WESTLAW

RELATED TOPICS

Requisites and Validity

Public Water Company Contract
Aid of Illegal Contract or Transaction

789 So.2d 405
District Court of Appeal of Florida,

Harris v. Gonzalez
District Court of Appeal of Florida, Fourth District. June 6, 2001 789 So.2d 405 26 Fla. L. Weekly D1433 *(Approx. 6 pages)*

Robert H. HARRIS, The Earth's Harvest, Inc., and Nutrisupplies, Inc., successor in interest to the rights of Robert H. Harris and The Earth's Harvest, Inc., Appellants,

v.

Nicholas GONZALEZ, M.D., Nutricology, Inc., a foreign corporation, and Stephen A. Levine, Appellees.

No. 4D99–4197.
June 6, 2001.
Rehearing Denied Aug. 1, 2001.

Synopsis

Seller of nutritional dietary supplements and its owner sued doctor and supplement wholesaler, alleging tortious interference. The Fifteenth Judicial Circuit Court, Palm Beach County, Edward H. Fine, J., granted summary judgment for defendants. Plaintiffs appealed. The District Court of Appeal, Fourth District, Taylor, J., held that contract between doctor and seller's owner violated public policy because doctor promised to refer patients in return for percentage of profits.

Affirmed.

West Headnotes (5)

Change View

1 **Contracts** Particular contracts
Contract between doctor and his attorney, who owned corporation that sold nutritional dietary supplements, violated public policy because doctor promised to refer his patients to corporation exclusively in return for 50% of net corporate profits, which was precisely the type of financial incentive for health care provider that legislature determined was harmful to public's safety and welfare. West's F.S.A. § 458.331(1)(i, gg); F.S.1997, § 455.237.

1 Cases that cite this headnote

2 **Courts** Actions under laws of other state
Although Florida cannot apply its public policy and statutes to a foreign contract to void its operation elsewhere, it can hold such a contract void or unenforceable in the state if said contract is repugnant to the public policy of the state.

8 Cases that cite this headnote

3 **Contracts** Enforcement of contract in general
A contract which violates a provision of the constitution or a statute is void and illegal, and will not be enforced in state's courts.

7 Cases that cite this headnote

4 **Contracts** Enforcement of contract in general
Where the parties to an agreement that violates a constitution or statute are in pari delicto the law will leave them where it finds them; relief will be refused in the courts because of public interest.

7 Cases that cite this headnote

5 Contracts Public Policy in General

"Public policy," which if violated renders a contract void and unenforceable, may be said to be the community common sense and common conscience, extended and applied throughout the state to matters of public morals, public health, public safety, public welfare, and the like.

6 Cases that cite this headnote

Attorneys and Law Firms

*406 Edna L. Caruso of Caruso, Burlington, Bohn & Compiani, P.A., West Palm Beach, and Jack Scarola of Searcy, Denney, Scarola, Barnhart & Shipley, P.A., West Palm Beach, for appellants.

William R. Bishin, Seattle, WA, and Eric C. Christu of Elk, Bankier, Palmer & Christu, Boca Raton, for Appellee Nicholas Gonzalez, M.D.

Rick Edwards of Rick Edwards, Inc., Los Angeles, CA, for appellees.

Opinion

TAYLOR, J.

Plaintiffs Robert Harris, The Earth's Harvest, Inc. (EHI), and Nutrisupplies, Inc., appeal a summary judgment in favor of Defendants Nutricology, Inc. and Stephen A. Levine on their claims for tortious interference with their contract with Nicholas Gonzalez, M.D. They also appeal a partial summary judgment on the fraud count of their third amended complaint. The trial court granted summary judgment on the contract interference claims because it determined that the contract between Harris and Dr. Gonzalez violated Florida law and was void as against public policy. We affirm on all issues raised in this appeal, but specifically address the trial court's finding that the contract violated public policy.

Nicholas Gonzalez, M.D., is a New York physician, who restricts his practice to providing *407 nutritional therapy to patients suffering from degenerative diseases. His therapy requires patients to consume large, daily doses of nutritional supplements. Because the quality and ready availability of these supplements are essential components of Dr. Gonzalez's therapy, he has actively participated in designing, procuring, evaluating, and monitoring the supplements. From 1987 to 1995, Dr. Gonzalez relied on Nutricology, Inc., a California company, to provide his patients with these supplements. The company was operated by Steve A. Levine, who designed and sold the supplements as a wholesaler.

Robert Harris is a New York attorney. From 1989 through November of 1992, he represented Dr. Gonzalez in various matters involving Dr. Gonzalez's unorthodox treatment. In 1992, Harris proposed taking over the retail sale of supplements. Harris and Dr. Gonzalez entered into a contract in New York to custom design various formulas for sale to Dr. Gonzalez's patients. Pursuant to the contract, Harris was to incorporate EHI in Florida, provide the capital for the business's inventory and equipment, and operate the distribution business. Dr. Gonzalez was to act as a consultant to EHI for ten years. In that capacity, Dr. Gonzalez was to formulate products that were needed by his patients; refer his patients to EHI "as an option for their fulfillment of their supply needs and mak[e] referrals to no other source;" meet a few times a year with management; and review assays of products to assure quality control. In return, Dr. Gonzalez was to receive 50 percent of EHI's net profit.

In May 1992 EHI began selling nutritional dietary supplements to customers in and out of Florida in response to telephone and mail orders. As agreed, Dr. Gonzalez referred his patients to EHI. However, six months after entering into the contract with Harris, Dr. Gonzalez terminated the agreement and discharged Harris as his attorney. Dr. Gonzalez claimed that EHI and Harris violated the agreement by improperly filling his patients' orders, abusing the patients, substituting cheaper unproven supplements, and raising prices to unacceptable levels. Dr. Gonzalez then began referring his patients to Nutricology for their nutritional dietary supplements.

The plaintiffs sued Nutricology, and its director and managing agent, Steven A. Levine, for tortious interference, alleging that they contacted Dr. Gonzalez and offered him financial inducements to refer his patients directly to Nutricology and bypass EHI, the "middleman." Harris claimed that, as a result, Dr. Gonzalez breached his contract with EHI.

In response to plaintiffs' tortious interference claims against Levine and Nutricology, the defendants raised an affirmative defense that Harris' contract with Dr. Gonzalez was illegal and void. In their motion for summary judgment, the defendants argued that the contract between Harris and Dr. Gonzalez was unenforceable in this state. After a hearing on the motion, the trial court granted summary judgment in favor of Levine and Nutricology.

1 We agree with the trial court's ultimate conclusion that "this contract establishes a commercial relationship that is banned by the law and public policy of the State of Florida." As appellants point out, section 455.654, [1] Florida Statutes, which the court found the contract violated, did not become effective until July 1, 1992, *408 after the contract was executed. However, there are other Florida statutes which render this contract violative of public policy when it was executed. *Curtis v. State*, 748 So.2d 370, 372 (Fla. 4th DCA 2000)(even where trial court's stated reasons are erroneous, appellate court will affirm if the result is correct

but for the wrong reason). These statutes express legislative sentiments that the public is best served by physician referrals uninfluenced by financial considerations.

Section 455.201, Florida Statutes (1991) provided:

> (2) The Legislature further believes that such professions shall be regulated only for the preservation of the health, safety, and welfare of the public under the police powers of the state. Such professions shall be regulated when:
>
> (a) Their unregulated practice can harm or endanger the health, safety, and welfare of the public and when the potential for such harm is recognizable and clearly outweighs any anticompetitive impact which may result from licensing.

The statutes that specifically regulate the practice of medicine also provide guidance on this issue. Section 458.331, Florida Statutes (1991),[2] enumerates grounds for disciplinary action against a physician. Subsection (1)(i)states:

> Paying or receiving any commission, bonus, kickback, or rebate, or engaging in any split-fee arrangement in any form whatsoever with a physician, organization, agency, or person, either directly or indirectly, for patients referred to providers of health care goods and services, including, but not limited to, hospitals, nursing homes, clinical laboratories, ambulatory surgical homes, clinical laboratories, ambulatory surgical centers, or pharmacies. The provisions of this paragraph shall not be construed to prevent a physician from receiving a fee for professional consultation services.

Subsection (gg)[3] provided, as additional grounds for disciplinary action:

> Referring any patient, for health care goods or services, to a partnership, firm, corporation, or other business entity in which the physician or the physician's employer has an equity interest of 10 percent or more unless, prior to such referral, the physician notifies the patient of his financial interest and of the patient's right to obtain such goods or services at the location of the patient's choice.

Chapter 92–178, Laws of Florida, created the "Patient Self–Referral Act of 1992," repealing certain provisions relating to a physician's business dealings in relation to his or her patients, and codifying an act to specifically address this issue. This Act is now codified in section 456.053, Florida Statutes (2000).[4] As part of the Act, the Legislature enacted a statute that prohibited kickbacks, which became effective April 8, 1992, a month before the contract herein was executed. Section 455.237, Florida Statutes, (Supp.1992),[5] provides:

> *409 (1) As used in this section, the term "kickback" means a remuneration or payment back pursuant to an investment interest, compensation arrangement, or otherwise, by a provider of health care services or items, of a portion of the charges for services rendered to a referring health care provider as an incentive or inducement to refer patients for future services or items, when the payment is not tax deductible as an ordinary and necessary expense.
>
> (2) It is unlawful for any health care provider or any provider of health care services to offer, pay, solicit, or receive a kickback, directly or indirectly, overtly or covertly, in cash or in kind, for referring or soliciting patients.

2 3 4 Although it is true that Florida cannot apply its public policy and statutes to a foreign contract to void its operation elsewhere, it can hold such a contract void or unenforceable here if said contract is repugnant to the public policy of this state. *Cerniglia v. C & D Farms, Inc.*, 203 So.2d 1, 2 (Fla.1967); *Title & Trust Co. of Fla. v. Parker*, 468 So.2d 520, 523 (Fla. 1st DCA 1985)("[A]s a general rule, if the enforcement of a contract is contrary to the public policy of the forum state, the contract need not be enforced."). A contract which violates a provision of the constitution or a statute is void and illegal, and, will not be enforced in our courts. "Where the parties to such an agreement are in pari delicto the law will leave them where it finds them; relief will be refused in the courts because of public interest." *Local No. 234 v. Henley*, 66 So.2d 818, 821 (Fla.1953).

5 The term "public policy" is not easily defined. "In substance, it may be said to be the community common sense and common conscience, extended and applied throughout the state to matters of public morals, public health, public safety, public welfare, and the like." *City of Leesburg v. Ware*, 113 Fla. 760, 153 So. 87, 89 (1934); *Neiman v. Galloway*, 704 So.2d 1131 (Fla. 4th DCA 1998)(quoting *Edwards v. Miami Transit Co.*, 150 Fla. 315, 7 So.2d 440, 442 (1942)(quoting *Atlantic Coast Line R. Co. v. Beazley*, 54 Fla. 311, 45 So. 761 (1907)))('[A] contract is not void, as against public policy, unless it is injurious to the interest of the public, or contravenes some established interest in society.'). The Harris/Gonzalez contract violates public policy because Dr. Gonzalez promised to refer his patients to EHI exclusively in return for fifty percent of the net corporate profits. This is precisely the type of financial incentive for a health care provider that the legislature determined is harmful to the public's safety and welfare.

Accordingly, we affirm the trial court's ruling that, as a matter of law, the subject contract is void as violative of Florida law and public policy and, thus, confers no enforceable rights on appellants based upon it.

AFFIRMED.

DELL and STEVENSON, JJ., concur.

All Citations

789 So.2d 405, 26 Fla. L. Weekly D1433

Footnotes

1 This statute was renumbered as section 456.053, Florida Statutes. Ch. 00–160, § 77, Laws of Fla.

2 The current version of section 458.331(1)(i) retains the same language as the 1991 version of the statute. See § 458.331(1)(i), Fla. Stat. (2000).

3 This subsection was subsequently repealed. Ch. 92–178, Laws of Fla.

4 Previously section 455.654. Ch. 00–160, § 77, Laws of Fla..

5 The current version of this statute is section 456.054, Florida Statutes (2000), and it contains the following additional subsection:

> (3) Violations of this section shall be considered patient brokering and shall be punishable as provided in s. 817.505.

End of Document

WESTLAW

366 So.3d 1126
District Court of Appeal of Florida, Third District.

Erb v. Chubb National Insurance Company
District Court of Appeal of Florida, Third District. December 14, 2022 366 So.3d 1126 47 Fla. L. Weekly D2635 *(Approx. 5 pages)*

v.

CHUBB NATIONAL INSURANCE COMPANY, etc., Appellee.

No. 3D20-1694
Opinion filed December 14, 2022.
Rehearing Denied May 2, 2023

Synopsis

Background: In dispute between insured and insurer, insured appealed from final order of the Circuit Court, 11th Judicial Circuit, Miami-Dade County, Mark Blumstein, J., which compelled arbitration pursuant to arbitration clause contained in insurance **contract**.

Holding: The District Court of Appeal, Bokor, J., held that insurer waived its right to arbitrate by failing to timely invoke arbitration provision.

Reversed.

West Headnotes (7)

Change View

1 **Appeal and Error**
District Court of Appeal reviews de novo an order interpreting a **contract** provision.

30	Appeal and Error
30XVI	Review
30XVI(D)	Scope and Extent of Review
30XVI(D)22	Substantive Matters
30k3765	**Contracts**
30k3767	Construction, interpretation, and application in general

2 **Insurance**
Insurer waived its right to arbitrate by failing to timely invoke arbitration provision, in dispute with insured, even if insurance **contract** provided that "any controversy or claim arising out of or related to this policy shall be referred to and settled by arbitration"; arbitration provision required arbitration of any conflict between parties, but only if invoked by insurer within one year from date of loss, and insurer failed to invoke arbitration within such time as required by **contract**.

217	Insurance
217XXVII	Claims and Settlement Practices
217XXVII(B)	Claim Procedures
217XXVII(B)7	Arbitration
217k3270	Waiver or estoppel

3 **Alternative Dispute Resolution**
Generally, a party may demand arbitration where: (1) a valid written agreement to arbitrate exists, (2) an arbitrable issue exists, and (3) the right to arbitration has not been waived.

25T	Alternative Dispute Resolution
25TII	Arbitration
25TII(D)	Performance, Breach, Enforcement, and Contest
25Tk183	Demand or notice

4	**Alternative Dispute Resolution** Because arbitration provisions are **contractual** in nature and governed by principles of **contract** interpretation, the determination of whether an arbitration clause requires arbitration of a particular dispute necessarily rests on the **intent** of the parties, and a natural corollary of this rule is that no party may be forced to submit a dispute to arbitration that the party did not intend and agree to arbitrate.	25T 25TII 25TII(A) 25Tk112	Alternative Dispute Resolution Arbitration Nature and Form of Proceeding **Contractual** or consensual basis
5	**Contracts** The **intent** of the parties to a **contract** is primarily discerned from the plain meaning of the **contractual** language, considered in context.	95 95II 95II(A) 95k147 95k147(2)	**Contracts** Construction and Operation General Rules of Construction **Intention** of Parties Language of **contract**
6	**Contracts** Where **contractual** provisions are clear and unambiguous, courts must give those terms their plain and ordinary meaning.	95 95II 95II(A) 95k151 95k152	**Contracts** Construction and Operation General Rules of Construction Language of Instrument In general
7	**Contracts** When construing a **contract** with two possibly conflicting provisions, courts endeavor to reconcile the provisions and give a reasonable, lawful and effective meaning to all terms.	95 95II 95II(A) 95k162	**Contracts** Construction and Operation General Rules of Construction Conflicting clauses in general

*1127 An Appeal from a non-final order from the Circuit Court for Miami-Dade County, Mark Blumstein, Judge. Lower Tribunal No. 18-31014

Attorneys and Law Firms

Perry & Neblett, P.A., and David Avellar Neblett, James M. Mahaffey, III and John A. Wynn, for appellant.

Brown Sims, P.C., and Marlin K. Green and Cody L. Frank, for appellee.

Before EMAS, GORDO and BOKOR, JJ.

Opinion

BOKOR, J.

1 Raymond Erb appeals a final order compelling arbitration with his insurer pursuant to an arbitration clause contained in the insurance **contract**. He alleges that the trial court erred by enforcing the arbitration provision despite the insurer failing to timely demand arbitration within the time specified by **contract**. Because requiring arbitration in this context conflicts with the **intent** of the parties, as expressed through the plain language of the agreement, we reverse. [1]

2 3 Generally, a party may demand arbitration where: (1) a valid written agreement to arbitrate exists, (2) an arbitrable issue exists, and (3) the right to arbitration has not been waived. Jackson v. Shakespeare Found., Inc., 108 So. 3d 587, 593 (Fla. 2013). As the former two factors are not in dispute on this appeal, we address only Erb's argument that the insurer waived its right to arbitrate by failing to timely invoke the arbitration provision.

The agreement here provides that "[t]he request for arbitration **must** be filed within one (1) year of the date of loss or damage." (emphasis added). Chubb concedes that it did not request arbitration within one year of the underlying accident. However, Chubb also argues that because the agreement provides that "[a]ny controversy or claim ... arising out of or related to this policy ... shall be referred to and settled by arbitration," the agreement does not expressly allow any form of dispute resolution *other* than arbitration, so Chubb's failure to comply with the time limitation had no impact on arbitrability.

In Abel Homes at Naranja Villas, LLC v. Hernandez, 960 So. 2d 891 (Fla. 3d DCA 2007), this court evaluated an arbitration provision allowing the developer, Abel Homes, to elect arbitration within 20 days of receiving notice of a claim, but providing that a purchaser could then proceed with other legal processes if the developer did not elect to arbitrate. Id. at 893. Under *1128 that **contractual** provision, we held that "the

Developer waived its right to arbitration by failing to timely serve a demand for arbitration within the twenty-day time limit specified in the Agreements." Id. at 894.

4 5 6 7 Because arbitration provisions are **contractual** in nature and governed by principles of **contract** interpretation, "the determination of whether an arbitration clause requires arbitration of a particular dispute necessarily rests on the **intent** of the parties," and "[a] natural corollary of this rule is that no party may be forced to submit a dispute to arbitration that the party did not intend and agree to arbitrate." Seifert v. U.S. Home Corp., 750 So. 2d 633, 636 (Fla. 1999) (quotations and citations omitted). The **intent** of the parties to a **contract** is primarily discerned from the plain meaning of the **contractual** language, considered in context. See, e.g., Gulliver Schs., Inc. v. Snay, 137 So. 3d 1045, 1047 (Fla. 3d DCA 2014). "Where **contractual** provisions are clear and unambiguous, the court must give those terms their plain and ordinary meaning." Abel Homes, 960 So. 2d at 894. Further, when construing a **contract** with two possibly conflicting provisions, we endeavor to reconcile the provisions and give a "reasonable, lawful and effective meaning" to all terms. See Nabbie v. Orlando Outlet Owner, LLC, 237 So. 3d 463, 466 (Fla. 5th DCA 2018) (internal quotations and citations omitted); see also City of Homestead v. Johnson, 760 So. 2d 80, 84 (Fla. 2000) ("[W]e rely upon the rule of construction requiring courts to read provisions of a **contract** harmoniously in order to give effect to all portions thereof.").

Here, the trial court's interpretation fails to harmonize the two sentences of the same **contractual** provision. The better reading, indeed, the only reading that gives effect to both relevant portions, requires arbitration of any conflict between the parties, but only if invoked by the insurer within one year from the date of loss. Accordingly, based on the failure to invoke arbitration within such time as required by **contract**, the trial court erred in compelling arbitration.

Reversed.

All Citations

366 So.3d 1126, 47 Fla. L. Weekly D2635

Footnotes

1 We review de novo an order interpreting a **contract** provision. See, e.g., Castro v. Mercantil Commercebank, N.A., 305 So. 3d 623, 625 (Fla. 3d DCA 2020); see also Grove Isle Ass'n, Inc. v. Grove Isle Assocs., LLLP, 137 So. 3d 1081, 1089 (Fla. 3d DCA 2014) (reviewing motion to dismiss under de novo standard of review).

End of Document