Case #:

THE SUPREME COURT OF THE UNITED STATES

Tamara Rouhi

Plaintiff/Appellant

V

Comcast

Defendant/Appellee

Original Case Number: 19CV703

Original Case/Complaint/Exhibits Filed: 3/6/19

Appellate Court Case Number: 20-1979

A review from the US Court of Appeals for the Fourth Circuit.

Civil Case.

Jury not requested.

APPENDIX VOLUME I: COURT FINDINGS

Adam S Caldwell

Davis Write Tremaine LLP

1919 Pennsylvania Ave. NW

Ste 800

Washington, DC 20006

2029734200

Counsel for Comcast

Tamara Rouhi

125 Fennington Circle

Owings Mills MD 21117

4105228217

Pro Se Plaintiff/Appellant

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Court Findings

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

Chambers of
George L. Russell, III
United States District Judge

101 West Lombard Street
Baltimore, Maryland 21201
410-962-4055

November 27, 2019

MEMORANDUM TO PARTIES RE: Tamara Rouhi v. Comcast Center
Civil Action No. GLR-19-703

Dear Parties:

Pending before the Court is Defendant Comcast Center's[1] ("Comcast") Motion to Compel Arbitration and to Dismiss Plaintiff's Complaint, or in the Alternative, to Stay Action (ECF No. 5). This action arises from Plaintiff Tamara Rouhi's ("Rouhi") allegation that Comcast harassed, defrauded, and overcharged her for internet and television services from October 2016 through September 2018. The Motion is ripe for disposition, and no hearing is necessary. See Local Rule 105.6 (D.Md. 2018). For the reasons outlined below, the Court will grant the Motion and dismiss the case.

From October 2016 through September 2018, Rouhi purchased video and high-speed internet services from Comcast.[2] (Compl. ¶¶ 2–10, 17–18, ECF No. 1). She alleges that, during that time, Comcast frequently imposed arbitrary price increases without notification or a new agreement. (Id. ¶¶ 1–3, 5–8, 10, 17, 19). For example, Rouhi's September 2016 bill totaled only $81.00, which included the "Bundled Services" package price of $79.00. (Id. ¶ 1). However, by May 2017, Rouhi alleges that she was being charged "a steady rate of $111.51 with a package price of $102.95." (Id. ¶ 6). Thereafter, her bill continued to increase. (Id. ¶ 7). Rouhi also alleges that Comcast billed her for cancelled services and for equipment that was either free or that had been returned. (Id. ¶¶ 9–19). Following various fee disputes, the imposition of late fees, and a temporary interruption of services, (id. ¶¶ 4–5), Rouhi terminated her remaining services in March 2019, (Mem. P. & A. Supp. Def. Mot. Compel Arbitration Dismiss Pl.'s Compl. Altern. Stay ["Def.'s Mot."] at 2, ECF No. 5-1).

According to Comcast, its relationship with Rouhi was governed by a Subscriber Agreement ("the Agreement"), which states in pertinent part: "**You will have accepted this Agreement and be bound by its terms if you use the Service(s) or otherwise indicate your**

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[1] In its Motion, Comcast represents that "Comcast Cable Communications, LLC, improperly pleaded as Comcast Center, is the properly named Comcast-entity Defendant." (Def. Mot. Compel Arbitration Dismiss Pl.'s Compl. Altern. Stay ["Def.'s Mot."] at 1 n.1, ECF No. 5). Because the Court will grant Comcast's Motion and dismiss the case, the Court will not direct the clerk to correct the case caption.

[2] Unless otherwise noted, the Court takes the following facts from Rouhi's Complaint and accepts them as true. See Erickson v. Pardus, 551 U.S. 89, 94 (2007) (citations omitted).

affirmative acceptance of such terms." (Def.'s Mot. Ex. A ["Subscriber Agreement"] ¶ 1, ECF No. 5-3) (emphasis in original). The Agreement includes the following Arbitration Provision:

> **Binding Arbitration** . . . If you have a Dispute (as defined below) with Comcast that cannot be resolved through an informal dispute resolution with Comcast, you or Comcast may elect to arbitrate that Dispute in accordance with the terms of this Arbitration Provision rather than litigate the Dispute in court.

(Id. ¶ 13(a)) (emphasis in original). "Dispute" is defined as:

> [A]ny dispute, claim, or controversy between you and Comcast regarding any aspect of your relationship with Comcast, whether based in contract, statute, regulation, ordinance, tort (including, but not limited to, fraud, misrepresentation, fraudulent inducement, negligence, or any other intentional tort), or any other legal or equitable theory, and includes the validity, enforceability or scope of this Arbitration Provision. "Dispute" is to be given the broadest possible meaning that will be enforced.

(Id. ¶ 13(b)). The Arbitration Provision includes a right to opt out and identifies specifically enumerated exclusions. (Id. ¶¶ 13(c), 13(j)).

Rouhi, proceeding pro se, sued Comcast in the United States District Court for the District of Maryland on March 6, 2019, seeking an unspecified amount of compensatory and punitive damages exceeding $75,000. (ECF No. 1). In an Amendment to the Complaint,[3] Rouhi asserted claims for fraud under 18 U.S.C. § 1001 (2018) and harassment under Md. Code Ann., Crim. Law § 3-803 (2018). On June 13, 2019, Comcast filed a Motion to Compel Arbitration and to Dismiss the Complaint, or in the Alternative, to Stay the Action. (ECF No. 5). Rouhi filed an Opposition on June 27, 2019. (ECF No. 7). To date, Comcast has not filed a Reply.

The Federal Arbitration Act ("FAA") provides, with limited exceptions, that agreements to arbitrate "shall be valid, irrevocable, and enforceable." 9 U.S.C. § 2 (2018). Accordingly, courts must "rigorously enforce" such agreements according to their terms. Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213, 221 (1985). A party seeking to compel arbitration must demonstrate: (1) "the existence of a dispute between the parties"; (2) "a written agreement that includes an arbitration provision which purports to cover the dispute"; (3) "the relationship of the transaction, which is evidenced by the agreement, to interstate or foreign commerce"; and (4) "the failure, neglect or refusal of the defendant to arbitrate the dispute." Galloway v. Santander Consumer USA, Inc., 819 F.3d 79, 84 (4th Cir. 2016) (quoting Rota-McLarty v. Santander Consumer USA, Inc., 700 F.3d 690, 696 n.6 (4th Cir. 2012)). A party opposing arbitration may raise generally available contract defenses, such as fraud, waiver, and unconscionability. Shearson/Am. Exp., Inc. v. McMahon, 482 U.S. 220, 226 (1987).

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[3] The one-page Amendment is attached to Rouhi's Complaint and was not filed as a separate document. (See ECF No. 1).

When a dispute is subject to arbitration, the Court may dismiss the case pursuant to Federal Rule of Civil Procedure 12(b)(6). Lomax v. Weinstock, Friedman & Friedman, P.A., No. CCB-13-1442, 2014 WL 176779, at *2 (D.Md. Jan. 15, 2014). "The purpose of a Rule 12(b)(6) motion is to test the sufficiency of a complaint," not to "resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses." Edwards v. City of Goldsboro, 178 F.3d 231, 243–44 (4th Cir. 1999) (quoting Republican Party v. Martin, 980 F.2d 943, 952 (4th Cir. 1992)). A complaint fails to state a claim if it does not contain "a short and plain statement of the claim showing that the pleader is entitled to relief," Fed.R.Civ.P. 8(a)(2), or does not "state a claim to relief that is plausible on its face," Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. (citing Twombly, 550 U.S. at 556). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Id. (citing Twombly, 550 U.S. at 555). Though the plaintiff is not required to forecast evidence to prove the elements of the claim, the complaint must allege sufficient facts to establish each element. Goss v. Bank of America, N.A., 917 F.Supp.2d 445, 449 (D.Md. 2013) (quoting Walters v. McMahen, 684 F.3d 435, 439 (4th Cir. 2012)), aff'd sub nom., Goss v. Bank of America, NA, 546 F.App'x 165 (4th Cir. 2013).

In considering a Rule 12(b)(6) motion, a court must examine the complaint as a whole, consider the factual allegations in the complaint as true, and construe the factual allegations in the light most favorable to the plaintiff. Albright v. Oliver, 510 U.S. 266, 268 (1994); Lambeth v. Bd. of Comm'rs, 407 F.3d 266, 268 (4th Cir. 2005) (citing Scheuer v. Rhodes, 416 U.S. 232, 236 (1974)). But, the court need not accept unsupported or conclusory factual allegations devoid of any reference to actual events, United Black Firefighters v. Hirst, 604 F.2d 844, 847 (4th Cir. 1979), or legal conclusions couched as factual allegations, Iqbal, 556 U.S. at 678.

Applying these standards, the Court first considers whether a valid arbitration agreement exists and then whether dismissal or a stay in proceedings is appropriate.

Motion to Compel Arbitration

Rouhi opposes arbitration, asserting that "[c]ivil litigation is [her] right," that the terms of the agreement do not override that right, and that the agreement is irrelevant because she is no longer a Comcast customer. Comcast argues that the Court should compel Rouhi to submit her claims to arbitration because (1) the FAA governs the arbitration agreement and mandates a liberal policy in favor of enforcing such provisions; (2) the arbitration agreement between Rouhi and Comcast is valid; and (3) Rouhi's claims fall within the scope of the arbitration provision. Comcast truncates, and in doing so, misstates the factors compelling arbitration. As previously discussed, a party seeking to compel arbitration must successfully demonstrate four factors: (1) a dispute; (2) a written arbitration agreement that would cover the dispute; (3) a relationship between the transaction and interstate or foreign commerce, as evidenced in the agreement; and (4) the defendant's failure, neglect or refusal to submit to arbitration. Galloway, 819 F.3d at 84. The Court examines each of the Galloway factors in turn.

The first requirement, existence of a dispute, is clearly established. Rouhi alleges that Comcast routinely, arbitrarily, and without notice or consent increased her monthly service rates,

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sometimes billing her for cancelled services, free equipment, and equipment that had been returned. (See generally Compl.). Comcast does not challenge the existence of the billing dispute. The third requirement, nexus to interstate commerce, is also satisfied. The Subscriber Agreement is between Comcast, a Delaware company with its principal place of business in Philadelphia, Pennsylvania, and Rouhi, a Maryland resident, concerning the provision of internet access. (Def.'s Mot. at 7). Comcast's provision of internet access to Rouhi constitutes interstate commerce. United States v. Gray-Sommerville, 618 F.App'x. 165, 168 (4th Cir. 2015) (quoting United States v. Barlow, 568 F.3d 215, 220 (5th Cir. 2009) ("It is beyond debate that the internet and email are facilities or means of interstate commerce.") (internal quotations omitted)). The fourth requirement, refusal to arbitrate, is equally clear. Rouhi filed this lawsuit days after terminating her contract with Comcast, completely bypassing the arbitration process. She explicitly opposes Comcast's Motion and requests that this Court allow her to proceed with litigation. (Resp. to Def.'s Filings ["Pl.'s Opp'n"] at 1, ECF No. 7). The only issue in dispute is the second Galloway factor, which requires arbitration agreements to be in writing and inclusive of the dispute.

Comcast asserts that the Arbitration Provision is "unquestionably in writing," and submits a copy of the Subscriber Agreement, which contains the Provision. In her opposition, Rouhi did not challenge the authenticity of that Agreement. Accordingly, the Court concludes that the Subscriber Agreement is indeed the written instrument memorializing the Arbitration Provision. Next, Comcast contends that the Arbitration Provision is valid because Rouhi accepted the Provision when she agreed to the terms and conditions in the Subscriber Agreement. Comcast asserts that it mailed the Subscriber Agreement to Rouhi in a Welcome Kit when she signed up for services. The Subscriber Agreement informed Rouhi that her "use of the Service(s)" or any "affirmative acceptance of its terms" would constitute acceptance of the Agreement. Comcast reasons that Rouhi's act of using the services constituted acceptance of the Subscriber Agreement and the Arbitration Provision. In support thereof, Comcast cites Galloway, which found that "acceptance may be manifested by actions as well as words." 819 F.3d at 85. Comcast notes that Rouhi was also informed that "[t]his Agreement contains a binding arbitration provision in Section 13 that affects your rights under this Agreement with respect to all Service(s)." The Agreement contained instructions for opting out of the Arbitration Provision. However, Comcast has no records indicating that Rouhi opted out. Comcast reasons that Rouhi accepted the Arbitration Provision through inaction, specifically her failure to opt out. In opposition, Rouhi asserts that the Agreement is irrelevant because she is no longer a Comcast customer. The Court agrees with Comcast.

Comcast has alleged, and Rouhi has failed to contest, that she received a Subscriber Agreement when she began using Comcast's services. That Agreement contained an Arbitration Provision and opt-out instructions, but there is no evidence that Rouhi opted out of the Provision. Rouhi's continued use of Comcast's services, coupled with her failure to opt out of the Provision, constituted acceptance of both the Subscriber Agreement and its Arbitration Provision. See Farmer v. Macy's Inc., No. TDC-17-0567, 2019 WL 5079763, at *3–6 (D.Md. Oct. 10, 2019) (granting defendant's motion to compel arbitration and dismissing the case where the plaintiff accepted an offer of employment, received a New Hire Brochure that contained an arbitration agreement, and failed to opt out of that agreement). Rouhi's argument that she is no longer a Comcast customer ignores the undisputed fact that her claim arose during, and is directly related to, her contractual relationship with Comcast. From its inception, that relationship was governed by the Subscriber

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Agreement, which specifies that the Arbitration Provision "shall survive termination of [the customer's] Service(s) with Comcast." (Def.'s Mot. at 9–10). Thus, the Arbitration Provision remains intact and enforceable as to claims properly within its scope, because its perpetuity is determined not by the duration of Rouhi and Comcast's contractual relationship, but by the accrual of any claims arising thereunder. The Court thus concludes that a written arbitration agreement exists between the parties.

Next, the Court considers the scope of the Arbitration Provision to determine if it encompasses Rouhi's claim. "The heavy presumption of arbitrability requires that when the scope of the arbitration clause is open to question, a court must decide the question in favor of arbitration." Garrett v. Monterey Fin. Servs., LLC, No. JKB-18-325, 2018 WL 3579856, at *3 (D.Md. July 25, 2018) (quoting Levin v. Alms & Assocs., Inc., 634 F.3d 260, 266 (4th Cir. 2011) (internal quotations omitted)). Accordingly, the party opposing arbitration is tasked with the heavy burden of presenting "forceful evidence" to exclude a claim from arbitration where the claim appears to be arbitrable. United Steelworkers of Am. v. Warrior & Gulf Navigation Co., 363 U.S. 574, 584–85 (1960). Comcast argues that Rouhi failed to make the required showing to avoid arbitration, because the dispute falls squarely within the broad terms of the Arbitration Provision. Rouhi does not proffer any arguments regarding the scope of the Arbitration Provision and generally avers that the Subscriber Agreement is unenforceable because she is no longer a Comcast customer. For the reasons stated above, the Court is not persuaded by Rouhi's argument. The Court agrees with Comcast.

The underlying dispute can be singularly and narrowly defined as a billing dispute. The dispute concerns the services and products that Rouhi received and the payments that she made for those services and products while she was a Comcast customer. There is no evidence that Rouhi opted out of the Arbitration Provision. (Patel Decl. ¶¶ 16–17, ECF No. 5-2). As such, the dispute falls squarely within the scope of the Arbitration Provision, which broadly mandates the arbitration of "any dispute, claim or controversy" with Comcast, regarding "any aspect of your relationship with Comcast" and including, but not limited to, fraud, misrepresentation, any other legal or equitable theory, or the validity and scope of the Provision. (Subscriber Agreement ¶ 13(b)). Although the Arbitration Provision identifies exceptions to that sprawling mandate, (id. ¶ 13(j)), Rouhi has failed to offer "forceful evidence" that her claim somehow falls within an exception or is otherwise exempt from arbitration. Accordingly, Rouhi's claim is within the scope of the Provision and must be submitted to arbitration.

Dismissal or Stay in Proceedings

Having concluded that this matter is arbitrable, the Court must now determine if it will dismiss or stay the case pending resolution of arbitration. Comcast requests dismissal of this case but acknowledges the Court's discretion to stay the proceedings. Rouhi baldly asserts that "there is no valid reason for [the motion to dismiss and the motion to stay], and [] ask[s] that we proceed with litigation."

In Marketti v. Cordish Companies, Inc., this Court identified a split in Fourth Circuit opinions regarding the decision to dismiss or stay an action pending the resolution of arbitration. No. ADC-19-0904, 2019 WL 2568839 (D.Md. June 21, 2019). In Hooters of America, Inc. v.

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Phillips, the United States Court of Appeals for the Fourth Circuit held that a stay is required under the FAA when the arbitration agreement covers the matter in dispute. 173 F.3d 933, 937 (4th Cir. 1999). However, two years later, in Choice International Hotels, Inc. v. BSR Tropicana Resort, Inc., the Fourth Circuit held that "[n]otwithstanding the terms of § 3 [of the FAA] . . . dismissal is a proper remedy when all of the issues presented in a lawsuit are arbitrable." 252 F.3d 707, 709–10 (4th Cir. 2001). While the Fourth Circuit has subsequently acknowledged that there is "some tension" between Choice International Hotels and Hooters, it has not reconciled or otherwise resolved this divergence in authority. Aggarao v. MOL Ship Mgmt. Co. Ltd., 675 F.3d 355, 376 n.18 (4th Cir. 2012). Nonetheless, district courts in the Fourth Circuit have routinely dismissed cases where all of the claims are arbitrable.[4] See, e.g., Stone v. Wells Fargo Bank, N.A., 361 F.Supp.3d 539, 557–58 (D.Md. 2019); Bey v. Midland Credit Mgmt., Inc., No. GJH-15-1329, 2016 WL 1226648, at *5 (D.Md. Mar. 23, 2016) (granting defendant's motion to dismiss when it moved to stay or, in the alternative, dismiss "because all of the Plaintiff's claims . . . are subject to arbitration").

Here, as in Marketti, the Court finds that Rouhi voluntarily agreed to arbitrate certain claims and that her billing dispute fits squarely within the scope of the Arbitration Provision. The Court also concludes that "no useful purpose will be served by staying the pertinent proceedings pending arbitration." 2019 WL 2568839, at *4 (quoting Taylor v. Santander Consumer USA, Inc., No. DKC-15-0442, 2015 WL 5178018, at *7 (D.Md. Sept. 3, 2015).

For the reasons stated above, the Court will GRANT the Motion to Compel Arbitration and to Dismiss Plaintiff's Complaint, or in the Alternative, to Stay Action (ECF No. 5) and will DISMISS the case without prejudice.

Despite the informal nature of this memorandum, it shall constitute an Order of the Court, and the Clerk is directed to docket it accordingly and CLOSE this case.

Very truly yours,

/s/
George L. Russell, III
United States District Judge

[4] This approach is consistent with that of the Fifth and Ninth Circuits, which have conclusively held that dismissal is appropriate as opposed to a stay. See Alford v. Dean Witter Reynolds, Inc., 975 F.2d 1161 (5th Cir. 1992); see also Sparling v. Hoffman Constr. Co., Inc., 864 F.2d 635 (9th Cir. 1988).

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UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

Chambers of
George L. Russell, III
United States District Judge

101 West Lombard Street
Baltimore, Maryland 21201
410-962-4055

August 14, 2020

MEMORANDUM TO PARTIES RE: Tamara Rouhi v. Comcast Center
Civil Action No. GLR-19-703

Dear Parties:

Pending before the Court is Plaintiff Tamara Rouhi's Motion for Reconsideration (ECF No. 9). The Motion is ripe for disposition, and no hearing is necessary. See Local Rule 105.6 (D.Md. 2018). For the reasons outlined below, the Court will deny the Motion.

On March 6, 2019, Rouhi, proceeding pro se, filed a Complaint alleging that Defendant Comcast Center ("Comcast") harassed, defrauded, and overcharged her for internet and television services from October 2016 through September 2018. (Compl., ECF No. 1). On June 13, 2019, Comcast filed a Motion to Compel Arbitration and to Dismiss Plaintiff's Complaint, or in the Alternative, to Stay Action. (ECF No. 5). Once the motion was fully briefed, the Court issued an Order on November 27, 2019, granting Comcast's motion and dismissing the case. (ECF No. 8). Rouhi filed a Motion for Reconsideration on December 11, 2019. (ECF No. 9). Comcast filed an Opposition on December 20, 2019. (ECF No. 10). Rouhi filed a Reply on March 9, 2020. (ECF No. 11).

Although the Federal Rules of Civil Procedure do not expressly recognize motions for "reconsideration," Rule 59(e) authorizes a district court to alter or amend a prior final judgment. See Katyle v. Penn Nat'l Gaming, Inc., 637 F.3d 462, 470 n.4 (4th Cir. 2011). Motions brought pursuant to Rule 59(e) must be filed within twenty-eight days of the final judgment. Bolden v. McCabe, Weisberg & Conway, LLC, No. DKC 13-1265, 2014 WL 994066, at *1 n.1 (D.Md. Mar. 13, 2014). A district court may only alter or amend a final judgment under Rule 59(e) in three circumstances: "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." United States ex rel. Carter v. Halliburton Co., 866 F.3d 199, 210 (4th Cir. 2017) (citing Zinkand v. Brown, 478 F.3d 634, 637 (4th Cir. 2007)). A Rule 59(e) amendment is "an extraordinary remedy which should be used sparingly." Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998) (quoting Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2810.1, at 124 (2d ed. 1995)). Accordingly, "[a] motion for reconsideration is 'not the proper place to relitigate a case after the court has ruled against a party, as mere disagreement with a court's rulings will not support granting such a request.'" Lynn v. Monarch Recovery Mgmt., Inc., 953 F.Supp.2d 612, 620 (D.Md. 2013) (quoting Sanders v. Prince George's Pub. Sch. Sys., No. RWT 08CV501, 2011 WL 4443441, at *1 (D.Md. Sept. 21, 2011)).

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Here, Rouhi has failed to identify any changes in controlling law, newly discovered evidence, or any clear error by the Court or other injustice that would warrant reconsideration of the Court's November 27, 2019 Order. Rouhi merely asserts that "The State of Minnesota [v.] Comcast, a case regarding fraud/billing errors, was litigated. To maintain equality, I think that my case should be re-opened." (Mot. Recons. at 1, ECF No. 9). To the extent Rouhi argues that there has been a change in controlling law, her argument fails. Rouhi neglected to provide a citation to the Minnesota case and failed to explain how the Minnesota case applies to, or otherwise impacts the previous decision rendered in, this case. Thus, the Court is unable to locate the Minnesota case, let alone determine if the case warrants reconsideration of this Court's earlier decision. Rouhi's Reply does nothing to elucidate her reason for seeking reconsideration and, if anything, illustrates her desire to relitigate the arbitration issue merely because she is dissatisfied with the Court's previous ruling. The Court declines to revisit the issue on that basis. See Lynn, 953 F.Supp.2d at 620.

For the reasons stated above, Rouhi's Motion for Reconsideration (ECF No. 9) is DENIED. Despite the informal nature of this memorandum, it shall constitute an Order of the Court, and the Clerk is directed to docket it accordingly and to mail a copy of this Order to Rouhi at her address of record.

Very truly yours,

/s/
George L. Russell, III
United States District Judge

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FILED: December 21, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-1979
(1:19-cv-00703-GLR)

TAMARA ROUHI

Plaintiff - Appellant

v.

COMCAST CABLE COMMUNICATIONS, LLC

Defendant - Appellee

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

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UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-1979

TAMARA ROUHI,

Plaintiff - Appellant,

v.

COMCAST CABLE COMMUNICATIONS, LLC,

Defendant - Appellee.

Appeal from the United States District Court for the District of Maryland, at Baltimore. George L. Russell, III, District Judge. (1:19-cv-00703-GLR)

Submitted: December 17, 2020 Decided: December 21, 2020

Before THACKER, HARRIS, and QUATTLEBAUM, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Tamara Rouhi, Appellant Pro Se. Adam Caldwell, Patrick J. Curran, DAVIS WRIGHT TREMAINE, LLP, Washington, D.C., for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Tamara Rouhi appeals the district court's orders granting the Appellee's motion to compel arbitration and dismissing Rouhi's claims, and denying her Fed. R. Civ. P. 59(e) motion for reconsideration. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Rouhi v. Comcast Cable Commc'n., Inc.*, No. 1:19-cv-00703-GLR (D. Md. Nov. 27, 2019 & Aug. 14, 2020). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

FILED: January 12, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-1979
(1:19-cv-00703-GLR)

TAMARA ROUHI

Plaintiff - Appellant

v.

COMCAST CABLE COMMUNICATIONS, LLC

Defendant - Appellee

MANDATE

The judgment of this court, entered December 21, 2020, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

/s/Patricia S. Connor, Clerk

Case #:

THE SUPREME COURT OF THE UNITED STATES

Tamara Rouhi

Plaintiff/Appellant

V

Comcast

Defendant/Appellee

Original Case Number: 19CV703

Original Case/Complaint/Exhibits Filed: 3/6/19

Appellate Court Case Number: 20-1979

A review from the US Court of Appeals for the Fourth Circuit.

Civil Case.

Jury not requested.

APPENDIX VOLUME II: AUTHORITIES

Adam S Caldwell

Davis Write Tremaine LLP

1919 Pennsylvania Ave. NW

Ste 800

Washington, DC 20006

2029734200

Counsel for Comcast

Tamara Rouhi

125 Fennington Circle

Owings Mills MD 21117

4105228217

Pro Se Plaintiff/Appellant

Table Of Contents

Authorities

Article III, Section 2, US Constitution

"The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;--to all cases affecting ambassadors, other public ministers and consuls;--to all cases of admiralty and maritime jurisdiction;--to controversies to which the United States shall be a party;--to controversies between two or more states;--between a state and citizens of another state;--between citizens of different states;--between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.
In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.
The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed."

- Article III, Section 2, US Constitution, Cornell Law

Certiorari

"Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
(1)
By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;..."

- 28 U.S. Code § 1254, Cornell Law

The Civil Rights Act of 1964, Title II

"All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination on the ground of race, color, religion, or national origin."

-42 U.S.C. §2000a (a), Justice.gov

Deprivation of rights under color of law

"Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death."

-18 U.S. Code § 242, Cornell Law

Diversity Jurisdiction

"(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between—

(1) citizens of different States;

(2) citizens of a State and citizens or subjects of a foreign state, except that the district courts shall not have original jurisdiction under this subsection of an action between citizens of a State and citizens or subjects of a foreign state who are lawfully admitted for permanent residence in the United States and are domiciled in the same State;

(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of $75,000, computed without regard to any setoff or

counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(c) For the purposes of this section and section 1441 of this title—

(1) a corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business, except that in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of—

(A) every State and foreign state of which the insured is a citizen;

(B) every State and foreign state by which the insurer has been incorporated; and

(C) the State or foreign state where the insurer has its principal place of business ..."

- 28 U.S. Code § 1332, Cornell Law

Federal Question

"The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

-28 U.S. Code § 1331, Cornell Law

Final decisions of district courts

"The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title."

-28 U.S. Code § 1291, Cornell Law

First Amendment

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

- First Amendment, congress.gov

Fraud

"(a)Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—

(1)

falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

(2)

makes any materially false, fictitious, or fraudulent statement or representation; or

(3)

makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both. If the matter relates to an offense under chapter 109A, 109B, 110, or 117, or section 1591, then the term of imprisonment imposed under this section shall be not more than 8 years.

(b)

Subsection (a) does not apply to a party to a judicial proceeding, or that party's counsel, for statements, representations, writings or documents submitted by such party or counsel to a judge or magistrate in that proceeding.

(c)With respect to any matter within the jurisdiction of the legislative branch, subsection (a) shall apply only to—

(1)

administrative matters, including a claim for payment, a matter related to the procurement of property or services, personnel or employment practices, or support services, or a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch; or

(2)

any investigation or review, conducted pursuant to the authority of any committee, subcommittee, commission or office of the Congress, consistent with applicable rules of the House or Senate."

-18 U.S. Code § 1001, Cornell Law

Harassment

"(a) A person may not follow another in or about a public place or maliciously engage in a course of conduct that alarms or seriously annoys the other:

(1) with the intent to harass, alarm, or annoy the other;

(2) after receiving a reasonable warning or request to stop by or on behalf of the other; and

(3) without a legal purpose.

(b) This section does not apply to a peaceable activity intended to express a political view or provide information to others..."

-MD § 3-803, Justia

Obstruction of Justice

"...Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress—

Shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both."

-18 U.S. § 1505, Cornell Law

Summary Judgement

"(a) Motion for Summary Judgment or Partial Summary Judgment. A party may move for summary judgment, identifying each claim or defense — or the part of each claim or defense — on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion..."

-Civil Rule 56, Cornell Law

Supplemental Jurisdiction

"(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

(b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—

(1) the claim raises a novel or complex issue of State law,

(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,

(3) the district court has dismissed all claims over which it has original jurisdiction, or

(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction..."

-28 U.S. Code § 1367, Cornell Law

Thirteenth Amendment

"Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

- Thirteenth Amendment, Congress.gov