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Arbitration Case Law Update

Morgan v. Sundance, Inc., 142 S.Ct. 1708 (2022). Employee brought nationwide collective action asserting employer violated federal law regarding overtime payment. Eight months later, employer moved to compel arbitration. The district court denied the motion, and the Eighth Circuit reversed, finding that a waiver of the right to arbitration required a showing of prejudice. The US Supreme Court vacated and remanded, holding that prejudice is not required to show that a party, by litigating too long, waived its right to compel arbitration under the Federal Arbitration Act ("FAA").

Viking River Cruises, Inc. v. Moriana, 142 S.Ct. 1906 (2022). The FAA preempts any state rule discriminating on its face against arbitration, for example, a law prohibiting outright the arbitration of a particular type of claim.

Southwest Airlines Co. v. Saxon, 142 S.Ct. 1783 (2022). Any class of workers directly involved in transporting goods across state or international borders falls within FAA's exemption for contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.

Outokumpu Stainless USA, LLC v. Coverteam SAS, 17-10944, 2022 WL 2643936, at *3 (11th Cir. July 8, 2022). On remand from the US Supreme Court, the Eleventh Circuit found that non-signatory to the arbitration agreement could nevertheless compel arbitration as a defined party covered by the arbitration clause.

Attix v. Carrington Mortgage Services, LLC, 35 F.4th 1284 (11th Cir. 2022). The Eleventh Circuit held that a borrower and mortgage servicer, through an express delegation clause, clearly and unmistakably agreed to submit questions of arbitrability to the arbitrator, stating: "At the end of the day, the 'arbitrability of arbitrability' is simply about the freedom to decide who decides disputes. Federal law provides, emphatically, that parties may opt out of the judicial system. One would be hard-pressed to find a topic about which the Supreme Court has provided more consistent clarity in recent years than arbitration. The Court's precedents make clear that, when an appeal presents a delegation agreement and a question of arbitrability, we stop. We do not pass go. At some point in this litigation, someone may, perhaps, collect $200. Whether anyone will—and who will ultimately decide whether anyone does—are not questions we answer today."

Perera v. Genovese, 345 So. 3d 882 (Fla. 4th DCA 2022). Once a court determines that arbitrator exceeded his or her powers, the court's decision to vacate the award either in whole or in part is a discretionary decision that turns on whether the arbitrator's other rulings are intertwined with the arbitrator's unauthorized ruling.

Navarro v. Varela, 345 So. 3d 365 (Fla. 3d DCA 2022). The determination of whether a particular claim must be submitted to arbitration necessarily depends on the existence of some nexus between the dispute and the contract containing the arbitration clause. The trial court did not err in concluding that claims for intentional infliction of emotional distress and violations of the Florida Civil Rights Act were not arbitrable because they lacked a sufficient nexus to the parties' agreement.

Malek v. Malek, 346 So. 3d 179 (Fla. 3d DCA 2022). Arbitration agreement applicable to disputes between a company and its shareholders did not apply to dispute over ownership of the company in a dissolution action.

Addit, LLC v. Hengesbach, 341 So. 3d 362 (Fla. 2d DCA 2022). Arbitration agreement contained on page 15 of 23-page assisted living residency agreement, which was neither set off nor made conspicuous in any manner, and where there was no opportunity for meaningful negotiation, was a contract of adhesion and was procedurally unconscionable; provision carving claims for eviction out of arbitration agreement was substantively unconscionable; as a matter of first impression, confidentiality provision of arbitration agreement was not substantively unconscionable; however, trial court erred in denying motion to compel arbitration where offending provisions were severable.

UniFirst Corp. v. Stronger Collision Ctr., LLC, 336 So. 3d 1283 (Fla. 3d DCA 2022). Under the rules of the American Arbitration Association (AAA) incorporated into arbitration provision, plaintiff was entitled to proceed to ex parte arbitration under the AAA's expedited rules, without seeking a court order compelling arbitration, after defendant chose not to participate in arbitration and did not reply to arbitration notices.

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