IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHARLES MORRISON	:	CIVIL ACTION
	:	
v.	:	No. 16-3353
	:	
CREDIT ONE BANK	:	

MEMORANDUM

Juan R. Sánchez, J. **July 25, 2017**

Plaintiff Charles Morrison brings suit against Defendant Credit One Bank under the Telephone Consumer Protection Act, 47 U.S.C. § 227 (TCPA), alleging that beginning in January 2016, the Bank repeatedly called his cellphone without his consent using an automatic dialing system, and requested to speak with "Terrell," an unknown third party. Morrison informed the caller he was not "Terrell," and requested that the Bank cease calling him. The Bank, however, continued to call Morrison several times per week. Morrison eventually blocked the Bank's telephone calls with a blocking application. He commenced this action on June 24, 2016.

On August 5, 2016, the Bank moved to compel arbitration of Morrison's claim pursuant to Section 4 of the Federal Arbitration Act (FAA), 9 U.S.C. § 4, based on the cardholder agreements associated with Morrison's two credit card accounts with the Bank—a Visa account opened on April, 17, 2010, and a MasterCard account open on February 3, 2015. Each of the cardholder agreements contains an arbitration clause, which provides that either party may require any controversy or dispute regarding any matters related to Morrison's accounts to be submitted to mandatory, binding arbitration. *See* Def.'s Mot. to Dismiss Ex. A-2, at 5 (Visa arbitration agreement), Ex. A-5 at 6 (MasterCard arbitration agreement). The parties do not dispute the existence of an enforceable agreement to arbitrate claims related to Morrison's credit

card accounts with the Bank. Rather, they disagree as to whether the instant dispute falls within the scope of the arbitration agreements, as Morrison argues the Bank's calls did not pertain to his credit card accounts, but to a third party. During a November 2, 2016, oral argument, the Bank agreed to provide the Court with evidence concerning its collection activity, including an affidavit and a record of telephone calls made to Morrison, and Morrison agreed to provide his telephone records, documenting the Bank's alleged unauthorized calls. The parties subsequently provided that information.

On March 24, 2017, following a teleconference with both parties, the Court denied without prejudice the Bank's motion to compel arbitration in order to allow the parties to engage in limited written discovery relating to the arbitration issue, after which the Bank could file a motion for summary judgment or a further motion to compel arbitration. Limited discovery closed on June 30, 2017, and that same day, the Bank filed the instant motion, renewing its argument that this action should be decided by an arbitration panel.

Although the deadline for Morrison to respond to the Bank's second motion to compel arbitration has lapsed, *see* Local R. of Civ. P. 7.1(c) (providing opposition briefs must be served within 14 days after service of a motion, unless the court directs otherwise, and a motion other than a motion for summary judgment may be granted as uncontested "[i]n the absence of a timely response"), Morrison has not submitted a response to date, and the motion to compel may therefore be granted as uncontested.

Compelling arbitration is also appropriate on the merits. The FAA reflects "a strong federal policy in favor of resolving disputes through arbitration," *Century Indem. Co. v. Certain Underwriters at Lloyd's, London*, 584 F.3d 513, 522 (3d Cir. 2009), providing that a written arbitration provision in a "contract evidencing a transaction involving commerce . . . shall be

valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract," 9 U.S.C. § 2. Under § 4 of the Act, "[a] party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration" may petition a district court that would otherwise have jurisdiction over the parties' dispute "for an order directing that such arbitration proceed in the manner provided for in such agreement." *Id.* § 4. Because arbitration is a matter of contract, "a party cannot be compelled to submit a dispute to arbitration unless it has agreed to do so." *Century Indem. Co.*, 584 F.3d at 524; *see also CardioNet, Inc. v. Cigna Health Corp.*, 751 F.3d 165, 172 (3d Cir. 2014) ("'[A] court may order arbitration of a particular dispute only where the court is satisfied that the parties agreed to arbitrate *that dispute.*'" (quoting *Granite Rock Co. v. Int'l Bhd. of Teamsters*, 561 U.S. 287, 297 (2010))). Thus, before granting a motion to compel arbitration, a court must determine "(1) there is an agreement to arbitrate and (2) the dispute at issue falls within the scope of that agreement." *Century Indem.*, 584 F.3d at 523.

The applicable standard for evaluating a motion to compel arbitration is as follows:

> [W]hen it is apparent, based on the face of a complaint, and documents relied upon in the complaint, that certain of a party's claims are subject to an enforceable arbitration clause, a motion to compel arbitration should be considered under a Rule 12(b)(6) standard without discovery's delay. But if the complaint and its supporting documents are unclear regarding the agreement to arbitrate, or if the plaintiff has responded to a motion to compel arbitration with additional facts sufficient to place the agreement to arbitrate in issue, then the parties should be entitled to discovery on the question of arbitrability before a court entertains further briefing on [the] question. After limited discovery, the court may entertain a renewed motion to compel arbitration, this time judging the motion under a summary judgment standard. In the event that summary judgment is not warranted because the party opposing arbitration can demonstrate, by means of citations to the record," that there is a genuine dispute as to the enforceability of the arbitration clause, the court may then proceed summarily to a trial regarding the making of the arbitration agreement or the failure, neglect, or refusal to perform the same, as Section 4 of the FAA envisions.

Guidotti v. Legal Helpers Debt Resolution, L.L.C., 716 F.3d 764, 776 (3d Cir. 2013) (internal citations and quotation marks omitted). Because the Bank has renewed its motion to compel arbitration following discovery regarding the arbitrability of Morrison's claim, the Court applies a summary judgment standard, and limits its inquiry to whether the dispute falls within the scope of the agreement. *See Century Indem.*, 584 F.3d at 523.

A motion for summary judgment shall be granted "if the movant shows there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Material facts are those "that might affect the outcome of the suit under the governing law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A factual dispute is genuine if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* "Speculation, conclusory allegations, and mere denials are insufficient to raise genuine issues of material fact." *Boykins v. Lucent Techs., Inc.*, 78 F. Supp. 2d 402, 408 (E.D. Pa. 2000) (citations omitted). "Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is 'no genuine issue for trial.'" *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

The Bank argues it called Morrison only with respect to his Credit One Visa account, which was delinquent. In support, the Bank has provided an affidavit of Vicki Scott, its Vice President of Collections, who asserts Morrison became in arrears on his Visa account, and on June 17, 2015, the Bank began placing collection calls to Morrison, including to his telephone number ending in "5591"—the telephone number at issue in this case. Def.'s Supp. Mem. in Supp. of Mot. to Compel Ex. 1 ¶¶ 1, 8. Scott further asserts she conducted a search of the Bank's account system for calls placed to the number ending in 5591, which revealed that the Bank "placed no calls to the number ending in '5591' for purposes of collecting on any other

accounts." *Id.* ¶ 9. The Bank also provided a log of calls placed by a vendor on behalf of the Bank for collection of Morrison's Visa account, which shows the vendor made fourteen calls to Morrison in June 2015 and 2016 with respect to his Visa account. Def.'s Sec. Supp. Mem. Ex. 2. Gary Harwood, who monitors and oversees the Bank's accounts as Vice President of Portfolio Services, asserts in an affidavit that the Bank "maintains records of all calls placed to its customers and a record of all communications[,] . . . includ[ing] when a phone call is placed, to whom the phone call is directed, which telephone number Credit One calls, and for which particular account the call relates to." *Id.* Ex. 1 ¶¶ 2-3. Harwood further states that every call placed to Morrison with respect to his Visa account is represented on the call log provided; no calls were placed to Morrison with respect to his MasterCard account; and the Bank has no record of any other calls being placed to Morrison. *Id.* ¶¶ 9-10.

Morrison maintains the calls were unrelated to his accounts. He has provided the Court with the records he received from T-Mobile, his cellular telephone provider, pertaining to his phone number ending in 5591, including a log of all incoming and outgoing calls between January 1, 2016, and November 30, 2016, over 6,000 calls in total. He makes no effort, however, to identify which calls were allegedly made by the Bank pertaining to an account unrelated to his own. Thus, while the Bank has provided evidence that it made calls to Morrison only with regard to his Visa account, Morrison has provided no evidence, by affidavit or otherwise, to support his allegations that the calls were unrelated to his accounts. *See Guidotti*, 776 F.3d at 778 (noting supporting affidavits pertaining to arbitration agreements are, in most cases, "sufficient to require a jury determination on whether there had in fact been a 'meeting of the minds'"). Morrison has therefore failed to produce evidence from which a reasonable trier of

fact could find that the calls were unrelated to his credit card accounts with the Bank and were therefore outside the scope of the arbitration agreement associated with those accounts.

Because Morrison has not opposed the Bank's second motion to compel, and because Morrison has failed to provide any evidence that his claim against the Bank falls outside of the arbitration agreements, the motion to compel arbitration is granted.

BY THE COURT:

/s/ Juan R. Sánchez
Juan R. Sánchez, J.