

SUMMARY STATEMENT

Shake Out, LLC v. Clearwater Construction, LLC

Docket No. 49637

This appeal concerns the applicability and enforceability of an arbitration clause. Shake Out, LLC (“Shake Out”), entered into a contract with Clearwater Construction, LLC (“Clearwater”), for Clearwater to repair the building Shake Out’s restaurant occupies. After the relationship between the parties deteriorated, Shake Out filed suit against Clearwater in district court. Clearwater filed its answer and later sought to compel arbitration pursuant to the contract. Shake Out objected, asserting that Clearwater had waived its right to enforce the arbitration clause because it had participated in the litigation for almost ten months before seeking to compel arbitration. The district court concluded Clearwater had not waived its right to seek arbitration and entered an order compelling arbitration and staying the proceedings. Shake Out timely appealed.

This Court held that the district court correctly concluded that Clearwater had not waived its right to compel arbitration. Specifically, this Court reasoned that it has previously referred to arbitration clauses as agreements to arbitrate, and, therefore, such clauses create a contractual right. Accordingly, this Court determined that Shake Out had failed to demonstrate that Clearwater had waived its right to compel arbitration and affirmed the decision of the district court.

Next, this Court concluded that neither party was entitled to attorney fees on appeal. First, attorney fees pursuant to Idaho Code section 12-121 were improper because neither party could demonstrate that the other acted “frivolously, unreasonably or without foundation.” Next, this Court determined that it would be premature to award attorney fees pursuant to Idaho Code section 12-120(3) because the parties have yet to litigate their dispute on the merits. For the same reason, this Court refused to award attorney fees pursuant to the contract between the parties. However, as the prevailing party on appeal, Clearwater was entitled to costs as a matter of right.

******This summary constitutes no part of the Court’s opinion. It has been prepared by court staff for the convenience of the public.******