Gelboim v. Bank of America Corp., No. 13-1174 (described in the June 30, 2014, Docket Report)

Under 28 U.S.C. § 1291, the federal courts of appeals have jurisdiction over "final decisions of the district courts." Today, the Supreme Court unanimously held that complaints that have been consolidated for purposes of multidistrict litigation ("MDL") pretrial proceedings "retain[] [their] independent status for purposes of appellate jurisdiction under § 1291." Thus, plaintiffs may appeal "when the District Court dismisse[s] their case, not upon eventual completion of multidistrict proceedings in all of the consolidated cases."

The Supreme Court's decision arose from more than 60 lawsuits alleging that financial institutions had manipulated the London Interbank Offered Rate ("LIBOR"), which provides a benchmark for short-term interest rates. The Judicial Panel on Multidistrict Litigation transferred the LIBOR-related litigation to the United States District Court for the Southern District of New York for consolidated pretrial proceedings. One of those lawsuits was *Gelboim*, a putative class action alleging violations of the federal antitrust laws. Other lawsuits in the MDL proceeding asserted similar antitrust claims, as well as claims under other federal and state laws.

The district court subsequently dismissed the antitrust claims in all the MDL proceedings—and those were the only claims asserted in *Gelboim*—but concluded that various other claims raised in the other consolidated actions could proceed to discovery.

The *Gelboim* plaintiffs appealed the dismissal of their action. The Second Circuit dismissed the appeal, however, because the district court had not dismissed all the claims in all the consolidated actions. The Supreme Court unanimously reversed and remanded for further proceedings.

In an opinion by Justice Ginsburg, the Court unanimously held that "[c]ases consolidated for MDL pretrial proceedings ordinarily retain their separate identities, so an order disposing of one of the discrete cases in its entirety should qualify under § 1291 as an appealable final decision." The Court made clear, however, that its holding was limited to the procedural posture of the case. Although the various actions had been transferred to the MDL court for pretrial proceedings, the actions had not been consolidated for all purposes, including trial, as sometimes occurs when the Judicial Panel on Multidistrict Litigation transfers related lawsuits to a single court. The Supreme Court stated: "We express no opinion on whether an order deciding one of multiple cases combined in an all-purpose consolidation qualifies under § 1291 as a final decision appealable of right."

The decision in *Gelboim* is of significant interest to businesses that are or may be involved in MDL litigation in federal court because the Supreme Court's decision will determine whether appeals in those actions must await the final resolution of all the consolidated cases.

Any questions about the case should be directed to Archis A. Parasharami (+1 202 263 3328) or Kevin Ranlett (+1 202 263 3217) in our Washington office.