and the phone companies did not mention Collecto, Collecto argued that it should be considered the phone companies' agent when it collected fees in connection with the plaintiffs' agreements. The court found insufficient evidence to support Collecto's claim that it had an agency relationship with the phone companies. To the contrary, the court pointed to Collecto's contracts with Verizon and AT&T, which expressly designated Collecto as an independent contractor, as opposed to an agent. Consequently, the court declined to compel the plaintiffs' to arbitrate their claims against Collecto.

Butto, et. al. v. Collecto, Inc., No. 10-CV-2906 (ADS)(AKT), 2011 WL 3557310 (E.D.N.Y. August 15, 2011).

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