

IN THE
Supreme Court of the United States

ROYAL MERCHANT HOLDINGS, LLC,

Applicant,

v.

THE FERRARO LAW FIRM, P.A.,

Respondent.

ON APPLICATION FOR EXTENSION OF TIME TO THE HONORABLE
CLARENCE THOMAS, ASSOCIATE JUSTICE OF THE SUPREME COURT
AND CIRCUIT JUSTICE FOR THE ELEVENTH CIRCUIT

**APPLICATION FOR AN EXTENSION OF TIME
TO FILE A PETITION FOR A WRIT OF CERTIORARI**

EUGENE E. STEARNS

Counsel of Record

STEARNS WEAVER MILLER WEISSLER ALHADEFF
& SITTERSON, P.A.

150 West Flagler Street, Suite 2200

Miami, FL 33131

(305) 789-3200

estearns@stearnsweaver.com

Counsel for Applicant

Royal Merchant Holdings, LLC



In the
Supreme Court of the United States

ROYAL MERCHANT HOLDINGS, LLC,
Applicant,
v.

THE FERRARO LAW FIRM, P.A.
Respondent.

**APPLICANT ROYAL MERCHANT HOLDINGS, LLC'S APPLICATION TO
EXTEND TIME TO FILE PETITION FOR A WRIT OF CERTIORARI**

To the Honorable Clarence Thomas, Associate Justice of the Supreme Court
and Circuit Justice for the Eleventh Circuit:

1. Pursuant to Supreme Court Rules 13.5, 22, and 30, Applicant Royal Merchant Holdings, LLC (“Applicant”)¹ respectfully requests a 60-day extension of time, up to and including, Monday, July 28, 2025, to file a petition for writ of certiorari to the State of Florida’s Third District Court of Appeal (“Third District”), seeking review of that court’s decision vacating an arbitration award governed by the Federal Arbitration Act that improperly imposes a judicial standard for procedural due process in arbitration. The Florida Supreme Court denied discretionary review of that decision. A copy of the Third District’s decision, dated June 12, 2024, the Third

¹ Applicant does not have a parent corporation. No publicly held corporation owns any portion of any of the Applicant, and the Applicant is not a subsidiary or an affiliate of any publicly owned corporation.

District’s order denying a motion for rehearing, dated August 21, 2024, and the Florida Supreme Court’s order denying discretionary review, dated February 25, 2025, are attached as Appendix A. The time to file a petition for a writ of certiorari will otherwise expire on Tuesday, May 27, 2025. This Application for Extension of Time is timely because it has been filed more than ten days prior to the date on which the time for filing the petition is to expire. *See* S.Ct. R. 13-5.

2. The jurisdiction of this Court in this case will be invoked under 28 U.S.C. § 1257(a) because it involves a final judgment rendered by a lower state court where the state court of last resort has denied discretionary review and a right claimed under the statutes of the United States—namely, the Federal Arbitration Act. *See Gonzalez v. Thaler*, 565 U.S. 134, 154 (2012) (“We can review . . . only judgments of a ‘state court of last resort’ or of a lower state court if the ‘state court of last resort’ has denied discretionary review.”).

3. Applicant has good cause for an extension of time to prepare a clear, concise, and comprehensive petition for certiorari for the Court’s review. This case involves important questions regarding procedural due process in arbitrations governed by the Federal Arbitration Act. Counsel for Applicant have extensive professional and personal obligations over the coming months. For example, counsel of record has work travel on June 12, 2025 and June 13, 2025. Counsel of record also has numerous obligations in other pending matters during the relevant time period, including but not limited to an appellate brief due in the Third District on June 6, 2025. Other members of the legal team likewise have conflicting professional and

personal commitments, including over half a dozen of depositions on May 13, 2025, May 19, 2025, May 20, 2025, May 27, 2025, June 2, 2025, June 5, 2025, and June 25, 2025 in proceedings pending in the United States District Court for the Southern District of Florida (*Penrod Brothers Inc. v. The City of Miami Beach, Florida*, Case No. 1:23-cv-23362 (S.D. Fla.)), and the 15th Judicial Circuit of Florida (*Indian River Memorial Hospital, Inc. v. Kreusler-Walsh Vargas & Serafin, P.A.*, Case No. 2023-016162 (Fla. 15th Cir. Ct.)), respectively, and a two-week bench trial commencing on May 12, 2025 before the United States District Court for the Southern District of New York (*Philip von Kahle v. Cargill, Inc.*, Case No. 21-CV-05532 (S.D.N.Y.)). The issues in this case warrant careful briefing and consideration, which counsels in favor of the requested extension. Counsel for Applicant also requires additional time to ensure compliance with the formatting requirements for filings.

4. **WHEREFORE**, Applicant respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari for 60 days, to and including Monday, July 28, 2025.

/s/ Eugene E. Stearns, Esq.
EUGENE E. STEARNS, ESQ.
COUNSEL OF RECORD

**STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.**
150 West Flagler Street
Suite 2200
Miami, Florida 33131
Telephone: 305-789-3200
estearns@stearnsweaver.com

Counsel for Applicant
ROYAL MERCHANT HOLDINGS, LLC

APPENDIX

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Supreme Court of Florida

TUESDAY, FEBRUARY 25, 2025

Royal Merchant Holdings,
LLC, etc.

Petitioner(s)

v.

The Ferraro Law Firm, P.A.,
etc., et al.

Respondent(s)

SC2024-1369

Lower Tribunal No(s).:

3D2022-1851;

132021CA003987000001

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that the petition for review is denied.

No motion for rehearing will be entertained by the Court. See Fla. R. App. P. 9.330(d)(2).

CANADY, LABARGA, COURIEL, GROSSHANS, and SASSO, JJ.,
concur.

A True Copy

Test:

SC2024-1369 2/25/2025

John A. Tomasino

Clerk, Supreme Court

SC2024-1369 2/25/2025



DL

CASE NO.: SC2024-1369

Page Two

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LESLIE ROTHENBERG

EUGENE E STEARNS

Third District Court of Appeal

State of Florida

Opinion filed June 12, 2024.
Not final until disposition of timely filed motion for rehearing.

No. 3D22-1851

Lower Tribunal No. 21-3987

The Ferraro Law Firm, P.A., etc., et al.,
Appellants/Cross-Appellees,

vs.

Royal Merchant Holdings, LLC, etc.,
Appellee/Cross-Appellant.

An Appeal from the Circuit Court for Miami-Dade County, Alan Fine,
Judge.

The Ferraro Law Firm, P.A., and Leslie B. Rothenberg and Mathew D.
Gutierrez; Boies Schiller Flexner LLP, and Jesse Panuccio and Eric M.
Palmer (Fort Lauderdale), for appellants/cross-appellees.

Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A., and Eugene
E. Stearns and Maria A. Fehretdinov and Alejandro D. Rodriguez, for
appellee/cross-appellant.

Before LINDSEY, MILLER and BOKOR, JJ.

BOKOR, J.

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MERCEDES M. PRIETO

Clerk, District Court of
Appeal, Third District

By: Eduy N. P. [Signature]

Deputy Clerk



These cross-appeals challenge an order vacating an arbitration award in favor of Royal Merchant Holdings, LLC (“Royal Merchant”), as well as a successor judge’s subsequent order granting reconsideration and confirming that same award. Appellant, the Ferraro Law Firm (“Ferraro”), argues that the award was properly vacated and could not be reinstated because the arbitrator vitiated the fundamental fairness of the proceedings by relying solely on a ground for relief that was not pled as an affirmative claim. Royal Merchant cross-appeals to challenge the merits of the original order vacating the award. Under the specific circumstances present here, we find that the trial court properly vacated the award in the first instance, and the successor court abused its discretion by confirming it on reconsideration.

The arbitration action related to Ferraro’s representation of Royal Merchant in an Ohio case founded on the breach of an agreement Royal Merchant had brokered between two nonparty companies. There, Royal Merchant claimed that it was entitled to recover as an intended third-party beneficiary to that agreement, but Ferraro asserted only that Royal Merchant was a party to the agreement instead of a beneficiary, which, in conjunction with Ferraro’s violations of various discovery orders, led the Ohio court to dismiss the claims. During that litigation, Ferraro also advised Royal Merchant to reject an offer for an assignment of recovery rights from the

nonbreaching signatory to the agreement, which would have clarified Royal Merchant's standing and allowed it to recover for the breach.

After dismissal of the Ohio case, Royal Merchant brought an arbitration complaint against Ferraro in Miami¹ for legal malpractice, asserting various grounds for relief including Ferraro's failure to raise a third-party beneficiary claim and failure to comply with discovery rules. In response, Ferraro asserted as an affirmative defense that Royal Merchant was not harmed because it was not entitled to recover as a third-party beneficiary. As an avoidance of that defense, Royal Merchant responded that it could have instead recovered as an assignee had Ferraro not advised it to reject the assignment proposal on the purported basis that Royal Merchant already had a third-party beneficiary claim.

Throughout the arbitration hearings, Royal Merchant repeatedly raised the issue of Ferraro's failure to accept the assignment proposal, arguing it both as an affirmative basis for malpractice and as an avoidance of Ferraro's affirmative defense of lack of prejudice. Over Ferraro's objections, the arbitrator allowed Royal Merchant to present evidence and testimony about the assignment proposal but did not make a pre-judgment ruling as to

¹ The parties' retainer agreement provided that disputes concerning the representation would be resolved by binding arbitration in Miami, Florida.

whether the issue could be tried by consent as an affirmative ground for relief. Ultimately, the arbitrator ruled in favor of Royal Merchant, relying solely on Ferraro's advisement to reject the assignment proposal as the basis for malpractice and awarding Royal Merchant a total of \$1,517,493.32. In doing so, the arbitrator also found that the assignment issue was tried by consent and that Ferraro was on notice it had "morphed" into an affirmative claim throughout the proceedings.

Ferraro subsequently moved for the circuit court to vacate the award, arguing that the arbitrator's reliance on the unpled assignment issue as a basis for relief was fundamentally unfair and amounted to a due process deprivation. After a hearing, the court entered an order vacating the arbitration award to the extent it relied on the assignment issue. Royal Merchant moved for reconsideration, and a successor judge granted the motion, vacated the prior order, and confirmed the arbitration award in its entirety, finding that the proceedings were not fundamentally unfair and that

the original judge lacked any basis to vacate the award.² These appeals followed.³

An arbitration award shall be vacated where there has been “[m]isconduct by an arbitrator prejudicing the rights of the party to the arbitration proceeding.” § 682.13(1)(b)3., Fla. Stat. “Although an arbitrator need not follow all the niceties observed in court proceedings, the arbitrator must grant the parties a fundamentally fair hearing.” Talel Corp. v. Shimonovitch, 84 So. 3d 1192, 1194 (Fla. 4th DCA 2012). Further, it is well-established that “[d]ue process protections prevent a trial court from deciding matters not noticed for hearing and not the subject of appropriate pleadings.” Mizrahi v. Mizrahi, 867 So. 2d 1211, 1213 (Fla. 3d DCA 2004); see also Cedars Med. Ctr., Inc. v. Ravelo, 738 So. 2d 362, 367 (Fla. 3d DCA 1999) (“The pleading of a legal theory is indispensable to a finding of liability on the basis of that theory.”); Arky, Freed, Stearns, Watson, Greer, Weaver &

² The original trial judge transferred to another division prior to hearing the reconsideration motion. Ferraro argues in part that the successor judge lacked jurisdiction to reconsider the order vacating the award because that order was final. A successor judge typically may not modify a final order of a predecessor judge absent a finding of fraud or mistake. However, while we note that the original order vacating the award lacks indicia of finality, ultimately, we decline to address the merits of this argument as we reverse on the merits.

³ We review a trial court’s decision to confirm or vacate an arbitration award for abuse of discretion. See Murton Roofing Corp. v. FF Fund Corp., 930 So. 2d 772, 773 (Fla. 3d DCA 2006).

Harris, P.A. v. Bowmar Instrument Corp., 537 So. 2d 561, 563 (Fla. 1988) (“[L]itigants at the outset of a suit must be compelled to state their pleadings with sufficient particularity for a defense to be prepared.”).

While we are cognizant of arbitrators’ broad discretion to “conduct an arbitration in such manner as the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding,” § 682.06(1), Fla. Stat., we find that the trial court properly vacated the award in the first instance and abused its discretion by confirming it on reconsideration. “Generally, due process requires fair notice and a real opportunity to be heard and defend in an orderly procedure *before* judgment is rendered.” Viets v. Am. Recruiters Enters., Inc., 922 So. 2d 1090, 1095 (Fla. 4th DCA 2006). Here, Royal Merchant repeatedly represented throughout the proceedings that the issue of the assignment proposal was not being argued as an affirmative basis for malpractice, but merely as an avoidance of Ferraro’s affirmative defense of lack of prejudice. When Ferraro objected and informed the arbitrator of the need to render a ruling on the issue, the arbitrator instead deferred the issue until the final order, only to then conclude that the issue was tried by consent all along. Thus, from the face of the record, it appears that the arbitrator’s consideration of the issue as an affirmative claim without prior notice prejudiced Ferraro’s ability to prepare its defense. The lack of a substantive

requirement that claims for relief be pled in an arbitration proceeding in a specific manner does not negate a party's right to fair and effective notice of the claims tried.

Thus, we vacate the order confirming the award, reinstate the prior order vacating the award, and remand for additional proceedings.

Reversed.

IN THE DISTRICT COURT OF
APPEAL
OF FLORIDA
THIRD DISTRICT

August 21, 2024

The Ferraro Law Firm, P.A., etc., et al., **3D2022-1851**

Trial Court Case No. 21-3987

Appellant(s)/Cross-Appellee(s),

v.

Royal Merchant Holdings, LLC,
etc.,

Appellee(s)/Cross-Appellant(s).

Upon consideration, Appellee's Motion for Rehearing, and Clarification is hereby denied.

LINDSEY, MILLER and BOKOR, JJ., concur.

Appellee's Motion for Rehearing En Banc is, likewise, denied.

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MERCEDES M. PRIETO
Clerk, District Court of
Appeal, Third District

By: *Evelyn N. Abner*
Deputy Clerk



~~3D2022-1851~~ [8/21/24] *Prieto*
Mercedes M. Prieto, Clerk
District Court of Appeal
Third District



CC: Maria Macarena Arhancet Fehretdinov
Mathew Daniel Gutierrez
Jesse Michael Panuccio
Alejandro David Rodriguez
Leslie Rothenberg
Eugene E. Stearns

LA