



DONNA GREENSPAN SOLOMON

## Arbitration Case Law Update

**Coinbase, Inc. v. Bielski**, 599 U.S. 736 (2023). District court must stay proceedings while interlocutory appeal as to arbitrability is ongoing.

**NuVasive, Inc. v. Absolute Med., LLC**, 71 F.4th 861 (11th Cir. 2023). The Federal Arbitration Act's three-month deadline for moving to vacate a final arbitration award is subject to equitable tolling, an extraordinary remedy that is appropriate where a movant untimely files because of extraordinary circumstances that are both beyond his control and unavoidable even with diligence.

**Bedgood v. Wyndham Vacation Resorts, Inc.**, 88 F.4th 1355 (11th Cir. 2023). A party that seeks to compel arbitration, but whose policies do not comply with the rules and policies of the arbitral forum, cannot compel arbitration, and accordingly, may be forced to litigate the claims it sought to arbitrate.

**Smith v. Int'l Bus. Machines Corp.**, 22-11928, 2023 WL 3244583, at \*3 (11th Cir. May 4, 2023). Plaintiff was a day late in demanding arbitration where she submitted demand to JAMS by the filing deadline but did not submit it to employer until the following day.

**Cosgun v. Seabourn Cruise Line Ltd. Inc.**, 23-11396, 2023 WL 4112993, at \*1 (11th Cir. June 22, 2023). An appeal may not be taken from an interlocutory order that compels arbitration and stays, rather than dismisses, the action.

**Bedgood v. Wyndham Vacation Resorts, Inc.**, 88 F.4th 1355 (11th Cir. 2023). The Federal Arbitration Act (FAA) provision prescribes two conditions to relief on a motion to direct arbitration, which are separate but causally related: first, the party resisting arbitration must have failed, neglected, or refused to arbitrate, and second, the party seeking to direct arbitration must have been aggrieved by that failure, neglect, or refusal.

**SICIS N. Am., Inc. v. Sadie's Hideaway, LLC**, 368 So. 3d 1052 (Fla. 1st DCA 2023). Property

owner was bound to arbitration provision in agreement between general contractor and tile manufacturer where owner authorized contractor to act as its agent in purchasing tiles from manufacturer.

**Beyond Billing, Inc. v. Spine & Orthopedic Ctr., PC.**, 362 So. 3d 256 (Fla. 2d DCA 2023). Parties' execution of joint stipulated motion to amend case management order, within 20 days of arbitration award, indicated parties' mutual desire and intent to proceed to trial, and thus trial court did not have duty to enter final judgment on arbitration award when no motion for trial de novo was filed within 20-day period.

**Allison v. Grand at Olde Carrollwood Condo. Ass'n, Inc.**, 369 So. 3d 1200, 1204 (Fla. 2d DCA 2023). Following non-binding arbitration, the trial court failed to properly conduct a trial de novo where it limited its role to reviewing the arbitrator's decision as if it were sitting in an appellate capacity.

**Alan v. Sandy T. Fox, P.A.**, 48 Fla. L. Weekly D2099 (Fla. 3d DCA Nov. 1, 2023). Rule 9.130(a)(3)(C)(iv), which designates non-final orders that "determine ... the entitlement of a party to arbitration" as appealable, does not encompass matters collateral to entitlement.

**Seduction Cosmetic Ctr. Corp. v. Dunbar**, 48 Fla. L. Weekly D2010 (Fla. 3d DCA Oct. 18, 2023). Trial court was required to hold evidentiary hearing to resolve parties' competing contentions as to whether arbitration clause was triggered.

**Labelle v. Berenson LLP**, 3D22-2113, 2023 WL 9051720, at \*1 (Fla. 3d DCA Dec. 26, 2023). Where an arbitration provision in an attorney's fee agreement fails to include the requisite notice to seek independent counsel, the provision is in violation of Florida Bar Rule 4-1.5(i) and unenforceable on its face.

**Barton Protective Services, LLC v. Redmon**, 48 Fla. L. Weekly D1560 (Fla. 3d DCA Aug. 9, 2023). Defendant presented colorable entitlement to relief from judgment based on excusable neglect after failing

to timely move for trial de novo following nonbinding arbitration, and thus trial court exceeded its discretion in failing to conduct evidentiary hearing.

**M.P. v. Guiribitey Cosmetic & Beauty Inst., Inc.**, 48 Fla. L. Weekly D1947 (Fla. 3d DCA Oct. 4, 2023). A litigant must establish both procedural and substantive unconscionability to avoid arbitration.

**Factor Brokers, Inc. v. J&C Enterprises, Inc.**, 48 Fla. L. Weekly D1874 (Fla. 3rd DCA Sep. 20, 2023). A nonsignatory to an arbitration agreement can be bound to it via assignment. However, an evidentiary hearing is required for a court to determine the existence and validity of the assignment.

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**Donna Greenspan Solomon** was the first attorney certified by The Florida Bar as both Business Litigator and Appellate Specialist. Donna is a Member of the National Academy of Distinguished Neutrals and serves as a Chair on AAA (Commercial Panel) and FINRA arbitrations. She is also a Certified Circuit, Appellate, and Family Mediator and Florida Supreme Court Qualified Arbitrator. Donna is also 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](mailto:Donna@SolomonAppeals.com) or by visiting [www.solomonappeals.com](http://www.solomonappeals.com).

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