

IN THE SUPREME COURT OF FLORIDA

AIRBNB, Inc.,

Petitioner,

v.

Case No.: SC20-1167

L.T. No.: 2D19-1383

JOHN DOE and JANE DOE,

Respondents.

MOTION FOR LEAVE TO FILE AMICUS BRIEF

Professor George A. Bermann moves for leave to file an amicus brief in support of Respondents, John Doe and Jane Doe, pursuant to Florida Rule of Appellate Procedure 9.370, and states:

1. **Interest of Amicus Curiae:** Amicus curiae George A.

Bermann is the Jean Monnet Professor of EU Law, Walter Gellhorn Professor of Law, and director of the Center for International Commercial and Investment Arbitration at Columbia Law School.

Professor Bermann is also an active international arbitrator in commercial and investment disputes; chief reporter of the ALI's Restatement of the U.S. Law of International Commercial and Investor-State Arbitration; co-author of the UNCITRAL Guide to the New York Convention on the Recognition and Enforcement of

RECEIVED, 07/19/2021 11:34:27 AM, Clerk, Supreme Court

Foreign Arbitral Awards; chair of the Global Advisory Board of the New York International Arbitration Center; co-editor-in-chief of the *American Review of International Arbitration*; and founding member of the ICC International Court of Arbitration's Governing Body.

Professor Bermann is interested in this case because it presents an opportunity for this Court to address a central but unsettled issue of domestic and international arbitration law relating to who gets to decide the issue of arbitrability.

2. **Issues Amicus Curiae will address:** Professor Bermann will address the issue of whether incorporation by reference of rules of arbitral procedure in arbitration clauses constitutes “clear and unmistakable” evidence that the parties intended “to arbitrate arbitrability,” within the meaning of *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938 (1995).

3. **How Amicus Curiae can assist the Court:** Professor Bermann can assist the Court in understanding the impact its decision will have beyond the parties and on the state of arbitration law in Florida. Courts that have concluded that the incorporation of arbitral procedure rules in an arbitration agreement signifies an intent to delegate arbitrability issues to arbitrators rely on the

presence in those rules of a “competence-competence” clause, enabling arbitral tribunals to make a determination of their own jurisdiction. All modern arbitral procedure rules contain a “competence-competence” clause, however, so treating such language as clear and unmistakable evidence of a delegation means parties will almost invariably lose their right to a judicial determination of what the Supreme Court has on multiple occasions referred to as the very cornerstone of arbitration—consent to arbitrate.

4. **Parties’ Position:** Counsel for Professor Bermann have conferred with Joel Perwin, counsel for Petitioner, AirBnB, Inc., and Tom Seider, counsel for Respondents John Doe and Jane Doe. Petitioner takes no position on and Respondents consent to the relief requested in this motion.

WHEREFORE, the Court should grant Professor Bermann leave to appear as amicus curiae and file a brief in support of Respondents.

Respectfully submitted,

/s/Courtney Brewer
Courtney Brewer

Florida Bar No. 0890901
cbrewer@bishopmills.com
Jonathan A. Martin
Florida Bar No. 117535
jmartin@bishopmills.com
service@bishopmills.com (secondary)
Bishop & Mills, PLLC
325 North Calhoun Street
Tallahassee, Florida 32301
(850) 765-0897
(850) 270-2474 facsimile

Attorneys for Amicus Professor George Bermann

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the following persons by email on July 19, 2021:

Eric J. Simonson
Manuel L. Iravedra
HINSHAW & CULBERTSON, LLP
900 Camp Street, Third Floor
New Orleans, LA 70130
esimonson@hinshawlaw.com
miravedra@hinshaw.com

Joel S. Perwin
JOEL S. PERWIN, P.A.
1680 Michigan Avenue
Suite 700
Miami Beach, FL 33139
jperwin@perwinlaw.com
sbigelow@perwinlaw.com

Rhett Conlon Parker
Karl Brandes
PHELPS DUNBAR, LLP

Damian Mallard
MALLARD LAW FIRM, P.A.
889 North Washington Blvd
Sarasota, FL 34236
damian@mallardlawfirm.com

Thomas J. Seider
Torri D. Macarages
BRANNOCK & HUMPHRIES
1111 West Cass Street
Suite 200
Tampa, FL 33606
tseider@bhappeals.com
tmacarages@bhappeals.com
eservice@bhappeals.com

Counsel for Respondent

Michael D. Gelety

100 South Ashley Drive
Suite 1900
Tampa, FL 33602
rhett.parker@phelps.com
karl.brandes@phelps.com
jill.reeves@phelps.com
Christina.lewis@phelps.com
Yolanda.vaxquez@phelps.com

Counsel for Petitioner

Charles E. Stoecker
MCGLINCHEY STAFFORD
1 E. Broward Boulevard,
Suite 1400
Fort Lauderdale, Florida 33301
cstoecker@mcglinchey.com
mnew@mcglinchey.com
rwalters@mcglinchey.com

Counsel for Petitioner

Harout J. Samra
DLA PIPER
200 S. Biscayne Boulevard
Suite 2500
Miami, Florida 33131
Harout.samra@dlapiper.com

*Amicus Counsel, Miami
International Arbitration Society*

Edward M. Mullins
REED SMITH LLP
1001 Brickell Bay Drive
Suite 900
Miami, Florida 33131
emullins@reedsmith.com

THE LAW OFFICES OF
MICHAEL D. GELETY
1209 S.E. 3rd Avenue
Ft. Lauderdale, FL 33316
mgeletyattorney@gmail.com

Counsel for Wayne Natt

William Grimsley
MCGLINCHEY STAFFORD
10407 Centurion Parkway N.,
Suite 200
Jacksonville, Florida 32256
wgrimsley@mcglinchey.com

Counsel for Petitioner

Elliott V. Mitchell
Edward B. Kerr
CAMPBELL TROHN TAMAYO &
ARANDA, P.A.
P.O. Box 2369
Lakeland, Florida 33806
e.mitchell@cttalaw.com
e.kerr@cttalaw.com
m.cunningham@cttalaw.com

*Amicus Counsel, Henry Allen
Blair, Angela Downes, Richard
Faulkner, Clark Freshman, Jill
Gross, Philip Loree Jr., and Imre
Stephen Szalai*

Carlos F. Concepcion
SHOOK HARDY & BACON LLP
201 S. Biscayne Boulevard,
Suite 3200
Miami, Florida 33131
cconcepcion@shb.com

*Amicus Counsel, Miami
International Arbitration Society*

William K. Hill
GUNSTER
600 Brickell Avenue, Suite 3500
Miami, Florida 33131
whill@gunster.com

*Amicus Counsel, Miami
International Arbitration Society*

Linnet R. Davis-Stermitz
1900 L Street NW, Suite 312
Washington, DC 20036
linnet@guptawessler.com

*Amicus Counsel, American
Association for Justice*

*Amicus Counsel, Miami
International Arbitration Society*

Bryan S. Gowdy
CREED & GOWDY, P.A.
865 May Street
Jacksonville, Florida 32204
bgowdy@appellate-firm.com
filings@appellate-firm.com

*Amicus Counsel, Florida Justice
Association*

/s/Courtney Brewer
Attorney