

# Fairhead v. Express Homes, Inc.

**Case Number**

A-16-0099

**Call Date**

April 11, 2017

**Case Time**

9:00 AM

**Case Summary**

A-16-0099, Gary Fairhead v. Express Homes, Inc. (Appellant)

Douglas County, District Judge Horatio Wheelock

Attorney for Appellant: Matthew S. McKeever (Copple, Rockey, McKeever & Schlecht, P.C., L.L.O.)

Attorney for Appellee: Eva M. Jessen (Sodoro, Daly, Shomaker & Selde, P.C., L.L.O)

Civil Action: Arbitration Agreement - Forum Selection Clause

Action Taken by Trial Court: The district court determined that the arbitration clause in the parties' agreement was enforceable but that the forum selection clause was unconscionable and accordingly ordered that arbitration take place in Nebraska and not West Virginia.

Assignments of Error on Appeal: Express Homes asserts that the district court erred in: (1) partially denying their motion to compel arbitration by ordering that the arbitration take place in Nebraska instead of West Virginia; (2) finding that the choice of venue clause in the agreement between the parties was unconscionable because its finding was not based on any evidence offered or received at the time of hearing; (3) not making any finding or addressing precedent as to whether an arbitration agreement is invalid as unconscionable; (4) partially denying the motion to compel arbitration and requiring the venue for arbitration to be in the state of Nebraska without any evidence offered or received on the issue of unconscionability; and (5) finding that the arbitration agreement's choice of venue clause was unconscionable but not addressing the factors for the validity of an arbitration agreement in Neb. Rev Stat. 525-2602.01 and other provisions of Nebraska law and precedent.

**Case Location**

Lincoln

**Panel Text**

Pirtle, Bishop and Arterburn, Judges

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