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Arbitration Case Law Update – 2017, pt. 1

The following are recent cases of interest regarding arbitration issues:

Hernandez v. Crespo, 211 So. 3d 19 (Fla. 2016). Arbitration agreement is void as against public policy where it diverges from statutory provisions of Medical Malpractice Act (disapproving *Santiago v. Baker*, 135 So.3d 569 (Fla. 2d DCA 2014)).

Dea v. PH Fort Myers, LLC, 208 So. 3d 1204 (Fla. 2d DCA 2017). Assisted living facility not entitled to compel arbitration of complaint filed by resident's estate where facility's predecessor entered into contract, which was silent as to whether successors in interest could enforce agreement.

Moen v. Bradenton Council on Aging, LLC, 210 So. 3d 213 (Fla. 2d DCA 2017). Health care proxy for nursing home patient does not have authority to bind patient to arbitration because that is not health care decision.

Angels Senior Living at Connerton Court, LLC v. Gundry, 210 So. 3d 257 (Fla. 2d DCA 2017). Argument that arbitration agreement allows arbitrator, instead of court, to determine whether written agreement to arbitrate exists is waived if not raised in initial motion to compel arbitration or at hearing on motion.

Vitacost.com, Inc. v. McCants, 210 So. 3d 761 (Fla. 4th DCA 2017). As a matter of first impression, the terms and conditions of sale, including an arbitration provision, were not sufficiently incorporated into an Internet sales agreement to compel purchaser to arbitrate products liability claim. Purchases were subject to such terms and conditions, and website allowed purchaser to check-out without seeing hyperlink to "terms and conditions."

Timber Pines Plaza, LLC v. Zabrzyski, 211 So. 3d 1147 (Fla. 5th DCA 2017). Vendor, by filing suit to enforce amended deed restrictions (ADR), did not waive right to compel arbitration on purchasers' counterclaim for breach of contract because no significant relationship existed between vendor's claims under the ADR and arbitration clause in the contract between the parties.

Sawgrass Ford, Inc. v. Vargas, 214 So. 3d 691 (Fla. 4th DCA 2017). Even though employee may have waived right to arbitrate class action claim by filing suit, employer was nevertheless equitably estopped from refusing to arbitrate where employer had compelled arbitration of substantially similar claims brought by different employees in federal court.

Israel v. Costanzo, 216 So. 3d 644, 646 (Fla. 4th DCA 2017). A motion to vacate arbitration award must be filed within 90 days after movant receives notice of award unless movant alleges corruption, fraud or other undue means, in which case motion must be made within 90 days after ground is known or by exercise of reasonable care would have been known by movant.

Fouche v. Pilot Catastrophe Services, Inc., 217 So. 3d 225 (Fla. 5th DCA 2017). The imposition of a stay, not an order of dismissal, is appropriate disposition when matter is sent to arbitration.

Kaplan v. Epstein, 219 So. 3d 932 (Fla. 4th DCA 2017). When parties agree to submit to voluntary binding arbitration pursuant to section 44.104, Florida Statutes, any appeal is to circuit court and no further review permitted unless constitutional issue is raised.

Rockledge NH, LLC v. Miley By & Through Miley, 219 So. 3d 246 (Fla. 5th DCA 2017). Arbitration provision that purports to preclude application of Adult Protective Services Act's prevailing party fee provision is unenforceable as against public policy. However, prevailing party fee provision that does not go to the "very essence" of the agreement may be severable if arbitration agreement contains a severability clause.

Leon County v. Sebastian, 42 Fla. L. Weekly D1187 (Fla. 1st DCA May 25, 2017). Appeal dismissed because order requiring parties to reschedule arbitration did not determine entitlement to arbitration, which was made in earlier referral order.

Anderson v. Taylor Morrison of Florida, Inc., 42 Fla. L. Weekly D1232 (Fla. 2d DCA May 31, 2017). Arbitration provision precluding homeowners from statutory remedy for builder's improper installation violates public policy and is unenforceable.

Sanders v. Drivetime Car Sales Co., LLC, 221 So. 3d 718 (Fla. 1st DCA 2017). Arbitration provision prohibiting private attorney general actions did not preclude Florida Deceptive and Unfair Trade Practices Act (FDUTPA) claims since a person has no statutory right to represent the enforcing agency or another person under FDUTPA.

Saunders v. St. Cloud 192 Pet Doc Hosp., LLC, 42 Fla. L. Weekly D1766 (Fla. 5th DCA Aug. 11, 2017). Employee's claims not relating directly to employment contract were not subject to arbitration provision contained within the contract.

**Donna Greenspan Solomon is one of three attorneys 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, and is the current Chair of the Business Litigation Certification Committee. Donna can be reached at (561) 762-9932 or Donna@SolomonAppeals.com or by visiting www.solomonappeals.com.*