

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Fong v. U.S. Bancorp

No. 2:22-cv-01291-DC-CSK (E.D. Cal. Mar. 6, 2025) · No. 2:22-cv-01291-DC-CSK · Decided March 6, 2025

SUMMARY

The United States District Court for the Eastern District of California denied U.S. Bancorp and U.S. Bank National Association’s renewed motion to compel arbitration and denied the plaintiffs’ motion to strike as moot. The court held that the renewed motion was a successive motion based on evidence defendants already possessed and declined to reconsider the arbitration issue after the Ninth Circuit had vacated the prior order compelling arbitration. The court further concluded that the 2012 and 2013 safe-deposit-box contracts did not establish, on the record presented, that the arbitration agreement was clearly incorporated by reference or made available to the plaintiffs.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Dena Coggins
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	March 6, 2025
DOCKET	2:22-cv-01291-DC-CSK
DISPOSITION	other
PROCEDURAL POSTURE	On remand from the Ninth Circuit, Defendants filed a renewed motion to compel arbitration. Plaintiffs filed a motion to strike the renewed motion.
STANDARD OF REVIEW	The court construed the renewed motion as a successive motion to compel arbitration and exercised its discretion to decline to entertain it.
PRECEDENTIAL VALUE	unpublished

TOPICS

- arbitration
- motions to dismiss
- contract interpretation
- civil procedure
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the court should exercise its discretion to entertain Defendants' successive motion to compel arbitration.
2. Whether Defendants' 'new evidence' (a 2012 contract) establishes that the arbitration agreement was properly incorporated by reference into the contract Plaintiffs signed.
3. Whether Plaintiffs' motion to strike Defendants' successive motion should be granted.

HOLDINGS

1. The court declines to exercise its discretion to entertain the successive motion because Defendants have not presented an expanded factual record based on new evidence; they are re-arguing the same incorporation by reference issues already decided by the Ninth Circuit.
2. Even on the merits, the motion fails. The 2012 contract's incorporation language is substantively identical to the 2013 contract. The Ninth Circuit already found a genuine dispute of material fact as to whether the arbitration agreement was 'called to the attention' of or 'easily available' to Plaintiffs.
3. Plaintiffs' motion to strike is denied as moot because the court denies Defendants' renewed motion to compel arbitration on other grounds.

KEY QUOTATIONS

“the mandate of an appellate court forecloses the lower court from reconsidering matters determined in the appellate court”

“District courts retain discretion to ‘weed out frivolous or simply repetitive motions.’”

“It is an elementary principle of judicial economy that parties are expected to raise all relevant arguments in the briefing on a given motion; parties do not get a second bite at the apple if their initial arguments fail.”

FACTUAL BACKGROUND

Plaintiffs opened a safe deposit box with Defendants in 2000. In 2012 and 2013, they signed new safe deposit box contracts at the bank's request to update information or get a new key slot. Defendants later drilled into the box without consent, allegedly resulting in the loss of valuables. Plaintiffs sued. Defendants moved to compel arbitration based on an arbitration clause in a 'Safe Deposit Box Lease Agreement' purportedly incorporated by reference into the signed contracts.

PROCEDURAL HISTORY

Plaintiffs filed a class action complaint. Defendants moved to compel arbitration, which the court granted. Plaintiffs appealed. The Ninth Circuit vacated the order compelling arbitration, finding a genuine dispute of material fact as to whether the arbitration agreement was incorporated by reference. On remand, Defendants filed a renewed motion to compel arbitration based on 'new evidence' (a 2012 contract). Plaintiffs opposed and moved to strike the renewed motion.

DISPOSITION

other

REMAND INSTRUCTIONS

The parties shall meet and confer regarding the scheduling of this case and file a joint status report within twenty-one (21) days addressing contemplated amendments, jurisdiction, discovery, dispositive motions, and other case management matters.

CASES CITED

- *Nguyen v. United States*, 792 F.2d 1500 (9th Cir. 1986)
- *Hoffman v. Tonnemacher*, 593 F.3d 908 (9th Cir. 2010)
- *Zamudio v. Aerotek, Inc.*, 733 F. Supp. 3d 931 (E.D. Cal. 2024)
- *Smith v. Rent-A-Center, Inc.*, No. 1:18-cv-01351-LJO-JLT, 2019 WL 3004160 (E.D. Cal. July 10, 2019)
- *Bernal v. Sw. & Pac. Specialty Fin., Inc.*, No. 4:12-cv-05797-SBA, 2014 WL 1868787 (N.D. Cal. May 7, 2014)
- *Lucas v. Hertz Corp.*, 875 F. Supp. 2d 991 (N.D. Cal. 2012)
- *Meeks v. Experian Info. Sols., Inc.*, No. 3:21-cv-03266-VC, 2022 WL 53832 (N.D. Cal. Jan. 5, 2022)
- *United States v. Holtzman*, 762 F.2d 720 (9th Cir. 1985)
- *Circuit City Stores, Inc. v. Mantor*, 417 F.3d 1060 (9th Cir. 2005)
- *Brazill v. California Northstate College of Pharmacy, LLC*, No. 2:12-cv-1218-WBS, 2013 WL 4500667 (E.D. Cal. Aug. 22, 2013)
- *AAA Flag & Banner Mfg. Co, Inc. v. Flynn Signs & Graphics, Inc.*, No. 09-cv-2053-ODW-VBK, 2010 WL 11463632 (C.D. Cal. Mar. 15, 2010)
- *Dillon v. BMO Harris Bank, N.A.*, 787 F.3d 707 (4th Cir. 2015)
- *Shaw v. Regents of Univ. of Cal.*, 58 Cal. App. 4th 44 (1997)
- *Smith v. Spizzirri*, 601 U.S. 472 (2024)