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Arbitration Case Law Update

GE Energy Power Conversion Fr. SAS, Corp. v. Outokumpu Stainless USA, LLC, 140 S. Ct. 1637, 1642 (2020). The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards does not conflict with domestic equitable estoppel doctrines that permit the enforcement of arbitration agreements by nonsignatories.

Lavigne v. Herbalife, Ltd., 967 F.3d 1110, 1113 (11th Cir. 2020). In deciding whether equitable estoppel is appropriate, courts must remember the purpose of the doctrine, which is to prevent the plaintiff from having it both ways. The signatory cannot, on the one hand, seek to hold the non-signatory liable pursuant to duties imposed by the agreement, which contains an arbitration provision, but, on the other hand, deny arbitration's applicability because the defendant is a non-signatory.

Gherardi v. Citigroup Glob. Mkts., Inc., 975 F.3d 1232 (11th Cir. 2020). Because arbitrators' decision was an interpretation of the parties' contract, in accordance with 9 U.S.C.S. § 10(a)(4), rather than an expansion of the arbitrable issues, the district court erred in substituting its own legal judgment).

EGI-VSR, LLC v. Coderch, 963 F.3d 1112, 1115 (11th Cir. 2020). The Federal Arbitration Act implements the Inter-American Convention on International Commercial Arbitration (Panama Convention), which provides that a federal court must confirm an arbitration award unless it finds one of the following grounds for refusal or deferral of recognition or enforcement of the award: (1) incapacity or invalidity of the agreement, (2) lack of notice, (3) that the decision concerns a non-arbitrable dispute, (4) violation of the arbitration agreement or relevant law in carrying out the arbitration, (5) that the decision is not yet binding on the parties or has been annulled or suspended, (6) that the subject of the dispute cannot be settled by arbitration under the law of the State of recognition, or (7) that the recognition or execution of the decision would be contrary to the public policy (ordre public) of the State of recognition.

Ga.-Pacific Consumer Ops., LLC v. United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Union, Loc. 9-0952, No. 20-10646 (11th Cir. Nov. 20, 2020). A federal court's review of an arbitration award is extremely narrow. Because the parties have contracted to have disputes settled by an arbitrator rather than a judge, they have agreed to accept the arbitrator's view of the facts and the meaning of the contract. The limited review of arbitral decisions "maintains arbitration's essential virtue of resolving disputes straightaway." If the arbitrator arguably constructed the contract at all, the arbitrator's construction holds, "however good, bad, or ugly."

Young v. Grand Canyon Univ., Inc., No. 19-13639 (11th Cir. Nov. 16, 2020). University was precluded from enforcing a pre-dispute arbitration agreement with respect to a student's breach of contract and misrepresentation claims because these claims constituted "borrower defense claims" under 34 C.F.R. § 685.300(i)(1), which, under Obama-era regulations, prohibited schools from entering into or relying on pre-dispute arbitration agreements and class-action waivers with students "with respect to any aspect of a borrower defense claim."

Massa v. Michael Ridard Hosp'y LLC, 45 Fla. L. Weekly D1979 (Fla. 3d DCA August 19, 2020). Trial court erred by not holding evidentiary hearing prior to entering order compelling nonsignatories to employment agreement to arbitrate because there was no evidence that permitted trial court to compel nonsignatories to arbitrate their disputes, as nonsignatories disputed facts that would have permitted trial court to find otherwise.

Cooper v. Rehab. Ctr. at Hollywood Hills LLC, 45 Fla. L. Weekly D2384 (Fla. 4th DCA October 21, 2020). An order compelling arbitration of the resident's claims against the rehabilitation center was proper because the resident's claims arose out of, or were related to, the contract, and any doubts as to the scope of the arbitration agreement were resolved in favor of arbitration. The center agreed to provide nursing care at the facility in return for payment and the resident's claims arose out of failure to provide appropriate nursing care and to provide for her well-being after a hurricane; the resident's entire relationship with the center was based upon their agreement, and her claims involved what she alleged that it failed to do in providing those services and protecting her.

Bailey v. Women's Pelvic Health, Ltd. Liab. Co., 45 Fla. L. Weekly D2604 (Fla. 1st DCA November 18, 2020). Trial court correctly limited itself to deciding only whether employer's claim was subject to arbitration, without deciding merits of employee's claim, because employee's view of facts provided no cause for scuttling parties' agreement to arbitrate any claims "arising out of or related to" their agreements.

Donna Greenspan Solomon *was the first attorney certified by The Florida Bar as both Business Litigator and Appellate Specialist. Donna is a Member of the AAA's Roster of Arbitrators (Commercial Panel). She is a FINRA-Approved and Florida Supreme Court Qualified Arbitrator. She is also a Certified Circuit, Appellate, and Family Mediator. Donna is a Member of the Florida Supreme Court Committee on Standard Jury Instructions—Contract and Business Cases. Donna can be reached at (561) 762-9932 or* ***Donna@SolomonAppeals.com*** *or by visiting* ***www.solomonappeals.com***.