

**The Texas Supreme Court sends a tort claimant to arbitration against a home builder with no signed contract.**

*In re Weekley Homes, L.P.*, 49 Tex. Sup. Ct. J. 55 (Oct. 28, 2005) (org. proceeding).

The Supreme Court of Texas recently looked to equity to break the bounds of traditional contract law and held that a nonsignatory was forced to arbitrate her personal injury claim pursuant to a contractual arbitration clause in its recent opinion in *In re Weekley Homes, L.P.*

The case arose out of a transaction involving a father and daughter. Vernon Forsting contracted with Weekley Homes, L.P. for construction of a home in which he and his daughter, Patricia Von Bargaen, were to live. Forsting was the sole signatory on the Purchase Agreement with Weekley. Significantly, however, Von Bargaen negotiated directly with Weekley on many construction issues. The property was later transferred to the Forsting Family Trust, which Forsting and Von Bargaen served as trustees.

The Purchase Agreement which Forsting executed contained an arbitration clause stating:

Any claim, dispute or cause of action between Purchaser and Seller . . . , whether sounding in contract, tort, or otherwise, shall be resolved by binding arbitration . . . . Such claims, disputes or causes of action include, but are not limited to, those arising out of or relating to . . . the design, construction, preparation, maintenance or repair of the Property.

After completion of the construction, numerous complaints arose about the home by both Forsting and Von Bargaen. Despite Weekley's efforts to remedy the problems, Forsting, Von Bargaen and the Trust filed suit against Weekley asserting claims for negligence, breach of contract, statutory violations, and breach of warranty. In addition, Von Bargaen asserted a personal injury claim against Weekley alleging that Weekley's negligent repairs caused her to develop asthma. Weekley invoked the arbitration clause as to all three of the plaintiffs; however, the trial court refused to compel arbitration of Von Bargaen's claim because she did not sign the Purchase Agreement.

In considering the issue of whether a nonparty may be compelled to arbitrate, the Supreme Court first recognized that when a litigant pursues a claim based on the contract he subjects himself to the contract's terms. However, in this case, Von Bargaen purported to make a personal injury claim against Weekley. The Court then looked to the doctrine of direct benefits estoppel. The Court stated that a "nonparty may be subject to a contract's arbitration clause if it deliberately seeks and obtains substantial benefits from the contract itself." The Court emphasized that the analysis should focus on the nonparty's conduct during the performance of the contract, and that the benefits derived must be substantial and direct.

In the case of Van Barga, she directed aspects of construction, repeatedly demanded extensive repairs to “our home,” personally requested and received financial reimbursement for expenses incurred while those repairs were being made, and conducted settlement negotiations with Weekley. The Court held that these actions indicated that Von Barga “deliberately sought substantial and direct benefits from the contract.” As such, equity prevailed, and the Court enforced the arbitration clause as to Von Barga despite not having been a party to the contract. In the words of Justice Scott Brister, the author of the opinion, “[a] nonparty cannot both have his contract and defeat it too.”

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