

21 Williston on Contracts § 57:19 (4th ed.)

Williston on Contracts
May 2016 Update
Chapter 57. Commercial Arbitration Contracts
I. Introduction
[References](#)

§ 57:19. Obligations and rights of persons who are not parties to arbitration agreement

West's Key Number Digest

West's Key Number Digest, Arbitration  7.3

Legal Encyclopedias

[C.J.S., Arbitration § 16](#)

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Third persons who are not parties to an arbitration agreement generally are not bound by the agreement or any resulting award.⁴⁹ It is beyond the power of the parties in their agreement of submission to prevent the exercise of a right of action by those who are not parties to the agreement.⁵⁰ Moreover, the general rule, in the absence of a statute to the contrary,⁵¹ is that agreements to arbitrate will be enforced despite the existence of claims by third parties, or of pending multiparty litigation; thus, once a trial court determines that a valid arbitration agreement exists, the court must compel arbitration, even if the principal litigation involves parties that were not signatories to the arbitration agreement.⁵²

Nevertheless, it has been said that nonsignatories may be bound by arbitration agreements entered into by others where they have no greater rights than those of the party through whom they claim, applying traditional principles of agency and contract law, including assumption, piercing the corporate veil, alter ego, incorporation by reference, third-party beneficiary theories, waiver, and estoppel,⁵³

The effect of agency law was explored in a case where a member of an investment partnership, which was formed for the sole purpose of buying and selling securities through a clearing

account established with a broker, brought suit against the broker.⁵⁴ The partnership had executed a customer agreement with the broker that contained a clause providing for arbitration between the customer and the broker of any dispute arising between them. The member executed a partnership agreement with the partnership, which referred to the member interchangeably as an "investor" and a "partner," and contained the following clause: "Nothing herein contained shall be construed to constitute any Partner the agent of another Partner, except as expressly provided herein." The investment partnership suffered heavy losses and was eventually liquidated. In the member's suit against the broker, the broker moved to stay the proceedings and compel arbitration. In considering whether the member was bound by the arbitration clause in the customer agreement between the broker and the partnership, and executed only by the partnership, the court stated that whether one is bound by an arbitration agreement he or she did not sign depends on principles of general contract and agency law. The dispositive issue was therefore whether the partners in the partnership were acting as the member's agents with power to bind her to arbitrate disputes over the broker's handling of funds or securities traded in the partnership account.

In deciding, as a matter of law, that the partnership was acting as the member's agent when it signed the customer agreement containing the arbitration clause, and, therefore, that she was bound by that clause, the court stated that the power of an agent to enter contracts on behalf of the agent's principal may be express or implied. In addition, the agent's power includes all powers necessarily implied from an express grant of power. The partnership agreement at issue provided that no agency existed except as expressly provided in the agreement. However, one of the express purposes of the partnership was to open an account with the broker, funded with money contributed to the partnership by investors. The overarching purpose of the partnership, therefore, was to make trades for the benefit of its members. The particular member previously had a personal account with that broker, subject to the identical arbitration agreement, and had authorized the broker to transfer the balance of her personal account to the partnership account. She authorized trades through the partnership account. These facts, the court said, established, as a matter of law, that the partnership was acting as the member's agent when it opened up the partnership account. Accordingly, the partnership was acting within the scope of its express authority both in signing the arbitration agreement with the broker and in making trades. Consequently, the court concluded, the customer was bound by the partnership's agreement to arbitrate disputes with the broker concerning the broker's handling of the customer's partnership account.⁵⁵

If an arbitration clause is broad in scope, a court may find that the parties intended that claims involving nonsignatories and related to the contract would be subject to arbitration.⁵⁶ Courts may also consider the extent to which the claims against the signatories are intertwined with those against nonsignatories.⁵⁷ In a case raising these concerns, the plaintiffs purchased a new mobile home. They made a downpayment and a finance company provided financing for the balance of the purchase price. The plaintiffs executed a retail installment contract, which contained an assignment to the finance company, and an arbitration clause, under which the parties agreed that "[a]ll claims or controversies arising from or relating to this Contract or the relationships which result from this Contract, or the validity of this arbitration clause or the

entire Contract, shall be resolved by binding arbitration." In connection with the purchase of the mobile home, the seller sold the plaintiffs an insurance policy, which the defendant insurance agent countersigned, and the finance company was named as an additional insured in the policy.

Disputes arose among the parties, and the plaintiffs sued the seller, the insurance company, the insurance agent, and the finance company, alleging fraudulent misrepresentation, fraudulent suppression, deceit, and conspiracy to defraud in connection with the sale of the mobile home and the insurance policy. All of the defendants filed motions to compel arbitration, which were granted by the trial court. The plaintiffs contended in part that the trial court abused its discretion in compelling them to arbitrate their claims against the insurance company and agent, since neither was a signatory to the arbitration agreement. In rejecting the plaintiffs' contentions, the court stated that the claims against the insurance company and agent were arbitrable because the arbitration clause was broad enough to encompass them. The court said: "Insurance coverage for potential physical damage to the mobile home was an indispensable element of the contract executed by [the plaintiffs], without which [the finance company] would not have agreed to finance their purchase. Therefore, the arbitration clause in the contract encompasses disputes arising out of the relationship of insured and insurer that resulted from the contract."⁵⁸

Moreover, the court found that the plaintiffs' claims against the seller and finance company and those against the insurer and its agent were sufficiently intertwined, so that all claims must be arbitrated. The plaintiffs alleged that the insurance on their mobile home was "force-placed," that the defendants misrepresented to them matters such as the necessity for the insurance and the amount of the insurance, and that certain persons accepted "kickbacks." The plaintiffs also alleged that the defendants conspired against them. Therefore, the court concluded, the nonsignatories had a connection to the claims against the signatories that was sufficient to subject all claims to arbitration.⁵⁹

However, in a similar case,⁶⁰ the same court ruled that a nonsignatory could not compel a party to a contract for the purchase of a vehicle to arbitrate his claims. The retail installment contract and security agreement at issue provided that all disputes or controversies between the purchaser and the dealer and its assignees were subject to arbitration. The contract also required that the purchaser keep the vehicle insured, and when he did not, the bank, as assignee of the contract, purchased a policy. After the vehicle was destroyed, the insurer allegedly told the purchaser that he needed to pay a premium, and if he made a claim, his credit rating would be affected. In holding that the purchaser's claims against the insurance company based on these representations were not subject to arbitration, the court noted that the insurance company was not an assignee of the dealer or the assignee bank. "Consequently, the arbitration provision in the retail installment contract . . . is specifically limited to the signing parties and their assignees and is not broad enough to cover [the purchaser's] claims against [the insurer]. Moreover, [the purchaser] is not suing [the insurer] on the retail installment contract or as either the principal or the agent of, or a conspirator with [the bank]. Accordingly, neither the facts nor the law

supports the order of the trial court in compelling arbitration of [the purchaser's] claims against [the insurer]."⁶¹

A dissent took the view that the purchaser's claims against the bank and insurer "are 'inextricably intertwined.' ... '[I]t is clear that a nonsignatory may enforce an arbitration agreement if the claims against it are intertwined with the underlying contract containing the arbitration clause.'

"[The purchaser's] claim against [the insurer] is premised upon the original contract requiring that [he] maintain insurance on the vehicle. That contract gave [the dealer] and its assignee, [the bank], the right to purchase insurance for the vehicle if [the purchaser] permitted his insurance to lapse. [The purchaser] was not a party to the insurance contract between [the bank] and [the insurer]; therefore, his claims against [the insurer], especially the breach-of-contract claim, must be based on the loan contract. Because [the purchaser's] claims against [the insurer] are intertwined with the underlying contract containing the arbitration clause," the dissenting judges were of the view that "the trial court properly compelled [the purchaser] to arbitrate his claims against [the insurer]."⁶²

In an action by pension plan trustees against a broker and its financial consultant, the court concluded that a valid arbitration agreement executed by the trustees and the broker also applied to the consultant and its sister corporation, despite the fact that the latter parties had not signed the agreement.⁶³ The court stated that the consultant was bound by the arbitration agreement under traditional agency theory. If a principal is bound under the terms of a valid arbitration clause, its agents, employees, and representatives are also bound. For similar reasons, the sister corporation was also bound, since the sister corporation was obligated to perform certain services in connection with the trustees' account, and was a subsidiary of the broker. Arbitration agreements may be upheld against nonparties where the interests of the parties are directly related to, if not congruent with those of the signatory. In the instant case, the court observed that the trustees' own theory of liability demonstrated that the sister corporation's interests were directly related to, if not predicated on, the conduct of the broker, since its liability, as stated in the trustees' complaint, was premised on its participation in breaches of fiduciary duties owed to the pension plan.⁶⁴

The doctrine of equitable estoppel allows a nonsignatory to a written agreement containing an arbitration clause to compel arbitration under the Federal Arbitration Act where a signatory to the written agreement must rely on the terms of that agreement in asserting its claims against the nonsignatory or where the signatory to the written agreement raises allegations of substantially interdependent and concerted misconduct by both the nonsignatory and one or more of the signatories to the contract.⁶⁵ Thus, in one case,⁶⁶ the plaintiff's predecessor in interest purchased an industrial saw manufactured by the defendant, a German manufacturer. The buyer purchased the saw through the defendant's distributor in the United States. In a purchase order from the buyer, the buyer agreed to buy, and the distributor agreed to sell, the

saw in accordance with a performance guarantee and certain specifications. The foreign manufacturer sent the distributor an "Order Confirmation/Contract" for the saw, together with two additional documents, one of which contained an arbitration clause, providing that "[a]ny dispute arising out of the Contract shall be finally settled, in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce, by one or more arbitrators designated by those rules." According to the buyer, the saw completely failed to operate, and the buyer filed a complaint against the manufacturer, alleging breach of contract, rejection, and breach of warranty. The buyer later filed an amended complaint, alleging that it was a third-party beneficiary of the Order Confirmation/Contract between the distributor and the manufacturer. The manufacturer then moved to stay the civil suit pending arbitration, relying on the arbitration clause contained in its contract with the distributor. The buyer subsequently withdrew its third-party beneficiary claim, responding to the district court's skepticism about the claim. The district court granted the stay, the arbitration was conducted, and the arbitrators ruled in the manufacturer's favor, finding that there was no basis for recovery against the manufacturer since no contract existed between the buyer and the manufacturer. The District Court then granted the manufacturer's motion to enforce the award. On appeal, the court affirmed, stating that while a contract cannot bind parties to arbitrate disputes they have not agreed to arbitrate, "[i]t does not follow ... that under the [Federal Arbitration Act] an obligation to arbitrate attaches only to one who has personally signed the written arbitration provision. ... Rather, a party can agree to submit to arbitration by means other than personally signing a contract containing an arbitration clause." The court stated that well-established common-law principles dictate that in an appropriate case a nonsignatory can enforce, or be bound by, an arbitration clause executed by other parties. For example, "when allegations against 'a parent company and its subsidiary are based on the same facts and are inherently inseparable, a court may refer claims against the parent to arbitration even though the parent is not formally a party to the arbitration agreement.'" The same result has been reached under a theory of equitable estoppel. The doctrine of equitable estoppel, said the court, precludes a party from asserting rights he or she otherwise would have had against another when the party's own conduct renders assertion of those rights contrary to equity. "In the arbitration context, the doctrine recognizes that a party may be estopped from asserting that the lack of his signature on a written contract precludes enforcement of the contract's arbitration clause when he has consistently maintained that other provisions of the same contract should be enforced to benefit him. 'To allow [a plaintiff] to claim the benefit of the contract and simultaneously avoid its burdens would both disregard equity and contravene the purposes underlying enactment of the Arbitration Act.'...

"A nonsignatory is estopped from refusing to comply with an arbitration clause 'when it receives a "direct benefit" from a contract containing an arbitration clause.'"

Given these rules, the court determined that the doctrine of equitable estoppel applied, and that the buyer was estopped from refusing to arbitrate its dispute with the manufacturer. At least a part of each claim asserted by the buyer against the manufacturer was based on the contract between the distributor and the manufacturer, the buyer having alleged that the manufacturer failed to honor the warranties in its contract with the distributor, and that it sought remedies in accordance with that contract. Thus, the buyer could not seek to enforce those contractual rights

yet avoid the contract's requirement that "any dispute arising out of" the contract be arbitrated.⁶⁷

As suggested, several cases have held that a nonsignatory may be bound by an arbitration clause in a contract between other parties if the nonsignatory receives "direct benefits" from the contract.⁶⁸ For example, yacht owners, who received direct benefits from a contract between the yacht's builder and a ship classification society, were estopped from denying their obligations under the contract's arbitration clause, where, as a result of the yacht's classification, the owners received significantly lower insurance rates and the ability to sail under a French flag. With regard to the owners' obligation to arbitrate, the court said: "A party is estopped from denying its obligation to arbitrate when it receives a 'direct benefit' from a contract containing an arbitration clause. ... The Owners are hence required to arbitrate their claims...." The insurer was also required to arbitrate its claims against the ship classification society, since the insurer "stood in the shoes" of the owners, as the subrogee of the insureds.⁶⁹

A nonsignatory may also waive his or her rights if a party consents to, and participates in, arbitration proceedings that affect the nonsignatory's own rights and liabilities.⁷⁰

These rules on waiver and estoppel have been applied in a variety of cases, including those involving the undertaking of a surety on an injunction bond⁷¹ and on a bond to discharge a mechanic's lien.⁷²

If a right to arbitration arises in a third party, by virtue of a valid provision in a contract, only on an award of arbitrators,⁷³ the agreement and a submission and award under it will conclude not only the interests of the parties to the agreement, but also those of a third person,⁷⁴ unless the third person's interest may be treated as an assignment of the right of the party to the principal contract. In that event, the third party is entitled to be a party to the arbitration, and is not bound by proceedings between the original parties to the agreement.⁷⁵

An arbitration clause is not necessarily a waiver of lien rights. It has been held that a person who is not a party to the original agreement, but who later acquires an interest in the premises against which the lien was sought, could not assert that a dispute as to a lien right had originated within the terms of the arbitration clause where there was no dispute as to the amount claimed.⁷⁶

In states where an arbitration agreement is irrevocable and enforceable, the agreement may be enforced against an assignee as well as against the original party who made the agreement.⁷⁷ A party cannot escape the effect of an arbitration clause by assigning to a third party a claim subject to arbitration between the original parties.⁷⁸ Conversely, the party to whom a contract containing an arbitration clause is assigned is entitled to take advantage of the arbitration clause

even if it is argued that he or she was not a party to the contract.⁷⁹

CUMULATIVE SUPPLEMENT

Cases:

Signatories to an arbitration agreement can be compelled to arbitrate their claims with a non-signatory where issues nonsignatory is seeking to resolve in arbitration are intertwined with agreement that other party has signed. [Denney v. BDO Seidman, L.L.P., 412 F.3d 58 \(2d Cir. 2005\)](#).

Employee benefit plan participant who brought ERISA breach of fiduciary duty claim against plan's investment manager was not bound by arbitration clause in investment management contract between employer and investment manager, on theory that participant's claim "arose out of" that contract; mere fact that ERISA claim "arose out of" contract could not bind participant to arbitration clause absent applicable contract or agency principles such as equitable estoppel, third-party beneficiary, agency, assumption by subsequent conduct, or veil-piercing. Employee Retirement Income Security Act, §§ 409, 502(a)(2), [29 U.S.C.A. §§ 1109, 1132\(a\)\(2\)](#). [Comer v. Micor, Inc., 436 F.3d 1098 \(9th Cir. 2006\)](#).

Nonsignatories to arbitration agreement can enforce agreement as third-party beneficiaries. [Comer v. Micor, Inc., 436 F.3d 1098 \(9th Cir. 2006\)](#).

A nonsignatory to an arbitration agreement may be bound by that agreement under traditional principles of contract and agency law. [Oehme, van Sweden & Associates, Inc. v. Maypaul Trading & Services Ltd., 2012 WL 5396394 \(D.D.C. 2012\)](#) (citing text).

Traditional principles of state law may allow a contractual arbitration agreement ???to be enforced by or against nonparties to the contract through ???assumption, piercing the corporate veil, alter ego, incorporation by reference, third-party beneficiary theories, waiver and estoppel.??? [Freund v. UBS Financial Services, Inc., 2015 I.E.R. Cas. \(BNA\) 349873, 2015 WL 6445603 \(N.D. Ill. 2015\)](#) (quoting text).

A nonsignatory to an arbitration contract may be compelled to arbitrate as a matter of substantive federal law when 'traditional principles' of state law allow a contract to be enforced by or against nonparties to the contract through assumption, piercing the corporate veil, alter ego, incorporation by reference, third-party beneficiary theories, waiver or estoppel.[Evans v. TIN, Inc., 2012 WL 2343162 \(E.D. La. 2012\)](#) (citing text).

Generally, arbitration clauses cannot be enforced by persons who are not parties to the contract. [D.C.D. Co., LLC v. Bank of America, N.A., 2007 WL 45935 \(E.D. Mich. 2007\)](#) (citing text).

Traditional principles of state law allow a contract to be enforced by or against nonparties to the contract through "assumption, piercing the corporate veil, alter ego, incorporation by reference, third-party beneficiary theories, waiver and estoppel." [Barber v. Charlotte Motor Speedway, LLC, 2014 WL 6686730 \(M.D. N.C. 2014\)](#) (quoting text).

Sub-subcontractor was not a third-party beneficiary of master subcontract agreement between contractor and subcontractor and was thus not subject to arbitration provision contained in master subcontract agreement; agreement applied only to disputes between contractor and subcontractor, and agreement specifically required subcontractor to include same provisions in all of its subcontracts, thus indicating that contractor and subcontractor did not intend to arbitration provision in master subcontract agreement to apply to any party other than the signatories. [Dannelly Enterprises, LLC v. Palm Beach Grading, Inc., 2016 WL 360668 \(Ala. 2016\)](#)

A nonsignatory to an arbitration agreement cannot be forced to arbitrate its claims, unless the third-party-beneficiary exception or the equitable-estoppel exception applies. [MTA, Inc. v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 2012 WL 6062567 \(Ala. 2012\)](#).

Under the theory of equitable estoppel, a nonsignatory can enforce an arbitration provision when the claims against the nonsignatory are intimately founded in and intertwined with the underlying contract obligations. [Smith v. Mark Dodge, Inc., 2006 WL 147511 \(Ala. 2006\)](#).

A nonsignatory can be bound to an arbitration agreement under ordinary principles of contract and agency. [Dan Wiebold Ford, Inc. v. Universal Computer Consulting Holding, Inc., 142 Idaho 235, 127 P.3d 138 \(2005\)](#).

Arbitration is a creature of contract, and under basic principles of contract law, only parties to the arbitration contract may compel arbitration or be compelled to arbitrate. [Carter v. SSC Odin Operating Co., LLC, 2012 IL 113204, 364 Ill. Dec. 66, 976 N.E.2d 344 \(Ill. 2012\)](#), petition for cert. filed, [81 U.S.L.W. 3473 \(U.S. Feb. 15, 2013\)](#).

Where contract contains an arbitration clause which is legally enforceable, the general rule is that the beneficiary is bound thereby to the same extent that the promisee is bound. [Ping v. Beverly Enterprises, Inc., 376 S.W.3d 581 \(Ky. 2012\)](#), petition for cert. filed, [81 U.S.L.W. 3309 \(U.S. Oct. 20, 2012\)](#).

Generally, arbitration clauses are contractual and cannot be enforced by persons who are not parties to the contract; however, there are exceptions allowing a nonsignatory to a contract to compel arbitration on grounds of equitable estoppel, agency, and third-party beneficiary. [Onvoy, Inc. v. SHAL, LLC, 669 N.W.2d 344 \(Minn. 2003\)](#).

Real estate agent who acted as vendor's agent in real estate transaction had right to compel arbitration of purchaser's claims against real estate agent arising from alleged defects in design

and construction, even though real estate agent was not signatory to purchase agreement containing arbitration clause, where real estate agent's allegedly wrongful acts related to real estate agent's behavior as agent for vendor and related to transaction governed by purchase agreement. [Lemon Drop Properties, LLC v. Pass Marianne, LLC, 73 So. 3d 1131 \(Miss. 2011\)](#).

A non-signatory party may be bound to an arbitration agreement if so dictated by the ordinary principles of contract and agency. [Scruggs v. Wyatt, 60 So. 3d 758 \(Miss. 2011\)](#).

A signatory may enforce an arbitration agreement against a non-signatory if the non-signatory is a third-party beneficiary or if the doctrine of estoppel applies. [Scruggs v. Wyatt, 60 So. 3d 758 \(Miss. 2011\)](#).

Arbitration agreements can be enforced against non-signatories if such non-signatory is a third-party beneficiary. [Adams v. Greenpoint Credit, LLC, 943 So. 2d 703 \(Miss. 2006\)](#).

Conservator who entered into nursing home admission agreement on behalf of conservatee was not bound by arbitration provision in admission agreement; although conservator signed admission agreement, conservator made a knowledgeable and express decision not to sign the arbitration provision, and nursing home's admitting conservatee, despite conservator's failure to affix signature to arbitration provision as per nursing home's demand, acquiesced to the terms presented by conservator. [Bedford Care Center-Monroe Hall, LLC v. Lewis, 923 So. 2d 998 \(Miss. 2006\)](#).

A non-signatory to an arbitration agreement should have standing to compel arbitration where the non-signatory has a close legal relationship, such as, alter ego, parent/subsidiary, or agency relationship, with a signatory to the agreement. [B.C. Rogers Poultry, Inc. v. Wedgeworth, 911 So. 2d 483 \(Miss. 2005\)](#).

Subsequent purchasers who were non-signatories to purchase agreements between builder and original homeowners were bound by arbitration provision of original purchase agreements in construction defect action, where subsequent purchasers received direct benefit from agreements when they asserted breach of contract claims against builder based on agreements. [Michalowski v. Second Judicial Dist. Court of State, ex rel. County of Washoe, 2015 WL 7431447 \(Nev. 2015\)](#)

Where a contract contains an arbitration clause which is legally enforceable, the general view is that the beneficiary is bound thereby to the same extent that the promisee is bound. [Henderson v. Lawyers Title Ins. Corp., 108 Ohio St. 3d 265, 2006-Ohio-906, 843 N.E.2d 152 \(2006\)](#).

An obligation to arbitrate not only attaches to one who has personally signed the written arbitration agreement but may also bind a non-signatory under principles of contract law and agency. [In re Rubiola, 334 S.W.3d 220 \(Tex. 2011\)](#).

Nonparties generally must arbitrate claims if liability arises from a contract with an arbitration clause, but not if liability arises from general obligations imposed by law. [In re Vesta Ins. Group, Inc., 192 S.W.3d 759 \(Tex. 2006\)](#).

Nonparties may be bound to an arbitration clause when the rules of law or equity would bind them to the contract generally. [In re Weekley Homes, L.P., 180 S.W.3d 127 \(Tex. 2005\)](#).

A non-signatory plaintiff may be compelled by direct benefits estoppel to arbitrate if it seeks to enforce terms of a contract containing an arbitration provision. [In re Kellogg Brown & Root, Inc., 166 S.W.3d 732 \(Tex. 2005\)](#).

One who has not manifested assent to an agreement to arbitrate generally cannot be required to submit to arbitration; however, under certain circumstances, a nonsignatory to an arbitration agreement can enforce or be bound by an agreement between other parties. [Ellsworth v. American Arbitration Ass'n, 2006 UT 77, 148 P.3d 983 \(Utah 2006\)](#).

Homeowners' children were not bound to arbitration clause contained in purchase and sale agreement (PSA) between homeowners and builder in action against builder for negligence and negligent misrepresentation, among other claims, where the children were non-signatories to the PSA, and builder owed them a duty that did not arise from the PSA. [Townsend v. Quadrant Corp., 173 Wash. 2d 451, 268 P.3d 917 \(2012\)](#).

There are five different theories, all arising out of common law principles of contract and agency law, under which a signatory to an arbitration agreement may bind a non-signatory: (1) incorporation by reference; (2) assumption; (3) agency; (4) veil-piercing/alter ego; and (5) estoppel. [Chesapeake Appalachia, L.L.C. v. Hickman, 236 W. Va. 421, 781 S.E.2d 198 \(2015\)](#)

Assignor of previous lease and geologist who negotiated lease were not, as non-signatories, bound by arbitration provision contained in oil and gas lease. [Chesapeake Appalachia, L.L.C. v. Hickman, 236 W. Va. 421, 781 S.E.2d 198 \(2015\)](#)

[END OF SUPPLEMENT]

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Footnotes

49 First Circuit

[Beacon Const. Co. of Mass. v. Prepakt Concrete Co., 375 F.2d 977 \(1st Cir. 1967\)](#) (a subcontractor whose subcontract did not provide for arbitration was not bound by an arbitration clause in the general contract)

Second Circuit

[Interocean Shipping Co. v. National Shipping & Trading Corp., 462 F.2d 673 \(2d Cir. 1972\)](#) (whether a person is a party to an arbitration agreement is included within the question of "the making of the arbitration agreement" under an arbitration statute, but a party acting as the agent for an disclosed principal is not a party to the agreement)

[Orion Shipping & Trading Co. v. Eastern States Petroleum Corp. of Panama, S. A., 312 F.2d 299 \(2d Cir. 1963\)](#) (an arbitrator exceeded scope of powers in determining the obligations of a parent corporation that was clearly not a party to arbitration proceedings between its subsidiary and another corporation)

Third Circuit

[Bel-Ray Co., Inc. v. Chemrite \(Pty\) Ltd., 181 F.3d 435 \(3d Cir. 1999\)](#) (courts have no authority to mandate that a party who has not agreed to arbitrate do so)

Ala.

[Southern Energy Homes, Inc. v. Gary, 774 So. 2d 521 \(Ala. 2000\)](#) (overruled by, [Jim Burke Automotive, Inc. v. McGrue, 826 So. 2d 122 \(Ala. 2002\)](#)) (sales contract containing arbitration clause requiring that "any complaint between the parties" be settled by arbitration only applied to purchaser and seller, who were the parties to the contract, and was not broad enough to include claims against the manufacturer)

[Ex parte Dickinson, 711 So. 2d 984 \(Ala. 1998\)](#), reh'g overruled, (Mar. 20, 1998) (wife, who purchased an automobile jointly with her husband, but was not a signatory to the arbitration agreement that her husband had signed, could not be compelled to arbitrate disputes arising from the purchase)

[Ex parte Stripling, 694 So. 2d 1281 \(Ala. 1997\)](#)

Conn.

[Cone v. Dunham, 59 Conn. 145, 20 A. 311 \(1890\)](#) (distributees who had already received shares of stock that were in possession of the testator at the time of his death were not concluded on the question of title to the shares by an arbitration and award to which they were not parties and which they did not ratify, but was conducted pursuant to an agreement of submission made by the executor)

Fla.

[Karlen v. Gulf & Western Industries, Inc., 336 So. 2d 461 \(Fla. Dist. Ct. App. 3d Dist. 1976\)](#) (an agreement between two parties to arbitrate their differences is a personal covenant and was not binding on the successors or assigns of either party, absent written evidence that the obligation to arbitrate had been assumed)

Idaho

[50](#) Ohio

[Columbus, H.V. & T.R. Co. v. Burke, 54 Ohio St. 98, 43 N.E. 282 \(1896\)](#)

Or.

[Sloan v. Journal Pub. Co., 213 Or. 324, 324 P.2d 449 \(1958\)](#)

[51](#) U.S. Supreme Court

[Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior University, 489 U.S. 468, 109 S. Ct. 1248, 103 L. Ed. 2d 488, 51 Ed. Law Rep. 725 \(1989\)](#) (applying [California Code of Civil Procedure § 1281.2\(c\)](#), which provides that if the court determines that a party to the arbitration is also a party to litigation in a pending court action with a third party, the court may, *inter alia*, stay arbitration pending the outcome of the court action; the Supreme Court's decision that the provision for a stay was not preempted by the Federal Arbitration Act where the parties have agreed to arbitration in accordance with California law is discussed in [§ 57:5](#))

[52](#) Ill.

[Board of Managers of Courtyards at Woodlands Condominium Ass'n v. IKO Chicago, Inc., 183 Ill. 2d 66, 231 Ill. Dec. 942, 697 N.E.2d 727 \(1998\)](#)

[53](#) The liability of a principal under a contract made with an agent is discussed in [§ 35:34](#).
First Circuit

[Hartford Financial Systems, Inc. v. Florida Software Services, Inc., 550 F. Supp. 1079 \(D. Me. 1982\)](#) (under the Uniform Partnership Act, a general partner is bound by an arbitration agreement, notwithstanding that the partner was not a signatory or a member of the partnership at the time the agreement was made)
Second Circuit

[Smith/Enron Cogeneration Ltd. Partnership, Inc. v. Smith Cogeneration Intern., Inc., 198 F.3d 88 \(2d Cir. 1999\)](#)
[American Bureau of Shipping v. Tencara Shipyard S.P.A., 170 F.3d 349 \(2d Cir. 1999\)](#)
[WorldCrisa Corp. v. Armstrong, 129 F.3d 71 \(2d Cir. 1997\)](#)
[American Fuel Corp. v. Utah Energy Development Co., Inc., 122 F.3d 130 \(2d Cir. 1997\)](#)
[Thomson-CSF, S.A. v. American Arbitration Ass'n, 64 F.3d 773 \(2d Cir. 1995\)](#)
[Wells Fargo Bank Intern. Corp. v. London Steam-Ship Owners' Mut. Ins. Ass'n, Ltd., 408 F. Supp. 626 \(S.D. N.Y. 1976\)](#) (a mortgagee-loss payee under a maritime insurance policy was bound by an arbitration clause in the policy, notwithstanding the fact that the payee was a not a signatory or a party to the contract, where under the contract and insurance law, a mortgagee claiming under such an open loss-payee clause was accorded no greater rights than those of the insured, and was bound by conditions in the contract)
Third Circuit

[Bel-Ray Co., Inc. v. Chemrite \(Pty\) Ltd., 181 F.3d 435 \(3d Cir. 1999\)](#) (when asked to enforce an arbitration agreement against a nonsignatory, the court should ask whether he or she is bound by that agreement under traditional principles of contract and agency law)
Fourth Circuit

[Kvaerner ASA v. Bank of Tokyo-Mitsubishi, Ltd., New York Branch, 210 F.3d 262 \(4th Cir. 2000\)](#) (guaranties included provision giving guarantors the same "rights and remedies" as available under a construction contract, which included an arbitration clause)
[International Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH, 206 F.3d 411 \(4th Cir. 2000\)](#)
Seventh Circuit

[Industrial Electronics Corp. of Wisconsin v. iPower Distribution Group, Inc., 215 F.3d 677 \(7th Cir. 2000\)](#) (members of association of franchisees were bound, as third-party beneficiaries, by arbitration provision in franchise agreement)
[Grundstad v. Ritt, 106 F.3d 201 \(7th Cir. 1997\)](#) (a guarantor who is not a signatory to a contract containing an arbitration clause is not bound by the arbitration clause, except where the guaranty explicitly incorporates the underlying agreement by reference)
Eleventh Circuit

[First Citizens Mun. Corp. v. Pershing Div. of Donaldson, Lufkin & Jenrette Securities](#)

- [54](#) The liability of partners as agents for each other is discussed in [§ 35:73](#).
Iowa
[Bullis v. Bear, Stearns & Co., Inc., 553 N.W.2d 599 \(Iowa 1996\)](#)
- [55](#) Iowa
[Bullis v. Bear, Stearns & Co., Inc., 553 N.W.2d 599 \(Iowa 1996\)](#)
- [56](#) Ala.
[Ex parte Napier, 723 So. 2d 49 \(Ala. 1998\)](#)
- [57](#) Ala.
[Ex parte Napier, 723 So. 2d 49 \(Ala. 1998\)](#)
- [58](#) Ala.
[Ex parte Napier, 723 So. 2d 49 \(Ala. 1998\)](#)
- [59](#) Ala.
[Ex parte Napier, 723 So. 2d 49 \(Ala. 1998\)](#)
- [60](#) Ala.
[Ex parte Lovejoy, 790 So. 2d 933 \(Ala. 2000\)](#), reh'g overruled, (Feb. 16, 2001)
- [61](#) Ala.
[Ex parte Lovejoy, 790 So. 2d 933 \(Ala. 2000\)](#), reh'g overruled, (Feb. 16, 2001)
- [62](#) Ala.
[Ex parte Lovejoy, 790 So. 2d 933 \(Ala. 2000\)](#), reh'g overruled, (Feb. 16, 2001)
(dissenting opinion)
- [63](#) Third Circuit
[Pritzker v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 7 F.3d 1110 \(3d Cir. 1993\)](#)
- [64](#) Third Circuit
[Pritzker v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 7 F.3d 1110 \(3d Cir. 1993\)](#)
- [65](#) Eleventh Circuit
[MS Dealer Service Corp. v. Franklin, 177 F.3d 942, 43 Fed. R. Serv. 3d 1204 \(11th Cir. 1999\)](#)

- [66](#) Fourth Circuit
[International Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH, 206 F.3d 411 \(4th Cir. 2000\)](#)
- [67](#) Fourth Circuit
[International Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH, 206 F.3d 411 \(4th Cir. 2000\)](#)
- [68](#) Second Circuit
[American Bureau of Shipping v. Tencara Shipyard S.P.A., 170 F.3d 349 \(2d Cir. 1999\)](#)
[Deloitte Noraudit A/S v. Deloitte Haskins & Sells, U.S., 9 F.3d 1060 \(2d Cir. 1993\)](#)
Fourth Circuit
[International Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH, 206 F.3d 411 \(4th Cir. 2000\)](#)
- [69](#) Second Circuit
[American Bureau of Shipping v. Tencara Shipyard S.P.A., 170 F.3d 349 \(2d Cir. 1999\)](#)
- [70](#) N.Y.
[Brescia Const. Co. v. Walart Const. Co., 264 N.Y. 260, 190 N.E. 484, 93 A.L.R. 1148 \(1934\)](#)
- [71](#) Ohio
[Columbus, H.V. & T.R. Co. v. Burke, 54 Ohio St. 98, 43 N.E. 282 \(1896\)](#)
- [72](#) N.Y.
[Brescia Const. Co. v. Walart Const. Co., 264 N.Y. 260, 190 N.E. 484, 93 A.L.R. 1148 \(1934\)](#)
- [73](#) See, e.g.:
Mass.
[Union Institution for Savings in City of Boston v. Phoenix Ins. Co., 196 Mass. 230, 81 N.E. 994 \(1907\)](#) (a mortgagee for whose benefit insurance is taken cannot enforce the policy unless the amount of the loss, in the absence of an agreement as to its amount on waiver of arbitration, is ascertained by arbitration as provided by the terms of the policy, although the policy places the duties with respect to arbitration on the mortgagor and provides that no default of any person other than the mortgagee or the mortgagee's agents shall affect the mortgagee's right to recover in case of loss)

- 74 Conn.
[Collinsville Sav. Soc. v. Boston Ins. Co., 77 Conn. 676, 60 A. 647 \(1905\)](#)
Mich.

[Lumbermen's Mut. Cas. Co. v. Bissell, 220 Mich. 352, 190 N.W. 283, 28 A.L.R. 874 \(1922\)](#)
Ohio

[Erie Brewing Co. v. Ohio Farmers' Ins. Co., 81 Ohio St. 1, 89 N.E. 1065 \(1909\)](#)
Wis.

[Chandos v. American Fire Ins. Co., 84 Wis. 184, 54 N.W. 390 \(1893\)](#)
- 75 Ky.
[Bergman v. Commercial Union Assur. Co., 92 Ky. 494, 13 Ky. L. Rptr. 720, 18 S.W. 122 \(1892\)](#)
Ohio

[Erie Brewing Co. v. Ohio Farmers' Ins. Co., 81 Ohio St. 1, 89 N.E. 1065 \(1909\)](#)
- 76 Colo.
[Park Lane Properties v. Fisher, 89 Colo. 591, 5 P.2d 577 \(1931\)](#)
- 77 N.Y.
[Hosiery Mfrs.' Corporation v. Goldston, 238 N.Y. 22, 143 N.E. 779 \(1924\)](#)
cf.: [United Kingdom Treasury and Supply Delegation v. National Radio Co., 37 A.D.2d 953, 326 N.Y.S.2d 219 \(1st Dep't 1971\)](#) (noting that where a subcontractor was not party to sale contract or an assignee, and there was no contractual relationship between buyer and subcontractor, buyer was not bound to submit to arbitration with subcontractor)
[Blum's, Inc. v. Ferro Union Corp., 36 A.D.2d 584, 318 N.Y.S.2d 414 \(1st Dep't 1971\)](#), order aff'd, [29 N.Y.2d 689, 325 N.Y.S.2d 418, 274 N.E.2d 751 \(1971\)](#) (the court found that an assignee of a written contract containing broad arbitration clause was bound by that clause)
[Tanbro Fabrics Corp. v. Deering Milliken, Inc., 35 A.D.2d 469, 318 N.Y.S.2d 764 \(1st Dep't 1971\)](#), order aff'd, [29 N.Y.2d 690, 325 N.Y.S.2d 419, 274 N.E.2d 751 \(1971\)](#) ("Of course, the assignee of a contract acquires the assignor's rights therein and assumes its obligations including an agreement to arbitrate.")
Or.

[Abbott v. Bob's U-Drive, 222 Or. 147, 352 P.2d 598, 81 A.L.R.2d 793 \(1960\)](#) (covenant in lease to arbitrate)

[78](#) N.Y.
Hosiery Mfrs.' [Corporation v. Goldston](#), 238 N.Y. 22, 143 N.E. 779 (1924)
[James Talcott, Inc. v. M. Lowenstein & Sons, Inc.](#), 39 A.D.2d 846, 333 N.Y.S.2d 1 (1st
Dep't 1972), appeal granted, [31 N.Y.2d 647](#), [341 N.Y.S.2d 1027](#), [294 N.E.2d 208](#) (1973)
and order aff'd, [33 N.Y.2d 924](#), [353 N.Y.S.2d 721](#), [309 N.E.2d 124](#) (1973) (with regard
to a factor's obligation to arbitrate under an assigned sales note, the court observed: "The
factor stands in the seller's shoes not alone to press its assigned claim, but to be held
amenable to defenses and cross-claims in respect thereof.")

[79](#) N.Y.
[Lipman v. Haeuser Shellac Co., Inc.](#), 289 N.Y. 76, 43 N.E.2d 817, 142 A.L.R. 1088
(1942) (which held: "An arbitration clause is an integral part of the contract and may be
availed of, not only by the original parties but by the assignees.")

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