

SUPREME COURT OF ALABAMA

F.A. Dobbs and Sons, Inc. v. Northcutt

819 So. 2d 607 (Ala. 2001) · No. 1991155 · Decided November 2, 2001

SUMMARY

The Alabama Supreme Court affirmed the denial of a construction company's motion to compel arbitration. The court held that the motion to dismiss was not reviewable because the submission of matters outside the pleadings converted it into a motion for summary judgment, and further held that the company failed to prove that the construction contract substantially affected interstate commerce as required for application of the Federal Arbitration Act.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Houston; Lyons; Brown; Harwood; Woodall; Stuart; Moore, C.J.; See, J.
JURISDICTION	Alabama
DECIDED	November 2, 2001
DOCKET	1991155
DISPOSITION	affirmed
PROCEDURAL POSTURE	Dobbs appealed the trial court's denial of its motion to dismiss or, alternatively, to compel arbitration.
STANDARD OF REVIEW	The denial of a summary-judgment motion is generally not appealable absent permission under Rule 5, Ala. R. App. P. The court reviewed the denial of the motion to compel arbitration based on whether Dobbs proved the existence of an arbitration agreement in a transaction substantially affecting interstate commerce.
PRECEDENTIAL VALUE	Published Alabama Supreme Court opinion
PARTIES	F.A. Dobbs and Sons, Inc. v. Dr. David Northcutt, Dr. Tracy Northcutt

TOPICS

- arbitration
- construction law
- summary judgment
- appellate procedure
- contracts

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the trial court's denial of Dobbs's motion to dismiss for failure to satisfy a contractual condition precedent was reviewable on appeal after Dobbs submitted matters outside the pleadings.
2. Whether Dobbs established that the parties' construction transaction substantially affected interstate commerce so that the Federal Arbitration Act applied and the arbitration agreement was specifically enforceable.

HOLDINGS

1. By attaching the contract and an affidavit to its Rule 12(b)(6) motion, Dobbs converted the motion into one for summary judgment. Because an order denying summary judgment is not appealable absent permission under Rule 5, Ala. R. App. P., and no permission was sought or granted, the court could not review the merits of Dobbs's condition-precedent defense.
2. The party moving to compel arbitration bears the burden of proving that the arbitration agreement appears in a contract involving a transaction that substantially affects interstate commerce. Dobbs failed to meet that burden because its general evidence concerning interstate materials and out-of-state cabinetry did not establish a substantial interstate-commerce effect for the Northcutts' Alabama construction contract; therefore, the motion to compel arbitration was properly denied.

KEY QUOTATIONS

“Because it is the Sisters who seek to compel arbitration, they have the burden of proving that the transaction in this case affected interstate commerce.” (at 611)

“If the party moving to compel arbitration fails to make such a showing, the burden of proof does not shift to the opposing party and the motion should be denied.” (at 611)

FACTUAL BACKGROUND

The Northcutts contracted with Dobbs to construct a one-story wood-frame professional dental office in Alabama. The construction contract contained an arbitration clause covering disputes arising out of or relating to the contract, but required certain disputes initially to be submitted to the engineer. Dobbs submitted an affidavit stating generally that its business used materials shipped from various locations and that some cabinetry was shipped out of state, but it presented no evidence that materials from outside Alabama were used in constructing the Northcutts' building.

PROCEDURAL HISTORY

The Northcutts sued Dobbs alleging breach of express and implied warranties, breach of contract, fraud, fraudulent suppression, deceit, and outrage. Dobbs moved to dismiss for failure to satisfy a contractual condition precedent or, alternatively, to compel arbitration, submitting the contract and an affidavit. The trial court denied both requests. The Supreme Court of Alabama held that the motion to dismiss had been converted into a

summary-judgment motion and that its denial was not appealable absent permission under Rule 5, which was neither sought nor granted; it reached the arbitration issue and affirmed its denial.

DISPOSITION

affirmed

CASES CITED

- Nationwide Prop. & Cas. Ins. Co. v. DPF Architects, P.C., 792 So. 2d 369 (Ala. 2001)
- Ex parte Rizk, 791 So. 2d 911 (Ala. 2000)
- Superskate, Inc. v. Nolen, 641 So. 2d 231 (Ala. 1994)
- Ex parte Costa & Head (Atrium), Ltd., 486 So. 2d 1272, 1275 (Ala. 1986)
- Southern United Fire Insurance Co. v. Knight, 736 So. 2d 582, 585-86 (Ala. 1999)
- Jim Burke Automotive, Inc. v. Beavers, 674 So. 2d 1260 (Ala. 1995)
- Lopez v. Home Buyers Warranty Corp., 670 So. 2d 35 (Ala. 1995)
- Delta Construction Corp. v. Gooden, 714 So. 2d 975 (Ala. 1998)
- Hurst v. Tony Moore Imports, Inc., 699 So. 2d 1249 (Ala. 1997)
- Rogers Foundation Repair, Inc. v. Powell, 748 So. 2d 869, 872 (Ala. 1999)
- United States v. Lopez, 514 U.S. 549, 559 (1995)
- Lilley v. Gonzales, 417 So. 2d 161 (Ala. 1982)
- Jewell v. Jackson & Whitsitt Cotton Co., 294 Ala. 112, 313 So. 2d 157 (1975)
- Sisters of the Visitation v. Cochran Plastering Co., 775 So. 2d 759, 765 (Ala. 2000)
- Ex parte Greenstreet, Inc., 806 So. 2d 1203, 1207 (Ala. 2001)