

It's a Family Affair: SCOTX Compels Non-Signatory Minor Children to Arbitrate Their Construction Defect Claims with Signatory Parents

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A novel question arose over the past few years in residential construction law as to whether minors were subject to the contractual provisions in their parents' purchase or construction contract. The contract typically has a dispute resolution clause mandating arbitration of all claims. However, asserting that the minors are not bound to a contract they did not enter, plaintiff lawyers have been filing arbitration demands for parent homeowners (usually related to construction defect claims), while also filing lawsuits on behalf of the minors in hopes of getting in front of a sympathetic jury, usually alleging personal injury claims related to the same construction defect claims in their parents' arbitration). Until recently, the state court lawsuits would traditionally be abated, and the minor claimants would be compelled to bring their claims in their parents' arbitration proceeding. Recently, however, the 1st and 14th Texas Courts of Appeals issued separate rulings denying the homebuilder such relief. Both cases were appealed, and the Supreme Court of Texas (SCOTX) has now settled the issue.

On Friday, January 27, 2023, SCOTX reversed two decisions, one from the 1st and one from the 14th appeals courts. In both cases, SCOTX considered whether non-signatory minor children – occupants of the subject property – could be compelled to arbitrate their construction defect-related claims alongside their parents on the basis of direct benefits estoppel. While Texas courts have repeatedly applied direct-benefits estoppel in situations in which non-signatory family members lived in the home that was the subject of the suit, SCOTX's rulings in [Taylor Morrison v. Skufca](#) and [Taylor Morrison v. Ha](#) provide much-needed clarity for builders and contractors on the real elephant in the room – the minor children.

In *Taylor Morrison v. Ha*, Tony and Michelle Ha (the parents) and their three minor children collectively sued the builder of their home, Taylor Morrison, alleging that construction defects caused the growth of mold resulting in physical illness and also alleging the home required repairs and mold remediation. They asserted claims for breach of implied warranties, negligent construction, fraud in a real estate transaction, breach of contract, violation of the Residential Construction Liability Act, quantum meruit, and violation of the Texas Deceptive Trade Practices Act (DTPA).

While only Mr. Ha signed the purchase agreement, Taylor Morrison sought to compel Mrs. Ha and the minor children to arbitrate their claims alongside Mr. Ha on the basis of direct benefits estoppel.

In opposition, Mrs. Ha and the minor children argued their claims were not subject to the arbitration clause because their claims were not based on the contract. Both the trial court and court of appeals agreed, denying Taylor Morrison's motion.

Similarly, in *Taylor Morrison v. Skufca*, Jack and Erin Skufca (the parents) and their minor children sued Taylor Morrison for construction defects in their home. The Skufca parents had purchased the home from Taylor Morrison under a similar purchase agreement and arbitration provision. The Skufcas asserted claims for breach of implied warranties, negligent construction, fraud in a real estate transaction, breach of contract, violation of the Residential Construction Liability Act, quantum meruit, and violation of the DTPA. Taylor Morrison moved to compel the minor children to arbitrate under direct benefits estoppel. Again, both the trial court and court of appeals denied the motion on the basis that direct benefits estoppel did not apply.

In reversing the 14th District Court of Appeals' decision in *Ha*, SCOTX held that:

“[W]hen a family unit resides in a home and sues for factually intertwined construction-defect claims concerning that home, a nonsignatory spouse and minor children have accepted direct benefits under the signatory spouse's purchase agreement such that they may be compelled to arbitrate through direct-benefits estoppel. This is especially true given the special nature of marital and parent–child relationships.”

In *Skufca*, SCOTX similarly found that the minor children had sued on the contract and were therefore subject to its terms, including the arbitration clause. SCOTX made clear that minor children could not circumvent direct benefits estoppel by simply pleading tort or non-contractual claims because:

“[T]he Skufca children lived with their parents in the home at issue and sued for factually intertwined construction-defect claims, that basis for direct benefits estoppel serves as an additional reason to compel arbitration here.”

Through *Skufca* and *Ha*, SCOTX has arguably broadened the scope of direct benefits estoppel in this context by holding that the minor children's occupancy of the home indicates that they accepted the benefits of their parents' purchase agreement, and therefore may be compelled to arbitrate alongside them. Therefore, even if a non-signatory does not assert a breach of contract claim (i.e., the typical direct benefits estoppel situation), their occupancy of the home alone is sufficient for direct benefits estoppel to apply. As SCOTX recognized, any other conclusion would be “surprising,” and:

“[S]plitting the family's claims between litigation and arbitration would be especially odd considering the family-home context and the unique nature of marital and parent-child relationships. The law and common sense need not be at war regarding the proposition that a family's shared home is something that will directly benefit the entire family.”

In both cases, SCOTX also addressed two common issues raised in the context of minors: whether minor contracts are voidable and whether children are bound by arbitration agreements in their parents' contracts. SCOTX seemingly dismissed these issues as barriers to its holding, reasoning that even for a voidable contract, a minor cannot enforce favorable portions and disaffirm the burdensome ones and that a parent can, in fact, bind their children to an arbitration agreement.

SCOTX's decision in *Ha* and *Skufca* is a major victory for builders and contractors that, prior to these decisions, were left exposed to the prejudicial effects of defending against separate state court and arbitration lawsuits by multiple occupants of the same home, including inconsistent rulings by different fact finders; loss of the benefit of the bargain (e.g., mandatory agreement to arbitrate and contractual limitations on damages and claims); appellate remedies that otherwise would not be available in arbitration; and the potential double recovery.

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National Law Review, Volume XIII, Number 32

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