

COURT OF APPEALS OF TEXAS, FIFTH DISTRICT AT DALLAS

Simeon Green v. Velocity Investments, LLC

No. 05-20-00795-CV · No. No. 05-20-00795-CV · Decided August 25, 2022

SUMMARY

This is a dissenting opinion concerning whether Simeon Green waived a contractual right to arbitration by delaying his motion to compel arbitration in a debt-collection lawsuit. Justice Schenck concluded that Green did not substantially invoke the judicial process and that Velocity Investments failed to establish actual prejudice. The dissent would have reversed the order denying arbitration and stayed the trial-court proceedings.

CASE DETAILS

COURT	Court of Appeals of Texas, Fifth District at Dallas
WRITING FOR THE COURT	David J. Schenck; Justice Osborne; Justice Partida-Kipness
JURISDICTION	Texas
DECIDED	August 25, 2022
DOCKET	No. 05-20-00795-CV
DISPOSITION	other
PROCEDURAL POSTURE	Green appealed the trial court's denial of his motion to dismiss or stay the action and compel arbitration under the Federal Arbitration Act. The dissent would have reversed the denial of arbitration and the judgment in favor of Velocity Investments.
STANDARD OF REVIEW	The dissent states that enforcement of an arbitration agreement is reviewed de novo, while disagreeing with the majority's application of an abuse-of-discretion standard to the trial court's decision to compel arbitration.
PRECEDENTIAL VALUE	dissenting opinion; nonbinding
PARTIES	Simeon Green v. Velocity Investments, LLC

TOPICS

- arbitration
- civil procedure
- appellate procedure
- contracts
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Green waived his contractual right to compel arbitration by substantially invoking the judicial process.
2. Whether Velocity Investments established actual prejudice resulting from Green's alleged litigation conduct.
3. Whether the arbitration provision covered Velocity Investments' claims as the assignee of a party to the credit agreement.
4. Whether the trial court should have stayed further litigation while arbitration proceeded.
5. Whether the trial court's decision regarding enforcement of the arbitration agreement should be reviewed de novo.

HOLDINGS

1. The dissent concluded that Green met his initial burden to establish that a valid arbitration agreement covered the claims because the provision was broad and Velocity Investments asserted the claims as assignee of a party to the credit agreement.
2. The dissent would have held that Green did not substantially invoke the judicial process merely by answering the lawsuit and delaying his motion to compel arbitration, particularly where he served no discovery, filed no other motions, and the record was minimal.
3. The dissent would have held that Velocity Investments failed to prove actual prejudice caused by Green's conduct.
4. The dissent would have held that the trial court was required to stay litigation of claims subject to arbitration after compelling arbitration.
5. The dissent disagreed with the majority's application of an abuse-of-discretion standard and stated that enforcement of an arbitration agreement is reviewed de novo.

KEY QUOTATIONS

“The necessary conduct must go beyond merely participating in the case, including actions as substantial as actually filing the suit or seeking discovery.” (at 5)

““Prejudice,” under binding precedent, in the context of waiver of a contractual right to arbitration means “the inherent unfairness in terms of delay, expense, or damage to a party’s legal position that occurs when the party’s opponent forces it to litigate an issue and later seeks to arbitrate that same issue.”” (at 8)

“Because the majority does not, and because I disagree with the majority’s conclusion that Velocity Investments met its burden to show waiver, I dissent.” (at 13)

FACTUAL BACKGROUND

Green entered into a credit-extension contract with LendingClub Corporation and failed to make all required payments. LendingClub assigned the account to Velocity Investments, which sued Green on March 26, 2019, to enforce the credit agreement and recover the unpaid balance. The agreement contained a broad arbitration provision. Green filed no discovery and no substantive motions other than his answer, although he objected to or contested a continuance and participated in settlement negotiations before moving to compel arbitration shortly before trial.

PROCEDURAL HISTORY

Velocity Investments sued Green in the 192nd Judicial District Court of Dallas County to recover an unpaid credit balance. Green answered, and the case was set for a bench trial. Shortly before trial, Green moved to dismiss or stay the proceedings and compel arbitration. The trial court denied the motion as untimely, and Green appealed. The majority concluded that Green waived arbitration; Justice Schenck dissented.

DISPOSITION

other

REMAND INSTRUCTIONS

The dissent would reverse the order denying Green's motion to compel arbitration and stay the proceedings, reverse the trial court's judgment in favor of Velocity Investments, and remand for further proceedings consistent with the dissenting opinion.

CASES CITED

- Henry v. Cash Biz, LP, 551 S.W.3d 111 (Tex. 2018)
- Perry Homes v. Cull, 258 S.W.3d 580 (Tex. 2008)
- RSL Funding, LLC v. Pippins, 499 S.W.3d 423 (Tex. 2016) (per curiam)
- G.T. Leach Builders, LLC v. Sapphire V.P., LP, 458 S.W.3d 502 (Tex. 2015)
- In re Fleetwood Homes of Tex., L.P., 257 S.W.3d 692 (Tex. 2008) (orig. proceeding) (per curiam)
- In re Bruce Terminix Co., 988 S.W.2d 702 (Tex. 1998) (orig. proceeding) (per curiam)
- G.T. Leach Builders, LLC v. Sapphire V.P., LP, 458 S.W.3d 502 (Tex. 2015)
- Sivanandam v. Themesoft, Inc., No. 05-21-00645-CV, 2022 WL 872623 (Tex. App.-Dallas Mar. 24, 2022, pet. filed)
- In re Labatt Food Serv., L.P., 279 S.W.3d 640 (Tex. 2009)
- In re Weekley Homes, L.P., 180 S.W.3d 127 (Tex. 2005) (orig. proceeding)
- Carr v. Main Carr Dev., LLC, 337 S.W.3d 489 (Tex. App.-Dallas 2011, pet. denied)
- Pilot Travel Ctrs., LLC v. McCray, 416 S.W.3d 168 (Tex. App.-Dallas 2013, no pet.)
- In re Citigroup Glob. Mkts., Inc., 258 S.W.3d 623 (Tex. 2008) (orig. proceeding) (per curiam)
- Holmes, Woods & Diggs v. Gentry, 333 S.W.3d 650 (Tex. App.-Dallas 2010, no pet.)
- In re Vesta Ins. Grp., Inc., 192 S.W.3d 759 (Tex. 2006) (orig. proceeding)

- Stratton v. Robins, No. 05-19-00055-CV, 2020 WL 415929 (Tex. App.-Dallas Jan. 27, 2020, no pet.)
- Wheeler v. Green, 157 S.W.3d 439 (Tex. 2005)
- Sivanandam, Inc. v. Themesoft, Inc., No. 05-21-00645-CV, 2022 WL 872623 (Tex. App.-Dallas Mar. 24, 2022, pet. filed)
- Fast v. Hawk Custom Pools, LLC, No. 05-21-00165-CV, 2022 WL 278235 (Tex. App.-Dallas Jan. 31, 2022, no pet.)
- Morgan v. Sundance, Inc., 142 S. Ct. 1708 (2022)
- Robinson v. Homeowners Mgmt. Enters., 590 S.W.3d 518 (Tex. 2019)
- In re Whataburger Rests. LLC, 645 S.W.3d 188 (Tex. 2022) (orig. proceeding)
- First Options of Chi., Inc. v. Kaplan, 514 U.S. 938 (1995)
- Jody James Farms, JV v. Altman Grp., Inc., 547 S.W.3d 624 (Tex. 2018)
- Prestonwood Tradition, LP v. Jennings, Nos. 05-20-00380-CV, 05-20-00387-CV, 05-20-00388-CV, 05-20-00389-CV, 05-20-00390-CV, 2022 WL 3138799 (Tex. App.-Dallas Aug. 5, 2022, no pet. h.) (en banc)

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