



The Fourth District Court of Appeal rendered two arbitration opinions on February 3, 2016:

In *Municommerce LLC v Navidor LTD*, the court reversed an order compelling arbitration and held that a termination-for-cause exception to the agreement to arbitrate was valid and there was “no basis for the court to find that the waiver [of arbitration] did not apply...”

In *John Cox v. Village of Tequesta*, the court reversed a Final Judgment and held that the particular issues of waiver/timeliness were for the arbitrator, not the court, to decide.

We'll briefly discuss these cases in order.

First, in *Municommerce*, there was a sales agreement between the parties which contained an arbitration clause. But, there was a particular provision, Section 10(e), which allowed MuniCommerce to terminate the contract, without triggering arbitration, if MuniCommerce made a good faith conclusion that the other party was using unsound business practices. A dispute arose and the fight over arbitration was waged on the issue of whether this was an impermissible unilateral ability for one party to avoid arbitration. Specifically, Navidor argued that the provision was unfair since, if it declared that MuniCommerce was in breach, then MuniCommerce could avoid arbitration by invoking Section 10(e). The appellate court disagreed, holding that there was no evidence that MuniCommerce's invocation of Section 10(e) was a pretext and that the arbitration agreement did not allow MuniCommerce to terminate “for any reason to unilaterally avoid... arbitration.”

The “takeaway” finding in *MuniCommerce* was that (a) use of this particular clause in arbitration agreements would be upheld in the Fourth DCA and practitioners might want to copy the language and (b) not all “escape clauses” from an arbitration agreement are invalid.

Second, in *Cox*, there was a detailed three-step grievance procedure before the plaintiff could timely and appropriately initiate arbitration. The plaintiff ultimately filed suit under the Florida Arbitration Code, F.S. 682.03 seeking to compel arbitration. Citing U.S. Supreme Court precedent, the appellate court noted that a trial court has “limited scope” in determining whether an arbitrable issue exists and that procedural questions typically go to the arbitrator (e.g., conditions precedent, timeliness / time limits, notice, laches, estoppel). The appellate court held that the alleged failure to make a timely arbitration demand was not akin to waiver of arbitration under the Seifert standards; under Fourth DCA precedent, “an arbitrator decides whether a party has timely invoked the key parts of an [arbitration] agreement.” *Cox* serves as a good summary of what “gatekeeping” functions a trial court holds when considering the enforcement of arbitration.



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