

882 So.2d 1059

**EASTERN FUNDING, L.L.C., Appellant,
v.**

**Gilda I. ROMAN, d/b/a Unique Dry
Cleaner, and Martin Roman, Appellees.**

No. 4D03-2795.

**District Court of Appeal of Florida,
Fourth District.**

August 25, 2004.

Gordon A. Dieterle of McClosky, D'Anna,
Ioannou & Dieterle, LLP, Boca Raton, for
appellant.

Patrick S. Cousins of Cousins Law Firm,
P.A., West Palm Beach, for appellee Martin
Roman.

POLEN, J.

Appellant, Eastern Funding, L.L.C., has
timely appealed a non-final order on
entitlement to arbitration. The central issue
below and on appeal is whether the parties'
underlying Lease Agreement evidenced a
transaction involving interstate commerce so
as to render it subject to the Federal
Arbitration Act. This issue presents a pure
question of law, therefore we apply a de novo
standard of review. *See Stacy David, Inc. v.
Consuegra*, 845 So.2d 303, 306 (Fla. 2d DCA
2003). For the reason that follows we affirm.

This appeal arises from an alleged breach
of contract for leased dry cleaning equipment.
Group Leasing entered into a Lease Agreement
with Gilda Roman. The Lease Agreement
provided for monthly payments to be mailed to
Group Leasing's New York address. There was
also a provision in the Lease Agreement for
any dispute arising from the lease to be
submitted to binding arbitration with the
American Arbitration Association in
accordance with its rules, to take place in New
York. Gilda Roman and her husband, Martin

Roman, executed a personal guaranty. Shortly
after the Lease Agreement was executed,
Group Leasing assigned all of its rights and
interest in the Lease Agreement to the
Appellant, Eastern Funding.

It is alleged that at some point, Gilda
Roman failed to pay the monthly lease
payments. Pursuant to the Lease Agreement,
Eastern Funding elected to accelerate the
remaining payments. Eastern Funding filed
suit in Palm Beach County for breach of
contract and breach of guaranty against the
Romans. Martin Roman was timely served,
but Gilda Roman was not. Martin Roman filed
a Motion to Dismiss for failure to apply the
arbitration

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clause, which dictated that arbitration be
completed in New York. The trial court
granted the motion, ordering that the parties
shall arbitrate in New York pursuant to the
Lease Agreement.

On appeal, Eastern Funding argues that
because the arbitration was to take place in a
foreign forum, the arbitration clause is not
enforceable if one party objects prior to an
arbitration award. *See* § 682.02, Fla. Stat.
(2003). In *Damora v. Stresscon
International, Inc.*, 324 So.2d 80, 81-82
(Fla.1975), the Supreme Court addressed this
issue, holding:

The Florida courts have no
statutory authority under
Chapter 682 to compel
arbitration in another
jurisdiction.... Absent the
statutory authority of Chapter
682 to enforce the arbitration
provision, the controlling law of
this state clearly makes an
arbitration provision voidable at
the instance of either party and
prohibits its being used as a bar

to an action by either party in a court of competent jurisdiction.

See also Romar Transports, Ltd., Inc. v. Iron and Steel Co. of Trinidad and Tobago, Ltd., 386 So.2d 572, 574 (Fla. 4th DCA 1980). Nevertheless, there is a well-established exception to the general rule announced in *Damora*. In *Butcher & Singer, Inc. v. Frisch*, 433 So.2d 1360, 1361 (Fla. 4th DCA 1983), this court held that the general rule does not apply to valid and enforceable arbitration agreements applying federal law, even though foreign state law is incorporated in the arbitration agreement. *See Coastal Health Care Group, Inc. v. Schlosser*, 673 So.2d 62, 65 (Fla. 4th DCA 1996). As such, Florida courts must enforce arbitration agreements that are subject to the Federal Arbitration Act even if the arbitration agreement is not subject to Florida law.

The Federal Arbitration Act applies only to [a] written provision in ... a contract evidencing a transaction involving commerce.... 9 U.S.C. § 2. The Federal Arbitration Act was discussed in *Coastal Health Care*, 673 So.2d at 66, in which this court noted:

The [Supreme] Court's recent case of *Allied-Bruce Terminix Co. v. Dobson*, [513 U.S. 265] 115 S.Ct. 834, 130 L.Ed.2d 753 (1995), addressed the reach of the Federal Arbitration Act and how the phrase transaction involving commerce should be construed. After noting that some state courts and federal district courts have interpreted the Act's language as requiring

the parties to a contract to have contemplated an interstate commerce connection, the Court held that such language should be read broadly. Specifically, the word involving is broad and is the functional equivalent of affecting. 115 S.Ct. at 839. The Court reiterated its earlier pronouncement that the interstate commerce language should be read broadly to extend the Act's reach to the limits of Congress' Commerce Clause power. [] 115 S.Ct. at 840; *Perry v. Thomas*, 482 U.S. 483, 107 S.Ct. 2520, 96 L.Ed.2d 426 (1987).

Coastal Health Care then discussed whether an interstate transaction meant that the transaction had to turn out in fact to involve interstate commerce or whether the parties had to "contemplate" an interstate transaction. *See Dobson*, 513 U.S. at 276-77, 115 S.Ct. 834. *Coastal Health Care* held that a commerce in fact interpretation was more faithful to the statute than the contemplation of the parties interpretation which would require costly litigation. 673 So.2d at 66.

In *Coastal Health Care*, this court found the following transactions to be interstate transactions: (1) several meetings took place in North Carolina; (2) discussions took place by telephone across state lines; (3) a Florida corporation acquired stock through its parent Delaware corporation

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with its principal place of business in North Carolina; (4) North Carolina employees and residents were involved in the negotiations; (5) closing took place in North Carolina; and (6) all notices and communications were sent across state lines to North Carolina. *Id.*

At bar, Eastern Funding is a Delaware corporation, with its primary place of business in New York. Roman, however, was operating out of Florida. Likewise, the monthly rent payments were to be mailed from Florida across state lines to New York. Finally, all correspondence whether by mail or telephone occurred across state lines. Similar to our holding in *Coastal Health Care*, we hold that the Federal Arbitration Act is applicable as the Lease Agreement involves interstate commerce. Consequently, the trial court did not err in granting Roman's Motion to Dismiss and in ordering the parties to arbitrate in New York. We find Eastern Funding's remaining issues to be unpersuasive and hereby affirm.

AFFIRMED.

MAY, J., and GOLD, MARC H., Associate Judge, concur.