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## BLOGS

### Arbitration

# District Court Orders Franchisor and Franchisee to Proceed to Arbitration After Granting Franchisor's Preliminary Injunction

A federal court in Florida recently ordered a franchisor and franchisee to proceed to arbitration following an earlier entry of a preliminary injunction against the franchisee. *Pirtek USA, LLC v. Twillman*, 2016 WL 7116205 (M.D. Fla. Dec. 7, 2016). The case involved claims of unfair competition, fraud, and breach of the noncompete and confidentiality provisions of a franchise agreement between the parties. Following entry of the preliminary injunction order, Twillman, a Pirtek franchisee, filed several motions seeking, among other things, relief from and/or modification of the order. Pirtek responded by objecting to the requested relief, filing an arbitration action with the AAA, and moving to compel arbitration pursuant to the terms of the franchise agreement between the parties.

The court denied Twillman's motions and granted Pirtek's motion to compel arbitration. In granting the motion to compel, the court rejected Twillman's argument that Pirtek had either waived its right to arbitrate or should be estopped from asserting such a right because it acted inconsistently with the right to arbitrate by filing a lawsuit seeking preliminary injunctive relief. The court held that Pirtek's initiation of its lawsuit was not inconsistent with its right to arbitrate the issue of permanent injunctive relief because the parties had contractually agreed that they could seek preliminary injunctive relief and reserve all other issues—including permanent injunctive relief—for arbitration. Further, the court noted that the brief delay between Pirtek's filing of its complaint and its arbitration demand did not amount to a waiver. Finding Twillman's waiver and estoppel arguments unavailing, the court ordered the parties to proceed to arbitration pursuant to the terms of their franchise agreement.

## Related People

### Maisa Frank

Partner

Washington, D.C.

202.295.2209

[maisa.frank@lathropgpm.com](mailto:maisa.frank@lathropgpm.com)