

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SCOTT DUNLOP et al.,
Plaintiffs,
v.
STATE FARM MUTUAL AUTOMOBILE
INSURANCE CO. and DOES 1-20,
Defendants.

No. C 12-2362 CW
ORDER GRANTING
PETITION TO COMPEL
ARBITRATION AND
MOTION TO STAY
(Docket Nos. 15 &
11).

United States District Court
For the Northern District of California

Plaintiffs Scott and Sandra Dunlop bring this action against Defendant State Farm Mutual Automobile Insurance Company for breach of contract and breach of the implied covenant of good faith and fair dealing. Defendant State Farm moves to compel arbitration and to stay the proceedings pending arbitration. Plaintiffs oppose both motions. The Court now takes the matter under submission on the papers and grants both motions.

BACKGROUND

On August 8, 2008, the Dunlops were driving through Colusa County when they collided with an uninsured motorist on California State Route 45. Docket No. 1, Notice of Removal, Ex. 2 (1AC) ¶¶ 13-17. As a result of the collision, the Dunlops and their two minor children suffered serious bodily injuries. Id. ¶ 15.

After the accident, the Dunlops filed a claim with State Farm, their auto insurer. Id. ¶ 18. The Dunlops' insurance policy specifically provides coverage for any injuries caused by an accident with an uninsured motorist. Declaration of Lawrence D. Goldberg, Ex. A, at 11-16. Under that provision of the policy,

1 any disputes between the insured and State Farm about the
2 insured's right to recover from the uninsured motorist or about
3 the amount of damages owed by the insurer "must be decided by
4 agreement." Id. at 12. If the two sides are unable to reach such
5 an agreement, then either side may commence arbitration to resolve
6 the dispute according to the specific procedures set forth in
7 California's uninsured motorist statute, Cal. Ins. Code
8 § 11580.2(f).¹ Id.

9 On February 18, 2009, six months after the accident, State
10 Farm sent the Dunlops a letter notifying them that their insurance
11 claim was subject to a two-year statute of limitations under the
12 state's uninsured motorist statute. Id., Ex. B, at 1. The letter
13 stated:

14 Under California law, Insurance Code 11580.2, and your
15 State Farm automobile policy, within two years from the
date of the accident, you must:

- 16 1. File a lawsuit for bodily injury in the proper
court against the uninsured motorist; or
- 17 2. Reach agreement with us about the amount due under
Uninsured Motorist Coverage; or
- 18 3. Formally start arbitration proceedings by making a
written request, sent to us by Certified Mail,
19 Return Receipt Requested.

20 Id. at 2.

21 ¹ The exact terms of the policy are as follows:

22
23 Two questions must be decided by agreement between the
insured and us: (1) Is the insured legally entitled to
24 collect damages from the owner or driver of the
uninsured motor vehicle; and (2) If so, in what amount?
25 If there is no agreement, upon written request of the
insured or us, these questions shall be decided by
26 arbitration as provided by section 11580.2 of the
California Insurance Code.
27

28 Goldberg Decl., Ex. A, at 12.

1 Six months later, on August 7, 2009, the Dunlops filed suit
2 against the uninsured motorist in Colusa County Superior Court.
3 1AC ¶ 20. In June 2010, they notified State Farm that they would
4 soon be submitting a Statement of Damages to the court and asking
5 the court to schedule a prove-up hearing. Goldberg Decl., Ex. C.

6 On October 29, 2010, State Farm sent the Dunlops a letter
7 stating that it needed "additional time to consider [their] claim"
8 because it was "await[ing] receipt of the judgment from [their]
9 3rd party lawsuit." Id., Ex. D. The letter also requested copies
10 of the Dunlops' medical records and stated that State Farm would
11 keep them informed about its own ongoing investigation into the
12 accident. Id. The following week, on November 3, 2010, the
13 Dunlops' attorney responded to State Farm's letter by informing
14 the company that a prove-up hearing had been scheduled for later
15 that month in the family's suit against the uninsured motorist.
16 Id., Ex. E.

17 On December 13, 2010, two weeks after the prove-up hearing,
18 the court entered a default judgment against the uninsured
19 motorist for just over \$1.7 million dollars. Id., Ex. F. The
20 Dunlops sent State Farm a copy of the judgment on January 19,
21 2011. Id., Ex. G, at 3-4. They also submitted a demand for
22 \$300,000 -- the coverage limit for uninsured motorist claims under
23 their policy. Id. at 2. On March 15, 2011, after further
24 correspondence between the parties, State Farm responded to the
25 Dunlops' demand with a counter-offer to settle the entire claim
26 for \$62,900. 1AC ¶ 29. The Dunlops refused and, exactly one year
27 later, on March 15, 2012, filed this suit against State Farm in
28

1 Alameda Superior Court. Id. at 1. The case was removed in May
2 2012 and State Farm moved to compel arbitration in July 2012.

3 LEGAL STANDARD

4 When parties "have agreed that their arbitration agreement
5 will be governed by the law of California," a court must apply the
6 California Arbitration Act (CAA), Cal. Civ. Proc. Code §§ 1280 et
7 seq., to determine whether that agreement is valid. Volt Info.
8 Sci. v. Stanford Univ., 489 U.S. 468, 470 (1989) (holding that the
9 CAA is not preempted by the Federal Arbitration Act, 9 U.S.C. § 1
10 et seq.). The CAA was enacted in 1961 in order to create "a
11 comprehensive, all-inclusive statutory scheme applicable to all
12 written agreements to arbitrate disputes." Am. Home Assurance Co.
13 v. Benowitz, 234 Cal. App. 3d 192, 198 (1992). It provides:

14 On petition of a party to an arbitration agreement
15 alleging the existence of a written agreement to
16 arbitrate a controversy and that a party thereto refuses
17 to arbitrate such controversy, the court shall order the
18 petitioner and the respondent to arbitrate the
19 controversy if it determines that an agreement to
20 arbitrate the controversy exists, unless it determines
21 that:

19 (a) The right to compel arbitration has been waived by
the petitioner; or

20 (b) Grounds exist for the revocation of the agreement.

21 Cal. Civ. Proc. Code § 1281.2. In other words, a trial court may
22 only deny a petition to compel arbitration if it finds that the
23 party seeking arbitration waived its rights under the agreement or
24 that the agreement itself was revocable. United Teachers of L.A.
25 v. L.A. Unified Sch. Dist., 54 Cal. 4th 504, 516 (2012).

26 The party opposing the petition bears the burden of
27 establishing waiver or revocation. Saint Agnes Med. Ctr. v.
28

1 PacifiCare of Cal., 31 Cal. 4th 1187, 1195 (2003). If that party
2 fails to do so, then the trial court must grant the petition and
3 stay the proceedings pending arbitration. Cal. Civ. Proc. Code
4 § 1281.4; MKJA, Inc. v. 123 Fit Franchising, LLC, 191 Cal. App.
5 4th 643, 658 (2011) ("The purpose of the statutory stay [under
6 section 1281.4] is to protect the jurisdiction of the arbitrator
7 by preserving the status quo until arbitration is resolved."
8 (citations omitted)).

9 DISCUSSION

10 I. Petition to Compel Arbitration

11 Plaintiffs oppose State Farm's petition to compel arbitration
12 on two grounds. First, they argue that State Farm consented to be
13 bound by the default judgment Plaintiffs obtained against the
14 uninsured motorist in December 2010. Second, they contend that
15 even if State Farm did not consent to be bound by the default
16 judgment, it still waived its arbitration rights through its
17 conduct. The following discussion addresses each of these
18 arguments in turn.

19 A. Consent to Default Judgment

20 Plaintiffs contend that State Farm implicitly consented to be
21 bound by the default judgment Plaintiffs obtained against the
22 uninsured motorist in state court. See Goldberg Decl., Ex. F.
23 They point specifically to State Farm's February 18, 2009 and
24 October 29, 2010 letters as proof of the company's consent. See
25 id., Exs. B & D. Because the question of whether State Farm is
26 bound by the default judgment is ultimately a merits question, the
27 Court declines to decide it on a motion to compel arbitration.
28

1 The California Supreme Court has held that when an insured is
2 bound by a valid arbitration agreement with its insurer, disputes
3 about whether the insurer is bound by a default judgment obtained
4 against a third-party tortfeasor must be decided by arbitration.
5 Bouton v. USAA Cas. Ins. Co., 43 Cal. 4th 1190, 1194, 1201-03
6 (2008) (“[W]e hold that it is for an arbitrator, and not a court,
7 to decide whether the default judgment [the insured] obtained
8 against the underinsured tortfeasor binds [the insurer].”). The
9 court reasoned that “the binding nature of a default judgment
10 . . . falls squarely within those questions of liability and
11 damages statutorily subject to arbitration” under section 11580.2
12 of the Insurance Code. Id. at 1194. A court may therefore only
13 address the “binding nature of a default judgment” if it first
14 finds the arbitration agreement between the parties to be invalid.

15 Applying this principle to the present case reveals that
16 Plaintiffs’ argument -- that State Farm cannot compel arbitration
17 because it is bound by the default judgment -- puts the cart
18 before the horse. The Court cannot find that State Farm is bound
19 by Plaintiffs’ default judgment unless it first finds, as a
20 threshold matter, that the parties are not bound by their original
21 arbitration agreement. Plaintiffs’ second argument here -- that
22 State Farm waived its arbitration rights -- addresses this
23 threshold question more directly.

24 B. Waiver of Arbitration Rights

25 Plaintiffs contend that, even if State Farm’s letters do not
26 bind it to the default judgment, the letters still constitute a
27 waiver of the company’s right to arbitrate the dispute.
28

1 The California Supreme Court has cautioned that “no single
2 test delineates the nature of conduct that will constitute a
3 waiver of arbitration.” Saint Agnes, 31 Cal. 4th at 1195-96.
4 Rather, courts must consider a variety of factors in determining
5 whether a party petitioning to compel arbitration has waived its
6 right to arbitrate. Id. These factors include whether the
7 parties have taken significant steps to prepare for litigation,
8 whether the petitioner delayed in seeking arbitration, and whether
9 the petitioner’s conduct “prejudiced” or “misled” the opposing
10 party in any way. Id. at 1196 (citations omitted). The
11 touchstone typically is whether the petitioner’s conduct is “so
12 inconsistent with the exercise of the right to arbitrate that it
13 constituted an abandonment of that right.” Platt Pac., Inc. v.
14 Adelson, 6 Cal. 4th 307, 318 (1993). Because of California’s
15 strong policy favoring arbitration, waivers of arbitration rights
16 “are not to be lightly inferred.” Saint Agnes, 31 Cal. 4th at
17 1195 (citing Christensen v. Dewor Dev., 33 Cal. 3d 778, 782
18 (1983)).

19 Plaintiffs’ waiver argument here focuses, in particular, on
20 State Farm’s October 2010 letter. In that letter, the company
21 stated that it could not decide Plaintiffs’ insurance claim until
22 it first received the judgment in Plaintiffs’ suit against the
23 uninsured motorist. Goldberg Decl., Ex. D. Plaintiffs assert
24 that this forced them to pursue the default judgment and thus was
25 inconsistent with an intent to arbitrate. They further contend
26 that they were “misled by State Farm” and “made to jump through
27 numerous unnecessary, costly and time consuming hoops” in order to
28 recover their insurance benefits. Opp. 6.

1 This argument fails for one basic reason: namely, Plaintiffs
2 have not shown that they were prejudiced by State Farm's October
3 2010 letter. See Saint Agnes, 31 Cal. 4th at 1203 (holding that
4 the party seeking to establish a waiver based on the opposing
5 party's conduct must show that it was somehow prejudiced by that
6 conduct). Although they contend that State Farm's letter induced
7 them to undertake costly litigation in pursuit of a default
8 judgment, Plaintiffs' own evidence indicates that they decided to
9 pursue litigation before they received the letter. Indeed,
10 Plaintiffs filed suit against the uninsured motorist in August
11 2009, more than a year before State Farm requested a copy of the
12 judgment in that case. What's more, Plaintiffs sent State Farm a
13 letter in June 2010, more than four months before they received
14 the State Farm letter, indicating that they were planning to
15 pursue a default judgment against the uninsured motorist. See
16 Goldberg Decl., Ex. C. Thus, while it is true that a party can
17 waive its arbitration rights by inducing the opposing party to
18 litigate arbitrable issues needlessly, see, e.g., Burton v.
19 Cruise, 190 Cal. App. 4th 939, 948 (2010) (recognizing that a
20 "party's conduct in stretching out the litigation process [] may
21 cause prejudice by depriving the other party of the advantages of
22 arbitration"), Plaintiffs have not shown that State Farm induced
23 them to do so here.

24 State Farm's February 2009 letter likewise does not support
25 Plaintiffs' waiver argument. That letter merely presented
26 Plaintiffs with options, one of which was to sue -- Plaintiffs
27 chose that option. The letter also expressly informed Plaintiffs
28 of their right to arbitrate. Plaintiffs have not identified

1 anything in the letter that induced them to forfeit their
2 arbitration rights, misrepresented State Farm's position, or
3 otherwise prejudiced them. Nor have they shown how the letter
4 constitutes conduct inconsistent with an intent to arbitrate.
5 Accordingly, without a showing of prejudicial or inconsistent
6 conduct by State Farm, Plaintiffs cannot establish that the
7 company waived its arbitration rights under the insurance policy.

8 II. Motion to Stay

9 As noted above, California law requires the court to grant a
10 party's motion to stay if that party prevails on a petition to
11 compel arbitration. Cal. Civ. Proc. Code § 1281.4; MKJA, Inc.,
12 191 Cal. App. 4th at 658. Because State Farm has prevailed on its
13 petition to compel arbitration here, its motion to stay must be
14 granted.

15 CONCLUSION

16 For the reasons set forth above, State Farm's petition to
17 compel arbitration (Docket No. 15) and its motion to stay the
18 proceedings pending arbitration (Docket No. 11) are GRANTED. This
19 case shall be administratively closed, subject to reopening if a
20 petition to enforce the arbitration award is filed.

21 IT IS SO ORDERED.

22
23 Dated: 12/7/2012

24
25
26
27
28


CLAUDIA WILKEN
United States District Judge