11th Circuit Holds that “Loser Pays” Provision Does Not Invalidate Arbitration Agreement

A former employee of our client King Motor Company signed an arbitration agreement during his employment. He later sued for religious discrimination and we moved to compel arbitration. The plaintiff opposed arbitration, arguing that the “loser pays” fee-shifting provision in the arbitration agreement denied him a remedy under Title VII, because a prevailing defendant in a Title VII case generally cannot recover its attorneys’ fees from the plaintiff. A Florida federal court agreed and denied the motion to compel arbitration. We appealed and the 11th Circuit reversed, holding that the possibility that the plaintiff might have to pay the defendant’s attorneys’ fees was too speculative to invalidate the agreement.

Musnick v. King Motor Co. of Fort Lauderdale, 325 F.3d 1255 (11th Cir. 2003).