

N.D. Cal. Certifies Antitrust / Arbitration Estoppel Question to Ninth Circuit

by Howard Ullman on February 13, 2012

In re Apple & AT&TM Antitrust Litigation, No. C 07-05152 JW (Feb. 1, 2012) (Ware, J.)

Judge Ware certified for interlocutory appeal the question of whether a non-signatory may assert equitable arbitration estoppel against a signatory plaintiff.



The case involves a Sherman Act Section 2 / aftermarket claim against Apple. The case arose from the plaintiff's service contract with defendant ATTM. As part of that service contract, the plaintiff signed an arbitration agreement with defendant ATTM which precluded class arbitrations and class actions.

The district court initially followed *Mundi v. Union Security Life Ins. Co.*, 555 F.3d 1042 (9th Cir. 2009), in finding that equitable estoppel required plaintiff to arbitrate with non-signatory Apple as well. The *Mundi* court had found a dearth of prior Ninth Circuit precedent, and had looked to other circuits for guidance — in particular, the Second Circuit in *Sokol Holdings, Inc. v. BMB Munai, Inc.*, 542 F.3d 354 (2d Cir. 2008). The Ninth Circuit allowed the assertion of equitable estoppel where the dispute is “intertwined” with the contract and there is a sufficient “relationship” between the parties.

Plaintiff filed a motion for reconsideration. Because the *Apple* Court's prior order “was premised on an interpretation of *Mundi* which required the Court to undertake an extensive analysis of both that opinion itself and the Second Circuit caselaw to which the *Mundi* court looked for guidance, and given the language in *Mundi* which indicates that the Ninth Circuit did not mean to extend the ‘concept of equitable estoppel of third parties’ beyond the ‘very narrow confines’ delineated in previous cases,” the *Apple* Court found reason to certify the issue of arbitration by equitable estoppel for interlocutory review.

in [Apple](#), [Arbitration](#), [Class Actions](#), [Northern District of California](#)