

SUPREME COURT OF FLORIDA

Gessa v. Manor Care of Florida, Inc.

86 So. 3d 484 (Fla. 2011) · Decided November 23, 2011

SUMMARY

The Florida Supreme Court reviewed an order compelling arbitration in a nursing-home negligence and statutory-rights action. The court held that provisions capping noneconomic damages at \$250,000 and waiving punitive damages were not severable from the arbitration agreement and violated Florida public policy. It further held that the court, rather than the arbitrator, must decide the public-policy issue and concluded that *Rent-A-Center, West, Inc. v. Jackson* was inapplicable.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Perry, J.; Pariente, J.; Lewis, J.; Quince, J.; Labarga, J.; Polston, J.; Canady, C.J.
JURISDICTION	Florida
DECIDED	November 23, 2011
DISPOSITION	quashed
PROCEDURAL POSTURE	Florida Supreme Court discretionary review of a decision of the Second District Court of Appeal affirming an order compelling arbitration.
STANDARD OF REVIEW	De novo review applied to the legal issues of severability, whether the court or arbitrator must decide the public-policy issue, and whether the limitation-of-liability provisions violate public policy.
PRECEDENTIAL VALUE	Published, precedential decision of the Supreme Court of Florida.
PARTIES	Angela I. Gessa v. Manor Care of Florida, Inc.

TOPICS

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PRACTICE AREAS

[arbitration](#)[nursing home liability](#)[contracts](#)[damages](#)[civil procedure](#)

QUESTIONS PRESENTED

1. Whether the contractual provisions capping noneconomic damages at \$250,000 and waiving punitive damages were severable from the arbitration agreement.
2. Whether the court or the arbitrator had to decide whether the arbitration agreement violated public policy.
3. Whether the contractual limitations on liability violated the public policy embodied in Florida's Nursing Home Residents Act.
4. Whether *Rent-A-Center, West, Inc. v. Jackson* required the dispute to proceed to arbitration.

HOLDINGS

1. The provisions capping noneconomic damages at \$250,000 and waiving punitive damages were not severable from the arbitration agreement.
2. The court, not the arbitrator, must decide whether the arbitration agreement violates public policy.
3. The provisions capping noneconomic damages at \$250,000 and waiving punitive damages violated Florida public policy and were unenforceable.
4. *Rent-A-Center, West, Inc. v. Jackson* was inapplicable because the arbitration agreement contained no delegation provision.

KEY QUOTATIONS

“Thus, contrary to the ruling below, these limitation of liability provisions, which place a \$250,000 cap on noneconomic damages and waive punitive damages, are not severable from the arbitration agreement.” (491)

“Thus, under Siefert [Seifert] and Global Travel, it is incumbent on the court, not the arbitrator, to determine whether an arbitration agreement violates public policy.” (492)

“Thus, these limitation of liability provisions, which place a \$250,000 cap on noneconomic damages and waive punitive damages, violate the public policy of the State of Florida and are unenforceable.” (493)

FACTUAL BACKGROUND

Angela Gessa was admitted to Manor Care of Carrollwood, a nursing home, on two occasions. Her daughter, acting as her attorney-in-fact, signed admissions documents containing an arbitration agreement that incorporated limitation-of-liability provisions. Those provisions capped noneconomic damages at \$250,000 and waived punitive damages. Gessa later sued under Florida's Nursing Home Residents Act, and Manor Care moved to compel arbitration.

PROCEDURAL HISTORY

Gessa sued Manor Care under chapter 400, Florida Statutes, alleging negligence, violation of residents' rights, and breach of fiduciary duty. The trial court compelled arbitration, finding the agreement not unconscionable because the allegedly offensive limitation provisions could be severed, and left the public-policy issue to the

arbitrator. The Second District affirmed, and the Florida Supreme Court granted discretionary review based on an asserted conflict among district courts of appeal.

DISPOSITION

quashed

CASES CITED

- Gessa v. Manor Care of Florida, Inc., 4 So. 3d 679 (Fla. 2d DCA 2009)
- Shotts v. OP Winter Haven, Inc., 86 So. 3d 456 (Fla. 2011)
- Rent-A-Center, West, Inc. v. Jackson, 561 U.S. 63, 130 S. Ct. 2772, 177 L. Ed. 2d 403 (2010)
- Aills v. Boemi, 29 So. 3d 1105, 1108 (Fla. 2010)
- Local No. 234 v. Henley & Beckwith, Inc., 66 So. 2d 818, 821-22 (Fla. 1953)
- Patricia Seifert v. U.S. Home Corporation, et al., Seifert v. U.S. Home Corp., 750 So. 2d 633, 636 (Fla. 1999)
- Global Travel Marketing, Inc. v. Shea, 908 So. 2d 392, 398 (Fla. 2005)
- Romano v. Manor Care, Inc., 861 So. 2d 59, 62-63 (Fla. 4th DCA 2003)
- Alterra Healthcare Corp. v. Estate of Linton, 953 So. 2d 574, 578 (Fla. 1st DCA 2007)
- Place at Vero Beach, Inc. v. Hanson, 953 So. 2d 773 (Fla. 4th DCA 2007)
- Lacey v. Healthcare & Retirement Corp. of Am., 918 So. 2d 333 (Fla. 4th DCA 2005)
- Fletcher v. Huntington Place Ltd. Partnership, 952 So. 2d 1225 (Fla. 5th DCA 2007)
- SA-PG-Ocala, LLC v. Stokes, 935 So. 2d 1242 (Fla. 5th DCA 2006)
- Jaylene, Inc. v. Steuer, 22 So. 3d 711, 713 (Fla. 2d DCA 2009)
- Alterra Healthcare Corp. v. Bryant, 937 So. 2d 263, 266-67 (Fla. 4th DCA 2006)
- Blankfeld v. Richmond Health Care, Inc., 902 So. 2d 296 (Fla. 4th DCA 2005)