

In the
United States Court of Appeals
for the Fifth Circuit

m 02-40416

LA MIRAGE HOMEOWNERS ASSOCIATION,
ALSO KNOWN AS LA MIRAGE CONDOMINIUM COUNCIL OF OWNERS, INC.,

Plaintiff-Appellee,

VERSUS

ROYAL SURPLUS LINES INSURANCE COMPANY, ET AL.,

Defendants,

ROYAL SURPLUS LINES INSURANCE COMPANY,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
m C-01-CV-551

March 12, 2003

Before GARWOOD, SMITH, and BARKSDALE,
Circuit Judges.

PER CURIAM:*

The issue is whether Royal Surplus Lines Insurance Company, through the subject policy's service-of-suit provision, waived its right to remove to federal court. We have reviewed the briefs and pertinent portions of the record, have heard the arguments of counsel, and have consulted the applicable caselaw. The district court did not err in remanding to state court.

This case is controlled by *City of Rose City v. Nutmeg Ins. Co.*, 931 F.2d 13 (5th Cir. 1991). As this court reiterated in *Waters v. Browning Ferris Indus., Inc.*, 252 F.3d 796 (5th Cir. 2001), nothing in *McDermott Int'l, Inc. v. Lloyds Underwriters*, 944 F.2d 1199 (5th Cir. 1991), undermines the applicability of *Nutmeg*. The presence of an arbitration clause in *McDermott* distinguishes that case from *Nutmeg* and from the instant case.

The order of remand is AFFIRMED.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.