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Florida's High Court Clarifies that Incorporating AAA Rules into an Arbitration Provision Delegates Arbitrability to Arbitrator

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When a litigant seeks to compel arbitration pursuant to the Federal Arbitration Act ("FAA"), there are two issues that must be resolved: (1) whether there is an agreement to arbitrate; and, if so, (2) whether the dispute at issue falls within the scope of the arbitration agreement. The Florida Supreme Court's recent decision in *Airbnb, Inc. v. Doe*, deals with who decides this second issue—the court or an arbitrator.

In *Airbnb*, a couple sued Airbnb and Wayne Natt (the property owner) for issues arising out of their stay at Natt's condominium, which was listed for rent on Airbnb's website. Airbnb moved to compel arbitration, arguing that the couple was required to arbitrate their claims because Airbnb's Terms of Service included an arbitration provision that integrated the AAA Rules. All parties agreed that the couple was bound by the arbitration agreement—the issue then became whether the court or the arbitrator should decide if the couple's claims against Airbnb were arbitrable.

In relevant part, the arbitration provision at issue provided: "The arbitration will be administered by the American Arbitration Association in accordance with the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes then in effect, except as modified by this 'Dispute Resolution' section." In line with well-settled law, the trial court held that because the arbitration provision at issue integrated the AAA Rules, the arbitrator should decide whether the couple's claims against Airbnb were arbitrable. The appellate court reversed, reasoning in large part that the arbitration provision (1) did not explicitly state the arbitrator should exclusively decide arbitrability; and (2) indicated that that the AAA Rules should apply only after an arbitration is commenced. It also recognized that its decision constituted "something of an outlier in the jurisprudence of arbitration." *Natt*, 299 So. 3d at 607.

The Florida Supreme Court took up the case to correct this "outlier." The general rule is that a court decides arbitrability unless the arbitration provision at issue contains "clear and unmistakable" evidence of the parties' intent to delegate the issue of arbitrability to the arbitrator. Applying this rule, the Florida Supreme Court held that the arbitration provision's integration of the AAA Rules constituted "clear and unmistakable" evidence that the parties intended for an arbitrator to decide arbitrability.

The Court initially noted that all of the federal appellate courts to consider this issue have reached this conclusion. *See Natt*, 336 So. 3d at 703. Next, the Court rejected the primary points of reasoning underlying the appellate court's decision. First, the contention that the AAA Rules only apply after an arbitration is commenced would render certain AAA Rules superfluous—most notably the AAA Rule delegating arbitrability decisions to an arbitrator (a decision that a court would make prior to compelling arbitration when a court decides arbitrability). Second, the Court rejected the exclusivity argument. Borrowing from the appellate court's dissent, the Court stated "the power to decide *is* the power to decide." *Id.* at 705 (citation omitted). In other words, once the arbitration provision delegated arbitrability to the arbitrator, "a court possesses no power to decide the arbitrability issue." *Id.* (citation omitted). Finally, in a footnote, the Court also addressed an additional argument not decided by the appellate court. Specifically, the Court indicated that the "clear and unmistakable" analysis need not account for the sophistication of the parties. *See id.* at 705 n.5.

In sum, the Florida Supreme Court's decision in *Airbnb* brings clarity to lower courts in Florida when faced with a previously well-settled issue—under the FAA, when an arbitration provision integrates the AAA Rules, the issue of arbitrability is delegated to the arbitrator. *Airbnb* thus reminds parties entering agreements containing arbitration provisions to check whether their arbitration provision integrates the AAA Rules and to understand the ramifications of this integration.

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