

Third District Court of Appeal

State of Florida

Opinion filed June 30, 2021.
Not final until disposition of timely filed motion for rehearing.

No. 3D20-161
Lower Tribunal No. 16-20026

Done and Done, LLC, etc.,
Appellant/Cross-Appellee,

vs.

Data Payment Systems, Inc., etc.,
Appellee/Cross-Appellant.

An Appeal from a non-final order from the Circuit Court for Miami-Dade County, Reemberto Diaz, Judge.

Buchanan Ingersoll & Rooney PC, and A. Sheila Oretsky and Chance Lyman (Tampa), for appellant/cross-appellee.

Barakat + Bossa PLLC, and Brian Barakat, for appellee/cross-appellant.

Before LOGUE, SCALES and LOBREE, JJ.

PER CURIAM.

In this appeal from an order compelling arbitration, the defendant,

Done and Done, LLC, argues that the trial court erred in compelling arbitration of its counterclaims and third-party claims.¹ Because our review of the record shows that the plaintiff, Data Payment Systems, Inc., d/b/a One Payment, waived its right to compel arbitration through its participation in litigation and discovery, we agree. See Chaikin v. Parker Waichman LLP, 253 So. 3d 640, 645 (Fla. 2d DCA 2017); Gen. Elec. Cap. Corp. v. Bio-Mass Tech, Inc., 136 So. 3d 698, 701 (Fla. 2d DCA 2014) (“[A] party acts inconsistently with the right to arbitration when the party actively participates in the lawsuit by either prosecuting or defending issues that are subject to arbitration.”); Est. of Orlanis ex rel. Marks v. Oakwood Terrace Skilled Nursing & Rehab. Ctr., 971 So. 2d 811, 813 (Fla. 3d DCA 2007) (“[I]t is crystal clear in this district that we apply the broad rule that any defendant who ‘seek[s] the benefits of the discovery rules prior to filing [his] motion to arbitrate,’ forfeits his right to arbitration.” (quoting Preferred Mut. Ins. Co. v. Matrix Constr. Corp., 662 So. 2d 432, 432 (Fla. 3d DCA 1995))); Marcus v. Fla. Bagels, LLC, 112 So. 3d 631, 634-35 (Fla. 4th DCA 2013) (declining to apply equitable estoppel to permit non-signatory former officer and director of signatory defendant to compel arbitration where signatory defendant had elected to proceed in litigation). Accordingly, the trial court’s order

¹ We dismiss the cross-appeal for lack of jurisdiction.

compelling Done and Done, LLC's counterclaims and third-party claims to arbitration is reversed, and the cause remanded for further proceedings.

Reversed and remanded.