

**BLOGS**

Arbitration

## Eighth Circuit Rules a Franchisor Is Not Entitled to Compel Arbitration of its Own Claims After Receiving a Series of Unfavorable Decisions from the Court

The Eighth Circuit Court of Appeals has affirmed the denial of a motion to stay pending arbitration because the claims of the franchisor, Breadeaux's Pisa, did not fall within the mandatory stay provision of the Federal Arbitration Act (FAA). *Breadeaux's Pisa, LLC v. Beckman Bros. Ltd.*, 2023 WL 6801149 (8th Cir. Oct. 16, 2023).

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The district court granted Breadeaux's motion to compel arbitration and stayed all litigation involving the counterclaims, and shortly thereafter the court declined to issue a preliminary injunction on Breadeaux's affirmative claims. As the case progressed, Beckman served Breadeaux with discovery requests, but Breadeaux objected arguing that the requests were frivolous since the parties consented to equitable relief in the Agreement. The district court overruled these objection and Breadeaux immediately filed a demand for arbitration again seeking preliminary and permanent injunctions and declaratory judgment against Beckman. Breadeaux then moved to stay all proceedings in court pending completion of the arbitration and refused to produce discovery until the court ruled on the motion to stay. The district court again overruled Breadeaux's objection and ordered it to respond to Beckman's discovery requests. Breadeaux then filed a notice of appeal and moved to stay all proceedings pending its appeal pursuant to the FAA. The district court denied Breadeaux's motion to stay pending arbitration and granted the motion to stay pending appeal.

On appeal, the Eighth Circuit affirmed the lower court's denial of the second motion to stay pending arbitration, reasoning that Breadeaux only sought to stay the litigation in favor of arbitration after a series of adverse rulings. Additionally, the Eighth Circuit stated that Section 3 of the FAA typically gives defendants, not plaintiffs, a right to stay litigation noting that "when a party who has agreed to arbitrate a dispute instead brings a lawsuit, the FAA entitles the defendant to file

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an application to stay the litigation.” Next, the Eighth Circuit found that the district court did not err when it resolved the parties’ discovery disputes because Breadeaux waived its arbitration rights by acting inconsistently with its right to arbitrate. The court noted that “[c]ourts determine whether a party waives arbitration, not arbitrators.” Further, the court reasoned that Breadeaux invited the district court to “peek” at the no-compete provision when it incorporated it into its claims and continued to invite the district court to “peek” at arbitrable issues when it delayed its decision to seek arbitration of its remaining claims for equitable relief.