

COURT OF APPEALS OF TEXAS, BEAUMONT

In re CITGO Petroleum Corporation and Stoneburner-Verrett
Electric Company, Inc.

248 S.W.3d 769 (Tex. App.—Beaumont 2008) · No. No. 09-07-563 CV · Decided February 21, 2008

SUMMARY

The Texas Court of Appeals considered a mandamus petition seeking to compel arbitration of an on-the-job personal injury dispute. The court held that Citgo Petroleum Corporation was an intended third-party beneficiary of the employee's arbitration agreement with Pat Tank and had not waived arbitration, but Stoneburner-Verrett Electric Company failed to establish entitlement to enforce the agreement. The court conditionally granted Citgo's petition and denied Stoneburner's request.

CASE DETAILS

COURT	Court of Appeals of Texas, Beaumont
WRITING FOR THE COURT	Per curiam; Gaultney; Kreger; Horton
JURISDICTION	Texas
DECIDED	February 21, 2008
DOCKET	No. 09-07-563 CV
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Original mandamus proceeding by Citgo and Stoneburner-Verrett seeking to compel arbitration after the trial court denied their motion to arbitrate.
STANDARD OF REVIEW	Mandamus requires a clear abuse of discretion and no adequate remedy at law. The validity of an arbitration agreement is reviewed de novo. Whether arbitration was waived is a question of law.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Citgo Petroleum Corporation, Stoneburner-Verrett Electric Company, Inc. v. Rodney Rose, Paula Rose

TOPICS

- arbitration
- writ of certiorari
- contracts
- contract formation
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Pat Tank assented to the arbitration agreement despite not signing it.
2. Whether Citgo, a nonsignatory customer of Pat Tank, was an intended third-party beneficiary entitled to enforce the arbitration agreement.
3. Whether Stoneburner-Verrett established that it was an intended third-party beneficiary entitled to enforce the arbitration agreement.
4. Whether Citgo waived arbitration by substantially invoking the judicial process and causing prejudice.

HOLDINGS

1. Pat Tank assented to and was bound by the arbitration agreement because its employment of Rose, together with the president's affidavit explaining the company's policy and the missing signature, demonstrated acceptance by conduct.
2. Citgo was an intended third-party beneficiary of the Dispute Resolution Agreement and could enforce its arbitration provision.
3. Stoneburner-Verrett did not establish that it was an intended third-party beneficiary and therefore was not entitled to mandamus relief compelling arbitration.
4. Citgo did not waive arbitration because the Roses failed to show that Citgo substantially invoked the judicial process to their prejudice.

KEY QUOTATIONS

“Doubts regarding an agreement's scope are resolved in favor of arbitration because there is a presumption favoring agreements to arbitrate under the FAA.” (at 775)

“The general statement regarding money and effort put into the case does not establish sufficient prejudice to overcome the strong presumption against waiver.” (at 778)

FACTUAL BACKGROUND

Pat Tank employed Rodney Rose, who signed a Dispute Resolution Agreement containing mediation and arbitration provisions at the beginning of his employment. Rose was performing work for Pat Tank on Citgo's premises when he allegedly sustained an injury. Pat Tank's president stated that the company's policy treated the agreement as binding once an employee signed it and began employment, even though Pat Tank occasionally failed to sign the document. Citgo supplied a contract with Pat Tank showing duties concerning employees working on Citgo's premises and an indemnity obligation, but Stoneburner supplied no comparable evidence of contractual duties or intended-beneficiary status.

PROCEDURAL HISTORY

Rodney and Paula Rose sued Citgo and Stoneburner-Verrett for damages arising from Rodney Rose's on-the-job injury at a Citgo refinery in Louisiana. Citgo moved to compel arbitration, and Stoneburner later joined the

motion. The trial court denied arbitration on the grounds that no agreement existed between the Roses and Citgo, no agreement existed between Rose and Pat Tank because Pat Tank had not signed the agreement, and Citgo had waived arbitration. The court of appeals denied Stoneburner's mandamus request, conditionally granted Citgo's request, and directed the trial court to compel arbitration as to Citgo.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The trial court was directed to enter an order granting Citgo's motion to compel arbitration. The writ would issue only if the trial court failed to comply. Stoneburner's request for mandamus relief was denied.

CASES CITED

- In re FirstMerit Bank, N.A., 52 S.W.3d 749 (Tex. 2001)
- In re D. Wilson Construction Co., 196 S.W.3d 774 (Tex. 2006)
- J.M. Davidson, Inc. v. Webster, 128 S.W.3d 223 (Tex. 2003)
- In re Bunzl USA, Inc., 155 S.W.3d 202 (Tex. App.—El Paso 2004, orig. proceeding)
- In re Weekley Homes, L.P., 180 S.W.3d 127 (Tex. 2005)
- In re Kellogg Brown & Root, Inc., 166 S.W.3d 732 (Tex. 2005)
- Stine v. Stewart, 80 S.W.3d 586 (Tex. 2002)
- MCI Telecommunications Corp. v. Texas Utilities Electric Co., 995 S.W.2d 647 (Tex. 1999)
- South Texas Water Authority v. Lomas, 223 S.W.3d 304 (Tex. 2007)
- Energy Service Co. of Bowie, Inc. v. Superior Snubbing Services, Inc., 236 S.W.3d 190 (Tex. 2007)
- In re Palm Harbor Homes, Inc., 195 S.W.3d 672 (Tex. 2006)
- In re Rolland, 96 S.W.3d 339 (Tex. App.—Austin 2002, orig. proceeding)
- In re Bayer Materialscience, LLC, 2007 WL 3227662 (Tex. App.—Houston [1st Dist.] Nov. 1, 2007, orig. proceeding)
- In re Bank One, N.A., 216 S.W.3d 825 (Tex. 2007)
- In re Vesta Insurance Group, Inc., 192 S.W.3d 759 (Tex. 2006)