

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

JOSHUA PARNELL,

Plaintiff,

v.

CIVIL ACTION FILE NO.:
4:14-CV-0024-HLM

CASHCALL, INC.

Defendant.

ORDER

This case is before the Court on the Motion to Stay Pending Appeal (“Motion to Stay”) filed by Defendant [72], on Plaintiff’s Motion to Certify Class [73], and on the Court’s own Motion.

I. Background

The Court incorporates the Background portion of its March 14, 2016, Order into this Order as if set forth fully herein, and adds only those background facts that are relevant to the instant Motion. (Order of Mar. 14, 2016 (Docket Entry No. 70).) On March 14, 2016, the Court entered an Order denying Defendant's Motion to Compel Arbitration ("Motion to Compel") . (Id.)

On March 25, 2016, Defendant filed a Notice of Appeal from the Order on the Motion to Compel. (Docket Entry No. 71.) On that same day, Defendant filed its Motion to Stay. (Docket Entry No. 72.) Plaintiff also filed a Motion to Certify Class on March 25, 2016. (Docket Entry No. 73.)

The Court concludes that no response from Plaintiff to the Motion to Stay is necessary. The Court therefore finds that the matter is ripe for resolution.

II. Discussion

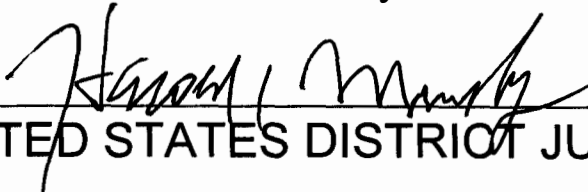
Defendant has moved to stay the proceedings in this case pending the United States Court of Appeals for the Eleventh Circuit's resolution of Defendant's appeal of the Motion to Compel. (Docket Entry No. 71.) The Eleventh Circuit has observed: "When a litigant files a motion to stay litigation in the district court pending an appeal from the denial of a motion to compel arbitration, the district court should stay the litigation so long as the appeal is non-frivolous." Blinco v. Green Tree Servicing, LLC, 366 F.3d 1249, 1253 (11th Cir. 2004) (per curiam). Although the

Court denied the Motion to Compel, the Motion to Compel presented close questions for the Court. Specifically, Defendant's arguments in support of that Motion were not frivolous, and its arguments concerning the alleged validity of the arbitration clause and the delegation provisions are not frivolous. The Court consequently must stay the proceedings in this action pending resolution of Defendant's appeal from the Court's Order denying the Motion to Compel. Id. The Court therefore grants the Motion to Stay. In light of this conclusion, and because the appeal process may take some time, the Court denies as moot and without prejudice Plaintiff's Motion to Certify Class, subject to renewal if the Eleventh Circuit upholds the Court's Order denying the Motion to Compel.

III. Conclusion

ACCORDINGLY, the Court **GRANTS** Defendant's Motion to Stay [72], and **STAYS** the proceedings in this case pending the Eleventh Circuit's resolution of Defendant's appeal of the Court's April 25, 2014, Order denying the Motion to Compel. Further, the Court **DENIES WITHOUT PREJUDICE** Plaintiff's Motion to Certify Class [73]. If the Eleventh Circuit affirms the denial of the Motion to Compel, Plaintiff may renew its Motion to Certify Class after the case returns to this Court simply by filing a one-page document.

IT IS SO ORDERED, this the 28² day of March, 2016.


UNITED STATES DISTRICT JUDGE