

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

United States Court of Appeals  
Fifth Circuit

**FILED**

March 4, 2008

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No. 07-40395  
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Charles R. Fulbruge III  
Clerk

PHILLIPS STAFFING SERVICES INC, doing business as All Star Staffing  
Services Inc.

Plaintiff - Appellee

v.

TEMPAY INC

Defendant - Appellant

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Appeal from the United States District Court  
for the Eastern District of Texas, Sherman  
No. 4:05-CV-407  
\_\_\_\_\_

Before KING, STEWART, and PRADO, Circuit Judges.

PER CURIAM:\*

We agree with the district court that defendant - appellant Tempay, Inc. waived its right to arbitration set out in the Funding Agreement between Tempay and plaintiff - appellee Phillips Staffing Services Inc., d/b/a All Star Staffing Services, Inc. Accordingly, the order of the district court entered March

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

23, 2007 denying Tempay's motion to dismiss and stay is affirmed for essentially the reasons given by the district court in that order.

AFFIRMED. The mandate shall issue forthwith.