

## **Supreme Court of Texas**

### **Alternative Dispute Resolution Topics**

#### ***RSL Funding, LLC v. Pippins***

No. 14-0457

Case Summary written by J. Ernesto Flores, Staff Member.

#### **PER CURIAM.**

In this multiple party claim, RSL Funding was seeking the enforcement of an arbitration clause it had with some of the parties involved. RSL had an arbitration clause in a contract where, Pippins, Morris, and O'Brien (collectively referred to as Individuals), agreed to sell RSL their annuities in exchange for a lump-sum payment. After MetLife discovered this sale, it refused to honor its contract with the Individuals, and refused to continue payments. RSL sued the Individuals and MetLife in a county court at law seeking a declaratory judgment, stating that MetLife was bound to its contract with the Individuals. At first, the Individuals were aligned with RSL, but disputes arose. The Individuals informed RSL they were terminating their agreements with RSL so they could re-assign their annuity rights. RSL moved the court to stay the lawsuit, and order the Individuals to arbitrate based on the cancellation clause of the agreement.

The Individuals filed counter and cross-claims alleging RSL breached its contract to pay the full lump-sums due, and MetLife breached its fiduciary duty by blocking the assignments to RSL. The Individuals sought to transfer the county court at law suit to district court on the basis that damages sought exceeded the court at law's jurisdiction, even though RSL supported the motion to transfer; the court denied the transfer. After a journey of motions to transfer, and consecutive filings, the district court abated its case, the court at law stayed arbitration after denying case abatement, and RSL filed the interlocutory appeal at issue now. MetLife and the Individuals, argue that RSL waived its right to arbitration by taking actions in forum shopping, discovery, and delay.

Issue: Did RSL Funding waive its right to arbitrate by substantially invoking the judicial process?

A party may waive its right to arbitrate if it substantially invokes the judicial process to the other party's detriment and prejudice.

However, there is a strong presumption against this implied waiver. Whether a right to arbitrate has been waived is a question of law that is subject to *de novo* review. The Supreme Court of Texas stated that various factors are relevant in the analysis of waiver of arbitration by a party, including: whether the party asserting the right to arbitrate was the plaintiff or the defendant, how long they waited before seeking arbitration, reasons for delay, amount of discovery conducted, and the amount of time and expense the parties expended in litigation. However, the Court did not limit these factors and held that it would review arbitration waivers based on the totality of the circumstances. While determining these factors, the Court focused on the factual allegations stated in the pleadings rather than the legal causes of action asserted. The Court additionally reviewed the claim independently against each party, not as a whole, and provided two principles.

In applying the principles to this case, the Court stated, whatever conduct RSL took regarding litigation with MetLife was not relevant to whether RSL waived its arbitration rights with the Individuals. Second, the Court looked at the factual nature between the two parties that were subject to the arbitration agreement to determine the reasoning and timing that an arbitration dispute arose.

In this case, the Court first looked at the “friendly” declaratory judgment sought in the county court at law. The Court noted that no arbitrable dispute arose until the Individuals moved the court at law to distribute the payments MetLife had made to the court registry during the proceedings. At that point, RSL promptly initiated arbitration proceedings. The Court stated that, in every dispute between RSL and the Individuals, RSL did not delay long enough to waive its right to arbitrate.

Finally, the Court examined the pretrial activities in the court at law. The Court stated that RSL participated in exclusively passive proceedings when conducting discovery and depositions with the Individuals. Further, the Court stated that when RSL sought MetLife to produce documents through discovery, the actions were exclusively between MetLife and RSL; therefore, these actions did not have an affect when determining if RSL participated in substantial litigation.

Because the defendants failed to prove that RSL had waived its right to arbitration by substantially invoking the judicial process to the

Individual's detriment, the Court remanded the case to trial court for further proceedings.