



DONNA GREENSPAN SOLOMON

Arbitration Case Law Update

Anderson v. Am. Gen. Life Ins. Co., 802 Fed. Appx. 548 (11th Cir. 2020) (arbitrator faced with jurisdictional challenge was not required to hear evidence of whether employer breached optional and informal dispute resolution procedure or whether employer's upper management knew about rigged sales contest used to decide promotion at issue).

Mason v. Midland Funding LLC, 18-14019, 2020 WL 2466370, at *4 (11th Cir. May 13, 2020) (defendant failed to show that plaintiff agreed to arbitrate by assenting to clickwrap agreement that was part of online credit application where evidence did not establish that plaintiff ever received or knew of arbitration agreement).

Iglehart v. Mitbank USA, Inc., 285 So. 3d 331 (Fla. 4th DCA 2019) (Co-trustee did not waive right to arbitration under land trust agreement by filing suit under contemporaneous but separate trust management agreement).

4927 Voorhees Rd., LLC v. Tesoriero, 291 So. 3d 668, 673 (Fla. 2d DCA 2020) (arbitration agreement containing improper damages and fees provisions could be severed from arbitration agreement; conflict certified with *Novosett v. Arc Villages II, LLC*, 189 So. 3d 895 (Fla. 5th DCA 2016)).

Hobby Lobby Stores, Inc. v. Cole, 287 So. 3d 1272 (Fla. 5th DCA 2020) (Arbitration agreement was not procedurally unconscionable, even though employee asserted he had a high school education, did not know what arbitration was, and believed he had no choice but to sign it; arbitration agreement's operative terms were not hidden, minimized, or buried in fine print, there was no evidence that employee could not read the agreement or that corporation pressured, rushed, or coerced him into signing it, and employee did not allege that corporation made false representations to induce him to sign it, or that he asked any questions about the agreement, or that he expressed any confusion about its terms, or that he lacked opportunity to inquire into the agreement's terms or to enlist help if confused).

Efron v. UBS Fin. Services Inc. of Puerto Rico, 45 Fla. L. Weekly D309 (Fla. 3d DCA Feb. 12, 2020) (trial court erred in confirming \$9.7 million arbitration award where panel denied motion for postponement due to withdrawal of counsel, giving no specific reason).

Ciccarello v. Siena Villas at Beach Park Condo. Ass'n, Inc., 45 Fla. L. Weekly D568 (Fla. 2d DCA Mar. 11, 2020) (appellate court lacks jurisdiction to review arbitration award in absence of timely-filed motion for trial de novo in circuit court pursuant to section 718.1255(4)(k), Fla. Stat.).

Doe v. Natt, 45 Fla. L. Weekly D712 (Fla. 2d DCA Mar. 25, 2020) (clickwrap agreement stating that any arbitration would be administered by American Arbitration Association (AAA) in accordance with its rules did not constitute clear and unmistakable evidence of parties' assent; agreement was silent on issue of arbitrability, agreement's reference to AAA rules was broad, nonspecific, and cursory, and AAA rule that arbitrator shall have power to rule on scope or validity of arbitration agreement or arbitrability of any claim conferred adjudicative power on arbitrator but did not make that power exclusive or contractually remove adjudicative power from court).

H Greg Auto Pompano, Inc. v. Raskin, 45 Fla. L. Weekly D702 (Fla. 3d DCA Mar. 25, 2020) (although section 682.03, Florida Statutes, requires a stay while motion to compel arbitration is pending, the statutory language does not mandate a stay during appeal of denial of motion to compel; noting difference with Eleventh Circuit in *Blinco v. Green Tree Servs., LLC*, 366 F.3d 1249, 1253 (11th Cir. 2004) (litigation should be stayed so long as appeal is non-frivolous)).

City of Hollywood v. Perrin, 45 Fla. L. Weekly D694 (Fla. 4th DCA Mar. 25, 2020) (employee's complaint that city erroneously calculated his longevity and seniority contained arguable allegation of unfair labor practice, over which Public Employees Relations Commission (PERC) had exclusive jurisdiction, and thus trial court could not compel arbitration).

Timmons v. Lake City Golf, LLC, 45 Fla. L. Weekly D797 (Fla. 1st DCA Apr. 7, 2020) (final judgment provided former partner with sole recourse process contemplated in arbitration, and thus was not flawed for failing to give him right of execution and final process).

CWELT-2008 Series 1045 LLC v. Park Gardens Ass'n, Inc., 45 Fla. L. Weekly D1001 (Fla. 3d DCA Apr. 29, 2020) (plaintiff waived right to demand arbitration on counterclaim that was "flip side" of claim it had actively litigated).

.....
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. Donna can be reached at (561) 762-9932 or Donna@SolomonAppeals.com or by visiting www.solomonappeals.com.

For additional ADR tips and resources, please go to the ADR Committee page of the updated Palm Beach County Bar Association website at www.palmbeachbar.org.

PAY SECURELY WITH

LAWPAY

The PBCBA has partnered with LawPay to offer Law Firm Merchant Accounts for our members to allow your firm to handle credit card transactions. Trust your transactions to the only payment solution recommended by over 60 bar associations. Correctly safeguard and separate client funds into trust and operating accounts. The ability to accept credit cards attracts clients, improves cash flow and reduces collections.
Plus, members save up to 25% off their credit card processing fees.
Call 866-376-0950 so you can get started today!