

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CIVIL): AY
CASE NO.: 502019AP000104CAXXMB
L.T. No.: 502015SC004497XXXXMB

DAWN T. WALLACE,
Appellant,

v.

STACY N. BEAULIEU-FAWCETT,
BEAULIEU LAW GROUP, P.A.,
Appellees.

Opinion filed: July 20, 2020

Appeal from the County Court in and for Palm Beach County,
Judge August Bonavita

For Appellant: Dawn T. Wallace
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For Appellee: Stacy N. Beaulieu-Fawcett, Esq.
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PER CURIAM.

Appellant, Dawn T. Wallace (the “Client”), appeals the trial court’s order denying her Motion for Rehearing after the trial court granted Appellee’s, Stacy N. Beaulieu-Fawcett (the “Attorney”), Motion to Compel Arbitration and to Dismiss Complaint. The Client argues that the trial court erred in granting the Attorney’s motion because the Attorney waived arbitration. We agree and reverse.

By way of background, the Client hired the Attorney and her law firm to represent the Client in a dissolution of marriage proceeding. The retainer agreement between the parties provided that all “disputes and any counterclaim against [the Attorney’s law] firm in an action for collection for setoff because of any alleged improper act or acts on the part of the firm” shall be resolved by arbitration. Sometime after the resolution of the dissolution proceeding, the Client paid the outstanding legal fees and costs due to the Attorney. Subsequently, the Client filed a small claims action alleging overpayment of \$5,000 and seeking money damages against the Attorney.

The Attorney did not file an answer to the claim, but appeared at the pretrial conference and responded to the Client’s discovery requests for admissions and interrogatories. Then, more than three years after the Client filed the lawsuit, the Attorney moved to compel arbitration and to dismiss the complaint pursuant to the retainer agreement. Following a hearing, the court granted the Attorney’s motion to compel arbitration based on the retainer agreement and dismissed the complaint. This timely appeal follows.

Courts must consider three elements when ruling on a motion to compel arbitration: “(1) whether a valid written agreement to arbitrate exists; (2) whether an arbitrable issue exists; and (3) whether the right to arbitration was waived.” *Seifert v. U.S. Home Corp.*, 750 So. 2d 633, 636 (Fla. 1999). In the present case, only the waiver prong of the arbitration analysis is at issue.

A waiver is “the voluntary and intentional relinquishment of a known right or conduct which implies the voluntary and intentional relinquishment of a known right.” *Raymond James Fin. Servs. Inc. v. Saldukas*, 896 So. 2d 707, 711 (Fla. 2005). Therefore, when determining waiver, “the essential question is whether, *under the totality of the circumstances*, the defaulting party has acted inconsistently with the arbitration right.” *Ibis Lakes Homeowners Ass’n v. Ibis Isle Homeowners Ass’n*, 102 So. 3d 722, 731 (Fla. 4th DCA 2012) (emphasis in original) (quoting *Roger E. Freilich, D.M.D., P.A. v. Shochet*, 96 So. 3d 1135, 1138 (Fla. 4th DCA 2012)). Mere delay in filing a motion to compel arbitration is not the equivalent of a waiver, but delay may constitute a waiver where the litigation is procedurally active during the delay. *Strominger v. AmSouth Bank*, 991 So. 2d 1030, 1033 n.1 (Fla. 2d DCA 2008). Additionally, a party that participates in discovery on the merits waives the right to arbitrate. *Lion Gables Realty Ltd. v. Randall Mech., Inc.*, 65 So. 3d 1098, 1100 (Fla. 5th DCA 2011).

Here, the Attorney waited three years to file her motion to compel arbitration. While this delay in and of itself is not sufficient to support a finding of waiver, prior to filing that motion, the Attorney was procedurally active in the case. Specifically, the attorney appeared before the court, filed motions, and engaged in discovery that addressed the merits of the case. Given the totality of the circumstances, the Attorney acted inconsistently with the right to arbitration and, therefore, waived that right. Accordingly, we **REVERSE** the trial court’s order compelling arbitration and dismissing the claim and **REMAND** for further proceedings consistent with this opinion. Consequently, we deny the Attorney’s Motion for Appellate Attorney’s Fees.

SMALL, HAFELE, and CHEESMAN, JJ., concur.

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Appeal from Palm Beach County Court
Judge August Bonavita

STACY N. BEAULIEU-FAWCETT,
BEAULIEU LAW GROUP, P.A.,
Appellees.

Date of Appeal: July 8, 2019

_____/

DATE OF PANEL: MAY 26, 2020

PANEL JUDGES: SMALL, HAFELE, CHEESMAN

AFFIRMED/REVERSED/OTHER: REVERSED AND REMANDED

PER CURIAM OPINION/DECISION BY: PER CURIAM

CONCURRING:	)	DISSENTING:	)	CONCURRING SPECIALLY:)
	)	With/Without Opinion	)	With/Without Opinion)
)))
<u>/s/ Lisa S. Small</u>)	_____)	_____)
DATE: 7/16/2020 J.	)	J.	)	J.)
)))
<u>/s/ Donald W. Hafele</u>)	_____)	_____)
DATE: 7/16/2020 J.	)	J.	)	J.)
)))
<u>/s/ Maxine Cheesman</u>)	_____)	_____)
DATE: 7/16/2020 J.	)	J.	)	J.)