



OKLAHOMA STATE COURTS NETWORK

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MERIT HOLDINGS et al. v. INTERNATIONAL BANK OF COMMERCE et al.

2026 OK 70

Case Number: 122379

Decided: 10/06/2026

THE SUPREME COURT OF THE STATE OF OKLAHOMA



Cite as: 2026 OK 70, __ P.3d __

MERIT HOLDINGS LLC, MERIT CHICKASHA BG LLC, MERIT CHICKASHA CDJR LLC, MERIT DUNCAN CDJR LLC, MERIT DUNCAN BCG LLC, MERIT FAIRVIEW FORD, LLC, MERIT AUTO GROUP REAL ESTATE LLC, LB HOLDINGS II LLC, LE NORMAN PROPERTIES, LLC, REIGN CAPITAL HOLDINGS LLC, DAVID D. LE NORMAN, and LE NORMAN RECOVERY LLC, Plaintiffs/Appellants,

v.

INTERNATIONAL BANK OF COMMERCE, an Oklahoma Bank, and INTERNATIONAL BANK OF COMMERCE, a Texas Bank, Defendants/Appellees.

ON WRIT OF CERTIORARI TO THE OKLAHOMA COURT OF CIVIL APPEALS, DIVISION II

¶0 Plaintiffs/Appellants Merit Holdings LLC, Merit Chickasha BG LLC, Merit Chickasha CDJR LLC, Merit Duncan CDJR LLC, Merit Duncan BCG LLC, Merit Fairview Ford, LLC, Merit Auto Group Real Estate LLC, LB Holdings II LLC, Le Norman Properties, LLC, Reign Capital Holdings LLC, David D. Le Norman, and Le Norman Recovery LLC (collectively, "Merit Entities") brought their lawsuit and Defendants/Appellees International Bank of Commerce, an Oklahoma Bank, and International Bank of Commerce, a Texas Bank (collectively, "IBC Bank") responded by filing a motion to dismiss along with a contemporaneous alternative motion to compel arbitration. Shortly thereafter, Plaintiffs sought injunctive relief. Defendants responded, and months of litigation followed. Almost two years after the original lawsuit was filed, Defendants' motion to dismiss was denied, and the trial court compelled the case to arbitration. The Court of Civil Appeals reversed on the basis that Defendants waived the right to demand arbitration, and we granted certiorari.

OPINION OF THE COURT OF CIVIL APPEALS VACATED; JUDGMENT OF THE DISTRICT COURT AFFIRMED

Melvin R. McVay, Jr., Eric S. Eissenstat, Catherine L. Campbell, Cody J. Cooper, and Jennifer L. Miller, Phillips Murrah, P.C., Oklahoma City, Oklahoma, for Plaintiffs/Appellants (except Appellant Le Norman Recovery LLC).

Jason A. Dunn, Socorro Adams Dooley, and Zachary Carson, Perri Dunn PLLC, Oklahoma City, Oklahoma, for Plaintiff/Appellant Le Norman Recovery LLC.

Michael Lauderdale, Spencer F. Smith, Kate N. Doodoo, Alex Duncan, and Elke C. Meeus, McAfee & Taft, A Professional Corporation, for Defendants/Appellees.

JETT, J.:

¶1 This case presents an issue of first impression for this Court regarding the proper application of an anti-waiver provision within a contractual agreement to arbitrate. The underlying lawsuit involves numerous sophisticated entities, complex capital investments, and an auto dealer floor plan financing arrangement. But the only issue on appeal is whether the merits dispute should ultimately be resolved in Oklahoma state court or in arbitration.

¶2 While the parties' dispute may be complex, our resolution at this stage is not. Enforcing the parties' contractual bargain means Defendants have not waived their right to arbitrate. These sophisticated parties agreed to an arbitration clause as a part of their 2020 loan agreements. The arbitration clause includes an arbitration-specific anti-waiver provision, and Defendants' activity in the district court case fits neatly within the scope of conduct expressly permitted by the anti-waiver provisions. We hold Defendants did not waive their right to arbitrate Plaintiffs' claims.

¶3 Additionally, Plaintiffs have not established that they were fraudulently induced to agree to the arbitration provisions in the parties' contractual agreements. The trial court did not err in its adjudication of Defendants' motion to compel arbitration. The trial court properly compelled arbitration, and the Court of Civil Appeals' opinion suggesting otherwise is vacated.

I.

A.

¶4 IBC Bank (Defendants/Appellees) loaned funds to certain Merit Entities (Plaintiffs/Appellants) used to grow and expand what became the Byford-Le Norman Auto Group. The Merit Entities allege that the Auto Group turned out to be a house of cards due to fraudulent business practices by Randy Byford, the Auto Group's former designated dealer/operator. ¹ According to the Merit Entities, Byford obtained loan advances exceeding the value of the secured cars and then used proceeds from car sales for his own benefit rather than repaying creditors. The Merit Entities allege they were unaware of Mr. Byford's fraudulent scheme until after he committed suicide in May 2020.

¶5 In the aftermath of Byford's passing, certain of the Merit plaintiffs were responsible for debt obligations to IBC Bank and other lenders. Representatives for the Merit Entities entered negotiations with IBC Bank to restructure the debt. Those negotiations resulted in the execution of a series of loan agreements in October 2020. The October 2020 loan agreements contain the arbitration provisions that serve as IBC Bank's basis for compelling arbitration in the underlying dispute.

¶6 After executing the October 2020 loan agreements, the parties negotiated various other legal instruments. ² The subsequent legal instruments include a "future negotiations provision" providing the parties "agree to negotiate in good faith, in an attempt to reach a permanent and equitable modification to the existing Loan Documents that includes releases, indemnifications, and other modifications mutually agreeable to the parties for the purpose of memorializing a plan for acceptable capital recovery for each of Borrower, Guarantor and Lendor." (Appellants' Br.-in-Chief at 4.)

¶7 To be clear, the loan documents signed in October 2020 did not contain future negotiations provisions when executed. The October 2020 loan documents do, however, grant the parties a right to arbitrate disputes, contain an arbitration-specific anti-waiver provision, and delegate authority to the arbitrator to resolve all arbitrability questions and any claim that the arbitration provisions are void or voidable. ³

¶8 The Merit Entities claim that they have worked in good faith with IBC Bank and have repaid more than \$50 million on the outstanding debt. But as of April 2023, IBC Bank alleged a current outstanding principal amount owed exceeding \$35 million (which does not include accrued interest). Specifics remain disputed both as to entitlement and to amount, and nothing in this opinion should be understood as resolving the parties' claims and defenses.

B.

¶9 Plaintiffs, the Merit Entities, filed suit June 24, 2022, and they served Defendants, IBC Bank, on August 1, 2022. After the trial court timely extended the answer deadline, Defendants responded to the petition by filing both a motion to dismiss and an alternative motion to compel arbitration on October 24, 2022. Defendants' motion to dismiss requested that the trial court dismiss Plaintiffs' petition. On the cover page of their motion to dismiss, Defendants gave notice of their contemporaneous submission of an alternative motion to compel arbitration in a conspicuous footnote, writing:

With this filing, Defendants have contemporaneously submitted an Alternative Motion to Compel Arbitration. As set forth therein, to the extent the Court denies this Motion to Dismiss either in whole or in part, any surviving claims should be sent to arbitration. Per the arbitration agreement, Defendants do not, by filing this motion, waive their rights to arbitrate any remaining claims.

(ROA at 820.) Defendants' alternative motion to compel arbitration likewise references the motion to dismiss:

IBC Bank submits that the Motion to Dismiss should be granted in its entirety because the Plaintiffs' claims are legally and facially defective for the reasons provided in the Motion to Dismiss. However, to the extent the Court denies, or is inclined to deny, the Motion to Dismiss, either in whole or in part, IBC Bank separately and alternatively moves for an order compelling Plaintiffs' remaining claims against IBC, if any, to arbitration, pursuant to the parties' binding arbitration agreement.

(ROA at 802.)

¶10 Plaintiffs responded to Defendants' filings by initiating temporary restraining order proceedings and seeking injunctive relief. Plaintiffs set those matters for emergency hearing, and Defendants responded. Defendants did not move to stay the case or reassert their motion to compel, and Defendants made the same decision after Plaintiffs filed a second application for temporary restraining order and injunctive relief.

¶11 Defendants filed a motion to compel Plaintiffs to provide discovery answers in advance of a temporary injunction hearing. Defendants also filed motions for attorney fees and to recover damages after the trial court denied Plaintiffs' second application for temporary restraining order and temporary injunction.

¶12 Eventually, Plaintiffs filed an amended petition pursuant to an agreed motion for leave to amend. Defendants moved for dismissal. Defendants harked back to their "previously submitted . . . Alternative Motion to Compel Arbitration" and restated their position: "to the extent the Court denies this Motion to Dismiss either in whole or in part, any surviving claims should be sent to arbitration. Per the arbitration agreement, Defendants do not, by filing this motion, waive their rights to arbitrate any remaining claims." (ROA, Defs.' Second Mot. to Dismiss, at 2115.)

¶13 The trial court heard argument on Defendants' second motion to dismiss, motion to compel arbitration, and application for fees stemming from their defense of the TRO proceedings on February 8, 2024. At that hearing, Defendants suggested, if the trial court was so inclined, "to take the motion to dismiss first, because that could decide or not decide certain remaining issues." (ROA, Tr. at 4:25--5:1 (Feb. 8, 2024).) The trial court agreed. (*Id.* at 5:2.) Counsels then presented their arguments on all three motions.

¶14 After taking argument, the trial court granted Defendants' motion to dismiss in part and denied it in part, allowing most of Plaintiffs' claims to proceed. Regarding arbitration, the trial court rejected Plaintiffs' argument that Defendants waived the right to arbitrate by participating in the district court litigation but concluded that an evidentiary hearing was necessary because Plaintiffs claimed fraud in the inducement of the arbitration agreements. Following the evidentiary hearing on fraudulent inducement, the trial court granted Defendants' motion to compel arbitration, finding that "an enforceable agreement to arbitrate exists and that the claims asserted by Plaintiffs . . . are subject to the arbitration agreement." (ROA, Journal Entry & Or., at 2468.)

¶15 Plaintiffs appealed the trial court's order compelling arbitration. Plaintiffs asserted Defendants waived the anti-waiver provision and right to arbitrate by: filing and litigating motions to dismiss, issuing discovery and compelling responses, defending against the TRO and temporary injunction, seeking attorney fees and damages once the temporary injunction was rejected, and failing to seek a stay of the district court case. Plaintiffs also argued they were fraudulently induced to agree to arbitrate and that the trial court improperly adjudicated the motion to compel arbitration. The Court of Civil Appeals reversed the trial court's order compelling arbitration finding Defendants waived their right to arbitrate. COCA did not address Plaintiffs' other bases for reversal. Defendants then petitioned for certiorari, which this Court granted.

¶16 We review de novo a district court's decision to grant or deny a motion to compel, *Thompson v. Bar-S Foods Co.*, 2007 OK 75, ¶ 9, 174 P.3d 567, 572, accepting the trial court's factual determinations unless clearly erroneous. See *I. T. K. v. Mounds Pub. Schs.*, 2019 OK 59, ¶ 11, 451 P.3d 125, 131. Whether a party waived its right to compel arbitration may present a mixed question of law and fact. *Howell's Well Serv., Inc. v. Focus Group Advisors*, 2021 OK 25, ¶ 6, 507 P.3d 623, 626. In such cases, we review the legal conclusions de novo and defer to factual findings if supported by the record. *Id.* Whether a party was fraudulently induced to agree to an arbitration provision itself may also present a mixed question warranting de novo review of legal conclusions and deference to the district court's fact-finding unless clearly erroneous. *Cf. id.*; see also *Moore v. Bob Howard German Imports, LLC*, 2023 OK CIV APP 14, ¶ 9, 531 P.3d 657, 661.

III.

¶17 Arbitration is a matter of contract law. See *Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63, 67 (2010). "Where arbitration has been contracted for it constitutes a substantive and mandatory right." *Voss v. City of Okla. City*, 1980 OK 148, ¶ 5, 618 P.2d 925, 928.

¶18 A party may waive its contractual right to arbitrate, but "[t]he burden of persuasion lies with the party claiming that the right to demand arbitration has been waived." *Hill v. Ricoh Americas Corp.*, 603 F.3d 766, 775 (10th Cir. 2010); see also *Howell's Well Serv.*, 2021 OK 25, ¶ 8, 507 P.3d at 626. "Waiver . . . is the intentional relinquishment or abandonment of a known right." *Morgan v. Sundance, Inc.*, 596 U.S. 411, 417 (2022) (citation modified); see also *Faulkenberry v. Kansas City S. Ry. Co.*, 1979 OK 142, ¶ 6, 602 P.2d 203, 206--07. Courts apply ordinary waiver principles to arbitration agreements and must treat arbitration contracts like all others without imposing arbitration-specific requirements. *Morgan*, 596 U.S. at 418--19. ⁴ Waiver is not easily inferred. *Howell's Well Serv.*, 2021 OK 25, ¶ 8, 507 P.3d at 626.

¶19 We have previously recognized several factors to analyze if the right to arbitrate has been waived:

1. Whether a party has taken actions that are inconsistent with a right to arbitrate;
2. Whether the issue of arbitration was raised only after there had been significant preparation for litigation;
3. Whether the trial date is near or there has been a long delay in raising the issue of contractual arbitration rights; and
4. Whether the party invoking the arbitration right has filed pleadings in the litigation without seeking a stay of the proceedings.

Howell's Well Serv., 2021 OK 25, ¶ 15, 507 P.3d at 627--28. ⁵ The *Howell's* factors is not a test unto itself; rather, the *Howell's* factors assist courts in resolving the ultimate waiver question--whether a party seeking to compel arbitration has intentionally relinquished or abandoned the right to arbitrate.

¶20 The novel aspect of this case is the arbitration-specific anti-waiver provision. This provision identifies specific conduct that does not waive the right to arbitrate. Though seemingly circular at first blush, anti-waiver provisions may also be waived expressly or impliedly with conduct signifying an intentional relinquishment of the anti-waiver provision. See *Westinghouse Credit Corp. v. Shelton*, 645 F.2d 869, 873--74 (10th Cir. 1981); *ASC Utah, Inc. v. Wolf Mountain Resorts, L.C.*, 2010 UT 65, ¶ 38, 245 P.3d 184, 196; 13 Williston on Contracts § 39:36 (4th ed. 2000). Conduct permitted by the anti-waiver provision cannot waive the anti-waiver provision or the right to arbitrate. Instead, a party arguing for waiver must point to some other conduct demonstrating an intentional relinquishment or abandonment of the known right.

¶21 Considering the anti-waiver provision in this case, the *Howell's* factors--as modified by *Morgan*--remain the proper analysis to determine if the arbitration right has been waived. However, the conduct permitted by the anti-waiver provision cannot be the basis for demonstrating an intentional relinquishment or abandonment of the right to arbitrate.

A.

¶22 We first consider Plaintiffs' argument that Defendants waived the arbitration-specific anti-waiver provision⁶ in the parties' contracts. The anti-waiver provision requires the parties to settle on a venue within a defined time period. If a defendant wants to arbitrate, they must move to compel arbitration within 180 days after being served. (ROA, Arbitration Provisions § IV(c), at 669.) But before the case is sent to arbitration, the parties agreed that certain conduct will not waive the defendant's right to arbitrate. Specifically, "[a]ctive participation in any pending litigation . . . shall not in any event be deemed a waiver of such [party's] right to compel arbitration." (*Id.*) Additionally, the "[u]se of self-help or ancillary and/or provisional judicial remedies shall not operate as a waiver of either [party]'s right to compel arbitration." (*Id.* § III(b), at 668.)

¶23 In accordance with the anti-waiver provision, Defendants moved to compel arbitration 84 days after being served, well within the 180 days allowed by the anti-waiver provision. In fact, Defendants filed an alternative motion to compel arbitration the same day they submitted their first substantive filing in the district court case.⁷ Defendants repeatedly stated in filings that their participation in the lawsuit was not a waiver of its right to arbitrate. This demonstrates an affirmative assertion of the anti-waiver provision rather than relinquishment or abandonment of rights under the parties' contract.

¶24 Defendants' conduct that Plaintiffs claim waived the right to arbitrate falls within what is permitted by the anti-waiver provision. A motion to dismiss for failure to state a claim must be filed before a defendant's first responsive pleading. 12 O.S. § 2012(C). Considering that the anti-waiver provision allowed "active participation" in litigation, it is apparent that filing a motion to dismiss--which necessarily comes at the beginning of the litigation--is the type of active participation in litigation the parties agreed to allow without fear of waiving arbitration rights.

¶25 Similarly, we have no difficulty concluding that issuing written discovery and moving to compel a response is permitted by the anti-waiver provision. The anti-waiver provision expressly contemplates discovery in district court litigation: "All discovery obtained in pending litigation may be used in any subsequent arbitration proceeding." (ROA at 669.) Moreover, we have previously indicated that a party's participation in discovery at the district court is no longer considered for purposes of determining whether a waiver occurred. *Howell's Well Serv.*, 2021 OK 25, n.4, 507 P.3d at 628 n.4; see also *Willco Enter., LLC v. Woodruff*, 2010 OK CIV APP 18, ¶¶ 19--20, 231 P.3d 767, 774. Defendants' discovery activity does not demonstrate an intention to relinquish its rights under the anti-waiver provision.

¶26 Defendants' defense against Plaintiffs' quest for injunctive relief did not waive the anti-waiver provision. The agreement expressly says that the use of provisional judicial remedies--which covers temporary injunctions and temporary restraining orders--"shall not operate as a waiver of either [party]'s right to compel arbitration." Defending against Plaintiffs' request for a TRO and temporary injunction, including Defendants' request for attorney fees and damages after the TRO was dissolved and the temporary injunction denied, is active litigation participation sanctioned by the anti-waiver provision.

¶27 Finally, Defendants did not seek a stay of the district court proceedings, but this did not relinquish Defendants' rights under the anti-waiver provision. The anti-waiver provision permitted Defendants to actively participate in litigation. One cannot actively participate in litigation that is stayed. To rule that Defendants' not seeking a stay waived the anti-waiver provision would turn the text of the provision on its head.

¶28 Defendants did not waive the anti-waiver provision of the arbitration agreements.

B.

¶29 With due regard for conduct permitted by the parties' enforceable anti-waiver provision, we next consider whether Defendants knowingly relinquished their contractual right to arbitrate by acting inconsistently with that right. We conclude that no waiver occurred.

¶30 As noted, we apply the four *Howell's* factors--as modified by *Morgan*--to determine whether a party has waived that right. *Howell's Well Serv.*, 2021 OK 25, ¶ 15, 507 P.3d at 627--28. Although each factor is analyzed independently, the factors are not meant to be applied mechanically such that "each factor is assessed and the side with the greater number of favorable factors prevails." *Hill*, 603 F.3d at 773. Rather, the factors reflect certain principles that guide us in determining whether a party has relinquished its right to arbitrate, *id.*, because "[t]here is no bright line test to assist a court in determining whether a party has waived arbitration," *Coxcom, Inc. v. Egghead Telecom, Inc.*, No. 08-CV-698, 2009 WL 4016629, at *5 (N.D. Okla. Sept. 11, 2009).

¶31 **Factor 1: Whether a party has taken actions that are inconsistent with a right to arbitrate.**

¶32 We conclude Defendants have not acted inconsistently with their bargained-for right to arbitrate. Inconsistent actions are those not compatible with or not in harmony with arbitration. The problem for Plaintiffs is that the conduct they claim waives arbitration is expressly permitted by the parties' arbitration agreements via the anti-waiver provision.

¶33 Defendants actively participated in the pending district court litigation, but the parties agreed that active participation in litigation does not waive the right to arbitration so long as arbitration was requested within 180 days after service. As noted, Defendants filed an alternative motion to compel arbitration at the beginning of the district court case and repeatedly stated in filings that their participation in the lawsuit was not a waiver of their right to arbitrate. See *supra* Part III.A. Though Defendants issued discovery and defended against Plaintiffs' motion for temporary injunctive relief, their contractual bargain permitted such conduct. *Id.* On this record, it is apparent that Defendants' actions were not inconsistent with their right to arbitrate.

¶34 **Factor 2: Whether the issue of arbitration was raised only after there had been significant preparation for litigation.**

¶35 This is not a close call. After *Morgan*, our focus must be on the actions of the party seeking to invoke their right to arbitrate. 596 U.S. at 417. In this case, Defendants raised the issue of arbitration in the *first* substantive filing⁸ on the *first* day they substantively participated in the pending district court litigation. It is hard to imagine Defendants raising the issue of arbitration "in a more-timely manner." See *Howell's Well Serv.*, 2021 OK 25, ¶ 19, 507 P.3d at 629. Defendants raised the issue of arbitration from the beginning--before issuing written discovery, before applying for fees, and before there were any court hearings. We conclude the issue of arbitration was raised before there had been significant preparation for litigation, not after.

¶36 **Factor 3: Whether the trial date is near or there has been a long delay in raising the issue of contractual arbitration rights.**

¶37 This factor presents an even less compelling case for waiver. At the time Defendants filed their motion to compel arbitration, no trial date was set, and no scheduling order was in place. See *Howell's Well Serv.*, 2021 OK 25, ¶ 21, 507 P.3d at 629. Nor was there a long delay in raising the issue of contractual arbitration rights. Again, Defendants raised the issue of arbitration in the first substantive filing in the pending district court litigation.

¶38 Plaintiffs' contention that this factor breaks in their favor because Defendants expressed their intent that the district court dismiss Plaintiffs' claims before "insisting on a ruling" on their motion to compel arbitration is not persuasive. Under this factor, we focus solely on when arbitration was raised and assess whether the trial date is near or whether there has been a long delay in raising the issue. How the parties and the court responded after the motion to compel is inconsequential in light of the anti-waiver provision in this case. Defendants raised arbitration before a trial date was contemplated; there was no delay in raising the issue.

¶39 **Factor 4: Whether the party invoking the arbitration right has filed pleadings in the litigation without seeking a stay of the proceedings.**

¶40 While this factor seemingly weighs against Defendants, it must be analyzed in light of the parties' arbitration-specific anti-waiver provision. The parties' anti-waiver provisions permit active participation in litigation. As noted, a party cannot actively participate in litigation that is stayed. While Defendants did not seek a stay of the district court proceedings, this factor has less weight since the parties expressly agreed that active participation in litigation was not a waiver of the right to arbitrate. Under the facts of this case, Defendants' failure to seek a stay is not dispositive because the other factors break decidedly in Defendants' favor. See *Garcia v. Fuentes Rest. Mgmt. Servs. Inc.*, 141 F.4th 671, 677 (5th Cir. 2025) (explaining that "a fact that weighs in favor of waiver in one case may not carry any weight in another").

* * *

¶41 We conclude that Plaintiffs have not satisfied their burden to overcome the parties' bargained-for agreement to arbitrate. Defendants did not waive the arbitration-specific anti-waiver provision and did not intentionally relinquish their contractual right to arbitrate.

IV.

¶42 While waiver was the primary focus of Plaintiffs' appellate briefing, they presented alternative arguments for reversing the trial court's order compelling arbitration, which the Court of Civil Appeals did not address. Prevailing at the Court of Civil Appeals, Plaintiffs, quite logically, did not petition for a writ of certiorari on these unaddressed issues. But the alternative arguments were properly preserved and are aptly briefed by the parties. See Okla.Sup.Ct.R. 1.180(b). To prevent inequity to Plaintiffs and for the sake of expediency, we exercise our discretion to resolve these undecided matters. *Id.*; *Gowens v. Barstow*, 2015 OK 85, ¶ 23, 364 P.3d 644, 652--53; *Lerma v. Wal-Mart Stores, Inc.*, 2006 OK 84, ¶ 5, 148 P.3d 880, 883; see also *Hough v. Leonard*, 1993 OK 112, ¶ 15, 867 P.2d 438, 445.

A.

¶43 Plaintiffs' argument that the arbitration agreement is unenforceable because it was procured by fraud was properly rejected by the trial court. In this case, Plaintiffs nominally challenge that they were fraudulently induced to agree to the arbitration provisions within the loan agreements executed in October 2020. In reality, they are challenging the validity of the entirety of the loan agreements. Challenges that a party was fraudulently induced to enter an entire agreement, even if it happens to include an arbitration provision, are to be decided by the arbitrator. Moreover, in this case, the parties' arbitration agreement specifically delegated the question of enforceability of the arbitration provisions to the arbitrator. Thus, Plaintiff's fraudulent inducement argument cannot thwart arbitration in this case.

1.

¶44 It is well established under both the Federal Arbitration Act and the Oklahoma Uniform Arbitration Act that arbitration provisions are severable from the remainder of the contract. *E.g.*, *Rent-A-Ctr.*, 561 U.S. at 71; *Signature Leasing, LLC v. Buyer's Grp., LLC*, 2020 OK 50, ¶ 19, 466 P.3d 544, 550. "Thus, a party's challenge to another provision of the contract, or to the contract as a whole, does not prevent a court from enforcing a specific agreement to arbitrate." *Rent-A-Ctr.*, 561 U.S. at 70.

¶45 From this separability principle comes the rule that "determination of fraudulent inducement to the entire contract is a question for the arbitrator," not the trial court. *Signature Leasing*, 2020 OK 50, ¶ 19, 466 P.3d at 550; see also *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 403--04 (1967). Under both the FAA and the OUAA, a trial court may consider fraudulent inducement only "if the claim is fraud in the inducement of the arbitration clause itself" *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 445 (2006) (quoting *Prima Paint*, 388 U.S. 395 at 403--04); *Sutton v. David Stanley Chevrolet*, 2020 OK 87, ¶ 8, 475 P.3d 847, 852 ("A claim which attacks the enforceability of an arbitration provision itself . . . may be challenged in court.").

¶46 To challenge fraud in the inducement of the arbitration provision, a party must isolate "an issue which goes to the making of the agreement to arbitrate." *Prima Paint*, 388 U.S. at 403--04. "In some cases the claimed basis of invalidity for the contract as a whole will be much easier to establish than the same basis as applied only to the severable agreement to arbitrate." *Rent-A-Ctr.*, 561 U.S. at 71. Legal challenges that may invalidate the entire contract do not affect the enforceability of an agreement to arbitrate. See *id.* "[W]here the alleged fraud that induced the whole contract equally induced the agreement to arbitrate which was part of that contract--we nonetheless require the basis of challenge to be directed specifically to the agreement to arbitrate before the court will intervene." *Id.* The fraudulent conduct that is cognizable by a trial court must apply "specifically to the agreement to arbitrate in a way that differs from its general effect." *Lefoldt for Natchez Reg'l Med. Ctr. Liquidation Tr. v. Horne, L.L.P.*, 853 F.3d 804, 817 (5th Cir. 2017).

¶47 While the FAA and the OUAA permit a trial court to consider a challenge based on the fraudulent inducement of the arbitration provision itself, parties to an arbitration agreement may delegate this gateway enforceability decision to an arbitrator. *Rent-A-Ctr.*, 561 U.S. at 69.

2.

¶48 Plaintiffs' fraudulent inducement argument is not cognizable by Oklahoma courts because the basis of their challenge is not directed specifically to the agreement to arbitrate. Plaintiffs allege that they were induced to agree to arbitrate because of Defendants' constructive fraud. Specifically, they complain that in the process of reworking the loans after Mr. Byford's death, Defendants should have disclosed that they intended to require Plaintiffs to repay the principal debt and accrued interest dictated by the original loans. Conveniently, Plaintiffs argue that if they knew they were going to have to repay all the principal and interest, they would not have agreed to an arbitration provision "without the inclusion of an FNP [i.e. future negotiations provision]." (Appellants' Br.-in-Chief at 22.) Plaintiffs point to the future negotiations provision's inclusion in subsequent agreements as evidence that Defendants made Plaintiffs think they were going to cut them a deal. This fact pattern does not support the conclusion that the alleged fraud was specifically directed to the agreement to arbitrate.

¶49 Plaintiffs never alleged that they were surprised to find that their loan agreements contained an arbitration provision. *Contra Sutton*, 2020 OK 87, 475 P.3d 847. Neither do they allege that Defendants' conduct caused them to misunderstand what it meant to arbitrate their disputes. They do not even contend that "but for" Defendants' allegedly fraudulent conduct--i.e., failing to disclose that they would not cut Plaintiffs a deal on the principal and interest accrued--they would not have agreed to arbitration. The actual testimony was that they would not have agreed to the arbitration provisions without an FNP, which is a provision Defendants agreed to in later agreements. (Appellants' Br.-in-Chief at 9 (citing ROA, Tr. at 61:7--13 (June 11, 2024)).)

¶50 The fact is Plaintiffs cannot point to evidence that the alleged fraud was actually about the agreement to arbitrate. Plaintiffs' complaint is really that it was fraudulently induced to enter the October 2020 loan agreements. Their petition expressly requests that the entire 2020 loan agreement should be voided for fraud, thereby undermining Plaintiffs' argument that the fraud was targeted to the arbitration provisions. (ROA, Second Amend. Pet. ¶¶ 128--134, at 1531--32.)

¶51 The fraudulent conduct that can cause an arbitration to be set aside must apply "specifically to the agreement to arbitrate in a way that differs from its general effect." *Lefoldt*, 853 F.3d at 817. Plaintiffs cannot demonstrate that Defendants' alleged constructive fraud applies specifically to the arbitration agreement since the same conduct serves as their basis to void the 2020 loan agreements in their entirety. The trial court did not err in rejecting Plaintiffs' fraudulent inducement argument.

¶52 Even if Plaintiff had established that Defendants' alleged fraud was specifically targeted to the agreement to arbitrate, there still would be no basis for us to overturn the district court's order compelling arbitration because the parties' arbitration agreement included a delegation clause. (ROA at 527--28, 569--70, 615--16, 659--60, 668--69.) Delegation clauses are severable and "if a party challenges the validity of an arbitration contract as a whole but fails to specifically challenge a delegation clause therein, then the delegation clause will typically require a court to compel arbitration and allow an arbitrator to determine whether the arbitration contract was indeed valid."

Fedor v. Un. Healthcare, Inc., 976 F.3d 1100, 1105 (10th Cir. 2020). Pursuant to the delegation clauses in this case, the parties delegated the arbitrator authority to resolve all arbitrability questions and any claim that the arbitration provisions are void or voidable. ⁹ Plaintiffs again assert that Defendants waived the delegation clause, but the argument is no more compelling when applied to the delegation clause than it was when applied to the anti-waiver provision or the underlying right to arbitration.

¶53 The delegation clause vests the arbitrator with authority to determine whether Plaintiffs were fraudulently induced to agree to the arbitration provisions. Thus, the trial court did not err in compelling arbitration.

B.

¶54 Finally, the trial court's rulings on discovery and evidence do not manifest abused discretion, and these rulings provide no basis to set aside the district court's order compelling arbitration. A district court abuses its discretion by drawing a clearly erroneous conclusion or by exercising its judgment against reason and evidence. *Okla. City Zoological Tr. v. State ex rel. Pub. Emp. Relations Bd.*, 2007 OK 21, ¶ 5, 158 P.3d 461, 464. "Under this standard, this Court will reverse 'only if the trial court's decision is clearly against the evidence or is contrary to a governing principle of law.'" *Birtciel v. Jones*, 2016 OK 103, ¶ 7, 382 P.3d 1041, 1043 (citation omitted).

¶55 **Discovery.** The trial court did not abuse its discretion when it denied Plaintiffs' request to conduct additional discovery in preparation for the evidentiary hearing on Defendants' motion to compel arbitration. A party is not required to respond to requests for production or interrogatories until an answer to the petition is filed unless leave is granted by the trial court. 12 O.S. §§ 3234(B)(2); 3233(A). Whether to require responses to these modes of discovery before the filing of an answer is left to the district court's discretion.

¶56 In this case, the trial court found that pre-hearing discovery was unnecessary because "based on the previous hearings, . . . the facts are well developed enough to be able to have an evidentiary hearing on this issue [i.e. fraudulent inducement] without further discovery or delay" (ROA, Tr. at 56:23--25 (Feb. 8, 2024).) Plaintiffs fail to establish that the trial court's decision was an abuse of discretion. In its Brief-in-Chief, Plaintiffs do not specify what discovery was sought, so they plainly do not establish that the trial court's ruling on discovery warrants reversal of the order compelling arbitration. In the Reply, Plaintiffs claim that "the trial court prohibited Merit from discovering documents and internal communications showing IBC's intent to demand payment in full, prohibited Merit from discovering IBC's communications with Byford, and prohibited Merit from discovering evidence of IBC's knowledge of Byford's wrongdoing." Assuming such documents even exist to be discovered, they may be relevant to the merits of Plaintiffs' claims. However, this potential evidence would not advance Plaintiffs' claim that they were fraudulently induced to agree to the arbitration provisions specifically rather than the entirety of the loan agreements. See *supra* Part IV.A.2.

¶57 Plaintiffs have not shown that the trial court's discovery ruling was an abuse of discretion, and there is no basis to set aside the order compelling arbitration.

¶58 **Scope of evidence.** Plaintiffs mistakenly assert that the trial court erred when it decided that only evidence bearing on fraudulent inducement of the arbitration provisions could be presented and considered. As noted, the separability principle "mandates that determination of fraudulent inducement to the entire contract is a question for the arbitrator," not the trial court. *Signature Leasing*, 2020 OK 50, ¶ 19, 466 P.3d at 550. A trial court is limited to determining whether a party was fraudulently induced to agree to the arbitration clause itself. See *Buckeye Check Cashing*, 546 U.S. at 445. In the hearing to decide whether Plaintiffs were fraudulently induced to agree to the arbitration clause itself, it was not an abuse of discretion to limit the scope of evidence to fraudulent inducement of the arbitration clause itself. This was legally correct.

¶59 **Judicial notice.** Plaintiffs contend the trial court took judicial notice of Mr. Le Norman's testimony in a previous hearing as support for factual determinations that are in dispute. They claim this precludes arbitration, but we disagree. The judicially noticed evidence--the date Mr. Le Norman had access to certain audit reports--is of no consequence to the correctness of the court's order compelling arbitration. Even if Mr. Le Norman first accessed the audit reports at a later date, this would not prove that Defendants fraudulently induced Plaintiffs to

agree to the arbitration clause itself or waived the right to arbitrate. This evidence may be relevant when adjudicating the merits, but the trial court's judicial notice of Le Norman's testimony provides no basis for reversing the order compelling arbitration.

V.

¶60 For the foregoing reasons, the Court of Civil Appeals' opinion is vacated, and the trial court's order compelling arbitration is affirmed. Defendants did not waive their right to arbitrate, and Plaintiffs have not established that they were fraudulently induced to agree to the arbitration clause itself. The parties' claims and defenses must be resolved in arbitration.

OPINION OF THE COURT OF CIVIL APPEALS VACATED; JUDGMENT OF THE DISTRICT COURT AFFIRMED

ROWE, C.J., KUEHN, V.C.J., WINCHESTER, EDMONDSON, COMBS, GURICH, DARBY, KANE and JETT JJ., CONCUR

KANE, J., Concurring:

"I would further rule upon the grounds urged by the amici curiae - the State Chamber of Oklahoma, the Oklahoma Chamber of Commerce, and the Oklahoma Bankers Association. They contend that § 1855 of the Oklahoma Uniform Arbitration-Enforcement Act controls the waiver question, and I agree (see *12 O.S. 2021, § 1855 (making specified provisions of the Act, including its arbitration-enforcement and anti-waiver protections, non-waivable by agreement)*)).

FOOTNOTES

JETT, J.:

¹ The Merit Entities claim IBC Bank shares responsibility for the fraud committed by Byford. They allege IBC Bank knew or should have known about the fraud and were negligent in administering the loans. (ROA, Second Amend. Pet., at 1510--1624.) The Merit Entities also assert that IBC Bank's dealership inventory inspections revealed discrepancies which, if brought to Mr. Le Norman's attention, would have been uncovered, and the fraud foiled. (*Id.*)

² According to the Merit Entities, the following agreements between IBC Oklahoma and Merit Holdings contain future negotiations provisions: Limited Waiver; First Amendment to Amended and Restated Loan Agreement; First Amendment to Amended and Restated Inventory Financing Credit Agreement; Second Amendment to Amended and Restated Inventory Financing Credit Agreement; Consent Agreement; Second Amendment to Amended and Restated Loan Agreement; and First Amendment to Second Amended and Restated Loan Agreement. (Appellants' Br.-in Chief at 4 n.1.)

³ ROA, Doc. 6, Ex. 1, Ex. B to Amend. and Restated Inventory Financing Credit Agreement, at 527--28; *id.*, Ex. 2, Ex. C. to Third Amend. and Restated Loan Agreement, §§ III(b), IV(a) & (c), at 569--70; *id.*, Ex. 3, Ex. B to Second Amend. and Restated Loan Agreement, §§ III(b), IV(a) & (c), at 615--16; *id.*, Ex. 4, Ex. C to Amend. and Restated Loan Agreement, §§ III(b), IV(a) & (c), at 659--60; *id.*, Ex. 5, Arbitration Provisions, §§ III(b), IV(a) & (c), at 668--69.

⁴ The holding in *Morgan* is compatible with this Court's longstanding recognition that the scope of arbitrable issues should be resolved in favor of arbitration. See, e.g., *Thompson v. Heartway Corp.*, 2025 OK 65, ¶ 6, 579 P.3d 622, 627 (citing *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24--25 (1983)). "The *Morgan* Court did *not* address the *Moses* presumption, which concerns the scope of arbitrable issues." *Smith v. Taverik Capital, LLC*, No. 25-cv-14047, 2026 WL 2268471, at 6 n.7 (D.S.C. Aug. 6, 2025).

⁵ Consistent with the U.S. Supreme Court's decision in *Morgan*, we no longer consider prejudice to the party opposing arbitration as a factor in determining whether waiver occurred. 596 U.S. at 417. The focus should be on the actions of the party seeking to invoke their right to arbitrate. *Id.* Neither do we consider whether the party seeking arbitration has engaged in discovery not available in arbitration, as explained in *Howell's Well Serv.*, 2021 OK 25, n.4, 507 P.3d at 628 n.4.

⁶ The anti-waiver provisions state:

(b) The PARTIES shall have the right to (i) invoke self-help remedies (such as setoff, notification of account debtors, seizure and/or foreclosure of collateral, and nonjudicial sale of personal property and real property collateral) before, during or after any arbitration, and/or (ii) request ancillary or provisional judicial remedies (such as garnishment, attachment, specific performance, receiver, injunction or restraining order, and sequestration) before or after the commencement of any arbitration proceeding (individually, and not on behalf of a class). The PARTIES need not await the outcome of the arbitration proceeding before using self-help remedies. **Use of self-help or ancillary and/or provisional judicial remedies shall not operate as a waiver of either PARTY's right to compel arbitration.** Any ancillary or provisional judicial remedy which would be available from a court at law shall be available from the Arbitrator.

* * *

(c) If a PARTY initiates legal proceedings, the failure of the initiating PARTY to request arbitration pursuant to these Arbitration Provisions within 180 days after the filing of the lawsuit shall be deemed a waiver of the initiating PARTY'S right to compel arbitration with respect to the claims asserted in the litigation. **The failure of the defending PARTY in such litigation to request arbitration pursuant to these Arbitration Provisions within 180 days after the defending PARTY'S receipt of service of judicial process, shall be deemed a waiver of the right of the defending PARTY to compel arbitration with respect to the claims asserted in the litigation.** If a counterclaim, cross-claim or third party action is filed and properly served on a PARTY in connection with such litigation, the failure of such PARTY to request arbitration pursuant to these Arbitration Provisions within ninety (90) days after such PARTY'S receipt of service of the counterclaim, cross-claim or third party claim shall be deemed a waiver of such PARTY'S right to compel arbitration with respect to the claims asserted therein. The issue of waiver pursuant to these Arbitration Provisions is an arbitrable dispute. **Active participation in any pending litigation described above by a PARTY shall not in any event be deemed a waiver of such PARTY'S right to compel arbitration. All discovery obtained in the pending litigation may be used in any subsequent arbitration proceeding.**

(ROA at 527--28, 569--70, 615--16, 659--60, 668--69 (emphasis added).)

⁷ The only document Defendants filed before the day they submitted their alternative motion to compel arbitration was an unopposed motion to extend time to answer or otherwise respond to Plaintiffs' petition. (ROA, Appearance Docket, at 2534.)

⁸ See *supra* n.7.

⁹ The delegation provision states: "The Arbitrator shall have exclusive authority to resolve any DISPUTES relating to the scope or enforceability of these Arbitration Provisions, including (i) all arbitrability questions, and (ii) any claim that all or a part of these Arbitration Provisions are void or voidable (including any claims that they are unconscionable in whole or in part)." (See ROA, Arbitration Provisions § IV(a), at 669.)

Cite Name Level

None Found.

Citationizer: Table of Authority

Cite Name

Level

Oklahoma Court of Civil Appeals Cases

Cite	Name	Level
<u>2010 OK CIV APP 18, 231 P.3d 767,</u>	<u>WILLCO ENTERPRISES, LLC v. WOODRUFF</u>	Discussed
<u>2023 OK CIV APP 14, 531 P.3d 657,</u>	<u>MOORE v. BOB HOWARD GERMAN IMPORTS</u>	Discussed

Oklahoma Supreme Court Cases

Cite	Name	Level
<u>1993 OK 112, 867 P.2d 438, 64 OBJ</u>	<u>Hough v. Leonard</u>	Discussed
<u>2836,</u>		
<u>2006 OK 84, 148 P.3d 880,</u>	<u>LERMA v. WAL-MART STORES, INC.</u>	Discussed
<u>2007 OK 21, 158 P.3d 461,</u>	<u>OKLAHOMA CITY ZOOLOGICAL TRUST v. STATE ex rel. PUBLIC</u>	Discussed
	<u>EMPLOYEES RELATIONS BD.</u>	
<u>2007 OK 75, 174 P.3d 567,</u>	<u>THOMPSON v. BAR-S FOODS COMPANY</u>	Discussed
<u>2015 OK 85, 364 P.3d 644,</u>	<u>GOWENS v. BARSTOW</u>	Discussed
<u>2016 OK 103, 382 P.3d 1041,</u>	<u>BIRTCIEL v. JONES</u>	Discussed
<u>1979 OK 142, 602 P.2d 203,</u>	<u>FAULKENBERRY v. KANSAS CITY SOUTHERN RY. CO.</u>	Discussed
<u>1980 OK 148, 618 P.2d 925,</u>	<u>Voss v. City of Oklahoma City</u>	Discussed
<u>2019 OK 59, 451 P.3d 125,</u>	<u>I. T. K. v. MOUNDS PUBLIC SCHOOLS</u>	Discussed
<u>2020 OK 50, 466 P.3d 544,</u>	<u>SIGNATURE LEASING LLC v. BUYER'S GROUP LLC</u>	Discussed at Length
<u>2020 OK 87, 475 P.3d 847,</u>	<u>SUTTON v. DAVID STANLEY CHEVROLET</u>	Discussed at Length
<u>2021 OK 25, 507 P.3d 623,</u>	<u>HOWELL'S WELL SERVICE v. FOCUS GROUP ADVISORS</u>	Discussed at Length
<u>2025 OK 65, 579 P.3d 622,</u>	<u>BEVERLY THOMPSON, Next Friend of CHARLENE HUGHES, an Individual v.</u>	Discussed
	<u>HEARTWAY CORPORATION</u>	

Title 12. Civil Procedure

Cite	Name	Level
<u>12 O.S. 2012,</u>	<u>Defenses and Objections - When and How Presented - By Pleading or</u>	Cited
	<u>Motion</u>	
<u>12 O.S. 3234, 12 O.S. 3234,</u>	<u>Production of Documents and Things and Entry upon Land for Inspection</u>	Cited
	<u>and Other Purposes</u>	