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Arbitration Case Law Update

AP Atlantic, Inc. v. Silver Creek St. Augustine, LLP, 266 So. 3d 865 (Fla. 5th DCA Mar. 15, 2019). Non-signatory may enforce arbitration provision when signatory makes claim against non-signatory that arises out of the contract.

Wilson v. AmeriLife of E. Pasco, LLC, 270 So. 3d 542 (Fla. 2d DCA 2019). A party may waive its right to arbitration by filing a lawsuit without first seeking arbitration.

Krol v. FCA US, LLC, 273 So. 3d 198 (Fla. 5th DCA 2019). Magnuson-Moss Warranty Act (MMWA) permits pre-dispute binding arbitration of written warranty claim

Krol v. FCA US, LLC, 273 So. 3d 198 (Fla. 5th DCA 2019). Arbitration agreement was not unenforceable for being placed in separate retail purchase order, rather than in single document along with other warranty terms; conflict certified with *Larrain v. Bengal Motor Co. Ltd.*, 976 So. 2d 12 (Fla. 3d DCA 2008).

Royal Palms Senior Apartments Ltd. P'ship v. Constr. Enterprises, Inc. of Tennessee, 275 So. 3d 1257 (Fla. 5th DCA 2019). While ambiguities regarding the scope of an arbitration clause should be resolved in favor of arbitration, the existence of an enforceable arbitration clause should not.

Greene v. Johnson, 276 So. 3d 527 (Fla. 3d DCA 2019). Non-signatories to a contract containing an arbitration provision may compel arbitration of claims brought by a signatory based on the doctrine of equitable estoppel if the signatory raises allegations of concerted misconduct by both the non-signatory and one or more of the signatories to the contract.

Ross Dress for Less, Inc. v. Higgins, 276 So. 3d 19 (Fla. 4th DCA 2019). A valid written agreement to arbitrate existed between employees and employer where employees electronically agreed to a Dispute Resolution Agreement which provided that any dispute arising out of employment would be resolved by mediation or arbitration.

Odum v. LP Graceville, LLC, 277 So. 3d 194 (Fla. 1st DCA 2019). Owners, operators,

managers, and licensees of nursing home patient were entitled to compel arbitration to determine enforceability of arbitration agreement where agreement explicitly stated that it applied to affiliates of nursing home, and executor of patient's estate never argued in trial court that owners, operators, managers, and licensees were not affiliates. *Hayslip v. U.S. Home Corp.*, 276 So. 3d 109 (Fla. 2d DCA 2019). Arbitration provision in original special warranty deed, mandating mediation and/or arbitration, was a covenant running with the land, and thus, it was binding upon subsequent purchasers.

SHP IV Harbour Island, LLC v. Boylan, 273 So. 3d 249 (Fla. 5th DCA 2019). Assisted living facility waived right to arbitration in resident's suit alleging negligence and breach of duty where defendants' counsel asked numerous questions at deposition of resident's daughter and attorney-in-fact that went to the merits of the underlying cases, covering matters extrinsic to the limited scope permitted by the court and consequently inconsistent with the right to arbitrate.

Sea Vault Partners, LLC v. Bermello, Ajamil & Partners, Inc., 274 So. 3d 473 (Fla. 3d DCA 2019). Statutes governing provisional remedies and petitions for judicial relief regarding arbitration did not grant trial court the authority to sanction developer that allegedly did not pay deposit for arbitrator's compensation for arbitration regarding breach of contract dispute between architectural company and developer.

Guan v. Ellingsworth Residential Cmty. Ass'n, Inc., 278 So. 3d 840 (Fla. 5th DCA 2019). Homeowners' association waived any claims arising out of landscaping dispute with homeowner by failing to comply with alternative dispute resolution provision in declaration of covenants, conditions, and restrictions.

Hedden v. Z Oldco, LLC, 2D18-4584, 2019 WL 5582049 (Fla. 2d DCA Oct. 30, 2019). Employer's declaratory judgment action based on violation of non-compete agreement was subject to arbitration under compensation agreement, even though non-compete agreement did not have

arbitration provision, where arbitration provision of compensation agreement covered any dispute, controversy or claim arising out of or relating to the agreement.

Fraternal Order of Police Lodge #20 v. City of Miami, 276 So. 3d 881 (Fla. 3d DCA 2019). Police officer was subject to reinstatement and recertification requirements following a two-year absence from the force, even though an arbitration order provided that police officer was to be reinstated with no loss of service credit for the purposes of determination of benefits to which he was entitled, where the arbitration order was silent as to the effect of two-year absence for other purposes.

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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.

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