



COURT OF APPEALS  
EIGHTH DISTRICT OF TEXAS  
EL PASO, TEXAS

	§	
	§	
FAMILY DOLLAR STORES OF TEXAS, LLC,	§	No. 08-16-00111-CV
	§	Appeal from the
Appellant,	§	County Court at Law No. 7
v.	§	of El Paso County, Texas
ANA MARIA RAMIREZ,	§	(TC# 2015-DCV-2741)
Appellee.	§	

**MEMORANDUM OPINION**

Pending before the Court is a joint motion which requests that the trial court's order refusing to compel arbitration be set aside, without regard to the merits, and the case remanded for rendition of judgment in accordance with the parties' agreement. See TEX.R.APP.P. 42.1(a)(2)(B). The same motion has been filed in the related original proceeding, *In re Family Dollar Stores of Texas, LLC, Relator*, No. 08-16-00109-CV. The parties represent in the motion that the trial court has entered an order stating that upon dismissal of this appeal, the trial court's order dated May 16, 2016 will be vacated, and the parties will be compelled to arbitrate pursuant to their agreement. The parties request that we dismiss the appeal, but the motion also asks the Court to set aside the trial court's order dated May 16, 2016, without regard to the merits, and remand the case for rendition of judgment in accordance with the agreement of the parties. An

appellate court cannot dismiss an appeal or original proceeding, and at the same time, grant affirmative relief in the case. Consequently, we have construed the motion as requesting relief under Rule 42.1(a)(2)(B). The motion is granted. We vacate the trial court's order dated May 16, 2016, without regard to the merits, and we remand the case to the trial court for rendition of judgment in accordance with the parties' agreement. Further, costs of the appeal are assessed against the party incurring same.

STEVEN L. HUGHES, Justice

July 29, 2016

Before McClure, C.J., Rodriguez, and Hughes, JJ.