

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Powers v. Receivables Performance Management, LLC

No. 22-1500, United States Court of Appeals for the First Circuit (June 8, 2023)

SUMMARY

The First Circuit dismissed an appeal for lack of appellate jurisdiction, holding that a district court's denial of a motion to compel arbitration, treated as a reconsideration of a pre-removal state court order under 28 U.S.C. § 1450, is not a final appealable order absent newly available evidence or law. The court did not reach the merits of whether a nonsignatory debt collector could enforce an arbitration agreement under the Massachusetts standard set forth in **Landry v. Transworld Systems Inc.**, 149 N.E.3d 781 (Mass. 2020). The underlying putative class action alleged violations of the Massachusetts Consumer Protection Act and debt collection regulations.

CASE DETAILS

COURT	United States Court of Appeals for the First Circuit
WRITING FOR THE COURT	Lynch; Barron; Gelpí
JURISDICTION	Federal
DECIDED	June 8, 2023
DOCKET	22-1500
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appeal from district court's denial of motion to compel arbitration, treated as motion for reconsideration of state court order.
PRECEDENTIAL VALUE	Published
PARTIES	Receivables Performance Management, LLC v. Stephanie Powers

TOPICS

- appellate jurisdiction
- arbitration
- civil procedure
- consumer protection
- fair debt collection
- class actions

PRACTICE AREAS

- Consumer Protection
- Arbitration
- Appellate Procedure
- Debt Collection

QUESTIONS PRESENTED

1. Whether the district court's denial of a motion to compel arbitration, treated as a motion for reconsideration of a state court order, is a final appealable order.

HOLDINGS

1. The order is not a final decision and does not fall within an exception for interlocutory review. Therefore, the court lacks appellate jurisdiction and the appeal is dismissed.

KEY QUOTATIONS

"any dispute that in any way relates to or arises out of this agreement or from any equipment, products and services you receive from us (or from any advertising for any such products or services)." (at 3)

"All injunctions, orders, and other proceedings had in such action prior to its removal shall remain in full force and effect until dissolved or modified by the district court." (at 8)

"at least absent some newly available evidence, law, or a new stage of the proceedings, orders denying [untimely] motions for reconsideration of . . . appealable interlocutory order[s] are generally not themselves appealable." (at 9)

FACTUAL BACKGROUND

Stephanie Powers opened a Verizon landline telephone account and accrued an unpaid balance. Verizon referred the debt to Receivables Performance Management, LLC (RPM) for collection. RPM called Powers more than twice within a seven-day period. Powers sued RPM under the Massachusetts Consumer Protection Act and debt collection regulations, seeking to represent a class.

PROCEDURAL HISTORY

The case was initially filed in Massachusetts state court. RPM moved to compel arbitration, which was denied by the state court. RPM did not appeal that order. Instead, RPM removed the case to federal district court under CAFA and filed a new motion to compel arbitration. The district court treated the motion as a motion for reconsideration and denied it. RPM appealed.

DISPOSITION

dismissed

CASES CITED

- Landry v. Transworld Systems Inc., 149 N.E.3d 781 (Mass. 2020)
- Concordia Partners, LLC v. Pick, 790 F.3d 277 (1st Cir. 2015)
- Granny Goose Foods, Inc. v. Brotherhood of Teamsters, 415 U.S. 423 (1974)
- Marie v. Allied Home Mortg. Corp., 402 F.3d 1 (1st Cir. 2005)
- Anderson v. City of New Orleans, 38 F.4th 472 (5th Cir. 2022)
- Behrens v. Pelletier, 516 U.S. 299 (1996)

- United States v. Zannino, 895 F.2d 1 (1st Cir. 1990)
- Cozza v. Network Assocs., Inc., 362 F.3d 12 (1st Cir. 2004)
- Fed. Deposit Ins. Corp. v. Santiago Plaza, 598 F.2d 634 (1st Cir. 1979)
- Fritsch v. Swift Transp. Co. of Ariz., LLC, 899 F.3d 785 (9th Cir. 2018)
- Fairbank v. Wunderman Cato Johnson, 212 F.3d 528 (9th Cir. 2000)
- Roberts v. Harley Davidson Fin. Servs., Inc., 611 F. Supp. 3d 761 (W.D. Mo. 2020)
- Powers v. Receivables Performance Mgmt., LLC, No. 21-cv-12125, 2022 WL 1666984 (D. Mass. May 25, 2022)
- Powers v. Receivables Performance Mgmt., LLC, No. 18-01463, slip op. (Mass. Super. Ct. Jan. 19, 2021)
- Powers v. Receivables Performance Mgmt., LLC, No. 2021-J-0544 (Mass. App. Ct. Nov. 24, 2021)