

Litigation Alert

June 14, 2017

Key Points

- In *Microsoft Corporation v. Baker*, the U.S. Supreme Court refused to extend mandatory appellate jurisdiction under 28 U.S.C. § 1291 to plaintiffs who voluntarily dismissed their claims so that they could appeal the denial of class certification.
- The Court held that denials or grants of class certification can be appealed under 28 U.S.C. § 1291, but only when there is a final judgment. In addition, discretionary appellate jurisdiction can be sought under 28 U.S.C. § 1292(b), a writ of mandamus, or Federal Rule of Civil Procedure 23(f).
- The Court was emphatic that attempts to avoid the finality requirement in 28 U.S.C. § 1291 to appeal class certification denials as a matter of right would not be allowed.



Appellate Jurisdiction over Class Certification Denials: *Microsoft v. Baker*

Facts

On June 12, 2017, in *Microsoft Corporation v. Baker*, the U.S. Supreme Court unanimously held that federal courts of appeals lack jurisdiction to review orders striking class allegations after the named plaintiffs have voluntarily dismissed their claims with prejudice. The case involved a group of Xbox owners that had brought a putative class action against Microsoft based on an alleged design defect in the device. The District Court dismissed the class allegations against Microsoft, at which point plaintiffs sought an interlocutory appeal under Rule 23(f), which the 9th Circuit Court of Appeals denied. Plaintiffs could have appealed to the 9th Circuit pursuant to 28 U.S.C. § 1292(b), which would have required permission from both the District Court and the 9th Circuit. They also could have continued to litigate their case to a final judgment on the merits and then appealed the denial of class certification. Instead, plaintiffs dismissed their case with prejudice. They then appealed to the 9th Circuit, challenging only the District Court's interlocutory order striking their class allegations. The 9th Circuit found jurisdiction under 28 U.S.C. § 1291 and set aside the District Court's order dismissing the class allegations. The U.S. Supreme Court granted certiorari on whether the 9th Circuit had jurisdiction to hear the appeal under Section 1291, which grants mandatory appellate jurisdiction to the courts of appeals over "final decisions" by district courts, and under Article III of the Constitution, which limits the jurisdiction of federal courts to "cases and controversies."

The Supreme Court agreed with Microsoft and reversed the 9th Circuit's order. The Court held that plaintiffs could not unilaterally “transform a tentative interlocutory order . . . into a final judgment within the meaning of Section 1291 simply by dismissing their claims with prejudice”

Ruling

The Supreme Court held that the 9th Circuit lacked jurisdiction under 28 U.S.C. § 1291 because the voluntary dismissal with prejudice did not result in a “final decision.” The Court resisted any efforts to stretch Section 1291 to permit appeals of right that would erode the finality principle. The Court emphasized the importance of the finality requirement in Section 1291 to preserve the proper balance between trial and appellate courts, minimize the harassment and delay that would result from repeated interlocutory appeals, and promote the efficient administration of justice. The Court also reasoned that allowing plaintiffs' appeal would “subvert the balanced solution Rule 23(f) put in place for immediate review of class-action orders.” Lastly, the Court reasoned that “the one-sidedness of respondents' voluntary-dismissal device reinforce[d]” the conclusion that an extension of mandatory appellate jurisdiction for class certification denials was unwarranted. Indeed, the proposed tactic allowed only plaintiffs, never defendants, to force an immediate appeal of an adverse certification ruling.

Justice Thomas authored a concurring opinion, joined by two other Justices. He agreed with the majority that plaintiffs could not appeal in these circumstances, but instead reasoned that the 9th Circuit lacked jurisdiction under Article III of the Constitution. For Justice Thomas, plaintiffs' appeal from their voluntary dismissal did not satisfy the jurisdictional requirement of federal courts to issues presented in an adversary contest because the 9th Circuit could not have affected their rights in any legally cognizable manner.

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