

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-13471
Non-Argument Calendar

R. MITCHELL BUSH,
R.M. BUSH & COMPANY,
d.b.a. The Bush Agency,

Plaintiffs-Appellants,

versus

NATIONWIDE MUTUAL INSURANCE COMPANY,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Georgia
D.C. Docket No. 4:20-cv-00219-RSB-CLR

Before NEWSOM, BRASHER, and ED CARNES, Circuit Judges.

PER CURIAM:

R. Mitchell Bush is the principal and owner of R.M. Bush & Company doing business as The Bush Agency. Bush has represented Nationwide Mutual Insurance Company as an insurance agent for 27 years, operating under an exclusive Nationwide contract. But in recent years, Bush and Nationwide agreed to transition Bush from an exclusive agent to an independent agent. The parties entered into several contracts, two of which are relevant to this appeal, and each of them includes an arbitration provision and also a forum selection clause, which names Ohio as the parties' chosen forum.

Soon after signing those contracts, Bush and his company sued Nationwide in the United States District Court for the Southern District of Georgia. (For simplicity, we'll refer to the plaintiffs collectively as Bush.) Why Bush sued Nationwide isn't relevant to this appeal. Because of the arbitration provision in one of the agreements, the suit bounced between arbitration and the district court while the arbitrability of Bush's claims was decided and some of the merits of Bush's arbitrable claims. Four years after Bush had filed his initial complaint in the Georgia district court, an arbitration panel issued an award in favor of Nationwide.

Instead of filing a motion to vacate or modify the award in the Georgia district court, Bush filed that motion along with a new complaint in the United States District Court for the Southern District of Ohio. The Ohio district court dismissed Bush's complaint under the first-to-file rule, concluding that Bush had waived any right to invoke the forum selection clauses in the contracts. In the

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Georgia district court, Nationwide moved to confirm the arbitration award, and that court granted the motion.

The only thing that Bush challenges in this appeal is whether the Georgia district court was the correct venue to confirm the award. Because we agree with the Georgia and Ohio district courts that Bush waived any right to invoke the forum selection clauses in his contracts with Nationwide, we affirm.

I.

The two agreements important to this appeal are: the Independent Contractor Agent Agreement (contractor agreement) and the Asset Transfer Agreement (asset agreement). Both contain arbitration provisions and forum selection clauses.

The contractor agreement makes any claim or dispute between the parties subject to mandatory arbitration in Ohio. But it includes a “carve out,” allowing the parties to seek in *any court* of “competent jurisdiction” equitable relief in the form of a temporary restraining order or preliminary or permanent injunctive relief. Here’s the language:

17.A: Any claim or dispute between Agent and Company, will be adjudicated on an individual agent-by-agent basis The adjudication will be by mandatory binding arbitration The place of arbitration will be Columbus, Ohio.

There is also this provision in the contractor agreement:

17.G: This Section 17[] does not limit either Party's right to pursue equitable remedies for a temporary restraining order or preliminary or permanent injunctive relief from a court of competent jurisdiction before, after, or during the pendency of any arbitration proceeding, including in aid of arbitration The Parties intend that any dispute in any way relating to the Parties' contractual and business relationship must be pursued through arbitration such that there should be no disputes suitable for filing in a court of competent jurisdiction except as to the pursuit of equitable remedies described in this paragraph. But, if a court determines that such claims exist, the claims may be brought only in a state or federal court in Columbus, Franklin County, Ohio[.]

The asset agreement also includes a forum selection clause choosing Ohio as the forum state for disputes arising out of or relating to the terms of the asset agreement or for recognition and enforcement of judgments:

¶ 10.K. Each Party irrevocably agrees that *any legal action or proceeding arising out of or relating to this Agreement* or for recognition and enforcement of any judgment in respect hereof brought by the other Party or Parties or their successors or assigns must be brought and determined exclusively in any Ohio state or federal court sitting in Columbus, Ohio[.] . . . Each Party hereby irrevocably and unconditionally waives, and agrees not to assert, by way of motion or as a defense, counterclaim or otherwise, in any action or proceeding arising out of or relating to this Agreement or the

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transactions contemplated hereby . . . that (a) the suit, action or proceeding in any such court is brought in an inconvenient forum, (b) the venue of such suit, action or proceeding is improper or (c) this Agreement, or the subject matter hereof, may not be enforced in or by such courts.

Under the asset agreement, the parties also agreed that Ohio law governs “all disputes or controversies arising out of or relating to” the asset agreement.

In the original complaint, Bush asserted claims for declaratory and injunctive relief, asking the Georgia district court to enjoin the enforcement of the asset agreement, which Bush was permitted to do under the contractor agreement. But Bush also asked the Georgia district court to declare specific provisions of the asset agreement “void and unenforceable” and asserted a claim for equitable estoppel, alleging that Bush was “entitled to an equitable rescission” of the asset agreement.

Relying on the arbitration provision in the contractor agreement and the forum selection clauses in both the contractor agreement and asset agreement (as well as a third agreement the parties had signed), Nationwide moved the Georgia district court to compel arbitration or, in the alternative, transfer the case to the Ohio district court. Bush opposed that motion in its entirety.¹ The Georgia district court stayed the case, ordered the parties’ underlying

¹ Bush argued before the district court that the contractor agreement’s arbitration provision didn’t apply to its claims because it had brought claims based only on the asset agreement. The district court disagreed, explaining

dispute to be arbitrated, and directed that the arbitration panel decide whether Bush's request for injunctive relief from the enforcement of the asset agreement was subject to arbitration.²

The arbitration panel later issued an order concluding that the contractor agreement allowed Bush to pursue injunctive relief in federal court. Then, back before the Georgia district court, Bush filed an amended complaint, adding a new claim for civil damages under 26 U.S.C. § 7434 and seeking injunctive and declaratory relief. Nationwide again filed a motion for the court to compel arbitration for all non-injunctive claims. The district court concluded that Bush's claim for monetary damages was subject to the contractor agreement arbitration provision and that Bush had also conceded that the claim was subject to arbitration. The court again stayed the proceedings. And it again sent the parties to arbitration.

The arbitration panel decided the claims in Nationwide's favor. After the panel issued a partial final award, but before it issued the final award, Bush filed a complaint and a motion to vacate or modify the arbitration award in the Ohio district court. *See R. M. Bush & Co. v. Nationwide Mut. Ins. Co.*, No. 2:24-CV-4311, 2025 WL 1413394, at *2 (S.D. Ohio May 15, 2025). Nationwide responded

that the contractor agreement's arbitration provision broadly applied to "any claim or dispute between" the parties and was not limited to "claims or disputes arising out of or relating to the terms" of only the contractor agreement.

² The court did not reach the issue of whether to transfer the case.

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with a motion to dismiss or to transfer that action to the Georgia district court under the first-to-file rule.

While the case was being litigated in the Ohio district court and after the arbitration panel had issued a final award in Nationwide's favor, Nationwide asked the Georgia district court to lift its stay and to confirm the arbitration award. And while those requests were pending before the Georgia district court, the Ohio district court dismissed the case, concluding that Bush had "waived the applicable forum selection clause and that ancillary arbitration litigation should be resolved in the Georgia court under the first-to-file rule." *Id.* at *3, *8.

Then, in the Georgia district court, Bush responded to Nationwide's motion to confirm the arbitration award by arguing only that the court was the improper venue for that motion under the contractor agreement's and asset agreement's forum selection clauses. After noting that Bush did not argue that the court lacked power to confirm the award and that Bush didn't attempt to establish grounds for vacatur or modification of the award, the Georgia district court granted Nationwide's motion and confirmed the award.

Before this Court, Bush doesn't contest the merits of the district court's order confirming the arbitration award. For the third time, before a third court, Bush argues that the Georgia district court was the wrong venue for Nationwide's motion to confirm the award. And for the third time, a Court (this one) rejects Bush's argument.

II.

We review *de novo* the enforceability of a forum-selection clause and whether a party's conduct amounts to waiver of a legal right. See *Bailey v. ERG Enters., LP*, 705 F.3d 1311, 1316 (11th Cir. 2013); *Ivax Corp. v. B. Braun of Am., Inc.*, 286 F.3d 1309, 1316 (11th Cir. 2002), *abrogated in part on unrelated grounds by Morgan v. Sundance, Inc.*, 596 U.S. 411, 419 (2022). But we review the underlying factual conclusions relevant to the enforceability of a forum selection clause or a waiver determination only for clear error. *Usme v. CMI Leisure Mgmt., Inc.*, 106 F.4th 1079, 1085 (11th Cir. 2024); *Ivax Corp.*, 286 F.3d at 1316 n.18. A "district court's refusal to change venue will only be disturbed for a clear abuse of discretion." *Robinson v. Giarmarco & Bill, P.C.*, 74 F.3d 253, 255 (11th Cir. 1996).

III.

Bush contends that under the contractor agreement's and asset agreement's forum selection clauses, Nationwide's motion to confirm the arbitration award should have been litigated in Ohio. Bush argues that he didn't waive the right to invoke the asset agreement's forum selection clause by filing in the Georgia district court the complaint that eventually led to this appeal, or by opposing Nationwide's motion to transfer the case to the Ohio district court, or by continuing to litigate the case in Georgia.

Under federal, Ohio, and Georgia law, waiver is the voluntary relinquishment or abandonment of a known right. *Morgan*, 596 U.S. at 417; *Gembarski v. PartsSource, Inc.*, 134 N.E.3d 1175, 1180 (Ohio 2019); *Floyd v. Floyd*, 732 S.E.2d 258, 262 n.3 (Ga. 2012). In

determining whether a party has waived a known right, “the court focuses on the actions of the person who held the right.” *Morgan*, 596 U.S. at 417 (“That analysis applies to the waiver of a contractual right, as of any other.”); see *Gembarski*, 134 N.E.3d at 1181 (explaining a waiver of a known right occurs if “the party acted inconsistently with that right”); *Floyd*, 732 S.E.2d at 262 n.3 (explaining that “one may waive a contractual right by his conduct”).

Bush’s conduct throughout this litigation (until Bush lost before the arbitration panel) has been inconsistent with any intent to invoke the forum selection clause in the asset agreement. Bush’s original complaint focused on the terms of the asset agreement and included claims for non-injunctive relief; Bush opposed Nationwide’s motion to compel arbitration, or in the alternative, to transfer the case to the Ohio district court under the forum selection clause in the asset agreement. And Bush has not contested the Georgia district court’s finding that one of Bush’s non-injunctive claims for relief alleged in the amended complaint “was explicitly contemplated by and addressed in the [asset agreement],” meaning it was subject to arbitration. *Bush v. Nationwide Mut. Ins. Co.*, No. 4:20-CV-219, 2024 WL 477004, at *4 (S.D. Ga. Feb. 7, 2024). And Bush continued to file joint status reports, with Nationwide in the Georgia district court, as directed, during the pendency of arbitration.

Bush is presumed to have read and understood the forum selection clause in the asset agreement. See generally *Swyters v. Motorola Emps. Credit Union*, 535 S.E.2d 508, 510 (Ga. Ct. App. 2000)

(“[P]arties to a contract are presumed to have read their provisions and to have understood the contents.”) (citations omitted); *Preferred Cap., Inc. v. Power Eng’g Grp., Inc.*, 860 N.E.2d 741, 745 (Ohio 2007) (“[P]arties to contracts are presumed to have read and understood them.”). Bush also attested to having “carefully read” and “understood all of the content” in the asset agreement when executing the agreement. The forum selection clause is plain. Despite all that, Bush repeatedly engaged in conduct directly inconsistent with the requirement that any legal proceeding relating to the asset agreement was to be brought in a court in Columbus, Ohio. By taking those actions he waived any right to invoke the clause. *See Morgan*, 596 U.S. at 417; *Gembarski*, 134 N.E.3d at 1181; *Floyd*, 732 S.E.2d at 262 n.3. The district court didn’t err, much less clearly err, in finding that Bush’s conduct established that he wanted to litigate in Georgia. And that’s what he did.³

AFFIRMED.

³ Because we conclude that Bush waived the right to invoke the asset agreement’s forum selection clause, we need not and do not reach the other issues the parties raised involving that clause.