

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

Court reversed trial court order denying arbitration of claims against two (2) of three (3) defendants. Even though the plaintiff below argued that the provision was not intended to operate as an irrevocable substitution for litigation, the court reasoned that the word of the arbitration agreement dictated the contrary. The provision directed arbitration of all disputes "that might arise under the terms of this Agreement"; (2) that arbitration was the "sole and exclusive remedy available to either party"; and that (3) "formal court action shall only be employed to enforce the Mediator's *decision*."

The original contract was drafted to include this provision under the heading of "Mediation." The Court reasoned that substance must control over form, citing to *Bodycare Solutions, LLC v Thione Int'l, Inc.*, 524 F.3d 1235 (11th Cir. 2008) which stated "Normally labels do not control; indeed if an agreement specifies in detail a dispute resolution procedure which it calls "mediation" (or anything else) but which is, in substance, FAA "arbitration," substance controls over title.")

Newcastle Shipyards, LLC; Alpha Maritime Limited; Alley, Maass, Rogers & Linday, PA v C & N Yacht Refinishing, Inc., ____ So. 3d ____, 40 Fla. L. Weekly D 1408 (Fla. 4th DCA)

SCOPE OF WORK

In case of Owner purchasing property out of receivership in Miami Beach, Architect disputed alleged obligation to perform "as built" drawings requested by the City of Miami Beach at the end of construction. Construction had exceeded the scope of the permit. The contract detailed fifteen (15) separate elements of Basic Services and thirty (30) services of "Optional Additional Services." Although the court decided the case on a discovery issue presented (whether discovery could be obtained from Architect's other clients to establish custom and usage regarding the architect's obligation to provide such services even though the Owner seeking discovery agreed that no ambiguity existed to allow parol evidence to establish "custom and usage."), the Architect's agreement contained the standard provision regarding standard of care. Specifically, the sweeping reference to enumerated activities that "shall not be construed to exclude other items generally included in the services of the Architect or fairly implied therein as necessary for the satisfactory completion of services in a

time and manner that complies with an agreed project schedule and conforms with all laws, ordinances, rules, regulations and requirements of authorities having jurisdiction over the project as well as any requirement reasonably identified as necessary to facilitate project financing and to coordinate/support project marketing." In light of this case, perhaps an adjustment to standard contract language to add that references that other service be included that "conforms with all laws, ordinances, rules, regulations and requirements of authorities having jurisdiction over the project as well as any requirement reasonably identified as necessary to facilitate project financing and to coordinate/support project marketing as well as those that may be required to meet the requirements of the authority having jurisdiction."

Kobi Karp Architecture & Interior Design, Inc. v Charms 63 Nobe, LLC, ___ So. 3d ___, 40 Fla. L. Weekly D 1428 (Fla. 3rd DCA)

INSURANCE

Question whether a numbered endorsement was part of the insurance contract remained a fact issue to be determined by the trier of fact. Therefore, the Court reversed summary judgment in favor of insurer. Three (3) copies of Endorsement No. 10, allegedly included a choice of law provision electing Texas law to control the suit. Also, one party's policy contained three (3) pages that the other's did not contain.

This case points of the need to obtain certified insurance policies from the carrier at the beginning of the project or at the beginning of litigation, at least.

Congress Park Limited Partnership v Certain Underwriters at Lloyd's, London, ___ So. 3d ___, 40 Fla. L. Weekly D1404 (Fla. 4th DCA 2015)