

Memo: Arbitrability and Competent Jurisdiction

To: *

From: *

Matter: *

Date: *

RE: Does arbitration count as a Court of Competent Jurisdiction under 553.84?

Sometimes contracting parties will disagree over whether a dispute should proceed in private arbitration. A plaintiff may file a claim as a public lawsuit and the defendant may object, citing arbitration language in the parties' written agreement. When these disagreements arise over which tribunal, private or public, should take jurisdiction, the Florida Arbitration Code, F.S. §682.01 et seq. , provides that any party may apply by motion for an order directing the parties to a lawsuit to comply with a governing arbitration clause. When motions of this nature are submitted, the party seeking to compel arbitration has the initial burden of establishing that an agreement to arbitrate exists .

18 U.S.C.A. § 2711

(3) the term "court of competent jurisdiction" includes--

(A) any district court of the United States (including a magistrate judge of such a court) or any United States court of appeals that--

(i) has jurisdiction over the offense being investigated;

(ii) is in or for a district in which the provider of a wire or electronic communication service is located or in which the wire or electronic communications, records, or other information are stored; or

(iii) is acting on a request for foreign assistance pursuant to section 3512 of this title;

(B) a court of general criminal jurisdiction of a State authorized by the law of that State to issue search warrants; or

(C) a court-martial or other proceeding under chapter 47 of title 10 (the Uniform Code of Military Justice) to which a military judge has been detailed;

Fla. Stat. § 682.18 Court; definition; jurisdiction.—

(1) The term "court" means any court of competent jurisdiction of this state. The making of an agreement or provision for arbitration subject to this law and providing for arbitration in this state shall, whether made within or outside this state, confer jurisdiction on the court to enforce the agreement or provision under this law, to enter judgment on an award duly rendered in an arbitration thereunder and to vacate, modify or correct an award rendered thereunder for such cause and in the manner provided in this law.

Fla. Stat. § 682.051 - Immunity of arbitrator; competency to testify; attorney fees and costs.—

(4) In a judicial, administrative, or similar proceeding, an arbitrator or representative of an arbitration organization is not competent to testify, and may not be required to produce records as to any statement, conduct, decision, or ruling occurring during the arbitration proceeding, to the same extent as a judge of a court of this state acting in a judicial capacity. This subsection does not apply:

(a) To the extent necessary to determine the claim of an arbitrator, arbitration organization, or representative of the arbitration organization against a party to the arbitration proceeding; or

(b) To a hearing on a motion to vacate an award under s. 682.13(1)(a) or (b) if the movant establishes prima facie that a ground for vacating the award exists.

Fla. Stat. § 682.02 - Arbitration agreements made valid, irrevocable, and enforceable; scope.—

- (1) An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.
- (2) The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.
- (3) An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.
- (4) If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the court, unless the court otherwise orders.

Fla. Stat. § 682.03 - Proceedings to compel and to stay arbitration.—

- (1) On motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement:
 - (a) If the refusing party does not appear or does not oppose the motion, the court shall order the parties to arbitrate.
 - (b) If the refusing party opposes the motion, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.
- (2) On motion of a person alleging that an arbitration proceeding has been initiated or threatened but that there is no agreement to arbitrate, the court shall proceed summarily to decide the issue. If the court finds that there is an enforceable agreement to arbitrate, it shall order the parties to arbitrate.
- (3) If the court finds that there is no enforceable agreement to arbitrate, it may not order the parties to arbitrate pursuant to subsection (1) or subsection (2).
- (4) The court may not refuse to order arbitration because the claim subject to arbitration lacks merit or grounds for the claim have not been established.
- (5) If a proceeding involving a claim referable to arbitration under an alleged agreement to arbitrate is pending in court, a motion under this section must be made in that court. Otherwise, a motion under this section may be made in any court as provided in s. 682.19.
- (6) If a party makes a motion to the court to order arbitration, the court on just terms shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the court renders a final decision under this section.
- (7) If the court orders arbitration, the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim.

Fla. Stat. § 489.1402 - Homeowners' Construction Recovery Fund; definitions.— (e) "Court of competent jurisdiction" means a civil or criminal court in the State of Florida, or a bankruptcy court.

Nunez V. Westfield Homes Of Florida, Inc., 925 So.2d 1108 (2006)

Although the Warranty and related sales contract may be unduly complex, the legal issue is straightforward. In ruling on a motion to compel arbitration, the trial court must decide (1) whether a valid written agreement to arbitrate existed; whether an arbitrable issue exists; and (3) whether the right to arbitrate has been waived. *Seifert v. U.S. Home Corp.*, 750 So.2d 633, 636 (Fla.1999); *Towers v. Clarendon Nat'l Ins. Co.*, 927 So.2d 913, 2006 WL 12939 (Fla. 2d DCA Jan.4, 2006). Here, we are called upon to decide only whether the parties agreed to arbitrate the building code violations as described in the class-action complaint. We, of course, must accord the parties' contract language its plain meaning. *See Interfirst Fed. Sav. Bank v. Burke*, 672 So.2d 90, 92 (Fla. 2d DCA 1996). Guided by this principle, we conclude that the alleged building code violations are not subject to arbitration. The Buyers do not allege that their homes have sustained physical damage or otherwise suffer from a situation that triggered Westfield's Warranty obligations. The Buyers do not allege and Westfield does not concede that the Warranty, on its face, extends to their claims.

Anderson v. Taylor Morrison of Florida, Inc., 223 So.3d 1088

The District Court of Appeal, Silberman, J., held that arbitration provision precluded homeowners from obtaining statutory remedy for builder's allegedly improper installation of exterior stucco, and thus arbitration provision violated public policy and was unenforceable.

Doe v. Natt, 299 So.3d 599 (QUASHED AND REMANDED MARCH 31, 2022)

The issue for the court was the “arcane” question of who decides whether a dispute is subject to a contract’s arbitration provision: an arbitrator or a judge. The Second District applied the Supreme Court’s test under the Federal Arbitration Act (the “FAA”)—the parties may delegate threshold arbitrability questions to the arbitrator, so long as the parties’ agreement does so by “clear and unmistakable” evidence. Short of this evidence, the assumption remains that such disputes are to be decided by a court. Because the evidence on which the parties relied as to who decides arbitrability was found to be ambiguous and not clear and unmistakable, the court retained its presumed authority to decide the arbitrability dispute. Thus, the Second District reversed the circuit court’s decision to grant Airbnb’s motion to compel arbitration.