An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA01-750

NORTH CAROLINA COURT OF APPEALS

Filed: 21 May 2002

HAROLD W. SQUIRES and
BARBARA S. SQUIRES
Plaintiffs

v.

Jones County
No. 00-CVS-172

JIM WALTER HOMES, INC.,
Defendant

Appeal by defendant from order entered 1 March 2001 by Judge Carl L. Tilghman in Jones County Superior Court. Heard in the Court of Appeals 14 March 2002.

Robert W. Detwiler, for plaintiff-appellees.

Sellers, Hinshaw, Ayers, Dortch and Lyons, P.A., by Timothy G. Sellers and Robert A. Whitlow, for defendant-appellant.

MARTIN, Judge.

Defendant appeals the trial court's denial of its motion to compel arbitration. We affirm.

On 24 November 1997, plaintiffs, Harold W. Squires and Barbara S. Squires, entered into a contract with defendant, Jim Walter Homes, Inc., for the purchase of a house to be constructed by defendant. After defendant had finished constructing the house, plaintiffs filed a complaint against defendant on 17 August 2000, alleging money damages due to unfair trade practices, fraud, and breach of warranty. Defendant responded by filing a motion to stay

the action pending arbitration on 20 October 2000. On 1 March 2001, Judge Carl L. Tilghman entered an order denying defendant's motion, concluding that defendant had failed to show, by the greater weight of the evidence, the existence of a valid and enforceable agreement to arbitrate.

The sole issue on appeal is whether the trial court erred in denying defendant's motion to compel arbitration.

We initially note that the trial court's order is interlocutory because it fails to resolve all issues between all parties in the action. *Howard v. Oakwood Homes, Corp.*, 134 N.C. App. 116, 516 S.E.2d 879, *disc. review denied*, 350 N.C. 832, 539 S.E.2d 288 (1999). However, an order denying arbitration is subject to immediate appeal "because it involves a substantial right, the right to arbitrate claims, which might be lost if appeal is delayed." *Martin* v. Vance, 133 N.C. App. 116, 119, 514 S.E.2d 306, 308 (1999). Therefore, defendant's appeal is properly before us.

G.S. § 1-567.3 provides, in relevant part:

> (a) On application of a party showing an agreement described in G.S. 1-567.2; and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration, but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue so raised and shall order arbitration if found for the moving party, otherwise, the application shall be denied.

N.C. Gen. Stat. § 1-567.3(a) (2001).

"Therefore, when the party contesting arbitration challenges the legitimacy of such an agreement, the trial court must 'summarily determine whether, as a matter of law, a valid arbitration agreement exists.'" *CIT Group/Sales Financing, Inc. v. Bray*, 141 N.C. App. 542, 544, 539 S.E.2d 690, 691-92 (2000) (quoting *Routh v. Snap On Tools Corp.*, 101 N.C. App. 703, 706, 400 S.E.2d 755, 757 (1991)). In the case *sub judice*, plaintiffs denied the existence of a valid arbitration agreement. The trial court properly proceeded to determine whether there existed a valid and enforceable agreement to arbitrate. Concluding no such agreement existed, the trial court denied defendant's motion to compel arbitration.

The trial court made no findings of fact to support its conclusion that no valid arbitration agreement existed. Under G.S. § 1A-1, Rule 52(a)(2), the trial court is not required to make findings of fact and conclusions of law when ruling upon a motion unless they are requested by a party or required by Rule 41(b) which is not applicable here. In the instant case, there is no indication in the record that either party requested that the trial court make findings of fact. Therefore, the trial court had no duty to make such findings. When the court is not required to find facts and does not do so, it is presumed that the court, upon proper evidence, found facts to support its ruling. *Patrick v. Ronald Williams, P.A.*, 102 N.C. App. 355, 402 S.E.2d 452 (1991). Therefore, in this case, we must presume that the court, upon proper evidence, found facts to support its conclusion that there

was no valid arbitration agreement and thus its denial of defendant's motion to compel arbitration. Accordingly, we affirm.

Affirmed.

Judges HUDSON and THOMAS concur.

Report per Rule 30(e).