



DONNA GREENSPAN SOLOMON

Arbitration Case Law Update

O'Neal Constructors, LLC v. DRT Am., LLC, 991 F.3d 1376 (11th Cir. 2021). Service of a "notice of a motion to vacate" under 9 U.S.C. § 12 is not accomplished by emailing a "courtesy copy" to opposing counsel where party to be served did not expressly consent in writing to service by email.

Mexicanos v. Executive MFE Aviation, LLC, 310 So. 3d 76 (Fla. 4th DCA 2021). Trial court could not deny aircraft purchaser's motion to compel arbitration of claims asserted by aircraft maintenance and repair servicers, on the ground that aircraft purchase agreements containing arbitration clauses had expired before claims arose, without first determining whether servicers, who were not parties to the purchase agreements, were nevertheless bound by the arbitration clauses; purchaser alleged that servicers were bound by virtue of their joint venture with aircraft seller or as third-party beneficiaries of the purchase agreements, and if servicers were in fact bound, and if purchaser has not waived right to arbitrate, then remaining issues of arbitrability, including whether the agreements had terminated, were for arbitrator to decide.

Black Knight Servicing Techs., LLC v. PennyMac Loan Services, LLC, 310 So. 3d 1116 (Fla. 1st DCA 2021). Loan services limited liability company (LLC) did not waive its contractual right to arbitration with servicing technology LLC by filing a separate lawsuit raising separate claims against the servicing technology LLC's parent company in federal court; parent company was a legally separate entity from servicing technology company, and loan services LLC's lawsuit in federal court was carefully worded and did not mention its contractual relationship with servicing technology LLC, which suggested an intent to safeguard its arbitration right.

Jean v. Bayview Loan Servicing, LLC, 46 Fla. L. Weekly D331 (Fla. 3d DCA Feb. 10, 2021). Trial court was required to conduct evidentiary hearing to determine whether arbitration agreement existed between employee and employer in action seeking damages for unpaid overtime compensation; employee alleged he had never received, reviewed, or signed dispute

resolution and arbitration policy, employee alleged electronic acknowledgement of his signature on arbitration policy was either forged or falsified, and employer alleged all employees were required to electronically sign arbitration policy as a condition of continued employment.

Kratos Investments LLC v. ABS Healthcare Services, LLC, 46 Fla. L. Weekly D603 (Fla. 3d DCA Mar. 17, 2021). Exception in arbitration clause in insurance company's agreements with agents, allowing insurance company to pursue its equitable remedies in any court of competent jurisdiction, did not apply to insurance company's claims against nonsignatory businesses for conspiracy to breach agent agreement and tortious interference with agent agreement, and thus nonsignatory businesses could compel arbitration of the claims, although insurance company's prayer for relief sought equitable remedy of disgorgement; each count of insurance company's complaint asserted a legal cause of action seeking compensatory damages such as consequential damages, lost profits, and disgorgement of ill-gotten gains.

Fallang Family Ltd. P'ship v. Privcap Companies, LLC, 46 Fla. L. Weekly D639 (Fla. 4th DCA Mar. 24, 2021). On motion to compel arbitration, arbitration agreement that made reference to "AAA" and "AAA rules and procedure" did not clearly and unmistakably supplant trial court's statutory power to decide what was arbitrable, despite AAA Commercial Arbitration Rule giving arbitrator authority to decide what controversies were within scope of agreement; arbitration agreement did not attach any portions of AAA rules or explain where those rules could be found, arbitration clause did not identify which subject-area version of AAA rules applied, and AAA Commercial Arbitration Rules, had they been specified, did not grant exclusive authority to arbitrator to decide arbitrability.

Lemos v. Sessa, 46 Fla. L. Weekly D701 (Fla. 3d DCA Mar. 31, 2021). Cost-shifting and fee-shifting provisions of arbitration clause in retainer agreement entered into by client and her attorney and law firm, particularly

when coupled together, were a de facto attempt to preemptively limit attorney's liability by chilling client's willingness to dispute any issue of client's representation, and thus were violative of public policy and invalid; although cost-shifting provision allowed for after-the-fact adjustment by arbitrator, provision would require client to pay, in advance, all costs associated with arbitration, and fee-shifting provision would require client to pay all of attorney's fees and costs associated with an arbitration, which was not conditioned upon attorney prevailing in arbitration and which was not reciprocal, creating a deterrent effect.

UATP Mgmt., LLC v. Barnes, 46 Fla. L. Weekly D875 (Fla. 2d DCA Apr. 16, 2021). Friend of child's mother who warranted and represented that she had mother's actual or implied authority to execute release and waiver of liability at indoor amusement park did not establish apparent authority to do so, and, thus, valid arbitration agreement did not exist to require arbitration of suit for child's injuries; agreement was not signed by mother against whom franchisor sought enforcement, and franchisor did not argue that mother represented anything to franchisor and did not rely upon any representation by mother.

.....
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 Chair-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.

PALM BEACH COUNTY BAR ASSOCIATION'S "ZOOM ROOM"

OFFERING LONG DISTANCE LEARNING FOR ALL FUTURE IN-HOUSE SEMINARS