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Arbitration Case Law Update

The following are recent cases of interest regarding arbitration issues:

Henry Schein, Inc. v. Archer & White Sales, Inc., 139 S. Ct. 524 (2019). Where an arbitration agreement delegates threshold question of arbitrability to the arbitrator, a court may not override the contract, even if it thinks that the argument that the arbitration agreement applies to a dispute is wholly groundless.

New Prime Inc. v. Oliveira, 139 S. Ct. 532 (2019). Federal Arbitration Act's exclusion for "contracts of employment" of certain transportation workers removes both employer-employee contracts and contracts involving independent contractors from Act's coverage.

JPay, Inc. v. Kobel, 904 F.3d 923 (11th Cir. 2018). As matter of first impression, availability of class arbitration is presumptively for court to decide, but clear and unmistakable delegation to arbitrator to decide gateway questions overcomes this presumption.

Pictet Overseas Inc. v. Helvetia Tr., 905 F.3d 1183 (11th Cir. 2018). Financial Industry Regulatory Authority (FINRA) Rule requiring associated persons of FINRA members to arbitrate applies only to disputes in connection with business activities undertaken in capacity as associated person of the FINRA member.

Dye v. Tamko Bldg. Products, Inc., 908 F.3d 675 (11th Cir. 2018). By unwrapping shingles packages with conspicuously-printed arbitration provision, roofers installing shingles on home bound the homeowners to arbitrate their claims against manufacturer.

Lowe v. Nissan of Brandon, Inc., 235 So. 3d 1021 (Fla. 2d DCA 2018). Documents executed contemporaneously with each other should be interpreted as a whole, including arbitration provisions therein.

Stankos v. Amateur Athletic Union of the United States, Inc., 255 So. 3d 377 (Fla. 4th DCA Sept. 12, 2018). Filing an amended

complaint does not revive a right to arbitration after waiver by answering a complaint and engaging in discovery directed to the merits.

Nat'l Millwork, Inc. v. ANF Group, Inc., 253 So. 3d 1261 (Fla. 4th DCA 2018). An arbitration clause attempting to expand the scope of judicial review in conflict with the Arbitration Code is unenforceable.

Darden Restaurants v. Ostanne, 255 So. 3d 382 (Fla. 4th DCA 2018). Provision giving arbitrator sole authority to determine eligibility of a dispute for arbitration and whether it was timely filed is valid and enforceable by employer where former employee did not challenge provision in employment discrimination action; employer does not waive arbitration by participating in EEOC proceedings.

Adkins v. Mem'l Motors, Inc., 260 So. 3d 408 (Fla. 2d DCA 2018). Contractual right of party to arbitration is not governed by rules unilaterally adopted by a private entity such as the American Arbitration Association unless those rules are explicitly incorporated into the contract.

Countyline Auto Ctr, Inc. v. Kulinsky, 257 So. 3d 1086 (Fla. 4th DCA 2018). Used car buyers' defamation claim against seller fell within scope of car sales contract's arbitration provision, where arbitration language expressly contemplated tort action, arbitration language was broad because of its "relates to" language, there was significant relationship between claim and agreement, and any ambiguity in agreement was resolved in favor of arbitration.

MetroPCS Communications, Inc. v. Porter, 44 Fla. L. Weekly D74 (Fla. 3d DCA Dec. 26, 2018). Wireless customer was put on notice that contract was subject to arbitration where customer received text message but chose not to click on hyperlink to review terms and conditions.

Johnson by & through Johnson v. Heartland of Fort Myers FL, LLC, 257 So. 3d 634 (Fla. 2d DCA 2018). Arbitration agreement between nursing home and former res-

ident applied to former resident's negligence claim for injuries arising at nursing home even if agreement applied only prospectively; although former resident sustained her injuries, and her cause of action accrued, before agreement was executed, dispute or controversy between former resident and nursing home did not arise until she filed suit.

Verizon Wireless Pers. Communications, LP v. Bateman, 44 Fla. L. Weekly D413 (Fla. 2d DCA Feb. 8, 2019). Customer's claim that wireless provider violated the Consumer Collection Practices Act by attempting to collect on a debt previously discharged in bankruptcy was not arbitrable.

Amalgamated Transit Union, Local 1579 v. City of Gainesville, 44 Fla. L. Weekly D478 (Fla. 1st DCA Feb. 15, 2019). Certifying conflict with the Third, Fourth, and Fifth Districts, the First District found it had jurisdiction over petition for writ of certiorari seeking review of trial court's order vacating arbitration award and ordering new arbitration; the Court found that trial court impermissibly reviewed arbitrator's factual findings and application of law.

Donna Greenspan Solomon is one of the few 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 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, and a past 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. For additional ADR tips and resources, go to www.palmbeachbar.org/adr.