

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2009-034601

03/19/2010

HON. JOHN REA

CLERK OF THE COURT
L. Gilbert
Deputy

A R MAYS CONSTRUCTION INC

ROBERT O DYER

v.

PURE FITNESS L L C

JOHN T MOSHIER

MINUTE ENTRY

Defendant Pure Fitness filed a Motion for Leave to File Amended Answer and an Application to Compel Arbitration and Stay Proceedings. Plaintiff A.R. Mays opposes both Motions. Pure Fitness's Motion and Application both seek to invoke an arbitration clause in the parties' contract. The record reflects that Defendant filed an Answer and Third-Party Complaint on December 10, 2009, without invoking the arbitration clause. Defendant also filed a Certificate that the case was not subject to compulsory arbitration. On January 22, 2010, Plaintiff filed a Motion for Summary Judgment. Prior to filing its Response, Defendant filed the pending Motion and Application.

In *Meineke v. Twin City Fire Ins. Co.*, 181 Ariz. 576, 582 (App. 1994), the court stated: "In our view, a party's filing of a lawsuit without invoking arbitration or appraisal would nearly always indicate a clear repudiation of the right to arbitrate or have an appraisal, and the filing of an answer normally has the same effect. Twin City, although stating in its answer that it reserved the right to demand arbitration or appraisal, did not request appraisal simultaneously with filing its answer. Under these circumstances, we must agree with the trial court's determination that filing the answer indicated a repudiation of the appraisal clause by Twin City. To hold otherwise would leave the insured in limbo as to which procedure would prevail for settlement of their claim. To allow parties to proceed on the dual pathways of arbitration (or

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appraisal) and litigation nullifies the time and expense-saving benefits of arbitration. Allowing parallel tracks also wastes over-burdened judicial resources. Although arbitration is favored, the reasons for favoring it are to save the parties both time and expense and to spare judicial resources. Allowing dual procedures negates the reasons behind favoring arbitration.”

In this case, Pure Fitness not only failed to invoke the arbitration clause in its Answer, it did not demand arbitration until it received Plaintiff’s Motion for Summary Judgment. The Court finds that Pure Fitness waived the arbitration clause.

IT IS ORDERED Defendants’ Motion for Leave to File Amended Answer is granted in part to allow the filing of a complete copy of the contract and denied in all other respects.

IT IS FURTHER ORDERED Defendants’ Application to Compel Arbitration and Stay Proceedings is denied.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>