

Nixing A Class After Jury Verdict — It's Possible

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On Friday, July 15, the U.S. Court of Appeals for the Second Circuit reaffirmed that district courts have the power to decertify a class even after a jury verdict. In *Mazzei v. The Money Store*, No. 15-2054 (July 15, 2016), the Second Circuit held that a class of mortgage borrowers awarded \$32 million by a jury was properly decertified by the district court before the entry of final judgment. The ruling serves as an important reminder that, even after class plaintiffs have met the threshold requirements of Rule 23 of the Federal Rules of Civil Procedure at the certification stage, they must still prove the merits of their claims on a classwide basis at trial. Thus, the decision reiterates that class action defendants have the opportunity to successfully challenge class certification even after trial.



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Background

Plaintiff Joseph Mazzei sued The Money Store and two other entities alleging, among other things, overcharging of late fees on mortgages. The district court certified a class of mortgage borrowers, and the case proceeded to trial. The jury found for the plaintiff and the class on the late-fee claims, awarding \$133 to the plaintiff and \$32 million (plus prejudgment interest) to the class.

After the verdict, but before the entry of judgment, The Money Store filed a motion to decertify the class. The Money Store argued that the plaintiff failed to prove classwide privity of contract with borrowers whose loans it only serviced, and did not own. The district court agreed, holding that the plaintiff had failed to establish typicality or predominance. Accordingly, it granted the motion for decertification of the class and entered judgment for the plaintiff on his individual claim.

The plaintiff appealed, arguing that (1) district courts lack the power to decertify a class after a jury verdict under both Federal Rule of Civil Procedure 23 and the Seventh Amendment; (2) the district court in this case improperly disregarded the jury's factual findings; and (3) the district court abused its discretion in ordering decertification.

The Second Circuit Opinion

The Second Circuit affirmed, holding that district courts have the power to order decertification of a class after a jury verdict and before the entry of final judgment. Specifically, the court found that district courts are authorized under the express language of Rule 23 to decertify a class any time before final judgment.

Next, the court found that an individual plaintiff has no constitutional right to represent a class (this right is provided solely by Rule 23). The court also found that decertification did nothing to impair the class' right to a jury, because the claims of putative class members are tolled until class certification is denied. Thus, according to the Second Circuit, nothing would prevent any member of the decertified class from filing a putative class action on the same grounds.

The Second Circuit further noted that “[t]here are many procedural devices that impose judicial control on juries,” and such controls do not violate the Seventh Amendment. In the court’s view, permitting decertification after a jury verdict protects the due process rights of absent class members by ensuring that they are not bound by a final judgment that is not appropriately the subject of class treatment.

The plaintiff also challenged the district court’s power to depart from the jury’s factual findings. The Second Circuit held that the standard that should apply to a post-verdict motion for decertification is the same standard that courts apply to a Rule 59 motion for a new trial on weight-of-the-evidence grounds. Thus, the court of appeal ruled that district courts “must defer to any factual findings the jury necessarily made unless those findings were 'seriously erroneous,' a 'miscarriage of justice,' or 'egregious.'” The court rejected the plaintiff’s argument that district courts should apply the more stringent “legally insufficient evidence” standard applied to Rule 50 motions.

Turning to the district court’s order to decertify the class, the court of appeal found no abuse of discretion. To establish a breach-of-contract claim, the plaintiff was required to prove that class members were in contractual privity with the defendants. Although the jury found that privity had been established, the court of appeal held that the district court properly disregarded the jury’s finding because it was not supported by the evidence presented at trial, and thus was “seriously erroneous.”

In light of the plaintiff’s failure to establish privity on a classwide basis, the Second Circuit agreed that decertification was proper. While The Money Store did not dispute that it had a contractual relationship with class members — including the plaintiff — whose loans it owned, it denied it was in privity with class members whose loans it only serviced, but did not own. Thus, the plaintiff could not establish typicality because his interests were not aligned with those of other class members. The plaintiff also could not establish predominance of common questions because the jury would have to make individual determinations as to whether each class member was in a contractual relationship with the defendants.

Finally, the court of appeal agreed that narrowing the class definition or creating a subclass was inappropriate because there was no basis on which it could be determined which class members’ loans were owned by defendants and which were only serviced by them. Thus, wholesale decertification was proper.

Takeaways

The Second Circuit’s ruling reaffirms that defendants can obtain decertification of a class action not only leading up to trial, but even after a jury verdict in favor of the class.

Most class action lawyers and their clients view a decision on class certification as a watershed event, and it often is. While the decision can be a game changer, it is important to not lose sight of the fact that there are opportunities to move for decertification after the ruling on class certification. Indeed, the evidentiary record may not be fully developed at the time of the hearing on class certification. This is particularly true in jurisdictions that have local rules requiring, for example, that the motion for class

certification be filed within 90 days of service of the complaint. The further development of the evidentiary record following a ruling on class certification gives the defense an opportunity to move for decertification all the way through trial. And as the Second Circuit's decision makes clear, "through trial" means through the entry of a verdict by the jury and before judgment is entered.

Class actions seldom go to trial. The Second Circuit's decision affirming decertification of the class after the jury verdict was entered may give plaintiffs counsel even more pause to try such a case, which can be very complex, expensive and time-consuming. Additionally, the decision may embolden defense counsel and their clients to not be so quick to settle after getting beat on class certification, and to continue litigating such cases through trial. Finally, the decision emphasizes the importance for defendants of pretrial and trial strategy focused not only on attacking the class plaintiffs' claims on the merits, but also on challenging the evidence in support of the Rule 23 requirements for class certification.

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