

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**NO. 2005 CA 1905**

**TOMMIE S. DUCOTE**

**VERSUS**

**MINNESOTA LIFE INSURANCE COMPANY,  
JIM WALTER HOMES, INC. F/K/A MIDSTATE HOMES, INC.**

Handwritten signatures and initials on the left side of the page. From top to bottom: a signature that appears to be 'JAW', a signature that appears to be 'JAW', and the initials 'JAW'.

*Judgment Rendered: September 15, 2006*

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**Appealed from the  
21st Judicial District Court  
In and for the Parish of Livingston, Louisiana  
Case No. 102622**

**The Honorable Jefferson D. Hughes, III, Judge Presiding**

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**BEFORE: KUHN, GAIDRY, AND WELCH, JJ.**

**GAIDRY, J.**

This appeal arises from a trial court judgment denying defendant's dilatory exception seeking to stay the proceedings based upon an arbitration clause in a building contract. We affirm.

Plaintiff, Tommie Sue Ducote, and her husband, Nathan Ducote, entered into a contract with Jim Walter Homes, Inc. ("JWH"), for the construction and financing of a custom-built home. Mrs. Ducote claims that she and her husband applied for group mortgage accidental death insurance and a life insurance policy with Minnesota Life Insurance Company ("Minnesota Life"), and that the premiums were to be included in their monthly mortgage payment to JWH. Some time after the home was built, Mr. Ducote died. Mrs. Ducote made a claim for benefits under both policies, which Minnesota Life denied because they had no active policies in which Mr. Ducote was a named insured. When Mrs. Ducote failed to pay her mortgage payments in accord with the agreement, JWH foreclosed and the home was sold at Sheriff's sale without appraisal. Mrs. Ducote filed suit against JWH for breach of contract or negligence in the servicing of the loan, and against Minnesota Life for benefits under both policies.

JWH filed a dilatory exception seeking to stay the proceedings on the grounds that a binding arbitration agreement existed between the parties, which stated that:

The parties agree that, at the election of either party, any controversy or claim *arising out of or relating to this contract*, or the breach thereof, whether asserted as in tort or contract, or as a federal or state statutory claim, arising before, during or after performance of this contract, shall be settled by binding arbitration.  
(Emphasis added).

After a hearing, the trial court denied JWH's exception. JWH appealed devolutively, alleging the trial court erred in denying its application

to stay the proceedings so that the matter could be referred to binding arbitration in accordance with the agreement.

We disagree that the trial court erred in denying JWH's exception. The arbitration agreement signed by Mr. and Mrs. Ducote applies to disputes "arising out of or relating to *this contract*." (Emphasis added). The contract referred to in the arbitration agreement is the building contract entered into by Mr. and Mrs. Ducote and a representative on behalf of JWH. The building contract includes the parties' agreement concerning the construction and cost of the house, as well as the "Federal Truth-In-Lending Disclosure Statement." There is no mention of accidental death insurance or life insurance in the contract, nor is there any statement concerning insurance premiums being paid to JWH. Clearly the agreement concerning the payment of premiums for these policies, if one in fact existed between the Ducotes and JWH<sup>1</sup>, was contained in another document. Any claim that JWH breached a contract to deliver premiums to Minnesota Life or was negligent in handling premiums meant for Minnesota Life, does not arise out of or relate to the building contract between the Ducotes and JWH. Thus, the arbitration agreement is inapplicable to this dispute.

### **DECREE**

For the above reasons, the January 31, 2005 judgment denying Jim Walter Homes's dilatory exception is affirmed. Costs of this appeal are assessed to defendant, Jim Walter Homes.

**AFFIRMED.**

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<sup>1</sup> The record does not contain any documentation at all concerning the application or premiums for either Minnesota Life policy. Minnesota Life admitted in its answer that the Ducotes applied for and were approved for the policies, and that the payments were to be included in their monthly mortgage payment and transmitted to Minnesota Life by the mortgage holder.