

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

MAJOR CADILLAC, INC.

Respondent

v.

GENERAL MOTORS CORPORATION

Appellant

DOCKET NUMBER **WD69823**

DATE: February 17, 2009

Appeal From:

Circuit Court of Jackson County, MO
The Honorable William Stephen Nixon, Judge

Appellate Judges:

Division Four: Thomas H. Newton, C.J., Harold L. Lowenstein and Victor C. Howard, JJ.

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**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

MAJOR CADILLAC, INC., Respondent, v.
GENERAL MOTORS CORPORATION, Appellant

WD69823

Jackson County

Before Division Four Judges: Newton, C.J., Lowenstein, and Howard, JJ.

Former dealerships and their owners—Major, Main Street, F. Major, J. Major, and Henderson—sued GM for damages under several theories. After pretrial litigation of several issues over the course of eight months, GM filed a motion to compel arbitration. Major and the other petitioners opposed the motion. The trial court denied the motion. GM appeals.

AFFIRMED.

Division Four holds:

GM argues in its first point that the trial court erred when it denied the motion compel arbitration because Major and Main Street agreed to arbitrate claims and their claims are within the scope of the arbitration agreements. In its second point, GM argues that the trial court erred in denying the motion to compel arbitration because Major and Main Street's defenses of waiver and federal exemption are meritless. And finally, GM argues that the trial court erred in denying the motion to compel arbitration against F. Major, J. Major, and Henderson because as owners their claims are derivative to the dealers' claims, requiring that the arbitration clauses also apply to their claims.

GM is correct that federal law requires the enforcement of valid arbitration agreements. But a party may also waive the right to arbitrate. A party waives the right to arbitrate if it: (1) had knowledge of the existing right to arbitrate, (2) acted inconsistently with that right, and (3) prejudiced the party contesting arbitration. The party contesting arbitration has the burden to show prejudice. GM had knowledge of the arbitration clauses because it drafted the agreements. GM acted inconsistently when it removed the case to federal court and then filed a motion to dismiss there, and upon remand to circuit court, filed for a change of judge and filed a motion to dismiss with prejudice. GM's conduct constitutes litigation of substantial issues going to the merits that has prejudiced Major and the other petitioners. Had GM filed its motion to compel arbitration earlier and not sought judgment on the merits of the case, Major and the other

petitioners would not have expended resources for eight months defending the merits of their claims. GM's conduct deprived them of the principle benefit of arbitration: efficient and low-cost resolution of disputes. Thus, GM has waived any right to arbitrate. The trial court did not err in denying the motion to compel arbitration.

Because GM waived any right to arbitrate, its remaining claims of error are moot. Therefore, we affirm.

Opinion by: Thomas H. Newton, C. J.

February 17, 2009

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