

UNITED STATES COURT OF APPEALS

AUG 31 2012

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

STEVEN MCARDLE,

Plaintiff - Appellee,

v.

AT&T MOBILITY, LLC; NEW
CINGULAR WIRELESS PCS, LLC;
NEW CINGULAR WIRELESS
SERVICES, INC.,

Defendants - Appellants.

No. 09-17218

D.C. No. 4:09-cv-01117-CW
Northern District of California,
OaklandORDER AMENDING
MEMORANDUM DISPOSITION
AND DENYING PETITION FOR
REHEARING

Before: HUG, RAWLINSON, and IKUTA, Circuit Judges.

The Memorandum Disposition filed on June 29, 2012 is amended as follows:

On page 2 of the Memorandum Disposition, last paragraph, the first sentence is amended by inserting <noted> following <we> and deleting the language beginning with <remanded> through <reasoning>, so that the sentence now reads: <In *Coneff*, we noted that “generally applicable contract defenses” survive under § 2 of the Federal Arbitration Act>.

The second sentence of the last paragraph is deleted in its entirety.

The third sentence of the last paragraph is amended by deleting <Therefore>, deleting the language beginning with <for> through the end of the sentence, and inserting <to consider in the first instance McArdle's arguments based on generally applicable contract defenses> following <district court>, so the sentence now reads: <We remand to the district court to consider in the first instance McArdle's arguments based on generally applicable contract defenses.>.

An Amended Memorandum Disposition will be filed simultaneously with this Order.

With these amendments, the panel has voted to deny Appellant's Petition for Rehearing filed on July 2, 2012.

The Petition for Rehearing is DENIED. No further petitions for rehearing and/or rehearing en banc will be entertained.

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NOT FOR PUBLICATION

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AMENDED
MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Claudia A. Wilken, District Judge, Presiding

Submitted June 15, 2012**
San Francisco, California

Before: HUG, RAWLINSON, and IKUTA, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

AT&T Mobility, LLC appeals the district court's order denying its motion to compel arbitration.

When the district court denied the motion to compel arbitration, it did not have the benefit of the decisions by the United States Supreme Court in *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740 (2011) and by this court in *Coneff v. AT&T Corp.*, 673 F.3d 1155 (9th Cir. 2012). The district court ruled that the arbitration clause in the agreement between Plaintiff Steven McArdle and AT&T was unenforceable due to the absence of class action relief. This ruling is not consistent with the holdings of *Concepcion* and *Coneff*. See *Concepcion*, 131 S. Ct. at 1751-52; *Coneff*, 673 F.3d at 1161.

In *Coneff*, we noted that “generally applicable contract defenses” survive under § 2 of the Federal Arbitration Act. *Coneff*, 673 F.3d at 1161 (quoting *Concepcion*, 131 S. Ct. at 1746). We remand to the district court to consider in the first instance McArdle's arguments based on generally applicable contract defenses. See *id.*

REVERSED and REMANDED.