

Texas Supreme Court Compels Arbitration against a Nonparty

In a personal injury suit against Weekley Homes, the Texas Supreme Court held that a non-party can be bound by the mandatory arbitration provision of a contract if the party “consistently” and “knowingly” insists that it be treated as a party. *In re Weekley Homes*, 180 S.W.3d 127(Tex. 2005). Weekley Homes, the homebuilder, entered into a Real Estate Purchase Agreement with seventy-eight year-old Vernon Forsting to construct a 4000 square foot home where he intended to live with his daughter, Von Bargaen, and Von’s husband and three children. The Purchase Agreement contained a broad arbitration clause that mandated arbitration of any dispute arising between the parties relating to the construction, design or repair of the property whether sounding in “contract, tort, or otherwise.” Shortly after the closing date, Vernon transferred the home into the Forsting Family Trust, of which Von Bargaen was the trustee and sole beneficiary. Von Bargaen and her husband actively negotiated construction and repair issues with Weekley both during and after construction, including direct involvement in addressing numerous problems that arose after move-in.

When unable to resolve the problems, Forsting, the trust, and Von Bargaen sued Weekley Homes. Von Bargaen’s only claim was a personal injury action in which she claimed that negligent repair activities by Weekley had caused her to develop asthma. Under the Federal Arbitration Act, Weekley moved to compel arbitration against all three plaintiffs. The court granted the motion to compel arbitration as to Forsting and the trust but denied as to Von Bargaen on the basis that she was not a party to the arbitration agreement.

On mandamus, the Texas Supreme Court reversed and held that Von Bargaen, although not a party to the Purchase Agreement, should be bound by the contract’s mandatory arbitration provisions by virtue of the Texas defensive theory of promissory estoppel and the companion federal theory of direct benefits estoppel. The Court noted that Von Bargaen, claiming authority under the Purchase Agreement, had in the past directed Weekley on how to construct many of the features of the home, repeatedly demanded extensive repairs to “our home,” personally requested and received financial reimbursement from Weekley for expenses “I incurred” and engaged in settlement negotiations with Weekley. Once Von Bargaen deliberately sought substantial and direct benefits from the contract which Weekley provided, the Court held that equity prevented her from avoiding the arbitration clause that was part of that agreement. As the Court put it, “a nonparty cannot both have his contract and defeat it too.”