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STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1733

CrowdSuit, LLC,
Appellant,

vs.

AT & T Mobility, LLC,
Respondent.

Filed December 24, 2018
Reversed
Connolly, Judge

Hennepin County District Court
File No. 27-CV-15-16241

Matthew L. Woods, Stephen P. Safranski, Peter N. Surdo, Robins Kaplan LLP, Minneapolis, Minnesota (for appellant)

Karla M. Vehrs, Ballard Spahr LLP, Minneapolis, Minnesota; and

Kevin S. Ranlett (pro hac vice), Mayer Brown LLP, Washington, D.C. (for respondent)

Considered and decided by Connolly, Presiding Judge; Schellhas, Judge; and Reyes, Judge.

U N P U B L I S H E D O P I N I O N

CONNOLLY, Judge

Appellant/cross-respondent, (appellant) is the assignee of lawsuits brought by seven customers of respondent/cross-appellant, (respondent) a provider of cellular service,

claiming breach of contract based on data-speed limitations applied to unlimited-data plans. Respondent moved to dismiss, in part on the ground that appellant lacked standing to bring the lawsuit because an aggregated lawsuit was precluded by respondent's contract with its customers. The district court denied the motion to dismiss. Because we conclude that this aggregated lawsuit was precluded by the parties' contract, we reverse the denial of the motion to dismiss and do not address the other issues raised in the motion to dismiss or the issues in the parties' subsequent cross-summary-judgment motions.

FACTS

When Apple, Inc. released its iPhone in 2007, respondent AT&T Mobility, LLC, then the sole United States provider of wireless services, offered a single data plan: unlimited data for a fixed monthly price. In 2010, network congestion resulted in respondent discontinuing unlimited data and offering tiered plans, whereby customers paid for a fixed monthly volume of data and were charged a fee if they exceeded that volume. Customers who already had unlimited-data plans were given the option of changing immediately to a tiered plan or "grandfathering," i.e., waiting until their unlimited-data plan expired and then changing to a tiered plan; these were known as grandfathered customers.

In 2011, AT&T established and publicized a policy whereby the top five percent of the grandfathered customers in terms of amount of data used would have their data speed temporarily reduced until the end of the monthly billing cycle. Grandfathering customers were informed if they were near the top five percent. In 2012, AT&T set fixed thresholds of data use for reducing data speed. In 2014, the policy was refined so that speed was

reduced only for grandfathered customers who were using data in a congested area and only by an amount commensurate with the congestion, referred to as dynamic reduction. Dynamic reduction was adopted for all grandfathering customers in May 2015.

The contract between AT&T and its customers, known as the Wireless Customer Agreement (WCA), provided for resolution of disputes arising between AT&T and its customers. In relevant part, it says:

> **[W]e each agree to resolve those disputes through binding arbitration or small claims court instead of in courts of general jurisdiction. . . .**
> . . . .
> . . . Notwithstanding the foregoing [agreement to arbitrate], either party may bring an individual action in small claims court. . . . **You agree that, by entering into this Agreement, you and AT&T are each waiving the right . . . to participate in a class action.**
> . . . .
> **YOU AND AT&T AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.**

WCA 2.1, 2.2 (1), (6).

In June 2015, appellant CrowdSuit LLC, an entity that informed customers of large wireless companies that they might have claims against the companies and asked them to assign those claims by clicking an "assign your claim" button on the CrowdSuit website, brought this action in conciliation court against AT&T on behalf of seven grandfathering customers who assigned their claims (the assignors).[1] The conciliation court hearing

[1] There were actually ten assignors, but CrowdSuit dropped three of the claims.

resulted in a ruling for AT&T. CrowdSuit then removed the case to district court, where AT&T filed a motion to dismiss, arguing, among other things, that CrowdSuit had not brought an individual action but "an aggregated claim on behalf of a so-called "tranche" of [seven] customers, seeking to resolve each of their claims in a single proceeding." The district court rejected this argument on the ground that "CrowdSuit is suing in its individual capacity as owner of [seven] claims," rejected AT&T's other arguments, and denied its motion to dismiss.

The matter was transferred to another district court judge, and both parties moved for summary judgment. AT&T's motion was granted; CrowdSuit's motion was denied. CrowdSuit appealed from the denial; AT&T filed a notice of related appeal from the denial of its motion to dismiss.

D E C I S I O N

In its motion to dismiss, AT&T argued that CrowdSuit lacked standing to bring the lawsuit because the WCA provided that AT&T customers could sue only as individuals. The legal question of standing to sue is reviewed de novo. *Nash v. Wollan*, 656 N.W.2d 585, 588 (Minn. App. 2003) (addressing the question of standing in the context of an individual). Here, the question is governed by the parties' contract, the WCA. Absent ambiguity, the interpretation of a contract is a question of law and is also reviewed de novo. *Valspar Refinish, Inc. v. Gaylord's, Inc*., 764 N.W.2d 359, 364 (Minn. 2009). "The primary goal of contract interpretation is to ascertain and enforce the intent of the parties." *Id.*

The assignors had explicitly agreed to bring claims against AT&T only in their individual capacities and not as members of any purported class or representative proceeding. Nothing in the WCA indicates that the parties to it intended disputes to be resolved collectively, or by third parties, or both. AT&T and its customers clearly intended that any dispute would be resolved one-on-one, whether in small-claims court or through arbitration.[2] The assignors, all of whom had explicitly agreed to resolve their disputes as individuals, could not engage in a collective district court action. CrowdSuit lacked standing to bring this lawsuit, and the district court erred in not dismissing it on that basis.

Reversed.

[2] The WCA even provided that, unless both parties agreed otherwise, an arbitrator "may not consolidate more than one person's claims, and may not otherwise preside over any form or a representative or class proceeding." WCA 2.2(6).