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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JJ BAZZI, on behalf of himself and all others similarly situated, Plaintiff - Appellant, v. JPMORGAN CHASE BANK, N.A., Defendant - Appellee.	No. 24-6 D.C. No. 2:23-cv-01570-SPL MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Steven Paul Logan, District Judge, Presiding

Argued and Submitted October 23, 2024
Phoenix, Arizona

Before: M. SMITH, BADE, and FORREST, Circuit Judges.

Plaintiff JJ Bazzi appeals the district court's order compelling arbitration and dismissing his claims against JPMorgan Chase Bank, N.A. (JPMC). However, we decline to reach the merits of Bazzi's challenge to the order compelling arbitration. Instead, we vacate the district court's dismissal of Bazzi's claims and remand for

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

the issuance of a stay pending arbitration between Bazzi and JPMC.

Because the parties are familiar with the facts and background of this case, we provide only the information necessary to provide context to our ruling. Bazzi filed a class action complaint against JPMC alleging violations of the Equal Credit Opportunity Act, 15 U.S.C. § 1691. JPMC moved to compel arbitration on an individual basis, contending that the Cardmember agreements for Bazzi's accounts had been amended by email notice to include binding arbitration provisions. It also requested that the district court stay the action pending arbitration. Bazzi opposed the motion to compel arbitration, contending, *inter alia*, that the arbitration agreement was not enforceable because he never received notice of the proposed amendments to the Cardmember agreements. The district court granted JPMC's motion to compel arbitration, but it denied JPMC's request for a stay, and dismissed all of Bazzi's claims without prejudice.

As subsequent legal developments have shown, the district court erred in denying JPMC's motion for a stay. During the pendency of this appeal, the Supreme Court issued its decision in *Smith v. Spizzirri*, which overruled Ninth Circuit precedent and concluded that, based on the plain language of 9 U.S.C. § 3, "[w]hen a federal court finds that a dispute is subject to arbitration, and a party has requested a stay of the court proceeding pending arbitration, the court does not have discretion to dismiss the suit on the basis that all the claims are subject to

arbitration." 601 U.S. 472, 475–76 (2024).

As both parties concede, *Spizzirri* makes plain that the district court erred in dismissing Bazzi's claims rather than staying them, as JPMC had requested. *See id.* The precedents relied upon by the district court in concluding that it had the discretion to dismiss Bazzi's claims are "clearly irreconcilable" with the "intervening higher authority" in *Spizzirri*. *Miller v. Gammie*, 335 F.3d 889, 893 (9th Cir. 2003) (en banc). And although JPMC did not file a cross-appeal challenging the denial of its request for a stay, "the cross-appeal requirement is a rule of practice and not a jurisdictional bar," so we have "broad power to make such dispositions as justice requires." *Stormans, Inc. v. Wiesman*, 794 F.3d 1064, 1085 (9th Cir. 2015) (quoting *Lee v. Burlington N. Santa Fe Ry. Co.*, 245 F.3d 1102, 1107 (9th Cir. 2001)). Accordingly, we conclude that the district court erred in denying JPMC's motion to stay the proceedings pending arbitration.

We decline to reach the merits of Bazzi's challenge to the district court's order compelling arbitration. Generally, the Federal Arbitration Act (FAA) does not permit the immediate appeal of an order compelling arbitration or granting a stay pending arbitration. *See* 9 U.S.C. § 16(b)(1)–(3). As the Supreme Court explained in *Spizzirri*, the choice to prohibit immediate appeals of orders directing arbitration is consistent with one purpose of the FAA, which is "to move the parties to an arbitrable dispute out of court and into arbitration as quickly and

easily as possible." 601 U.S. at 478 (quoting *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 22 (1983)).

But we *do* have jurisdiction over appeals when all the underlying claims are dismissed, as was the case here. *See Diaz v. Macys W. Stores, Inc.*, 101 F.4th 697, 701 (9th Cir. 2024) (discussing 9 U.S.C. § 16(a)(3)). Thus, a district court's decision to dismiss an action rather than grant a request for a stay pending arbitration "triggers the right to an immediate appeal where Congress sought to forbid such an appeal." *Spizzirri*, 601 U.S. at 478. Although we do not lack jurisdiction, reaching the merits of Bazzi's arguments regarding arbitration would contravene the scheme and structure of the FAA.

Our conclusion aligns with the non-precedential disposition in *Woody v. Coinbase Global, Inc.*, No. 23-3584, 2024 WL 4532909, at *1 (9th Cir. Oct. 21, 2024) (unpublished). The *Woody* decision involved a strikingly similar situation to the case at bar, and the panel ultimately vacated the district court's dismissal and remanded for entry of a stay pending arbitration—notwithstanding the fact that the party who sought arbitration did not cross-appeal. *Id.* The *Woody* panel also declined to address the merits of the plaintiff's challenge to the order compelling arbitration, for substantially the same reasons given here. *See id.* ("Reaching the substance of Plaintiffs' challenge would contravene the FAA's structure and purpose. If Coinbase prevails at arbitration, and the district court does not vacate

the resulting award, nothing precludes Plaintiffs from appealing at that time, as Congress intended." (citing 9 U.S.C. § 16(a)(1))). Although *Woody* is not binding, *see* 9th Cir. R. 36-3, we find it persuasive and reach the same conclusion here. As such, we express no opinion on the merits of Bazzi's arguments.

VACATED IN PART AND REMANDED.[1]

[1] Each party shall bear its own costs. *See* Fed. R. App. P. 39(a)(4).