FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-1492

BLACK KNIGHT SERVICING TECHNOLOGIES, LLC,

Appellant,

v.

PENNYMAC LOAN SERVICES, LLC,

Appellee.

On appeal from the Circuit Court for Duval County.
Virginia Norton, Judge.

January 6, 2021

LONG, J.

Black Knight appeals the trial court's order compelling arbitration. Black Knight argues PennyMac waived its right to arbitration when, after Black Knight sued PennyMac in Florida state court for breach of contract, PennyMac responded by suing Black Knight's parent company in a California federal court. The lawsuit was carefully worded and does not mention PennyMac's contractual relationship with Black Knight. While the only action taken by PennyMac in the state court proceedings was to compel arbitration, Black Knight argues the federal lawsuit constitutes a waiver of PennyMac's contractual right to arbitrate. We disagree and affirm. Both arbitration and contract law compel this result.

"The general definition of waiver, namely 'the voluntary and intentional relinquishment of a known right or conduct which implies the voluntary and intentional relinquishment of a known right,' applies to the right to arbitrate." *Pearson v. Peoples Nat'l Bank*, 116 So. 3d 1283, 1284 (Fla. 1st DCA 2013) (quoting *Raymond James Fin. Services, Inc. v. Saldukas*, 896 So. 2d 707, 711 (Fla. 2005)). "[The] party arguing waiver of arbitration bears a heavy burden of proof." *Eden Owners Ass'n, Inc. v. Eden III, Inc.*, 840 So. 2d 419, 420 (Fla. 1st DCA 2003) (citing *Miami Dolphins, Ltd. v. Cowan*, 601 So. 2d 301 (Fla. 3d DCA 1992)).

"All doubts regarding waiver should be construed in favor of arbitration rather than against it." *Marine Envtl. Partners, Inc. v. Johnson*, 863 So. 2d 423, 426 (Fla. 4th DCA 2003); *see also Qubty v. Nagda*, 817 So. 2d 952, 956 (Fla. 5th DCA 2002) (same); *Zager Plumbing, Inc. v. JPI Nat. Const., Inc.*, 785 So. 2d 660, 662 (Fla. 3d DCA 2001) (same); *K.P. Meiring Const., Inc. v. Northbay I & E, Inc.*, 761 So. 2d 1221, 1225 (Fla. 2d DCA 2000) (same). PennyMac's filing of a separate lawsuit raising separate claims against a separate entity does not establish an evidentiary basis of its intent to relinquish the right to arbitration with Black Knight. In fact, it may show the opposite; PennyMac's carefully worded federal lawsuit suggests an intent to safeguard its arbitration right.

Black Knight's burden is high, and it presented only the lawsuit itself to show PennyMac's intent to relinquish its contractual right to arbitration. There is doubt as to PennyMac's intent, and we must resolve all doubts against waiver and in favor of arbitration. We therefore find the trial court was correct to compel arbitration.*

AFFIRMED.

OSTERHAUS and NORDBY, JJ., concur.

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* We leave the issue of appellate attorney's fees to the arbitrator. Both parties' fee motions are denied.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Cristine M. Russell, A. Graham Allen, Edward McCarthy, III, E. Carson Lange, and Samuel J. Horovitz of Roger Towers, P.A., Jacksonville, for Appellant.

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