

IN THE COURT OF APPEALS OF TENNESSEE

AT KNOXVILLE

FILED

November 29, 1999

Cecil Crowson, Jr.
Appellate Court Clerk

BLOUNT EXCAVATING, INC.,) C/A NO. 03A01-9903-CV-00112
)
Plaintiff-Appellee,)
)
)
v.) APPEAL AS OF RIGHT FROM THE
) BLOUNT COUNTY CIRCUIT COURT
)
)
DENSO MANUFACTURING)
TENNESSEE, INC.,)
) HONORABLE W. DALE YOUNG,
Defendant-Appellant.) JUDGE

CONCURRING OPINION

I concur in Judge Swiney's determination that the trial court was correct in refusing to confirm the letter judgment of Allen & Hoshall, Inc., as an arbitration award under the provisions of T.C.A. § 29-5-301, *et seq.* I do so because I find, for the reasons expressed by Judge Swiney, that the architect's decision was not made pursuant to "a provision in a written contract to submit to arbitration any

controversy thereafter arising between the parties," see T.C.A. § 29-5-302(a), as contemplated by the Uniform Arbitration Act ("the Act"). Hence, if the subject provision is not the type of provision addressed in the Act, it is not logical to hold that the various directives contained in the statutory scheme are applicable to it. This is *not* to say that the parties' agreement with respect to decisions by the architect has no bearing on this case. In my judgment, and in the judgment of the majority opinion, as I understand it, this is still an open issue to be decided by the court below. I agree that we should not address this issue on this appeal since it is not presently before us; but, whatever the nature and effect of this contract provision, it is not, in my judgment, an agreement to arbitrate *under the Act*.

Charles D. Susano, Jr., J.