In the

United States Court of Appeals

For the Seventh Circuit

No. 24-1168

VILLAGE OF SCHAUMBURG, ILLINOIS,

Plaintiff-Appellant,

v.

PERMASTEELISA NORTH AMERICA CORP.,

Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 22 CV 601 — **Manish S. Shah**, *Judge*.

ARGUED SEPTEMBER 26, 2024 — DECIDED AUGUST 18, 2026

Before EASTERBROOK, ST. EVE, and PRYOR, *Circuit Judges*.

EASTERBROOK, *Circuit Judge*. The Village of Schaumburg owns the Renaissance Schaumburg Hotel and Convention Center. Schaumburg believes that the convention center's exterior walls are defective. In February 2022 it sued several entities for fraud, breach of warranty, and products liability. In November 2022 it added Permasteelisa North America, one of the subcontractors, as an additional defendant. Eight months later the Village told the court that it wants to arbitrate its dispute with Permasteelisa. It had not asked for that relief in its complaint, nor had it told Permasteelisa before filing suit that it wanted to arbitrate. Its belated request for arbitration brought the suit to a halt.

The district court denied the motion to order arbitration. It concluded that, by filing suit against Permasteelisa, the Village presumptively surrendered whatever right to arbitrate it may have possessed. See *Smith v. GC Services L.P.*, 907 F.3d 495, 499 (7th Cir. 2018). (It is not clear that the Village ever had such a right. The arbitration clause is in a contract between Permasteelisa and Walsh Construction, the general contractor. The Village contends that it can take advantage of this clause as assignee of Permasteelisa's warranties to Walsh.)

The presumption of waiver became a holding of waiver because the Village waited many months after filing suit. It asserted that suit was necessary to avoid the running of the statute of limitations, to which the district court replied, in essence, that, if this supplied the need for suit, then the Village should have requested arbitration at the same time and certainly no later than January 2023, when Permasteelisa filed a motion to dismiss. The combination of suit plus delay meant that the Village "has acted inconsistently with the right to arbitrate", waiving whatever entitlement it might have had. *Brickstructures, Inc. v. Coaster Dynamics, Inc.*, 952 F.3d 887, 891 (7th Cir. 2020).

The first question we must address on the Village's appeal, see 9 U.S.C. §16(a)(1), is the standard of appellate review. The Village maintains that our review is plenary (de novo), while Permasteelisa contends that it is deferential. Both positions find support in this court's decisions. The court recently resolved the intra-circuit conflict in favor of deferential review (unless legal issues predominate). See *Moore v. Club Exploria, LLC*, No. 25-2721 (7th Cir. Aug. 18, 2026). We review today's dispute for abuse of discretion under *Moore*'s approach.

The district court did not commit clear error in concluding that the Village waived whatever right it possessed to arbitrate with Permasteelisa. The Village filed suit without asking that the dispute be sent to arbitration. Two months later Permasteelisa moved to dismiss the complaint. The Village still did not seek arbitration, perhaps hoping that it would receive a favorable ruling on the merits. Only after letting the district judge spend six months working on Permasteelisa's motion did Schaumburg *then* declare that the dispute does not belong in court. The judge understandably thought that the Village was playing games. Although the Village did not wait until after receiving an adverse decision before asking to opt out—that's one common situation in which courts find waiver by delay—it may have concluded that, as time passed, Permasteelisa's motion to dismiss seemed more likely to prevail.

Morgan v. Sundance, Inc., 596 U.S. 411 (2022), holds that prejudice from delay is not essential to waiver by conduct. Still, the Village insists, "the law's overwhelming policy favoring arbitration" (Br. 6) compels a district court to resolve any doubt in favor of arbitration. But where can we find this "overwhelming policy"? Not in the Federal Arbitration Act, which requires courts to treat arbitration agreements just like other contracts. 9 U.S.C. §2. "[A] court must hold a party to its arbitration contract just as the court would to any other kind. But a court may not devise novel rules to favor arbitration over litigation. If an ordinary procedural rule—whether of waiver or forfeiture or what-have-you—would counsel against enforcement of an arbitration contract, then so be it.

The federal policy is about treating arbitration contracts like all others, not about fostering arbitration." *Morgan*, 596 U.S. at 418 (citation omitted). The Supreme Court has dashed any contention that district judges must favor arbitration when making decisions about waiver by conduct.

Schaumburg has one final argument, based on §12.2 of the contract between Permasteelisa and Walsh:

> Severability and Waiver. The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision. The failure of either party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

As the Village sees things, delay in asking the court to refer a dispute to arbitration is a "failure to insist" on enforcing part of the contract and "shall not be construed as a waiver or relinquishment" of arbitration.

Yet the effects of conduct (or absence of conduct) *in federal court* are decided under federal procedural law and not under a state's law of contract. This is an application of the norm that, in cases under the diversity jurisdiction, federal rules and practices govern conduct of the litigation while state law governs substance. See, e.g., *Shady Grove Orthopedic Associates, P.A. v. Allstate Insurance Co.*, 559 U.S. 393 (2010); *Gasperini v. Center for Humanities, Inc.*, 518 U.S. 415 (1996); *Mayer v. Gary Partners & Co.*, 29 F.3d 330 (7th Cir. 1994). *Morgan* is among the many decisions applying federal procedural norms to decide whether conduct in federal court waives a right.

Federal judges are entitled to protect themselves, and litigants in the many other cases awaiting judicial attention, from manipulation. People cannot by contract create a privilege to delay federal suits or ignore generally applicable procedures, such as the need to make *timely* requests to arbitrate. Likewise parties cannot agree by contract to replace notice-pleading standards under Fed. R. Civ. P. 8 with code pleading. At least four courts of appeals have held that an anti-waiver clause in a contract does not limit a federal judge's discretion about how to respond to delay or other strategic behavior in litigation. See *Johnson Associates Corp. v. HL Operating Corp.*, 680 F.3d 713, 717 (6th Cir. 2012); *Gray Holdco, Inc. v. Cassady*, 654 F.3d 444, 452–54 (3d Cir. 2011); *Republic Insurance Co. v. PAICO Receivables, LLC*, 383 F.3d 341, 348 (5th Cir. 2004); *S&R Co. of Kingston v. Latona Trucking, Inc.*, 159 F.3d 80, 85–86 (2d Cir. 1998). We agree with those decisions.

AFFIRMED