

DISTRICT COURT OF APPEAL OF FLORIDA, FIFTH DISTRICT

SHP IV Harbour Island, LLC v. Boylan

273 So. 3d 249 (Fla. 5th DCA 2019) · Decided May 24, 2019

SUMMARY

The Florida Fifth District Court of Appeal affirmed an order denying a motion to compel arbitration in an assisted living facility negligence case. The court held that the defendants waived arbitration by conducting discovery into the merits of the underlying claims, contrary to the limited discovery authorized by the trial court.

CASE DETAILS

COURT	District Court of Appeal of Florida, Fifth District
WRITING FOR THE COURT	Evander, C.J.; Edwards, J.; Harris, J.
JURISDICTION	Florida
DECIDED	May 24, 2019
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants appealed a nonfinal order denying their motion to abate and compel arbitration.
STANDARD OF REVIEW	The opinion does not expressly state a standard of review; the appellate court reviewed the evidentiary support for the trial court's finding of waiver.
PRECEDENTIAL VALUE	Published Florida Fifth District Court of Appeal opinion
PARTIES	SHP IV Harbour Island, LLC, the facility's management company, the facility's administrator v. Gail Boylan

TOPICS

- arbitration
- waiver
- negligence
- civil procedure
- health law

PRACTICE AREAS

- arbitration
- civil procedure
- negligence
- health law

QUESTIONS PRESENTED

1. Whether Appellants waived their contractual right to arbitrate by engaging in discovery concerning the merits of the underlying claims after moving to compel arbitration.
2. Whether the trial court properly denied Appellants' motion to abate and compel arbitration.

HOLDINGS

1. A party waives its right to arbitration when, under the totality of the circumstances, it acts inconsistently with that right; participating in discovery directed to the merits of the underlying claims is conduct inconsistent with the right to arbitrate.

KEY QUOTATIONS

“The right to arbitration, like any contract right, can be waived.” (273 So. 3d at 251)

“The essential question is whether, under the totality of the circumstances, the defaulting party has acted inconsistently with the arbitration right.” (273 So. 3d at 251)

“The law in Florida is clear that a party's participation in merits discovery constitutes a waiver of arbitration.” (273 So. 3d at 251)

FACTUAL BACKGROUND

Gail Boylan lived at the Allegro at Harbour Island assisted living facility for slightly more than one month and was injured in a fall. She sued the facility's owner, management company, and administrator for negligence and breach of fiduciary duty. Although the parties stipulated to limited discovery regarding arbitration, Appellants' counsel questioned Boylan's daughter and attorney-in-fact about matters going to the merits of the underlying case.

PROCEDURAL HISTORY

Boylan sued the assisted living facility's owner, management company, and administrator for negligence and breach of fiduciary duty after suffering injuries in a fall. Appellants moved to abate the action and compel arbitration under the resident agreement. After permitting limited discovery concerning arbitration, the trial court found that Appellants' deposition questioning improperly addressed the merits of the underlying claims and denied the motion to compel arbitration.

DISPOSITION

affirmed

CASES CITED

- Raymond James Fin. Servs., Inc. v. Saldukas, 896 So. 2d 707, 711 (Fla. 2005)
- Nat'l Found. for Cancer Research v. A.G. Edwards & Sons, Inc., 821 F.2d 772, 774 (D.C. Cir. 1987)
- Major League Baseball v. Morsani, 790 So. 2d 1071, 1077 n.12 (Fla. 2001)
- Lion Gables Realty Ltd. v. Randall Mech., Inc., 65 So. 3d 1098, 1101 (Fla. 5th DCA 2011)

- Olson Elec. Co. v. Winter Park Redev. Agency, 987 So. 2d 178, 179 (Fla. 5th DCA 2008)
- Green Tree Servicing, LLC v. McLeod, 15 So. 3d 682, 687 (Fla. 2d DCA 2009)

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