

Split 3rd Circ. Won't Let Sunoco Arbitrate Credit Claims

Law360, Los Angeles (September 5, 2017, 6:21 PM EDT) -- The Third Circuit issued a split decision Tuesday refusing to let [Sunoco Inc.](#) force arbitration in a credit card customer's proposed class action over an allegedly broken promise for rewards at gas stations, saying in the published ruling Sunoco wasn't even part of the card contract.

Two of the three judges on the panel agreed that when credit card customer Donald White signed up for a [Citigroup Inc.](#) credit card marketed as providing a discount at Sunoco gas stations, he hadn't agreed to arbitrate disputes against Sunoco, according to the ruling. The credit card contract outlined the relationship between Citi and White, but didn't even mention Sunoco, the majority wrote.

Sunoco had contended, among other things, that because it was central in marketing the card with Citi, it should be allowed to compel arbitration under that contract, according to court papers. And White's decision to leave Citi out of the proposed class action over the rewards program was a strategic one to keep the case in court, the fuel company said.

But the majority rejected those arguments, finding White's claims were about Sunoco's alleged broken promise for discounts, not about the credit card itself, according to Tuesday's decision.

"We decline to speculate as to whether White has some related grievance against Citibank and to compel White to arbitrate based on that speculation," the majority wrote. "We are skeptical of whether the joint marketing campaign between Sunoco and Citibank could make Sunoco a 'connected' entity under the arbitration clause."

White had accused Sunoco in his 2015 suit of backing out on a promise to give him a 5-cent discount on gas at Sunoco stations for using the company's branded Citibank card, court records show. He seeks to represent a class of consumers who, White says, bought into Sunoco's promise only to discover after fueling up at Sunoco stations that only some of them actually provide the discount.

Sunoco sought to bump the case into arbitration, but U.S. District Judge Paul Diamond in May 2016 found that Sunoco wasn't a party to the contract that included the arbitration clause, court records show.

The Third Circuit noted in Tuesday's decision that courts have recognized some third parties may be allowed to apply a contract's terms, but found that Sunoco didn't fit that bill, saying it wasn't closely connected to Citi or Citi's business of consumer lending.

Circuit Judge Jane Richards Roth, penning a dissent, said that multiple documents can

make up a contract and that Sunoco's promotional materials about the partnered Citi credit card, together with the card agreement between White and Citi, make up the contract at issue in this case.

That makes Sunoco a party to the contract in a position to exercise its provisions, including arbitration, Judge Roth wrote.

"At issue is an attempt to bypass, through artful pleading, a valid agreement to arbitrate," Judge Roth wrote. "Clever framing, however, cannot obfuscate the intent of the parties upon creation of the contract."

David Stanoch of [Golomb & Honik PC](#), who represents White in the case, said he and his team were pleased with the result.

"We believe the district court got it right. We believe the Third Circuit got it right," he said. "Hopefully, this result will encourage Sunoco to do the right thing now by Mr. White and Sunoco's other customers."

A representative for Sunoco didn't immediately respond to a request for comment on Tuesday.

Circuit Judges Michael Chagares, L. Felipe Restrepo and Jane Richards Roth sat on the panel that reached Tuesday's decision.

White is represented by Richard M. Golomb, Ruben Honik, Kenneth J. Grunfeld and David J. Stanoch of [Golomb & Honik PC](#).

Sunoco is represented by Seamus C. Duffy, Kathryn E. Deal, Meredith C. Slawe and Katherine L. Villanueva of [Drinker Biddle & Reath LLP](#).

The case is Donald White v. Sunoco Inc., case number 16-2808, in the U.S. Court of Appeals for the Third Circuit.

--Editing by Kelly Duncan.