

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8676

TERRY ELSEY,

Plaintiff-Appellee,

versus

SEARS ROEBUCK & CO.,

Defendant-Appellant.

Appeal from the United States District Court for
the Western District of Texas
(A-93-CV-361)

(August 18, 1994)

ON PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC

Before REAVLEY and JONES, Circuit Judges, and JUSTICE*, District
Judge.

PER CURIAM:**

Through our citation of *Colonial Refrigerated Transp., Inc.*,
403 F.2d 541, 549 (5th Cir. 1968) we did not intend to imply that
Mr. Elsey would not have to arbitrate his claim if he and Mrs.
Elsey were a joint venture. To the contrary, the agency

*District Judge of the Eastern District of Texas, sitting by
designation.

**Local Rule 47.5 provides: "The publication of opinions
that have no precedential value and merely decide particular
cases on the basis of well-settled principles of law imposes
needless expense on the public and burdens on the legal
profession." Pursuant to that Rule, the court has determined
that this opinion should not be published.

agreement would clearly require the arbitration of his claim in that circumstance. For clarification, the basis of our holding was that on this record, we are unable to determine whether Mr. and Mrs. Elsey were a joint venture.

The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, (FRAP and Local Rule 35) the Suggestion for Rehearing En Banc is also DENIED.