

UNITED STATES SUPREME COURT

Melody Bynum, Plaintiff, -v- Maplebear Inc., d/b/a Instacart, Defendant.	MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI
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I. PRELIMINARY STATEMENT

Petitioner Melody Bynum, by her attorney Abdul K. Hassan, Esq., of the Abdul Hassan Law Group, PLLC, respectfully makes this motion, pursuant to Rule 13 of the Rules of the U.S. Supreme Court, an extension of time of sixty (60) days to file his petition for certiorari in the cases of *Melody Bynum v. Maplebear Inc.* 2d Cir. Case No. 16-3348. This case involves a very important issue, especially in light of the “Metoo” movement sweeping the nation and the public’s outrage at workplace abuses, and devices such as arbitration and non-disclosure agreements which are used to silence victims/employees. More specifically, this case presents the question of whether such victims have a voice to seek appellate review in light of this Court’s decision in *United States v. Procter & Gamble*, 356 U.S. 677 (1958), which was reaffirmed in footnote 11 of *Microsoft Corp. v. Baker*, 137 S. Ct. 1702 (2017).

II. JURISDICTION

The district court had jurisdiction over this action because it involved a federal question – whether plaintiff was owed overtime wages under the federal Fair Labor Standard Act (“FLSA”), at 29 USC §§ 207, 216(b). The Second Circuit Court of Appeals had jurisdiction pursuant to 28 USC § 1291. The Second Circuit rendered its decision on October 5, 2017. (See Exhibit 1), and

denied the October 19, 2017 petition for rehearing on October 30, 2017. (See Exhibit 2). This Court has jurisdiction under 28 U.S.C. § 1254(1). The ninety-day period for filing a petition for certiorari in this Court has not expired.

III. REASONS FOR THE MOTION

Petitioner is making this motion for two primary reasons. First, in light of the Second Circuit's ruling that the district court did not have authority to dismiss the case, plaintiff intends to move the district court for an order clarifying the ruling and as to whether the case should proceed to arbitration – the outcome of such a motion may obviate the need for a petition for certiorari. Second, this case was consolidated in the Second Circuit with *Rodriguez-Depena v. Parts Auth., Inc.*, 877 F.3d 122 (2d Cir. 2017), which is still pending in the Second Circuit on a petition for rehearing – the outcome of that case would materially impact a petition made to this Court.

We thank the Court in advance for its time and consideration.

Dated: Queens Village, New York
January 18, 2018

Abdul Hassan Law Group, PLLC
Attorneys for Plaintiff

By: Abdul Hassan
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CERTIFICATE OF SERVICE

I, Abdul K. Hassan, a member of the bar of this Court, in the above-entitled action, hereby certify and declare under penalty of perjury, that a copy of the within motion for extension of time, was served on January 18, 2018, on counsel for defendant Maplebear Inc. to counsel Mr. Benjamin W. Berkowitz, Keker & Van Nest LLP, 633 Battery Street, San Francisco, CA 94111-1809, by first class mail, postage paid, via the United States Postal Service.

Dated: Queens Village, New York
January 18, 2018

Abdul Hassan Law Group, PLLC
Attorneys for Plaintiff

By: Abdul Hassan
Abdul K. Hassan, Esq. (AH6510)
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Exhibit 1

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York on the 5th day of October, two thousand seventeen.

Present: JON O. NEWMAN,
GUIDO CALABRESI,
ROSEMARY S. POOLER,
Circuit Judges.

MELODY BYNUM,

Plaintiff-Appellant,

v.

16-3348

MAPLEBEAR INC., dba INTSACART,

Defendant-Appellee.

Appearing for Appellant: Abdul K. Hassan, Queens Village, NY

Appearing for Appellee: Julia Allen, Keker, Van Nest & Peters, LLP (Benjamin W. Berkowitz, *on the brief*), San Francisco, CA

Appeal from the United States District Court for the Eastern District of New York (Weinsten, J.).

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the appeal be, and hereby is, **DISMISSED**.

Melody Bynum appeals from the September 19, 2016 judgment of the United States District Court for the Eastern District of New York dismissing her case against Mapbear Inc., dba Instacart. We assume the parties' familiarity with the underlying facts, procedural history, and specification of issues for review.

We dismiss Bynum's appeal for lack of jurisdiction. The district court granted Instacart's motion to compel arbitration and then stayed the case pursuant to Section 3 of the Federal Arbitration Act. Bynum's counsel then informed the district court that she did not want to arbitrate her claims, and she asked the district court to end the stay and dismiss the action instead so that she might pursue an appeal. The district court, after conducting a hearing and asking Bynum to confirm that she wished to waive her right to arbitration and dismiss her case on the merits, granted Bynum's motion.

We lack jurisdiction over this appeal. *See Empire Volkswagen Inc. v. World-Wide Volkswagen Corp.*, 814 F.2d 90, 94 (2d Cir. 1987) (holding that "an appeal from a judgment entered upon a voluntary dismissal with prejudice does not bring up for review any matters that were voluntarily dismissed"). The Federal Arbitration Act bars interlocutory appeals from the grant of a motion to compel arbitration. 9 U.S.C. § 16(b)(1)-(2) ("[A]n appeal may not be taken from an interlocutory order ... granting a stay of any action under § 3 ... [or] directing arbitration to proceed under § 4."). Plaintiffs cannot circumvent that prohibition by agreeing to dismiss their claims rather than proceed to arbitration. *See Katz v. Cellco P'ship*, 794 F.3d 341, 346 (2d Cir. 2015) (noting that dismissing a complaint after granting a motion to compel, rather than staying the action, "effectively converts an otherwise-unappealable interlocutory stay order into an appealable final dismissal order. Affording judges such discretion would empower them to confer appellate rights expressly proscribed by Congress.").

Microsoft v. Baker, 137 S. Ct. 1702 (2017) also counsels against allowing this appeal to proceed. There plaintiffs chose to stipulate to a dismissal of their claims after the district court denied their motions to certify a class, and to take an interlocutory appeal from that decision. Armed with their now-final order, plaintiffs appealed from the denial of class certification. The Supreme Court held that "the voluntary dismissal essayed by respondents does not qualify as a 'final decision' within the compass of § 1291. The tactic would undermine § 1291's firm finality principle, designed to guard against piecemeal appeals, and subvert the balanced solution Rule 23(f) put in place for immediate review of class-action orders." *Id.* at 1707. Similarly, allowing an immediate appeal here violates the finality rule.

We have considered the remainder of Bynum's arguments regarding jurisdiction and find them to be without merit. Accordingly, the appeal is DISMISSED for lack of jurisdiction. Each side to bear its own costs.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

Exhibit 2

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 30th day of October, two thousand and seventeen,

Before: JON O. NEWMAN,
GUIDO CALABRESI,
ROSEMARY S. POOLER,
Circuit Judges.

Melody Bynum,

Plaintiff - Appellant,

v.

Maplebear Inc., DBA Instacart,

Defendant - Appellee.

ORDER

Docket No. 16-3348

Appellant having filed a petition for panel rehearing and the panel that determined the appeal having considered the request,

IT IS HEREBY ORDERED that the petition is DENIED.

For The Court:

Catherine O'Hagan Wolfe,
Clerk of Court

A circular official seal of the United States Court of Appeals for the Second Circuit is positioned over the signature. The seal features the text "UNITED STATES" at the top, "SECOND CIRCUIT" in the center, and "COURT OF APPEALS" at the bottom, with stars on either side of the central text.