

Florida Supreme Court Affirms Arbitrator's Authority to Decide Timeliness Defenses

In construing an arbitration agreement that expressly precluded arbitration demands for time-barred claims, the Florida Supreme Court held that under the Florida Arbitration Code, the statute of limitations is a procedural question for the arbitrator and not a question of arbitrability for the court.

In [O'Keefe Architects, Inc. v. CED Construction Partners, Ltd.](#), No. SC05-1417, 2006 WL 2971783 (Fla. Oct. 19, 2006), CED was the general contractor on two housing projects designed by O'Keefe. Both contracts contained an identical arbitration clause requiring arbitration of "[c]laims, disputes or other matters . . . arising out of or relating to" the contract. The arbitration clause further provided: "In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of limitations."

When CED filed a demand for arbitration seeking damages for negligent design, O'Keefe objected to the arbitration on the ground that the underlying claims were barred by the statute of limitations and therefore not subject to arbitration. After the arbitrators decided the statute of limitations issue in favor of CED, O'Keefe filed suit seeking a judicial determination on the issue. The trial court found that O'Keefe's statute of limitations defense was an issue for the arbitrators.

On appeal, a Florida district court of appeal affirmed the trial court's ruling but certified a conflict with [Reuter Recycling of Florida, Inc. v. City of Dania Beach](#), 859 So.2d 1271 (Fla. Dist. Ct. App. 2003), in which a Florida district court of appeal construing a similar arbitration agreement held that the court should rule on a statute of limitations defense.

The Florida Supreme Court (the Court) granted review in order to resolve the conflict as to whether a statute of limitations defense is subject to arbitration under an arbitration agreement that expressly precludes an arbitration demand for time-barred claims.

In resolving that issue, the Court held that the statute of limitations and other defenses are questions for the arbitrator and not questions of arbitrability for the court. As support for its holding, the Court relied partly on [Howsam v. Dean Witter Reynolds, Inc.](#), 537 U.S. 79 (2002), in which the Supreme Court explained that "gateway procedural disputes" (e.g., the timeliness of a demand for arbitration) do not present "questions of arbitrability."

Other state supreme courts have used the same analysis to reach this conclusion. In [Industra/Matrix Joint Venture v. Pope & Talbot, Inc.](#), 142 P.3d 1044 (Or. 2006), the Oregon Supreme Court distilled Howsam down to distinguishing "substantive" questions of arbitrability from "procedural" questions of arbitrability. For example, the scope of an arbitration agreement presents "substantive" questions of arbitrability which the court must decide unless the parties "clearly and unmistakably provide otherwise." Conversely, the statute of limitations presents a "procedural" question of arbitrability that the arbitrator must decide.