UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Rhonda J. Lewallen v. Green Tree Servicing, L.L.C.; U.S. Bank Trust National Association, as Trustee for Conseco Finance Home Equity Loan Trust

487 F.3d 1085 (8th Cir. 2007) · No. No. 06-1925 · Decided June 4, 2007

SUMMARY

The Eighth Circuit affirmed the denial of Green Tree Servicing and U.S. Bank's motion to dismiss or compel arbitration in a Chapter 13 bankruptcy adversary proceeding. The court held that Green Tree waived its contractual right to arbitrate by delaying its request, participating in litigation and discovery, seeking merits-based relief, and prejudicing Lewallen. The court therefore did not reach whether the claims were core bankruptcy matters or whether the bankruptcy court had discretion to deny arbitration.

CASE DETAILS

COURT	United States Court of Appeals for the Eighth Circuit
WRITING FOR THE COURT	John R. Gibson; Kermit V. Bye; William H. Gruender
JURISDICTION	Federal
DECIDED	June 4, 2007
DOCKET	No. 06-1925
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appellants appealed the district court's affirmance of the bankruptcy court's denial of their motion to dismiss or, alternatively, to compel arbitration.
STANDARD OF REVIEW	The court reviewed the legal determination of waiver de novo and the factual findings underlying waiver for clear error.
PRECEDENTIAL VALUE	published precedential federal appellate opinion
PARTIES	Green Tree Servicing, L.L.C., U.S. Bank Trust National Association, as Trustee for Conseco Finance Home Equity Loan Trust v. Rhonda J. Lewallen

TOPICS

arbitration · chapter 13 · adversary proceedings · bankruptcy · consumer protection

PRACTICE AREAS

bankruptcy · arbitration · consumer protection · civil procedure

QUESTIONS PRESENTED

1. Whether Green Tree waived its contractual right to arbitrate by substantially invoking the litigation process before moving to compel arbitration.
2. Whether Green Tree's litigation conduct prejudiced Lewallen so as to establish waiver of arbitration.
3. Whether the bankruptcy court had discretion to refuse arbitration because Lewallen's claims were core bankruptcy proceedings.

HOLDINGS

1. Green Tree waived its contractual right to arbitrate because it acted inconsistently with that right and prejudiced Lewallen by delaying its arbitration demand, urging resolution on the merits, participating in discovery, and otherwise invoking the litigation process.
2. Green Tree's filing of a proof of claim did not, by itself, waive its right to invoke the arbitration clause because the agreement reserved the lender's option to use judicial proceedings to collect the debt or foreclose on collateral.

KEY QUOTATIONS

> *“A party may be found to have waived its right to arbitration if it: "(1) knew of an existing right to arbitration; (2) acted inconsistently with that right; and (3) prejudiced the other party by these inconsistent acts."”* (¶ 11)

> *“An arbitration provision gives parties "the choice of an alternative, nonjudicial forum" to resolve their disputes, but it does not go so far as to "allow or encourage the parties to proceed, either simultaneously or sequentially, in multiple forums."”* (¶ 18)

> *“We conclude that Lewallen has been prejudiced by Green Tree's attempt to litigate the merits of her claims, participation in discovery, and delay.”* (¶ 21)

FACTUAL BACKGROUND

Lewallen obtained a $50,300 consumer loan secured by a deed of trust on her trailer home, and the loan agreement contained an arbitration provision. After the loan was transferred and Green Tree became the servicer, Lewallen alleged that Green Tree improperly increased payments, assessed excessive charges, failed to credit payments or respond to inquiries, and provided inaccurate payoff and overdue information. She filed Chapter 13 bankruptcy to stop foreclosure, objected to Green Tree's proof of claim, and then brought an adversary proceeding alleging violations of federal and Missouri consumer-protection laws. Green Tree participated in the litigation, including discovery and merits-related motions, before moving to compel arbitration.

PROCEDURAL HISTORY

Lewallen filed a Chapter 13 bankruptcy petition and objected to Green Tree's proof of claim. She later filed an adversary proceeding asserting claims under consumer-protection statutes and other theories. The bankruptcy court denied Green Tree and U.S. Bank's motion to dismiss or compel arbitration, concluding that Green Tree had waived arbitration through its litigation conduct. The district court affirmed on waiver and on the independent ground that the bankruptcy court had discretion to refuse arbitration because the claims implicated core bankruptcy proceedings. The Eighth Circuit affirmed.

DISPOSITION

affirmed

CASES CITED

- Kelly v. Golden, 352 F.3d 344, 349-50 (8th Cir. 2003)
- Stifel, Nicolaus & Co. v. Freeman, 924 F.2d 157, 158 (8th Cir. 1991)
- Dumont v. Saskatchewan Government Insurance, 258 F.3d 880, 886 (8th Cir. 2001)
- Ritzel Communications, Inc. v. Mid-America Cellular Telephone Co., 989 F.2d 966, 968-69 (8th Cir. 1993)
- Moses H. Cone Memorial Hospital v. Mercury Construction Corp., 460 U.S. 1, 24-25 (1983)
- Coxson v. Commonwealth Mortgage Co. of America, L.P. (In re Coxson), 43 F.3d 189, 193-94 (5th Cir. 1995)
- In re Statewide Realty Co., 159 B.R. 719, 724 (Bankr. D.N.J. 1993)
- Cabinetree of Wisconsin, Inc. v. Kraftmaid Cabinetry, Inc., 50 F.3d 388, 390-91 (7th Cir. 1995)
- In re Farmland Industries, Inc., 309 B.R. 14, 17 (Bankr. W.D. Mo. 2004)
- E.C. Ernst, Inc. v. Manhattan Construction Co. of Texas, 559 F.2d 268, 269 (5th Cir. 1977)
- Leadertex, Inc. v. Morganton Dyeing & Finishing Corp., 67 F.3d 20, 26 (2d Cir. 1995)
- Rush v. Oppenheimer & Co., 779 F.2d 885, 887 (2d Cir. 1985)
- Reis v. Peabody Coal Co., 935 S.W.2d 625, 631 (Mo. Ct. App. 1996)