

NEBRASKA COURT OF APPEALS

EAD Engineering, Inc. v. Purac America Inc., doing business as Corbion

34 Neb. App. 24 (2026) · No. A-25-080 · Decided February 3, 2026

SUMMARY

The Nebraska Court of Appeals held that EAD Engineering, which did not sign the applicable construction agreement, was not bound to arbitrate under an incorporation-by-reference or assignment theory. The court reversed the order compelling arbitration and remanded for the district court to consider agency and delegation theories that it had not previously addressed.

CASE DETAILS

COURT	Nebraska Court of Appeals
WRITING FOR THE COURT	Riedmann, Chief Judge; Moore, Judge; Bishop, Judge
JURISDICTION	Nebraska Court of Appeals
DECIDED	February 3, 2026
DOCKET	A-25-080
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	EAD Engineering appealed an order of the District Court for Washington County compelling it to arbitrate with Purac America Inc. The Nebraska Court of Appeals reversed the order and remanded for the district court to address agency and delegation theories that it had not decided.
STANDARD OF REVIEW	Questions concerning contract meaning and arbitrability are questions of law reviewed independently of the lower court's conclusions.
PRECEDENTIAL VALUE	Published opinion
PARTIES	EAD Engineering, Inc. v. Purac America Inc., doing business as Corbion

TOPICS

- contracts
- contract interpretation
- appellate procedure
- preservation of error
- commercial litigation

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether EAD Engineering, a nonsignatory to the Engineering, Procurement and Construction Agreement, agreed to arbitrate disputes through incorporation by reference of the Engineering Services Agreement.
2. Whether the assignment of EAD Engineering's rights under the Engineering Services Agreement bound EAD Engineering to the arbitration provision in the later Engineering, Procurement and Construction Agreement.
3. Whether the appellate court could affirm on agency or delegation theories that were raised below but not addressed by the district court.
4. Whether the remaining assignments of error required separate consideration.

HOLDINGS

1. EAD Engineering did not contractually agree to be bound by the arbitration provision in the Engineering, Procurement and Construction Agreement because it did not sign that agreement, was not identified in its introductory paragraph as an executing entity, and the agreement incorporated an earlier agreement requiring judicial dispute resolution rather than an existing arbitration clause.
2. EAD Engineering's assignment of its rights under the Engineering Services Agreement to EAD Constructors did not bind EAD Engineering to the arbitration clause in the later Engineering, Procurement and Construction Agreement.
3. The Court of Appeals would not decide agency or delegation theories in the first instance. Because Corbion raised those theories in the district court but the district court did not rule on them, the matter had to be remanded for the district court to consider them.

KEY QUOTATIONS

"Arbitration is a matter of contract, and a party cannot be required to submit to arbitration any dispute which he or she has not agreed so to submit." (at 28)

"A party has a constitutional right to adjudication of a justiciable dispute, and the law will not find a waiver of that right absent direct and explicit evidence of actual intent of a party's agreement to do so." (at 29)

"An appellate court will not consider an issue on appeal that was not presented to or passed upon by the trial court." (at 32)

"In order to preserve each party's right to meaningful appellate review of issues presented to but not decided by the district court, we decline to decide such issues in the first instance." (at 32)

FACTUAL BACKGROUND

Corbion and EAD Engineering entered into an Engineering Services Agreement that required judicial resolution of disputes and identified EAD Engineering as the service provider. Corbion and EAD Constructors later entered

into an Engineering, Procurement and Construction Agreement that incorporated the Engineering Services Agreement but provided for binding arbitration and stated that its dispute-resolution provisions controlled; EAD Engineering did not sign the later agreement. EAD Engineering assigned its rights under the Engineering Services Agreement to EAD Constructors, after which a dispute arose between Corbion and EAD Constructors and Corbion sought to join EAD Engineering in arbitration.

PROCEDURAL HISTORY

Corbion sought to compel EAD Engineering to arbitrate a dispute arising after Corbion and EAD Constructors entered into an Engineering, Procurement and Construction Agreement containing an arbitration provision. EAD Engineering resisted, arguing that it was not a party or signatory to that agreement and that its separate Engineering Services Agreement required judicial resolution of disputes. The district court found EAD Engineering bound by the arbitration provision through incorporation by reference and an umbrella-agreement theory, then compelled arbitration. The Court of Appeals reversed that ruling and remanded for consideration of Corbion's agency and delegation theories on the existing record, unless the parties agreed to reopen and expand the record.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court must consider Corbion's agency and delegation theories on the existing record, unless the parties agree that the record may be reopened and expanded. The court should conduct further proceedings consistent with the opinion.

CASES CITED

- Frohberg Elec. Co. v. Grossenburg Implement, 297 Neb. 356, 900 N.W.2d 32 (2017)
- Cullinane v. Beverly Enters.-Neb., 300 Neb. 210, 912 N.W.2d 774 (2018)
- 21 Richard A. Lord, A Treatise on the Law of Contracts by Samuel Williston § 57:19 (4th ed. 2017)
- Millard Gutter Co. v. Shelter Mut. Ins. Co., 312 Neb. 606, 980 N.W.2d 420 (2022)
- Vowers & Sons v. Strasheim, 248 Neb. 699, 538 N.W.2d 756 (1995)
- Weber v. Gas 'N Shop, 278 Neb. 49, 767 N.W.2d 746 (2009)
- Darling Ingredients v. City of Bellevue, 309 Neb. 338, 960 N.W.2d 284 (2021)