

**The Florida Bar: Real Property, Probate and Trust Law  
Section  
Construction Law Committee**

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**Validity of arbitration agreement based upon harmonious meaning of its wording**

*4927 Voorhees Road, LLC; Florida Holdings, III, LLC; Harborside Healthcare Corp.; Sunbridge Healthcare Corp n/k/a Sunbridge Healthcare, LLC; Sun Healthcare Group, Inc.; Faulman; Vermilyea; Morris and Clausi v. Steven M Mallard*, \_\_\_\_ So. 3d \_\_\_\_, 40 Fla. L. Weekly D977 (Fla. 2d DCA 2015)

Nursing home admission agreement contained arbitration agreement that stated, "If not cancelled, this Agreement shall be binding on the Resident for this and all of the Resident's other admissions to the Facility without any need for further renewal." Estate alleged negligence against the nursing home and sought to avoid arbitrating the dispute. Accordingly, Estate opposed Facility's Motion to Compel Arbitration which the trial judge denied. On appeal, the Court reversed the denial, upholding the validity of the arbitration agreement after applying principles of contract interpretation to the specific arbitration agreement:

1. Arbitration agreements are contractual in nature and their construction remains a matter of contract interpretation. *Seifert v U.S.Home Corp*, 750 So. 2d 633 (Fla. 1999);

2. All provisions of arbitration agreement must be interpreted in such a way to prevent rendering them meaningless. *Kel Homes, LLC v. Burris*, 933 So. 2d 699 (Fla. 2d DCA 2006); *Ibis Lake Homeowners Ass'n v. Ibis Isle Homeowners Ass'n*, 102 So. 3d 722 (Fla. 4th DCA 2012);

3. All provisions of arbitration agreement must be interpreted "to give harmonious effect to all the terms". *Spring Lake NC, LLC v. Figueroa*, 104 So. 3d 1211 (Fla. 2d DCA 2012).

Contrast this outcome with a similar nursing home arbitration provision in *LTCSP-St. Petersburg, LLC v. Robinson*, 96 So. 3d 986 (Fla. 2d CA 2012) in which the court denied the motion to compel arbitration of a dispute. In *Robinson, supra*, the arbitration provision required that readmissions to the facility must be signed by all those signing the original admission agreement or a new admission agreement must be signed. The court did not compel arbitration there where upon readmission the parties were not the original parties to the earlier admission agreement.

### **Counsel's letter waived lease default**

*Amelia Island Restaurant II, Inc. v. Omni Amelia Island, LLC*, \_\_\_ So. 3d \_\_\_, 40 Fla. L. Weekly D947 (Fla. 2d DCA 2015)

The First District Court of Appeal upheld an exclusivity provision in a lease, thus allowing tenant-restaurant to block landlord from leasing to another restaurant upon lease renewal. Lease required that tenant-restaurant not be in default in order to renew the lease. Landlord claimed tenant-restaurant was in default at time it served its first notice to renew lease because it owed interest and a \$50 processing fee from earlier late-paid rent. However, landlord's attorney had written in a letter that the tenant-restaurant could exercise the option to renew after "addressing other (non-interest and non-processing fee) issues.

### **Attorney's fee agreement depended upon the meaning of "settle"**

*Burlington & Rockenback, P.A. v Law Offices of E. Clay Parker*, \_\_\_ So. 3d \_\_\_, 40 Fla. L. Weekly D915 (Fla. 5th DCA 2015)

A fee agreement between co-counsel stated that the appellate lawyers counseling at the trial court level would earn a stated hourly fee plus 1-1/2% of gross recovery were settled prior to filing post trial motions OR 2-1/2% of gross recovery if case settled after appellate counsel were required to prepare post trial motions. After jury verdict of \$13M for plaintiff, defendant filed post trial motions and one defendant settled with plaintiff. The other defendants proceeded on appeal which served to affirm the jury verdict.

The trial attorney's interpreted the agreement to require that they pay only the hourly fee plus 1-1/2% but the appellate counsel demanded their hourly fee plus 2-1/2% of the recovery. Once the underlying medical malpractice suit was resolved, the trial court found for the trial attorneys allowing the hourly fee plus 1-1/2%. The Fifth District Court of Appeal held that the trial court had reached an absurd interpretation of the contract and had erroneously reasoned that the appellate counsel had breached the fee agreement by disagreeing with the trial attorneys. The appellate court cited to Black's Law Dictionary as well as the American Heritage Dictionary for clarity as to the meaning of "settled." The court noted also that principles of contract interpretation govern, requiring (1) the parties' intentions to be determined from the plain meaning of the words, (2) that dictionaries are commonly consulted for such plain meaning, (3) the entire contract should be read as a whole and provision should not be considered in isolation, and (4) that the contract should be not interpreted to achieve an absurd result. In other words, the court should reach a contract interpretation consistent with reason, probability, and the practical aspect of the transaction between the parties.