

SUPREME COURT OF MONTANA

Stewart v. Covill and Basham Construction, LLC

Stewart v. Covill & Basham Construction, LLC, 75 P.3d 1276 (Mont. 2003) · No. No. 03-003 · Decided August 25, 2003

SUMMARY

The Montana Supreme Court affirmed an order compelling arbitration in a construction-contract dispute between Jody Stewart and Covill and Basham Construction, LLC. The court held that the contractor did not impliedly waive its arbitration right by proposing mediation, filing a construction lien, or delaying arbitration, because those actions were not inconsistent with arbitration and did not establish the required prejudice. Justice Regnier dissented, reasoning that filing the construction lien was inconsistent with arbitration and prejudiced Stewart.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	W. William Leaphart; Patricia Cotter; Jim Rice; James C. Nelson; Jim Regnier
JURISDICTION	Montana
DECIDED	August 25, 2003
DOCKET	No. 03-003
DISPOSITION	affirmed
PROCEDURAL POSTURE	Stewart appealed the Flathead County District Court's order staying the case and compelling arbitration of her construction-related claims.
STANDARD OF REVIEW	De novo review applies to a trial court's determination of whether an arbitration clause has been waived.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion; binding precedent in Montana.
PARTIES	Jody Stewart v. Covill and Basham Construction, LLC

TOPICS

- arbitration
- waiver
- construction law
- breach of contract
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Covill and Basham impliedly waived its contractual right to compel arbitration by participating in mediation, filing a construction lien, and delaying before moving to compel arbitration.

HOLDINGS

1. A party asserting implied waiver of a contractual arbitration right must prove knowledge of the right to compel arbitration, acts inconsistent with the right to arbitrate, and prejudice to the party resisting arbitration. Covill and Basham did not impliedly waive arbitration because its mediation proposal expressly preserved arbitration, its construction lien protected a statutory security interest rather than advanced litigation, and any prejudice from the lien would have occurred whether the dispute was arbitrated or litigated.

KEY QUOTATIONS

“The party asserting waiver of an arbitration right must demonstrate: (1) knowledge of the existing right to compel arbitration; (2) acts inconsistent with the right to arbitrate the dispute; and (3) prejudice to the party resisting arbitration.” (¶ 8)

“Additionally, Covill and Basham's filing of a construction lien was not to advance litigation, but rather to protect its statutorily created security interest in the property.” (¶ 13)

FACTUAL BACKGROUND

Stewart and Covill and Basham entered into a construction agreement for a residence and garage that contained a binding arbitration clause for disputes exceeding the small-claims limit. After Stewart stopped making payments, the parties attempted nonbinding mediation, and Covill and Basham filed a construction lien to protect its security interest. Stewart later asserted defective-construction claims and filed suit, while Covill and Basham consistently indicated its intent to enforce arbitration and moved to compel arbitration.

PROCEDURAL HISTORY

Stewart filed a complaint alleging breach of contract and slander of title arising from allegedly defective construction. Covill and Basham moved to compel arbitration under the parties' construction agreement. The District Court stayed the proceeding, granted the motion after a hearing, and Stewart appealed.

DISPOSITION

affirmed

CASES CITED

- Holm-Sutherland Co., Inc. v. Town of Shelby, 1999 MT 150, 295 Mont. 65, 982 P.2d 1053
- Downey v. Christensen, 251 Mont. 386, 825 P.2d 557 (1992)

- Thiel v. Johnson, 219 Mont. 271, 711 P.2d 829 (1985)
- Firestone v. Oasis Telecommunications, 2001 MT 297, 307 Mont. 469, 38 P.3d 796
- Kloss v. Edward D. Jones & Co., 2002 MT 129, 310 Mont. 123, 54 P.3d 1

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