

2026 IL App (1st) 260844-U
No. 1-26-0844
Order filed September 30, 2026

Fifth Division

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

ACCELERATED INVENTORY MANAGEMENT, LLC,	)	Appeal from the
	)	Circuit Court of
Plaintiff and Counterdefendant-Appellant,	)	Cook County.
	)	
v.	)	No. 25 M4 003390
	)	
JOSE HERNANDEZ, on behalf of himself and others	)	Honorable
similarly situated,	)	Neil H. Cohen,
	)	Judge, Presiding.
Defendant and Counterplaintiff-Appellee.	)	

PRESIDING JUSTICE ODEN JOHNSON delivered the judgment of the court.
Justices C.A. Walker and Wilson concurred in the judgment.

ORDER

- ¶ 1 *Held:* The circuit court did not err in denying plaintiff's motion to compel arbitration based on waiver when plaintiff's complaint and the defendant's counterclaim arose from the same contract and factual circumstances and defendant's affirmative defenses and counterclaims were mirror images of plaintiff's initial complaint.
- ¶ 2 Plaintiff and Counterdefendant Accelerated Inventory Management, LLC (AIM) appeals from the circuit court's denial of its motion to compel arbitration of counterclaims filed by

defendant Jose Hernandez, on behalf of himself and others similarly situated. On appeal, AIM contends that the circuit court erred in denying its motion to compel arbitration because: (1) it did not waive its right to arbitrate, (2) the matters raised in the counterclaim are subject to the arbitration clause, and (3) it has the right to enforce the arbitration clause as a subsequent holder. For the following reasons, we affirm.

¶ 3

BACKGROUND

¶ 4 On April 25, 2025, debt buyer AIM filed suit against Hernandez to recover money owed under a purported Loan Agreement and Promissory Note. The complaint alleged that LendingClub Corporation (LendingClub) operated an online personal loan platform through which individuals could apply for loans originated by WebBank. Applicants applied for the loans online, verified personal information and provided identity and proof of income information. On the basis of the information provided, LendingClub would decide whether or not to approve the loan on WebBank's behalf. Once the loan was approved, a borrower would then receive a Borrower Agreement and Promissory Note, as well as other documentation for the loan, which was required to be e-signed by checking a box signifying their electronic consent and then clicking through to the next screen, which finished the application process. AIM included copies of the Borrower Agreement and Promissory Note with the motion to compel arbitration. AIM states that it was not possible for a borrower to receive a loan through LendingClub's system without signifying their agreement to the terms of the Borrower Agreement, Promissory Note, and other required documentation. On January 21, 2019, Hernandez applied for a loan through WebBank through LendingClub and executed the required pre-loan documentation at 9:12 p.m. PST. The loan was approved, and Hernandez allegedly subsequently executed the Borrower Agreement, Promissory

Note and other required documentation on January 24, 2019, at 3:13 a.m. PST. The \$15,000 loan was issued to Hernandez on January 28, 2019.

¶ 5 The Borrower Agreement and Promissory Note indicated that they were governed by federal law and the laws of the State of Utah, and contained the following language in paragraph 21(a):

“Either party to this Agreement, or any subsequent holder, may, at its sole election, require that the sole and exclusive forum and remedy for resolution of a Claim be final and binding arbitration pursuant to this section 21 (the “Arbitration [Clause]”), unless you opt out as provided in section 21(b) below.”

The Arbitration Clause defined “claim” as:

“any past, present or future claim, dispute, or controversy involving you (or persons claiming through or connected with you), on the one hand, and us and/or any subsequent holder (or persons claiming through or connected with us and/or the subsequent holders), on the other hand, relating to or arising out of this Agreement, any Loan Agreement and Promissory Note(s), the Site, and/or the activities or relationships that involve, lead to, or result from any of the foregoing, including (except to the extent provided otherwise in the last sentence of section 21(f) below) the validity or enforceability of this Arbitration Clause, any part thereof, or the entire Agreement.

* * *

Claims are subject to arbitration regardless of whether they arise from contract; tort (intentional or otherwise); a constitution, statute, common law, or principles of equity; or otherwise. Claims include matters arising as initial claims, counterclaims, cross-claims,

third-party claims, or otherwise. The scope of this Arbitration Clause is to be given the broadest possible interpretation that is enforceable.”

¶ 6 The Promissory Note further provided that:

“Lender may, without notice to Borrower, assign all of its right, title and interest in this Note to any other third party, and Borrower further understands, acknowledges and agrees that any assignee may sell, assign or transfer the Note and all associated documents and information related to the Note without Borrower’s consent or delivery of notice (subject in each case to the registration requirement above). Borrower may not assign this Note without the prior written consent of Lender. This Note inures to the successors, permitted assigns, heirs and representatives of Borrower and Lender. * * * This Note is subject to the arbitration provisions of the Borrower Agreement between Lender and Borrower, which is incorporated by reference into this Note.”

The Loan Agreement further provided in paragraph 21(f) that:

“NO ARBITRATION SHALL PROCEED ON A CLASS, REPRESENTATIVE, OR COLLECTIVE BASIS (INCLUDING AS PRIVATE ATTORNEY GENERAL ON BEHALF OF OTHERS), EVEN IF THE CLAIM OR CLAIMS THAT ARE SUBJECT OF THE ARBITRATION HAD PREVIOUSLY BEEN ASSERTED (OR COULD HAVE BEEN ASSERTED) IN A COURT AS CLASS REPRESENTATIVE, OR COLLECTIVE ACTIONS IN A COURT.”

Further, paragraph 21(h) of the loan documents provides that:

“This Arbitration [Clause] shall survive * * * (iii) any transfer of any loan or Loan Agreement or Promissory Note(s) or any other promissory note(s) which you owe, or any amounts owed on such loans or notes, to any other person or entity.

Borrowers were permitted to opt out of the Arbitration Clause in paragraph 21(b) as follows:

“You may opt out of this Arbitration Provision for all purposes by sending an arbitration opt out notice to WebBank, c/o LendingClub Corporation, 71 Stevenson St., Suite 1000, San Francisco CA, 94105, Attention: Legal Department, which is received at the specified address within 30 days of the date of your electronic acceptance of the terms of this Agreement.”

¶ 7 Within 14 days of the loan’s origination WebBank transferred ownership of the loan account to LendingClub. On November 20, 2020, LendingClub sold the account to AIM via an Account Purchase Agreement- Forward Flow. According to Hernandez, AIM’s suit was filed more than five years after the last payment.

¶ 8 Hernandez filed his affirmative defenses on November 19, 2025, concerning collection activities AIM allegedly undertook regarding the account. On January 7, 2026, AIM, via email, requested that Hernandez agree to arbitration on an individual basis pursuant to the Arbitration Clause. Hernandez’s counsel replied the following day that Hernandez did not consent to arbitration.

¶ 9 On March 3, 2026, Hernandez filed a class action counterclaim against AIM alleging several allegations of fair debt collection practices, consumer fraud, truth in lending, as well as assertions that AIM’s claims were time-barred because they were filed more than five years after the last payment or default, the loan agreements were usurious, and that the powers of attorney

and promissory notes were invalid. AIM responded with a motion to compel arbitration of the counterclaim, filed on March 23, 2026. Hernandez made several arguments against compelling arbitration, but the circuit court relied on waiver.

¶ 10 Specifically, the circuit court agreed that AIM waived its right to arbitration when it chose to file suit against Hernandez seeking to enforce the Borrower's Agreement and the Promissory Note. The court found that AIM's claim against Hernandez clearly and unambiguously fell within the terms of the arbitration provision as the complaint asserts that agreements are valid and that suit was filed within the statute of limitations. The counterclaim asserts that the agreements are invalid and unenforceable, that AIM's suit is time-barred, and that AIM habitually files time-barred suits in violation of the law. The court found that AIM submitted issues that are "undeniably subject to arbitration to this court for decision, and therefore, AIM waived any right to compel Hernandez to arbitrate his counterclaim involving the same agreements and the validity and enforceability of those agreements. The circuit court denied AIM's motion to compel arbitration on April 28, 2026.

¶ 11 AIM's notice of interlocutory appeal was filed on May 6, 2026.

¶ 12 ANALYSIS

¶ 13 On appeal, AIM contends that the circuit court erred in denying its motion to compel arbitration because: (1) it did not waive its right to arbitrate, (2) the matters raised in the counterclaim are subject to the arbitration clause, and (3) it has the right to enforce the arbitration clause as a subsequent holder.

¶ 14 AIM filed its timely notice of appeal on May 6, 2026, pursuant to Illinois Supreme Court Rule 307(a)(1) (eff. Nov. 1, 2017), appealing the April 28, 2026, order denying its motion to

compel arbitration. Rule 307(a)(1) permits interlocutory appeals from orders granting or refusing an injunction. *Id.* An injunction is a judicial process requiring a party to do a particular thing or refrain from doing a particular thing. *Herns v. Symphony Jackson Square LLC*, 2021 IL App (1st) 201064, ¶ 14. An order granting or denying a motion to compel arbitration is injunctive in nature and is appealable under Rule 307(a)(1). *Id.* Accordingly, this court has jurisdiction pursuant to Rule 307(a)(1).

¶ 15 A motion to compel arbitration is fundamentally a section 2-619(a)(9) (735 ILCS 5/2-619(a)(9) (West 2024)) motion to dismiss or stay an action based on an affirmative matter, the exclusive remedy of arbitration. *Nord v. Residential Alternatives of Illinois, Inc.*, 2023 IL App (4th) 220669, ¶ 28. In ruling on a motion to dismiss and compel arbitration pursuant to section 2-619, the court must interpret all pleadings and supporting documents in the light most favorable to the nonmoving party. *Westlake Services LLC v. Williams*, 2025 IL App (1st) 241383, ¶ 13. Generally, the standard of review for an order granting or denying a motion to compel arbitration is abuse of discretion. *Id.* But when the circuit court's decision is made without an evidentiary hearing and without findings on any factual issues, this court's standard of review is *de novo*. *Id.* In this case, the record indicates that the circuit court did not hold an evidentiary hearing, thus our review is *de novo*.

¶ 16 A court should grant a motion to compel arbitration if there is (1) a valid arbitration agreement between the parties and (2) the litigation falls within the scope of the arbitration agreement. *Donaldson, Lufkin & Jenrette Futures, Inc. v. Barr*, 124 Ill. 2d 435, 444-45 (1988).

¶ 17 As an initial matter, this court must determine whether it or an arbitrator should decide the motion to dismiss and compel arbitration. *Clark v. Foresight Energy, LLC*, 2023 IL App (5th)

230346, ¶ 15. Illinois courts follow a three-pronged approach when determining whether parties agreed to arbitrate: (1) if the dispute clearly falls within the arbitration clause, the court must compel arbitration; (2) if it clearly does not, the court must deny arbitration; and (3) if it is unclear, the arbitrator decides arbitrability. *Id.* AIM contends that the parties agreed to binding arbitration at the election of either party including the scope of the arbitration agreement. But whether a claim is arbitrable on its face is initially for the court to decide. *Westlake*, 2025 IL App (1st) 241383, ¶ 15.

¶ 18 AIM argues that the circuit court erred in ruling that it waived the right to arbitrate the class action counterclaims. Where a party waived its right to arbitrate through litigation conduct or delay is not a question of arbitrability and is decided by a court. *Id.* ¶ 16. Waiver of the right to arbitrate turns on whether the moving party acted inconsistently with the arbitration clause. *Id.*

¶ 19 Illinois considers arbitration to be a favored method of dispute resolution (*Clark*, 2023 IL App (5th) 230346, ¶ 23), and courts are reluctant to hold that a party waived its arbitration rights (*Lundy v. Farmers Group, Inc.*, 322 Ill. App. 3d 214, 219 (2001)). However, the court will find waiver if a party has acted inconsistently with claiming that right and shows an intention to abandon that right. *Id.* In determining a party's waiver, courts will consider (1) the moving party's conduct, (2) the party's delay in proclaiming a right to arbitrate, (3) any prejudice to the nonmoving party, and (4) whether the parties incorporated a no waiver provision in their arbitration agreement. *Westlake*, 2025 IL App (1st) 241383, ¶ 18.

¶ 20 “‘Even where a party follows the letter of the arbitration agreement in invoking its right to arbitration, a court may conclude that the party has done something to waive that right.’” *Id.* ¶ 19 (quoting *Liberty Chevrolet, Inc. v. Rainey*, 339 Ill. App. 3d 949, 953 (2003)). Submitting a

substantive and arbitrable issue to a court is inconsistent with preserving a right to arbitrate. *Westlake*, 2025 IL App (1st) 241383, ¶ 19. Thus, if a party files a complaint in court containing arbitrable issues, the party waives its right to arbitrate the issue. *Id*; *Schroeder Murchie Laya Associates, Ltd. v. 1000 West Lofts, LLC*, 319 Ill. App. 3d 1089, 1098 (2001). The party also waives its right to arbitrate counterclaims that are related to the complaint. *Schroeder*, 319 Ill. App. 3d at 1099. However, there is no rule that filing a complaint waives the plaintiff's right to demand the arbitration of new issues that the defendant has raised in a counterclaim. *Westlake*, 2025 IL App (1st) 241383, ¶ 19. Accordingly, the issue of whether filing a complaint is inconsistent with seeking to compel arbitration of counterclaims depends on the relatedness of the claims. *Id*.

¶ 21 Hernandez argues, among other things, that AIM acted inconsistently with the arbitration clause by filing its collection suit in court because the complaint and counterclaim involve the same contract, issues and facts. In response, AIM argues in its reply brief that it did not knowingly waive its right to compel arbitration by filing a court complaint and essentially doing nothing else. AIM also argues that this approach is inconsistent with Utah law, which holds that waiver only occurs when the party seeking arbitration substantially participates in litigation to a point inconsistent with the right to arbitrate. AIM does not address whether the issues raised in its initial complaint were arbitrable.

¶ 22 AIM's argument amounts to a misstatement of the law. Utah law with respect to waiver of arbitration is in fact very similar to Illinois law. To establish waiver of the right to arbitrate, a party must show that (1) the party seeking arbitration substantially participated in the underlying litigation to a point inconsistent with the intent to arbitrate, and (2) this participation resulted in prejudice to the opposing party. *Vivant Solar, Inc. v. Lundberg*, 2025 UT App 102, ¶ 29. In *Vivant*,

the Utah appeals court noted that waiver of arbitration is applicable when the matters raised in the earlier claims are intertwined with issues raised in the later claims. *Id.* ¶ 40 (citing *Nelson v. Liberty Acquisitions Servicing LLC*, 2016 UT App 92, ¶ 19). The Utah court concluded that because both parties claims arose from the same agreements, the same understandings about those agreements, and the same conduct related to those agreements as the plaintiff's malpractice claims, the general facts and fact discovery applicable to each set of claims were largely overlapping and supported a finding that the two cases were sufficiently intertwined to qualify as underlying litigation for purposes of an arbitration waiver analysis. *Vivant*, 2025 UT App 102, ¶¶ 45-46. This conclusion is in fact very similar to the outcome resulting from an application of Illinois law.

¶ 23 We find the analysis and conclusions in both *Westlake* (an Illinois case) and *Nelson v. Liberty Acquisitions Servicing LLC*, 2016 UT App 92 (a Utah case cited by AIM) to be instructive to the circumstances presented here and support a finding of waiver of the arbitration rights that AIM attempts to exert here.

¶ 24 *Westlake* involved very similar circumstances to the case before us; an automobile loan purchase servicer assignee brought action against a consumer for breach of contract and to collect remaining debt after repossession of the vehicle for nonpayment on November 16, 2022. *Westlake*, 2025 IL App (1st) 241383, ¶¶ 4-5. The consumer filed counterclaims on behalf of herself and putative class on July 7, 2023, and *Westlake* filed a motion to dismiss the counterclaims in favor of arbitration. *Id.* ¶¶ 6, 8. The circuit court denied the motion and we affirmed, finding that the complaint and counterclaims were connected; both parties claimed violations of the same installment contract, and the claims directly concerned facts about whether the consumer made payments, how *Westlake* allocated those payments, and what was or not received. *Id.* ¶ 26. This

court also noted that the legal arguments advanced by the consumer were the same legal arguments in her counterclaims and Westlake's complaint and the counterclaims involved the same installment contract, facts, and issues- thus they were related to the collections action. *Id.* We concluded that the circuit court properly found that Westlake acted inconsistently with its own arbitration agreement by filing its initial claim in the circuit court. *Id.*

¶ 25 *Nelson* involved a suit against a debt collection company after the cessation of its litigation efforts against two consumers for violation of federal and state statutes governing debt collection practices. *Nelson*, 2016 UT App 92, ¶ 1. The company sought to enforce arbitration clauses in the underlying credit card agreements allegedly entered into by the individuals and the company's predecessor-in-interest. *Id.* The district court ruled that the company had waived the right to enforce the arbitration clauses by filing and pursuing the original debt collection actions and the Court of Appeals of Utah agreed. *Id.* ¶¶ 1, 24. The appeals court noted that the relevant inquiry was whether the later claim was part of the "underlying litigation," and noted that Utah courts had often defined as referring to earlier, but related cases that concerned claims and parties not before the court. *Id.* ¶¶ 15-16. The district court "implicitly" determined that the prior actions were part of the underlying litigation when it ruled that waiver in the prior actions amounted to waiver in the later action. *Id.* ¶ 18. The appeals court found that the company failed to demonstrate on appeal that the prior actions did not constitute underlying litigation to the later action and concluded that the company failed to show error in the district court's ruling that the company's election to pursue litigation in the prior actions constituted waiver of its right to arbitration in the later action. *Id.* ¶ 20.

¶ 26 The same result is warranted here. In this case, AIM filed a debt collections suit against Hernandez to recover amounts due under a defaulted personal loan on April 25, 2025, and Hernandez in turn filed counterclaims related to AIM's collection activities on behalf of himself and others similarly situated on November 19, 2025. AIM subsequently filed a motion to compel arbitration on February 20, 2026, based on an arbitration clause contained in paragraph 21 of the Borrower Agreement and incorporated into the Loan Agreement. The counterclaims are wholly derived from the personal loan between AIM's predecessor and Hernandez, as is the underlying collections claim, and the various documents that purportedly secured that personal loan. The counterclaims and affirmative defenses raised the mirror image of the issues raised by AIM in its initial complaint. AIM makes no argument concerning the connection between the underlying claim and the counterclaims; rather, it bases its entire argument on its ability to compel arbitration on counterclaims based on the language contained in the arbitration clause. AIM overlooks the fact that the arbitration clause, if valid, would also apply to its collection action. We find, like the courts in *Westlake* and *Nelson*, that AIM waived its right to arbitration of the related counterclaims filed by Hernandez by bringing the collections action and not pursuing arbitration of those claims. It is clear that the counterclaims did not encompass different issues than the complaint and did not fundamentally change the nature of the litigation. See *Westlake*, 2025 IL App (1st) 241383, ¶ 26; *Overland Bond & Investment Corporation v. Calhoun*, 2023 IL App (1st) 221804, ¶¶ 48-49; *Nelson*, 2016 UT 92, ¶ 20. We conclude that the circuit court properly found that AIM waived arbitration.

¶ 27

CONCLUSION

¶ 28 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

No. 1-26-0844

¶ 29 Affirmed.