

Appeal Dismissed, Petition for Writ of Mandamus Denied, and Opinion filed October 12, 2000.



In The
Fourteenth Court of Appeals

NO. 14-99-00740-CV
NO. 14-99-01056-CV

MARILYN POOLE,
Appellant and Real Party in Interest

V.

USAA CASUALTY INSURANCE COMPANY,
Appellee and Relator

Appeal from the 281st District Court
Harris County, Texas
Trial Court Cause No. 96-015632

Consolidated with
Original Proceeding,
Writ of Mandamus

O P I N I O N

In this arbitration dispute, (1) Marilyn Poole appeals a judgment vacating an arbitration award in her favor; and (2) USAA Casualty Insurance Company ("USAA") seeks a writ of mandamus to vacate a trial court order compelling arbitration of the extra-contractual claims asserted against USAA by Poole. We dismiss the appeal and deny the petition for writ of mandamus.

Background

After Poole was involved in an automobile accident with an uninsured driver, a dispute arose with USAA, her automobile insurance carrier, over payment of benefits under the policy. The parties agreed to an arbitration. However, when the arbitration proceeding began, a further dispute arose regarding whether the parties had agreed to arbitrate only Poole's contractual claims or also her extra-contractual claims. After the arbitrator concluded that the extra-contractual claims were within the scope of the proceeding, USAA withdrew from the arbitration, and a \$700,000 award (the "award") was ultimately rendered in Poole's favor.

Poole thereafter filed suit to confirm the award. The trial court denied confirmation, vacated the award, and ordered the parties to re-arbitrate both the contractual and extra-contractual claims.¹ Poole appeals the denial of confirmation of her award, and USAA seeks a writ of mandamus to vacate the portion of the trial court's order compelling re-arbitration of Poole's extra-contractual claims.

Jurisdiction Over Appeal

An appellate court lacks jurisdiction to review an interlocutory order unless a statute specifically authorizes an exception to the general rule that appeals may be taken only from final judgments. *See Qwest Communications Corp. v. AT & T Corp.*, 24 S.W.3d 334, 336 (Tex. 2000). A party may appeal an interlocutory order "denying confirmation of an [arbitration] award; . . . or . . . vacating an award without directing a rehearing." TEX. CIV. PRAC. & REM. CODE ANN. § 171.098(a)(3), (5) (Vernon Supp. 2000). The Houston Courts of Appeals have interpreted this language to mean that no appellate jurisdiction exists over an interlocutory order which orders a new arbitration after vacating, and/or denying confirmation of, an arbitration award. *See Stolhandske v. Stern*, 14 S.W.3d 810, 815 (Tex. App.—Houston [1st Dist.] 2000, pet. denied); *Prudential Securities, Inc. v. Vondergoltz*, 14 S.W.3d 329, 331 (Tex. App.—Houston [14th Dist.] 2000, no writ). Because the trial court's interlocutory order in this case vacated and denied confirmation of the award and ordered a new arbitration of the

¹ The trial court also ordered the parties to re-arbitrate the matter before the same arbitrator, Martha Hill Jamison, and USAA challenged this portion of the order. However, because Jamison has since become Judge of the 164th District Court and thus ineligible to arbitrate the matter, USAA has withdrawn this challenge as moot.

parties' dispute, we have no jurisdiction over an appeal of that order. Accordingly, Poole's appeal must be dismissed.

Mandamus

USAA's petition for mandamus asserts that the trial court abused its discretion in ordering USAA to arbitrate Poole's extra-contractual claims because USAA never agreed to do so. Contract construction is a matter of law for the court. *See Elliott-Williams Co. v. Diaz*, 9 S.W.3d 801, 803 (Tex. 1999). In interpreting a contract, we ascertain and give effect to the parties' intentions as expressed in the document. *See Lopez v. Munoz, Hockema & Reed, L.L.P.*, 22 S.W.3d 857, 861 (Tex. 2000). Parties are free to exclude certain claims from the scope of an arbitration agreement. *See, e.g., Volt Info. Sciences v. Bd. of Trustees*, 489 U.S. 468, 478 (1989). Moreover, a party who is compelled to arbitrate without having agreed to do so loses its right to have the dispute resolved by litigation, has no adequate remedy by appeal, and is entitled to mandamus relief vacating the order compelling such arbitration. *See Freis v. Canales*, 877 S.W.2d 283, 284 (Tex. 1994).

Conversely, because Texas law strongly favors arbitration, a party opposing arbitration bears the burden of defeating it, and courts must resolve any doubts about an arbitration agreement in favor of arbitration. *See Cantella & Co. v. Goodwin*, 924 S.W.2d 943, 944 (Tex. 1996). Texas law also favors the joint resolution of multiple claims to prevent multiple determinations of the same matter. *See Jack B. Anglin Co. v. Tipps*, 842 S.W.2d 266, 271 (Tex. 1992). Therefore, where a contract contains an arbitration provision and a dispute arises over the subject matter of the contract which also involves extra-contractual claims, the extra-contractual claims will be subject to the arbitration provision if they are so factually intertwined with the contractual claims that the same evidence will be required to establish both. *See id.*

In this case, prior to the arbitration, Poole's attorney, Roy Ewart, sent USAA statutory 60-day notice letters dated June 27, 1995 (the "June 27 letter"), and August 21, 1995 (the "August 21 letter"), asserting, among other things, that USAA's refusal to pay the claimed benefits constituted "unfair claim settlement practices." In addition, the June 27 letter stated, in part:

We specifically complain that you have failed to pay the total charges for medical expenses incurred . . . by [Poole] in accordance with your policy of insurance.

. . . Due to your unfair refusal to pay those charges . . . , [Poole] has had to borrow money at considerable expense to herself in order to pay for her medical care. Additionally, she has suffered severe physical and mental anguish and damages as a result of your unwarranted and unsubstantiated refusal to reimburse her for her medical expenses to date.

Similarly, the August 21 letter stated, in part:

We specifically complain that you have unfairly failed to pay the \$20,000 uninsured motorist claim presented by [Poole].

Due to your unfair refusal to settle this claim for the policy limits of \$20,000.00 [Poole] has had to incur debt in order to pay for her living expenses and medical bills. Additionally, she has suffered severe physical and mental anguish and damages as a result of your unwarranted and unsubstantiated refusal to reimburse her for her damages and expenses to date.

Each of the letters also included a specific settlement demand and cautioned that the referenced statutes provided for recovery of treble damages, interest, costs, and attorney's fees, *i. e.*, in the event of litigation.

A letter dated January 5, 1996, from USAA to Ewart stated, in part:

This memo serves to confirm our conversation of January 2, 1996, regarding binding arbitration. We feel arbitration is an excellent tool . . . to resolve *this injury claim*.

* * * *

We will wait to hear from you so that we can schedule the arbitration date and time.

(emphasis added). Ewart's January 12 letter replied, in part, "My client has *accepted your offer to arbitrate . . .*" (emphasis added).

We interpret this exchange of letters to create an agreement to arbitrate and construe the phrase, "this injury claim," as used in USAA's letter, to refer to the matters alleged in Poole's notice letters. Because those notice letters asserted injury claims beyond merely the alleged unpaid policy benefits, we agree with the trial court that the parties' agreement to arbitrate, as expressed in their letters, extended beyond the purely contractual claims to recover those policy benefits.² In addition, because the proof of

² In addition to their letters, the parties' attorneys also signed an Agreement to Arbitrate which recited, among other things, that the arbitrator was designated to conduct an arbitration of "this lawsuit" and would "faithfully and fairly hear and decide *the matters in controversy between the parties*," but

Poole's extra-contractual unfair settlement claims will largely overlap with the proof needed to establish her contractual claims for policy benefits, the policy favoring joint resolution of multiple claims over multiple determinations of the same matter dictates that Poole's contractual and extra-contractual claims be resolved in the same proceeding in the absence of an agreement to limit the arbitration to only the contractual claims.

Accordingly, we dismiss Poole's appeal and deny USAA's petition for writ of mandamus.

/s/ Richard H. Edelman
Justice

Judgment rendered and Opinion filed October 12, 2000.
Panel consists of Justices Fowler, Edelman, and Baird.³
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did not purport to describe the matters in controversy. We do not construe this agreement to establish or change the scope of the arbitration already agreed to by the parties but simply to reflect the obligations of the parties with regard to the arbitrator.

³ Former Judge Charles F. Baird sitting by assignment.