

# SIGNATURE REQUIRED? FIFTH CIRCUIT'S HOLDING IMPLIES THAT EQUITABLE ESTOPPEL MAY NOT APPLY UNLESS A SIGNATURE IS ON AN AGREEMENT

By Isaac Villarreal\*

In a recent unpublished opinion, the Fifth Circuit Court of Appeals held that the doctrine of equitable estoppel permits a non-signatory to be bound to a contract from which the non-signatory benefits; however, the doctrine may not apply where there are no signatures whatsoever on an arbitration agreement.<sup>1</sup> The court ultimately found that the appellant, Southern Energy Homes, failed to raise the stand-alone equitable estoppel issue in district court, so the appellate court could not review the issue for the first time on appeal.<sup>2</sup> In reaching that decision, however, the court discussed the application of the doctrine of equitable estoppel to arbitration agreements in light of *Southern Energy's* facts.<sup>3</sup>

The Godwins, plaintiffs in *Southern Energy*, purchased a mobile home from a Southern Energy dealer in 1997.<sup>4</sup> After the installation of the home in Mississippi, the Godwins discovered in the home a "Home Owners Manual" that informed customers of an express limited warranty.<sup>5</sup> The manual did not contain a signature line or require a signature, nor did it contain a separate signature card that was to be returned to the manufacturer, Southern Energy.<sup>6</sup> The manual's detailed table of contents failed to identify an arbitration provision.<sup>7</sup>

Within the manual's warranty section, several paragraphs provided customers with various remedies if they encountered any problems with their home.<sup>8</sup> The final paragraph of the warranty section was entitled, "IF THE PROBLEM STILL IS NOT RESOLVED", and stated, "If your problems are not satisfactorily remedied through the steps set out above, you are entitled to have the dispute settled through binding arbitration as set out below."<sup>9</sup> The paragraph then stated, "In the event of any dispute or claim...the manufacturer and the purchaser of this product agree to submit such a dispute or claim to binding arbitration ....."<sup>10</sup>

In 1998 and 1999, work was twice performed on the Godwins' home and covered under the express warranty.<sup>11</sup> However, respecting four additional "Requests for Service" made in 1999, 2000, and 2001, Southern Energy's records showed that the work requested and performed was not covered by the warranty.<sup>12</sup>

In October 2002, the Godwins filed suit against Southern Energy in a Mississippi state court.<sup>13</sup> The issues raised in the

complaint included an allegation that Southern Energy breached its express warranty.<sup>14</sup> Southern Energy responded to the state-court action by filing its own action (in federal court, based on diversity jurisdiction) to compel arbitration pursuant to the arbitration language in the home owner's manual.<sup>15</sup>

In moving for summary judgment Southern Energy relied on an affidavit of its director of consumer affairs, which included two copies of the "Warranty Claim Request" forms showing that the Godwins made requests and had work performed under the warranty on two occasions.<sup>16</sup> The Godwins opposed the summary judgment and provided an affidavit stating that Mr. Godwin never signed a written contract or agreement with Southern Energy, that he never orally agreed to arbitrate any disputes, and that prior to purchasing the home he never saw, read, or was informed of the manual or its provisions.<sup>17</sup> Moreover, Mr. Godwin's affidavit stated that after the purchase of the mobile home, he read only a few portions of the manual and that when he had repair work performed on the mobile home, he was never informed that having the work done would subject him to binding arbitration.<sup>18</sup>

The district court denied Southern Energy's summary judgment motion because it found no proof of an affirmative mutual agreement to arbitrate.<sup>19</sup> Southern Energy filed an interlocutory appeal, which the Fifth Circuit considered.<sup>20</sup>

In its brief on appeal, as it had claimed in district court, Southern Energy contended only that the Godwins were required to arbitrate under a valid arbitration agreement.<sup>21</sup> However, at oral argument, Southern Energy conceded that its only basis for relief was equitable estoppel.<sup>22</sup>

The doctrine of equitable estoppel "precludes a party from claiming benefits of a contract while simultaneously attempting to avoid the burdens that contract imposes."<sup>23</sup> The court concluded, in agreement with several other circuits, that equitable estoppel may be used to compel non-signatories to arbitrate.<sup>24</sup> The doctrine permits a nonsignatory to be bound to a contract from which the non-signatory has benefited; it prevents parties to a contract from "having it both ways."<sup>25</sup>

The Fifth Circuit reviewed its decision in the *Bailey*<sup>26</sup> case, where a signatory's wife contended that she should not have

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been compelled to arbitrate claims arising under her husband's loans and insurance because, although her husband signed the arbitration agreement, she had not signed it.<sup>27</sup> The Fifth Circuit, in requiring the wife to arbitrate, had held that the wife was "trying to have it both ways by suing based upon one part of a transaction that she says grants her rights while simultaneously attempting to avoid other parts of the same transaction that she viewed as a burden—namely, the arbitration agreement."<sup>28</sup>

Based upon the court's holding in *Bailey*, one could assume that the court would apply the same rule in *Southern Energy*. The court, however, distinguished the facts in *Southern Energy* from those in *Bailey* in that no party in *Southern Energy* had signed any agreement to arbitrate.<sup>29</sup> While the court made a clear distinction between *Southern Energy* and *Bailey*, it declined to discuss the issue any further because, upon its review of the record, it determined *Southern Energy* had failed to adequately raise the stand-alone equitable estoppel claim in district court.<sup>30</sup> The court noted the well-established rule that summary-judgment issues not raised in district court will not be considered on appeal.<sup>31</sup>

Despite the court's decision not to resolve the issue, one could infer that absent *Southern Energy*'s failure to properly raise the issue at the district court level, the Fifth Circuit might have held the lack of signatures sufficiently distinguished the *Southern Energy* facts from the general rule regarding equitable estoppel. In such a case, the Godwins would not have been bound to arbitrate the dispute. Until this issue is properly raised before the Fifth Circuit, a question remains within the circuit: Is a signature a prerequisite to binding arbitration?



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**ENDNOTES**

<sup>1</sup> *Southern Energy Homes, Inc. v. Godwin*, No. 05-60056, 2006 U.S. App. LEXIS 13574 (5<sup>th</sup> Cir. May 31, 2006) (per curiam).

<sup>2</sup> *Id.* at \*8

<sup>3</sup> *Id.* at \*6-\*8.

<sup>4</sup> *Id.* at \*2.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at \*3.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at \*4.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at \*6.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*; *Wash. Mut. Fin. Group, L.L.C. v. Bailey*, 364 F.3d 260, 267 (5<sup>th</sup> Cir. 2004).

<sup>24</sup> *See Bailey*, 364 F.3d at 267 (holding that a nonsignatory party may be bound to an arbitration agreement if so dictated by the ordinary principles of contract and agency).

<sup>25</sup> *Id.*; *Southern Energy Homes, Inc.*, 2006 U.S. App. LEXIS 13574, at \*7.

<sup>26</sup> 364 F.3d 260 (5<sup>th</sup> Cir. 2004).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Southern Energy Homes, Inc.*, 2006 U.S. App. LEXIS 13574, at \*8.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

***Reconciliation should be accompanied by justice, otherwise it will not last. While we all hope for peace it shouldn't be peace at any cost but peace based on principle, on justice.***

**Corazon Aquino**