



FOURTH CIRCUIT

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FOURTH CIRCUIT EXERCISES APPELLATE JURISDICTION OVER SUCCESSIVE ARBITRATION MOTIONS

In *Dillon v. BMO Harris Bank, N.A.*, 787 F.3d 707 (4th Cir. 2015) the Fourth Circuit held that it had appellate jurisdiction over the defendants' second round of motions to compel arbitration, though those filed first were denied and not appealed. The opinion in *Dillon* clarified the qualities of a "motion for reconsideration" and emphasized that the Federal Arbitration Act (the "FAA") does not limit the number of times a defendant can seek to compel arbitration.

In *Dillon*, the defendants' initial motions to compel arbitrations were denied because they failed to authenticate the arbitration agreements on which they relied. The defendants attempted to cure the shortcoming by re-submitting their motions to compel arbitration with declarations that authenticated the arbitration agreements. The plaintiff opposed the renewed motions, arguing that they were effectively motions for reconsideration for which there were no grounds to modify the prior order. The district court agreed and denied the renewed motions.

The defendants appealed the denial of their renewed motions to the Fourth Circuit, which first considered whether it had jurisdiction over the appeal. The Fourth Circuit held that if the renewed motions sought relief under the FAA, then the FAA afforded jurisdiction over the interlocutory appeals of the denial of the renewed motions. *Id.* at 714–15. The court easily concluded that the motions entitled "Renewed Motion to Compel Arbitration and to Stay Litigation" sought relief under the FAA. *Id.*



Having concluded that it had jurisdiction over the appeal, the Fourth Circuit next addressed whether the district court correctly construed the renewed motions as motions for reconsideration. The Fourth Circuit first held that "no authority . . . limits a party to only one motion under §§ 3 or 4 of the FAA." *Id.* at 715. And, because the renewed motions "presented different issues" than the initial motions – the agreements were now authenticated – the "law of the case doctrine" did not apply. *Id.*

Thus, the Fourth Circuit vacated and remanded the district court's denial of the renewed motions to compel arbitration and instructed that if material questions of fact remained after considering the motions, the court must hold "an expeditious and summary hearing" to resolve those questions. *Id.* at 716. ☞

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