

Not Reported in S.W.3d, 2004 WL 254223 (Tex.App.-Fort Worth)
(Cite as: 2004 WL 254223 (Tex.App.-Fort Worth))

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SEE TX R RAP RULE 47.2 FOR DESIGNATION
AND SIGNING OF OPINIONS.

MEMORANDUM OPINION

Court of Appeals of Texas,
Fort Worth.

W. Vincent MURPHY, Dale Murphy and Johnye
Murphy, Appellants

v.

Dottie Ann MURPHY and W. Vincent Murphy, Jr.,
individually and as Co-Executors of the estate of
Frances Marie Murphy, Appellees.

In re W. Vincent Murphy, Dale Murphy and Johnye
Murphy.

Nos. 2-02-449-CV, 2-03-027-CV.
Feb. 12, 2004.

Background: Petition was filed for writ of mandamus and an interlocutory appeal was filed challenging decision of the 97th District Court, Archer County, denying appellants' motion to compel arbitration. Proceedings were consolidated.

Holding: The Court of Appeals, [Lee Ann Dauphinot](#), J., held that agreement for sale of two properties in Colorado affected interstate commerce, and thus, Federal Arbitration Act (FAA), not the Texas General Arbitration Act, applied.

Petition denied.

West Headnotes

Alternative Dispute Resolution 25T 114

25T Alternative Dispute Resolution

25TII Arbitration

25TII(A) Nature and Form of Proceeding

25Tk114 k. Constitutional and Statutory

Provisions and Rules of Court. [Most Cited Cases](#)

(Formerly 33k2.2 Arbitration)

Commerce 83 80.5

83 Commerce

83II Application to Particular Subjects and
Methods of Regulation

83II(I) Civil Remedies

83k80.5 k. Arbitration. [Most Cited Cases](#)

Agreement for sale of two properties in Colorado affected interstate commerce, and thus, Federal Arbitration Act (FAA), not the Texas General Arbitration Act, applied, where at least some litigants and intended recipients of sales proceeds were Texas residents. 9 U.S.C.A. § 1 et seq.; V.T.C.A., [Civil Practice & Remedies Code § 171.001 et seq.](#)

From the 97th District Court of Archer County.
Original Proceeding. [Thomas A. Zabel](#), for W. Vincent Murphy.

[Daniel J. Sheehan, Jr.](#), for Dale Murphy and Johnye Murphy.

Roger E. Towery, Judge, 97th District Court, Pro se.

[Frank J. Douthitt](#) and [William J. Boyce](#), for Murphy, Dottie Ann, Individually and as Co-Executor of the Estate of Frances Marie Murphy.

PANEL A: [CAYCE](#), C.J.; [LIVINGSTON](#) and [DAUPHINOT](#), JJ.

MEMORANDUM OPINION^{FN1}

FN1. See [TEX.R.APP. P. 47.4](#).

[LEE ANN DAUPHINOT](#), Justice.

*1 W. Vincent Murphy, Dale Murphy, and Johnye Murphy (collectively “Relators” or “Appellants”) bring both a petition for writ of mandamus and an interlocutory appeal challenging the trial court's denial of their motion to compel arbitration. We have consolidated these proceedings.

FN2

FN2. See *In re Valero Energy Corp.*, 968 S.W.2d 916, 916-17 (Tex.1998) (orig.proceeding) (“[T]he better course of action for a court of appeals confronted with an interlocutory appeal and a mandamus proceeding seeking to compel arbitration would be to consolidate the two proceedings and render a decision disposing of both simultaneously.”).

When it is unclear to parties whether the Federal Arbitration Act (“FAA”) or the Texas General Arbitration Act (“TAA”) governs their arbitration dispute, they must pursue parallel appellate proceedings because a dispute governed by the TAA must be brought on interlocutory appeal, but a dispute governed by the FAA must be raised by a petition for mandamus.^{FN3} The FAA governs “when the dispute concerns a ‘contract evidencing a transaction involving commerce.’”^{FN4} “Whether the parties contemplated that their transaction would substantially affect interstate commerce is irrelevant; if the transaction affects interstate commerce ‘in fact,’ the arbitration provision is governed by the FAA.”^{FN5} The agreement in this case contains a provision for selling two properties in Colorado. The record shows that at least some of the litigants (and intended recipients) of the sales proceeds are Texas residents. We therefore hold that the agreement affects interstate commerce.^{FN6} Consequently, the FAA applies. Because we conclude that the FAA applies, we dismiss Appellants' interlocutory appeal for want of jurisdiction.

FN3. *Jack B. Anglin Co., Inc. v. Tipps*, 842 S.W.2d 266, 272, 73 (Tex.1992) (orig.proceeding); 9 U.S.C. § 16 (2001); TEX. CIV. PRAC. & REM.CODE ANN. § 171.098 (Vernon Supp.2004).

FN4. *Jack B. Anglin Co.*, 842 S.W.2d at 269-70 (citing 9 U.S.C. § 2).

FN5. *Palm Harbor Homes, Inc. v. McCoy*,

944 S.W.2d 716, 719 (Tex.App.-Fort Worth 1997, orig. proceeding) (holding FAA governed dispute over mobile home manufactured, bought, and delivered in Texas because manufacturer was a Florida corporation insured by a New York corporation and because the components of the mobile home came from various states and countries) (citing *Allied Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 268-70, 276-78, 115 S.Ct. 834, 837, 841, 130 L.Ed.2d 753 (1995)); see *BWI Cos. v. Beck*, 910 S.W.2d 620, 622-23 (Tex.App.-Austin 1995, orig. proceeding) (holding FAA governed arbitration agreement between employer and employee, even though employee worked and made deliveries only in Texas, because employer had facilities in Texas and other states); *Lost Creek Mun. Util. Dist. v. Travis Indus. Painters, Inc.*, 827 S.W.2d 103, 105 (Tex.App.-Austin 1992, writ denied) (holding FAA governed arbitration agreement between Texas residents concerning work performed in Texas because paint and epoxy were manufactured outside Texas and contractor's performance bond was issued by nonresident surety company); see also *Jack B. Anglin*, 842 S.W.2d at 272.

FN6. See *In re L & L Kempwood Assocs., L.P.*, 9 S.W.3d 125, 127 (Tex.1999) (holding that contract involved FAA when parties were from different states, even though the real estate itself was in Houston, Texas).

The court has also considered Relators' petition for writ of mandamus and is of the opinion that relief should be denied. Accordingly, Relators' petition for writ of mandamus is denied.

LIVINGSTON, J. concurred without opinion.

Tex.App.-Fort Worth,2004.

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