

JUN 29 2012

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

STEVEN MCARDLE,

Plaintiff - Appellee,

v.

AT&T MOBILITY, LLC; NEW
CINGULAR WIRELESS PCS, LLC;
NEW CINGULAR WIRELESS
SERVICES, INC.,

Defendants - Appellants.

No. 09-17218

D.C. No. 4:09-cv-01117-CW

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Claudia A. Wilken, District Judge, Presiding

Submitted June 15, 2012**
San Francisco, California

Before: HUG, RAWLINSON, and IKUTA, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

AT&T Mobility, LLC (AT&T) appeals the district court's order denying its motion to compel arbitration.

When the district court denied the motion to compel arbitration, it did not have the benefit of the decisions by the United States Supreme Court in *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740 (2011) and by this court in *Coneff v. AT&T Corp.*, 673 F.3d 1155 (9th Cir. 2012). The district court ruled that the arbitration clause in the agreement between McArdle and AT&T was unenforceable due to the absence of class action relief. This ruling is not consistent with the holdings of *Concepcion* and *Coneff*. See *Concepcion*, 131 S. Ct. at 1751-52; *Coneff*, 673 F.3d at 1161.

In *Coneff*, we remanded the issue of procedural unconscionability to the district court, reasoning that “generally applicable contract defenses” survive under § 2 of the Federal Arbitration Act (FAA). *Coneff*, 673 F.3d at 1161 (quoting *Concepcion*, 131 S. Ct. at 1746). As in *Coneff*, the district court in this case did not address procedural unconscionability, although the issue was raised by McArdle. Therefore, we remand to the district court for initial consideration of the issue of procedural unconscionability. See *id.*

REVERSED and REMANDED.