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Cardegna v. Buckeye Check Cashing, Inc.

The Florida Supreme Court, in Cardegna v. Buckeye Check Cashing, Inc., Sup. Ct. No. 02-2161 (Fla. Jan. 20, 2005), has taken a position directly contrary to the Eleventh Circuit Court of Appeals, even though determining the operation of the Federal Arbitration Act ("FAA"). The Florida Supreme Court held that an arbitration clause invoking the FAA would not be enforceable if a court determined the underlying contract was usurious and void *ab initio*. Thus, once the issue of a contract being void *ab initio* is raised, the arbitration clause becomes ineffective on the central issue of contract validity. In contrast, the Eleventh Circuit has held that such an arbitration clause is presumptively valid, and the arbitrator must determine whether the contract is void. Bess v. Check Express, 294 F. 3d 1298 (11th Cir. 2002).

Given this conflicting authority, a party seeking enforcement of an FAA arbitration clause would generally do well to remove a case to federal court, if grounds exist.

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