



DONNA GREENSPAN SOLOMON

Arbitration Case Law Update

Hamrick v. Partsfleet, LLC, 1 F.4th 1337 (11th Cir. 2021). Federal Arbitration Act's (FAA) carve-out exception to final judgment rule, which allows review of some district court interlocutory orders, including orders denying petitions to order arbitration under federal law, does not provide a carve-out for orders denying motions to compel arbitration based on state law.

Calderon v. Sixth Rent a Car, LLC, 5 F.4th 1204 (11th Cir. 2021). Customer's class action claims against car rental agency for breach of contract and violation of two states' consumer protection laws, based on its charge for damages to car that allegedly had not occurred, did not arise out of customer's contract with online travel booking company, as would support arbitration of claims under Federal Arbitration Act's (FAA) strong policy favoring arbitration; although customer's contract with online booker was governed by FAA, dispute in question was not an immediate, foreseeable result of the performance of online booker's contractual duties.

McLaurin v. Terminix Int'l Co., LP, 20-12904, 2021 WL 4236673 (11th Cir. Sept. 17, 2021). Under the Federal Arbitration Act (FAA), in addition to the losing party being allowed to oppose the winning party's motion to confirm the arbitration award, the losing party can also take up to three months from the arbitration award to file a separate motion to vacate, modify, or correct the award.

Laurel Point Care & Rehab. Ctr., LLC v. Estate of Desantis by & Through Desantis, 323 So. 3d 186 (Fla. 4th DCA 2021). Arbitrator, and not trial court, had authority to decide whether arbitration agreement, which specifically referenced and incorporated American Health Lawyers Association (AHLA) Alternative Dispute Resolution Service Rules of Procedure for Arbitration, was a separate document so as to satisfy requirement in arbitration rules; reference and incorporation of AHLA rules in arbitration agreement was a clear and unmistakable delegation of authority to have arbitrator decide issue, and AHLA

rules used mandatory language requiring arbitrator to decide issue. The trial court exceeded its authority by concluding that the arbitration agreement did not satisfy a requirement in the AHLA rules as that was an issue clearly delegated to the arbitrator under the rules.

Russell v. Hydroprocessing Associates, LLC, 46 Fla. L. Weekly D1352 (Fla. 1st DCA June 10, 2021). Employee executed two contemporaneous employment agreements with related companies. One agreement included an arbitration provision. The other agreement did not include an arbitration provision but included an integration clause stating that the agreement was the entire agreement between the parties and superseded all prior agreements. The trial court passed the issue of arbitrability to the arbitrator, which was error. It is the trial court's responsibility to determine whether a valid arbitration agreement exists especially where, as here, the arbitration clause itself is challenged. The court's responsibility to determine whether a valid arbitration agreement exists is not altered by conflicting arbitration provisions.

Leder v. Imburgia Constr. Services, Inc., 46 Fla. L. Weekly D1719 (Fla. 3d DCA July 28, 2021). Homeowners and construction contractor waived their right to arbitrate change order dispute. Construction contract's dispute resolution procedure provided that submission of dispute to agreed-upon Initial Decision Maker (the Miami Shores Village Building Department Official) was condition precedent to mediation, which was condition precedent to arbitration. However, contractor failed to file claim with Initial Decision Maker after change order dispute, the homeowners filed a complaint in court rather than with Initial Decision Maker, and contractor did not move to compel arbitration in answer to homeowners' complaint but merely moved to dismiss the complaint, which the trial court granted in error.

Marino Performance, Inc. v. Zuniga, 4D20-1463, 2021 WL 3641855 (Fla. 4th DCA Aug. 18, 2021). Automobile dealer waived right to arbitrate as to unnamed class members

in class-action proceeding. Dealer, which filed motion to compel arbitration on eve of certification hearing, had done nothing to preserve its right to arbitrate in the event of class certification. Dealer's responses to interrogatory and document requests were directed to class representatives and proposed class members, and dealer had attempted, unsuccessfully, to have entire action dismissed on the merits. It was only after that unsuccessful attempt, and months later, that dealer attempted to compel arbitration. *The key ingredient in the waiver analysis is fair notice to the opposing party and the court at a relatively early state of litigation of a party's arbitration rights and its intent to exercise them.*

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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.

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