

SUPREME COURT OF GEORGIA

SunTrust Bank v. Lilliston

302 Ga. 840 (2018) · Decided January 29, 2018

SUMMARY

The Supreme Court of Georgia held that a renewal action under OCGA § 9-2-61(a) is a de novo action rather than a continuation of the original litigation. Accordingly, a party’s conduct in the original action could not establish waiver of the right to compel arbitration in the renewal action, and the court reversed the judgment affirming denial of SunTrust’s motion to compel arbitration.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Hunstein, Justice
JURISDICTION	Georgia
DECIDED	January 29, 2018
DISPOSITION	reversed
PROCEDURAL POSTURE	SunTrust sought to compel arbitration in a renewal action under OCGA § 9-2-61(a). The trial court denied the motion, finding that SunTrust waived arbitration by participating in the original litigation. The Georgia Court of Appeals affirmed, and the Supreme Court of Georgia granted certiorari.
STANDARD OF REVIEW	De novo review of the legal issue whether conduct in an original action may establish waiver of arbitration in a subsequent renewal action.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Georgia; precedential.
PARTIES	SunTrust Bank v. Jedon Lilliston, L-T Adventures, Inc.

TOPICS

- arbitration
- waiver
- affirmative defenses
- civil procedure
- statutory interpretation

PRACTICE AREAS

- arbitration
- civil procedure
- commercial litigation
- contracts

QUESTIONS PRESENTED

1. Whether a party's conduct in an original action may waive its right to demand arbitration in a renewal action filed under OCGA § 9-2-61(a).
2. Whether a renewal action under OCGA § 9-2-61(a) must be treated as a de novo action such that claims and defenses are evaluated based on events occurring after refiling.

HOLDINGS

1. A party's conduct in the original action cannot establish waiver of the right to demand arbitration in a renewal action because the renewal action is a new, de novo action.
2. The right to arbitrate is an affirmative defense in Georgia and may be waived by conduct, but waiver must be assessed based on conduct in the renewal action rather than conduct in the dismissed original action.

KEY QUOTATIONS

“A party has waived its right to arbitrate if, under the totality of the circumstances, the party has acted inconsistently with the arbitration right, and in so acting, has in some way prejudiced the other party” (at 843)

“When questions of estoppel or waiver are presented in renewal actions, the focus of the analysis must be on the renewal action, not on the conduct in the original action.” (at 845)

FACTUAL BACKGROUND

SunTrust entered into a 2001 loan agreement with L-T Adventures that contained no arbitration provision. In 2005, SunTrust entered into a subsequent transaction with Jedon Lilliston and her former husband, guaranteed by L-T Adventures, that included an ISDA Master Agreement with an arbitration clause. After a dispute over interest charges, Lilliston and L-T Adventures filed suit; SunTrust participated in the original litigation for more than a year and a half without demanding arbitration, and the plaintiffs then voluntarily dismissed the action. In the renewal action, SunTrust answered and moved to compel arbitration.

PROCEDURAL HISTORY

Lilliston and L-T Adventures sued SunTrust in April 2013. They voluntarily dismissed that action in January 2015 after SunTrust had participated in discovery and moved for summary judgment without demanding arbitration. They filed a renewal action on June 19, 2015. The trial court denied SunTrust's motion to compel arbitration, and the Court of Appeals affirmed. The Supreme Court of Georgia reversed.

DISPOSITION

reversed

CASES CITED

- S & H Contractors v. A.J. Taft Coal Co., 906 F.2d 1507, 1514 (11th Cir. 1990)

- McCormick-Morgan, Inc. v. Whitehead Elec. Co., 179 Ga. App. 10, 12 (345 SE2d 53) (1986)
- SunTrust Bank v. Lilliston, 338 Ga. App. 738, 741-742 (791 SE2d 614) (2016)
- Cleveland v. Skandalakis, 268 Ga. 133, 134 (485 SE2d 777) (1997)
- American Gen. Financial Svcs. v. Jape, 291 Ga. 637, 638, 640 (732 SE2d 746) (2012)
- Wise v. Tidal Constr. Co., 261 Ga. App. 670, 676 (583 SE2d 466) (2003)
- Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24-25 (IV)(B) (103 S.Ct. 927, 74 L.Ed.2d 765) (1983)
- Subway Equip. Leasing Corp. v. Forte, 169 F.3d 324 (5th Cir. 1999)
- Price v. Drexel Burnham Lambert, Inc., 791 F.2d 1156, 1158 (5th Cir. 1986)
- Hornsby v. Hancock, 165 Ga. App. 543, 544 (301 SE2d 900) (1983)
- Hobbs v. Arthur, 264 Ga. 359, 360-361 (444 SE2d 322) (1994)
- Archie v. Scott, 190 Ga. App. 145, 146 (378 SE2d 182) (1989)
- Granite State Ins. Co. v. Nord Bitumi U.S., 262 Ga. 502, 505 (422 SE2d 191) (1992)
- Adams v. Gluckman, 183 Ga. App. 666, 666 (359 SE2d 710) (1987)
- Robinson v. Attapulgis Clay Co., 55 Ga. App. 141, 142 (1) (189 SE 555) (1937)
- United Health Svcs. of Ga. v. Norton, 300 Ga. 736 (2) (797 SE2d 825) (2017)
- Doctor's Associates v. Casarotto, 517 U.S. 681, 687 (II) (116 S.Ct. 1652, 134 L.Ed.2d 902) (1996)