

**IN THE COURT OF APPEALS OF THE STATE OF IDAHO**

**Docket No. 51563**

**JACQUELYN ZIGMOND, an individual, )**  
**Plaintiff-Respondent, )**  
**v. )**  
**MORT CONSTRUCTION, INC., dba )**  
**MONOGRAM HOMES, )**  
**Defendant-Appellant. )**  
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Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Hon. Barry D. McHugh, District Judge.

Roberts Freebourn, PLLC; Kevin W. Roberts, Spokane, for appellant.

Hopkins Roden Crockett Hansen & Hoopes, PLLC; Jedediah A. Bigelow, Idaho Falls, for respondent.

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Mort Construction, Inc., dba Monogram Homes (Monogram) appeals from the district court’s order denying its motion to dismiss, or in the alternative, to stay pending arbitration. Jacquelyn Zigmond purchased a home from Monogram, including a six-year warranty in lieu of all other warranties of any type. When Zigmond’s driveway became delaminated, she sought coverage through the warranty, which was denied. Zigmond then filed a complaint against Monogram alleging breach of contract and breach of warranty of workmanship. The district court denied Monograms motion to dismiss or in the alternative, stay Zigmond’s complaint, pending arbitration.

On appeal, Monogram contends Jacquelyn Zigmond signed a contract for a warranty and therein, agreed to arbitration as the exclusive remedy for any warranty disputes and therefore cannot bypass arbitration and seek judicial adjudication of her claims. Zigmond contends the arbitration clause is not binding because at the time she signed the contract, she was not provided with the warranty documentation and therefore, the language from the warranty cannot be incorporated into the document she signed. Alternatively, Zigmond argues the disputed issue was expressly excluded from the warranty and therefore is not subject to the arbitration requirement.