

TEXAS CIVIL PROCEDURE UPDATE

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Honors: Texas Extraordinary Women in Texas Law, Texas Lawyer Award 2008; Distinguished Alumna, South Texas College of Law 2008; State Bar of Texas Bar Foundation Outstanding Law Review Article of the Year, 1995; Vinson & Elkins Faculty Excellence Award; South Texas College of Law Outstanding Professor Award.

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Arbitration

Bonsmara Natural Beef Co., LLC v. Hart of Texas Cattle Feeders, LLC, 603 S.W.3d 385, 393 (Tex. 2020) (The mere availability of a discretionary interlocutory appeal of a ruling denying a motion to compel arbitration does not preclude review of an order as part of a final judgment in the case.)

Lamps Plus, Inc. v. Varela, 139 S.Ct. 1407,1414-15 (2019) (An agreement to arbitrate disputes arising out a contract does not infer an agreement under the Federal Arbitration Act to arbitrate those disputes in a class action, absent an affirmative contractual basis to do so. Nor will an ambiguous arbitration agreement provide the necessary contractual basis for compelling class certification.).

Robinson v. Home Owners Mgmt. Enters., Inc., 590 S.W.3d 518, 528-35 (Tex. 2019) (Overruling its decision in *In re Wood*, 140 S.W.3d 367 (Tex. 2004) (per curium), the Texas Supreme Court holds that determining whether the parties have agreed to arbitrate class action disputes is a threshold question of arbitrability presumptively for the courts to decide, rather than a procedural question for the arbitrator. The Court further held that while parties are free to alter these presumptions by agreement, the limited warranty and addendum in this case were silent as to arbitrating arbitrability issues and, therefore, the question whether the parties agreed to arbitrate class claims was a question for the court to answer. Because the arbitration provisions did not reference class claims at all and Respondents' objected to the arbitration of the class claims, the parties did not agree to class arbitration. Further, there was no clear intent by Respondents to arbitrate class claims. Accordingly, the lower courts correctly determined that Respondent was not bound to arbitrate Petitioners' putative class claims, and the court of appeals' judgment was affirmed.).

RSL Funding, LLC v. Newsome, 569 S.W.3d 116, 122-23 (Tex. 2018) (“While the [Structured Settlements Protection Act] requires a court to approve a settlement-payment transfer, it is silent as to who should decide disputes that arise after such approval, including disputes that require application of the court order itself. . . Here, the courts below have not questioned the validity of parties' arbitration clause. We thus have no choice but to send this dispute to arbitration for the arbitrator to at least decide arbitrability.”Because the parties agreed to have the arbitrator decide issues of arbitrability, the lower court erred in denying the motion to compel arbitration.).

San Antonio River Auth. v. Austin Bridge & Road, L.P., 601 S.W.3d 616, 621-31 (Tex. 2020) (The Texas Supreme Court held that Local Government Code Chapter 271 provides the authority for local governments to agree to arbitrate claims brought under the chapter. Thus, even though the Construction Industry Arbitration Rules permit an arbitrator to decide the validity and scope of an arbitration agreement, the arbitrator has the “power to rule on his or her own jurisdiction.” However, whether there is sovereign immunity implicates subject matter jurisdiction and it is for the court to decide because it is the non-delegable role of the judiciary to determine whether governmental immunity exists, whether the immunity has been waived, and to what extent. A court lacks jurisdiction to compel or stay arbitration, or to enforce a later arbitration award, if a governmental entity is immune from any suit or liability. The parties cannot contractually agree to define a court’s subject matter jurisdiction.).

Jefferson County v. Jefferson County Constables Assoc., 546 S.W.3d 661, 674 (Tex. 2018) (Common-law grounds for vacating an arbitration award are exceedingly narrow and do not include an arbitrator's mere error in applying the law in ruling on a matter within the scope of the arbitration agreement.).

Jody James Farms, JV v. Altman Group, Inc., 547 S.W.3d 624, 633 (Tex. 2018) (When relying on a contract to compel arbitration, the moving party must first establish the existence of a valid and enforceable arbitration agreement. Second, the claims at issue must fall within the arbitration agreement's scope. Whether a non-signatory may enforce an arbitration agreement's terms is a question within the first element. The Supreme Court determined that a valid arbitration agreement exists for disagreements between Insured and Agency, but the insurance policy can not be reasonably read to encompass disagreements between the signatories and other parties.).

Tex. Windstorm Ins. Ass'n v. Jones, 512 S.W.3d 434, 441, 444 (Tex. App.—Houston [1st Dist.] 2016, no pet.) (The standard of review of a trial court's decision to confirm or vacate an arbitration award is de novo. The arbitration agreement in this case provided the arbitrator with the authority to resolve "all disputes concerning the proper interpretation and application of this Agreement." Appellees successfully moved for summary judgment on the ground the arbitrator exceeded its authority by deciding the issue incorrectly, not that the arbitrator lacked the authority to interpret the agreement. The appellate court reverses, explaining that in determining whether the arbitrator exceeded its authority, courts need not decide whether the arbitrator made a correct decision under the law and facts of the case. The court’s review focuses on the integrity of the process, not the propriety of the

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