

## Does an Arbitration Provision Survive an Unenforceable Contract?



That the Federal Arbitration Act (FAA), state arbitration statutes and courts generally favor arbitration provisions in contracts is well-recognized. But what if the contract containing the arbitration agreement appears on its face to be invalid, unenforceable and against public policy under state law? Will the arbitration provision similarly be deemed unenforceable? Or will the arbitration provisions, nonetheless, remain valid and enforceable, resulting in the arbitration of the dispute?

This issue was considered by the Court of Appeals of Georgia in *Juhn v. Imagine Castle*, 358 Ga. App 627 (2021).

The case involved the Juhns hiring Imagine Castle to perform remodeling, structural and other work in their house. The initial contract was later amended to include an arbitration agreement. It provided:

“Any ... claim or dispute of any kind or nature between contractor/builder and homeowner/buyer arising out of or relating in any manner to this agreement or this transaction ... shall be decided by binding arbitration.” It further provided that “any questions regarding the interpretation of this arbitration provision or about the arbitrability of a dispute ... shall be decided by the arbitrator.” In addition, it recited that the FAA would govern the arbitration.

Subsequently, the Juhns contended that after work had commenced, Imagine Castle provided shoddy and incomplete work that was not compliant with requisite building codes, ordinances and industry standards and was billing them for materials that had not been ordered and work that had not been completed. The Juhns eventually stopped paying Imagine Castle and hired other contractors to complete the work.

The Juhns sued Imagine Castle and their principals in the Georgia state court for damages arising out of the allegedly defective work. In addition, they specifically asked the state court to declare the contract unenforceable and void as a matter of public policy because Imagine Castle was not a properly licensed contractor. [READ MORE..](#)

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