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New Prime Inc. v. Oliveira, Case No. 17–340 (2019).
Certain transportation workers are exempt from the reach of the Federal Arbitration Act, and accordingly, arbitration cannot be compelled for those workers, even when an arbitration agreement which contains a delegation provision exists.

Saccullo v. United States of America, Case No. 17-14546 (11th Cir. 2019).
The curative provisions of Florida Statute section 95.231 (certain defects in deeds, including not having sufficient witnesses, are cured after 5 years) apply and vest a technically incorrect deed in the grantee after the statutory period; United States v. Summerlin, 310 U.S. 414, 416 (1940) (statutes of limitation are not enforceable against a sovereign) is not applicable as the deed vested before the claim of the U.S. vested.

1385 Starkey, LLC v. Superior Fence & Rail of Pinellas County, Inc., Case No. 2D15-5579 (Fla. 2d DCA 2019).
A motion for continuance of trial to allow an insolvent company to reinstate should be granted; no ruling as a matter of law whether an insolvent corporation may proceed to trial under the province of the "winding up affairs" section of Florida Statute section 605.0709.

Haggin v. Allstate Investments, Inc., Case No. 4D18-568 (Fla. 4th DCA 2019).
A guarantee of a lease that is not a continuing guarantee only applies to the original term of the lease, notwithstanding a provision of the guarantee that the parties "agree[d] that this guarantee shall remain for the renewal, modification, extension or waiver of this Lease."

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

NEW PRIME INC. *v.* OLIVEIRA

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 17–340. Argued October 3, 2018—Decided January 15, 2019

Petitioner New Prime Inc. is an interstate trucking company, and respondent Dominic Oliveira is one of its drivers. Mr. Oliveira works under an operating agreement that calls him an independent contractor and contains a mandatory arbitration provision. When Mr. Oliveira filed a class action alleging that New Prime denies its drivers lawful wages, New Prime asked the court to invoke its statutory authority under the Federal Arbitration Act to compel arbitration. Mr. Oliveira countered that the court lacked authority because §1 of the Act excepts from coverage disputes involving "contracts of employment" of certain transportation workers. New Prime insisted that any question regarding §1's applicability belonged to the arbitrator alone to resolve, or, assuming the court could address the question, that "contracts of employment" referred only to contracts that establish an employer-employee relationship and not to contracts with independent contractors. The District Court and First Circuit agreed with Mr. Oliveira.

Held:

1. A court should determine whether a §1 exclusion applies before ordering arbitration. A court's authority to compel arbitration under the Act does not extend to all private contracts, no matter how emphatically they may express a preference for arbitration. Instead, antecedent statutory provisions limit the scope of a court's §§3 and 4 powers to stay litigation and compel arbitration "accord[ing to] the terms" of the parties' agreement. Section 2 provides that the Act applies only when the agreement is set forth as "a written provision in any maritime transaction or a contract evidencing a transaction involving commerce." And §1 helps define §2's terms, warning, as relevant here, that "nothing" in the Act "shall apply" to "contracts of em-

ployment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." For a court to invoke its statutory authority under §§3 and 4, it must first know if the parties' agreement is excluded from the Act's coverage by the terms of §§1 and 2. This sequencing is significant. See, *e.g.*, *Bernhardt* v. *Polygraphic Co. of America*, 350 U. S. 198, 201–202. New Prime notes that the parties' contract contains a "delegation clause," giving the arbitrator authority to decide threshold questions of arbitrability, and that the "severability principle" requires that both sides take all their disputes to arbitration. But a delegation clause is merely a specialized type of arbitration agreement and is enforceable under §§3 and 4 only if it appears in a contract consistent with §2 that does not trigger §1's exception. And, the Act's severability principle applies only if the parties' arbitration agreement appears in a contract that falls within the field §§1 and 2 describe. Pp. 3–6.

2. Because the Act's term "contract of employment" refers to any agreement to perform work, Mr. Oliveira's agreement with New Prime falls within §1's exception. Pp. 6–15.

(a) "[I]t's a 'fundamental canon of statutory construction' that words generally should be 'interpreted as taking their ordinary . . . meaning . . . at the time Congress enacted the statute.' " *Wisconsin Central Ltd.* v. *United States*, 585 U. S. ___, ___ (quoting *Perrin* v. *United States*, 444 U. S. 37, 42). After all, if judges could freely invest old statutory terms with new meanings, this Court would risk amending legislation outside the "single, finely wrought and exhaustively considered, procedure" the Constitution commands. *INS* v. *Chadha*, 462 U. S. 919, 951. The Court would risk, too, upsetting reliance interests by subjecting people today to different rules than they enjoyed when the statute was passed. At the time of the Act's adoption in 1925, the phrase "contract of employment" was not a term of art, and dictionaries tended to treat "employment" more or less as a synonym for "work." Contemporaneous legal authorities provide no evidence that a "contract of employment" necessarily signaled a formal employer-employee relationship. Evidence that Congress used the term "contracts of employment" broadly can be found in its choice of the neighboring term "workers," a term that easily embraces independent contractors. Pp. 6–10.

(b) New Prime argues that by 1925, the words "employee" and "independent contractor" had already assumed distinct meanings. But while the words "employee" and "employment" may share a common root and intertwined history, they also developed at different times and in at least some different ways. The evidence remains that, as dominantly understood in 1925, a "contract of employment" did not necessarily imply the existence of an employer-employee rela-

Syllabus

tionship. New Prime's argument that early 20th-century courts sometimes used the phrase "contracts of employment" to describe what are recognized today as agreements between employers and employees does nothing to negate the possibility that the term also embraced agreements by independent contractors to perform work. And its effort to explain away the statute's suggestive use of the term "worker" by noting that the neighboring terms "seamen" and "railroad employees" included only employees in 1925 rests on a precarious premise. The evidence suggests that even "seamen" and "railroad employees" could be independent contractors at the time the Arbitration Act passed. Left to appeal to the Act's policy, New Prime suggests that this Court order arbitration to abide Congress' effort to counteract judicial hostility to arbitration and establish a favorable federal policy toward arbitration agreements. Courts, however, are not free to pave over bumpy statutory texts in the name of more expeditiously advancing a policy goal. Rather, the Court should respect "the limits up to which Congress was prepared" to go when adopting the Arbitration Act. *United States* v. *Sisson*, 399 U. S. 267, 298. This Court also declines to address New Prime's suggestion that it order arbitration anyway under its inherent authority to stay litigation in favor of an alternative dispute resolution mechanism of the parties' choosing. Pp. 10–15.

857 F. 3d 7, affirmed.

GORSUCH, J., delivered the opinion of the Court, in which all other Members joined, except KAVANAUGH, J., who took no part in the consideration or decision of the case. GINSBURG, J., filed a concurring opinion.

SUPREME COURT OF THE UNITED STATES

No. 17–340

NEW PRIME INC., PETITIONER *v.*
DOMINIC OLIVEIRA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

[January 15, 2019]

JUSTICE GORSUCH delivered the opinion of the Court.

The Federal Arbitration Act requires courts to enforce private arbitration agreements. But like most laws, this one bears its qualifications. Among other things, §1 says that "nothing herein" may be used to compel arbitration in disputes involving the "contracts of employment" of certain transportation workers. 9 U. S. C. §1. And that qualification has sparked these questions: When a contract delegates questions of arbitrability to an arbitrator, must a court leave disputes over the application of §1's exception for the arbitrator to resolve? And does the term "contracts of employment" refer only to contracts between employers and employees, or does it also reach contracts with independent contractors? Because courts across the country have disagreed on the answers to these questions, we took this case to resolve them.

I

New Prime is an interstate trucking company and Dominic Oliveira works as one of its drivers. But, at least on paper, Mr. Oliveira isn't an employee; the parties' contracts label him an independent contractor. Those agree-

ments also instruct that any disputes arising out of the parties' relationship should be resolved by an arbitrator—even disputes over the scope of the arbitrator's authority.

Eventually, of course, a dispute did arise. In a class action lawsuit in federal court, Mr. Oliveira argued that New Prime denies its drivers lawful wages. The company may call its drivers independent contractors. But, Mr. Oliveira alleged, in reality New Prime treats them as employees and fails to pay the statutorily due minimum wage. In response to Mr. Oliveira's complaint, New Prime asked the court to invoke its statutory authority under the Act and compel arbitration according to the terms found in the parties' agreements.

That request led to more than a little litigation of its own. Even when the parties' contracts mandate arbitration, Mr. Oliveira observed, the Act doesn't *always* authorize a court to enter an order compelling it. In particular, §1 carves out from the Act's coverage "contracts of employment of . . . workers engaged in foreign or interstate commerce." And at least for purposes of this collateral dispute, Mr. Oliveira submitted, it doesn't matter whether you view him as an employee or independent contractor. Either way, his agreement to drive trucks for New Prime qualifies as a "contract[] of employment of . . . [a] worker[] engaged in . . . interstate commerce." Accordingly, Mr. Oliveira argued, the Act supplied the district court with no authority to compel arbitration in this case.

Naturally, New Prime disagreed. Given the extraordinary breadth of the parties' arbitration agreement, the company insisted that any question about §1's application belonged for the arbitrator alone to resolve. Alternatively and assuming a court could address the question, New Prime contended that the term "contracts of employment" refers only to contracts that establish an employer-employee relationship. And because Mr. Oliveira is, in fact as well as form, an independent contractor, the company argued, §1's exception doesn't apply; the rest of the

statute does; and the district court was (once again) required to order arbitration.

Ultimately, the district court and the First Circuit sided with Mr. Oliveira. 857 F. 3d 7 (2017). The court of appeals held, first, that in disputes like this a court should resolve whether the parties' contract falls within the Act's ambit or §1's exclusion before invoking the statute's authority to order arbitration. Second, the court of appeals held that §1's exclusion of certain "contracts of employment" removes from the Act's coverage not only employer-employee contracts but also contracts involving independent contractors. So under any account of the parties' agreement in this case, the court held, it lacked authority under the Act to order arbitration.

II

In approaching the first question for ourselves, one thing becomes clear immediately. While a court's authority under the Arbitration Act to compel arbitration may be considerable, it isn't unconditional. If two parties agree to arbitrate future disputes between them and one side later seeks to evade the deal, §§3 and 4 of the Act often require a court to stay litigation and compel arbitration "accord[ing to] the terms" of the parties' agreement. But this authority doesn't extend to *all* private contracts, no matter how emphatically they may express a preference for arbitration.

Instead, antecedent statutory provisions limit the scope of the court's powers under §§3 and 4. Section 2 provides that the Act applies only when the parties' agreement to arbitrate is set forth as a "written provision in any maritime transaction or a contract evidencing a transaction involving commerce." And §1 helps define §2's terms. Most relevant for our purposes, §1 warns that "nothing" in the Act "shall apply" to "contracts of employment of seamen, railroad employees, or any other class of workers

engaged in foreign or interstate commerce." Why this very particular qualification? By the time it adopted the Arbitration Act in 1925, Congress had already prescribed alternative employment dispute resolution regimes for many transportation workers. And it seems Congress "did not wish to unsettle" those arrangements in favor of whatever arbitration procedures the parties' private contracts might happen to contemplate. *Circuit City Stores*, *Inc.* v. *Adams*, 532 U. S. 105, 121 (2001).

Given the statute's terms and sequencing, we agree with the First Circuit that a court should decide for itself whether §1's "contracts of employment" exclusion applies before ordering arbitration. After all, to invoke its statutory powers under §§3 and 4 to stay litigation and compel arbitration according to a contract's terms, a court must first know whether the contract itself falls within or beyond the boundaries of §§1 and 2. The parties' private agreement may be crystal clear and require arbitration of every question under the sun, but that does not necessarily mean the Act authorizes a court to stay litigation and send the parties to an arbitral forum.

Nothing in our holding on this score should come as a surprise. We've long stressed the significance of the statute's sequencing. In *Bernhardt* v. *Polygraphic Co. of America*, 350 U. S. 198, 201–202 (1956), we recognized that "Sections 1, 2, and 3 [and 4] are integral parts of a whole. . . . [Sections] 1 and 2 define the field in which Congress was legislating," and §§3 and 4 apply only to contracts covered by those provisions. In *Circuit City*, we acknowledged that "Section 1 exempts from the [Act] . . . contracts of employment of transportation workers." 532 U. S., at 119. And in *Southland Corp.* v. *Keating*, 465 U. S. 1, 10–11, and n. 5 (1984), we noted that "the enforceability of arbitration provisions" under §§3 and 4 depends on whether those provisions are "part of a written maritime contract or a contract 'evidencing a transaction in-

volving commerce'" under §2—which, in turn, depends on the application of §1's exception for certain "contracts of employment."

To be sure, New Prime resists this straightforward understanding. The company argues that an arbitrator should resolve any dispute over §1's application because of the "delegation clause" in the parties' contract and what is sometimes called the "severability principle." A delegation clause gives an arbitrator authority to decide even the initial question whether the parties' dispute is subject to arbitration. *Rent-A-Center*, *West*, *Inc.* v. *Jackson*, 561 U. S. 63, 68–69 (2010). And under the severability principle, we treat a challenge to the validity of an arbitration agreement (or a delegation clause) separately from a challenge to the validity of the entire contract in which it appears. *Id.*, at 70–71. Unless a party specifically challenges the validity of the agreement to arbitrate, both sides may be required to take all their disputes—including disputes about the validity of their broader contract—to arbitration. *Ibid.* Applying these principles to this case, New Prime notes that Mr. Oliveira has not specifically challenged the parties' delegation clause and submits that any controversy should therefore proceed only and immediately before an arbitrator.

But all this overlooks the necessarily antecedent statutory inquiry we've just discussed. A delegation clause is merely a specialized type of arbitration agreement, and the Act "operates on this additional arbitration agreement just as it does on any other." *Id.*, at 70. So a court may use §§3 and 4 to enforce a delegation clause only if the clause appears in a "written provision in . . . a contract evidencing a transaction involving commerce" consistent with §2. And only if the contract in which the clause appears doesn't trigger §1's "contracts of employment" exception. In exactly the same way, the Act's severability principle applies only if the parties' arbitration agreement

appears in a contract that falls within the field §§1 and 2 describe. We acknowledged as much some time ago, explaining that, before invoking the severability principle, a court should "determine[] that the contract in question is within the coverage of the Arbitration Act." *Prima Paint Corp.* v. *Flood & Conklin Mfg. Co.*, 388 U. S. 395, 402 (1967).

III

That takes us to the second question: Did the First Circuit correctly resolve the merits of the §1 challenge in this case? Recall that §1 excludes from the Act's compass "contracts of employment of . . . workers engaged in . . . interstate commerce." Happily, everyone before us agrees that Mr. Oliveira qualifies as a "worker[] engaged in . . . interstate commerce." For purposes of this appeal, too, Mr. Oliveira is willing to assume (but not grant) that his contracts with New Prime establish only an independent contractor relationship.

With that, the disputed question comes into clear view: What does the term "contracts of employment" mean? If it refers only to contracts that reflect an employer-employee relationship, then §1's exception is irrelevant and a court is free to order arbitration, just as New Prime urges. But if the term *also* encompasses contracts that require an independent contractor to perform work, then the exception takes hold and a court lacks authority under the Act to order arbitration, exactly as Mr. Oliveira argues.

A

In taking up this question, we bear an important caution in mind. "[I]t's a 'fundamental canon of statutory construction' that words generally should be 'interpreted as taking their ordinary . . . meaning . . . at the time Congress enacted the statute.'" *Wisconsin Central Ltd.* v. *United States*, 585 U. S. ___, ___ (2018) (slip op., at 9)

(quoting *Perrin* v. *United States*, 444 U. S. 37, 42 (1979)). See also *Sandifer* v. *United States Steel Corp.*, 571 U. S. 220, 227 (2014). After all, if judges could freely invest old statutory terms with new meanings, we would risk amending legislation outside the "single, finely wrought and exhaustively considered, procedure" the Constitution commands. *INS* v. *Chadha*, 462 U. S. 919, 951 (1983). We would risk, too, upsetting reliance interests in the settled meaning of a statute. Cf. 2B N. Singer & J. Singer, Sutherland on Statutes and Statutory Construction §56A:3 (rev. 7th ed. 2012). Of course, statutes may sometimes refer to an external source of law and fairly warn readers that they must abide that external source of law, later amendments and modifications included. *Id.*, §51:8 (discussing the reference canon). But nothing like that exists here. Nor has anyone suggested any other appropriate reason that might allow us to depart from the original meaning of the statute at hand.

That, we think, holds the key to the case. To many lawyerly ears today, the term "contracts of employment" might call to mind only agreements between employers and employees (or what the common law sometimes called masters and servants). Suggestively, at least one recently published law dictionary defines the word "employment" to mean "the relationship between master and servant." Black's Law Dictionary 641 (10th ed. 2014). But this modern intuition isn't easily squared with evidence of the term's meaning at the time of the Act's adoption in 1925. At that time, a "contract of employment" usually meant nothing more than an agreement to perform work. As a result, most people then would have understood §1 to exclude not only agreements between employers and employees but also agreements that require independent contractors to perform work.

What's the evidence to support this conclusion? It turns out that in 1925 the term "contract of employment" wasn't defined in any of the (many) popular or legal dictionaries

the parties cite to us. And surely that's a first hint the phrase wasn't then a term of art bearing some specialized meaning. It turns out, too, that the dictionaries of the era consistently afforded the word "employment" a broad construction, broader than may be often found in dictionaries today. Back then, dictionaries tended to treat "employment" more or less as a synonym for "work." Nor did they distinguish between different kinds of work or workers: All work was treated as employment, whether or not the common law criteria for a master-servant relationship happened to be satisfied.[1]

What the dictionaries suggest, legal authorities confirm. This Court's early 20th-century cases used the phrase "contract of employment" to describe work agreements involving independent contractors.[2] Many state court cases did the same.[3] So did a variety of federal statutes.[4] And state stat-

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[1] See, *e.g.*, 3 J. Murray, A New English Dictionary on Historical Principles 130 (1891) (defining "employment" as, among other things, "[t]he action or process of employing; the state of being employed. The service (of a person). That on which (one) is employed; business; occupation; a special errand or commission. A person's regular occupation or business; a trade or profession"); 3 The Century Dictionary and Cyclopedia 1904 (1914) (defining "employment" as "[w]ork or business of any kind"); W. Harris, Webster's New International Dictionary 718 (1st ed. 1909) (listing "work" as a synonym for "employment"); Webster's Collegiate Dictionary 329 (3d ed. 1916) (same); Black's Law Dictionary 422 (2d ed. 1910) ("an engagement or rendering services" for oneself or another); 3 Oxford English Dictionary 130 (1933) ("[t]hat on which (one) is employed; business; occupation; a special errand or commission").

[2] See, *e.g.*, *Watkins* v. *Sedberry*, 261 U. S. 571, 575 (1923) (agreement between trustee and attorney to recover bankrupt's property); *Owen* v. *Dudley & Michener*, 217 U. S. 488, 494 (1910) (agreement between Indian tribe and attorneys to pursue claims).

[3] See, *e.g.*, *Lindsay* v. *McCaslin (Two Cases)*, 123 Me. 197, 200, 122 A. 412, 413 (1923) ("When the contract of employment has been reduced to writing, the question whether the person employed was an independent contractor or merely a servant is determined by the court as a matter of law"); *Tankersley* v. *Webster*, 116 Okla. 208, 210, 243 P.

utes too.[5] We see here no evidence that a "contract of employment" necessarily signaled a formal employer-employee or master-servant relationship.

More confirmation yet comes from a neighboring term in the statutory text. Recall that the Act excludes from its coverage "contracts of employment of . . . any . . . class of *workers* engaged in foreign or interstate commerce." 9 U. S. C. §1 (emphasis added). Notice Congress didn't use the word "employees" or "servants," the natural choices if

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745, 747 (1925) ("[T]he contract of employment between Tankersley and Casey was admitted in evidence without objections, and we think conclusively shows that Casey was an independent contractor"); *Waldron* v. *Garland Pocahontas Coal Co.*, 89 W. Va. 426, 427, 109 S. E. 729 (1921) (syllabus) ("Whether a person performing work for another is an independent contractor depends upon a consideration of the contract of employment, the nature of the business, the circumstances under which the contract was made and the work was done"); see also App. to Brief for Respondent 1a–12a (citing additional examples).

[4] See, *e.g.*, Act of Mar. 19, 1924, ch. 70, §5, 43 Stat. 28 (limiting payment of fees to attorneys "employed" by the Cherokee Tribe to litigate claims against the United States to those "stipulated in the contract of employment"); Act of June 7, 1924, ch. 300, §§2, 5, 43 Stat. 537–538 (providing same for Choctaw and Chickasaw Tribes); Act of Aug. 24, 1921, ch. 89, 42 Stat. 192 (providing that no funds may be used to compensate "any attorney, regular or special, for the United States Shipping Board or the United States Shipping Board Emergency Fleet Corporation unless the contract of employment has been approved by the Attorney General of the United States"). See also App. to Brief for Respondent 13a (citing additional examples).

[5] See, *e.g.*, Act of Mar. 10, 1909, ch. 70, §1, 1909 Kan. Sess. Laws p. 121 (referring to "contracts of employment of auditors, accountants, engineers, attorneys, counselors and architects for any special purpose"); Act of Mar. 4, 1909, ch. 4, §4, 1909 Okla. Sess. Laws p. 118 ("Should the amount of the attorney's fee be agreed upon in the contract of employment, then such attorney's lien and cause of action against such adverse party shall be for the amount so agreed upon"); Act of Mar. 4, 1924, ch. 88, §1, 1924 Va. Acts ch. 91 (allowing extension of "contracts of employment" between the state and contractors with respect to the labor of prisoners); App. to Brief for Respondent 14a–15a (citing additional examples).

the term "contracts of employment" addressed them alone. Instead, Congress spoke of "workers," a term that everyone agrees easily embraces independent contractors. That word choice may not mean everything, but it does supply further evidence still that Congress used the term "contracts of employment" in a broad sense to capture any contract for the performance of *work* by *workers*.

B

What does New Prime have to say about the case building against it? Mainly, it seeks to shift the debate from the term "contracts of employment" to the word "employee." Today, the company emphasizes, the law often distinguishes between employees and independent contractors. Employees are generally understood as those who work "in the service of another person (the employer) under an express or implied contract of hire, under which the employer has the right to control the details of work performance." Black's Law Dictionary, at 639. Meanwhile, independent contractors are sometimes described as those "entrusted to undertake a specific project but who [are] left free to do the assigned work and to choose the method for accomplishing it." *Id.*, at 888. New Prime argues that, by 1925, the words "employee" and "independent contractor" had already assumed these distinct meanings.[6] And given that, the company contends, the phrase "contracts of *employment*" should be understood to refer only to relationships between *employers and employees*.

Unsurprisingly, Mr. Oliveira disagrees. He replies that, while the term "employment" dates back many centuries, the word "employee" only made its first appearance in English in the 1800s. See Oxford English Dictionary (3d ed., Mar. 2014), www.oed.com/view/Entry/61374 (all In-

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[6] See, *e.g.*, *Atlantic Transp. Co.* v. *Coneys*, 82 F. 177, 178 (CA2 1897); *Nyback* v. *Champagne Lumber Co.*, 109 F. 732, 741 (CA7 1901).

ternet materials as last visited Jan. 9, 2019). At that time, the word from which it derived, "employ," simply meant to "apply (a thing) to some definite purpose." 3 J. Murray, A New English Dictionary on Historical Principles 129 (1891). And even in 1910, Black's Law Dictionary reported that the term "employee" had only "become somewhat naturalized in our language." Black's Law Dictionary 421 (2d ed. 1910).

Still, the parties do share some common ground. They agree that the word "employee" eventually came into wide circulation and came to denote those who work for a wage at the direction of another. They agree, too, that all this came to pass in part because the word "employee" didn't suffer from the same "historical baggage" of the older common law term "servant," and because it proved useful when drafting legislation to regulate burgeoning industries and their labor forces in the early 20th century.[7] The parties even agree that the development of the term "employee" may have come to influence and narrow our understanding of the word "employment" in comparatively recent years and may be why today it might signify to some a "relationship between master and servant."[8]

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[7] See Carlson, Why the Law Still Can't Tell an Employee When It Sees One and How It Ought To Stop Trying, 22 Berkeley J. Emp. & Lab. L. 295, 309 (2001) (discussing the "historical baggage" of the term "servant"); Broden, General Rules Determining the Employment Relationship Under Social Security Laws: After Twenty Years an Unsolved Problem, 33 Temp. L. Q. 307, 327 (1960) (describing use of the term "employer-employee," in contradistinction to "master-servant," in the Social Security laws). Legislators searched to find a term that fully encompassed the broad protections they sought to provide and considered an "assortment of vague and uncertain terms," including "'servant,' . . . 'employee,' . . . 'workman,' 'laborer,' 'wage earner,' 'operative,' or 'hireling.'" Carlson, 22 Berkeley J. Emp. & Lab. L., at 308. Eventually "'employee' prevailed, if only by default, and the choice was confirmed by the next wave of protective legislation—workers' compensation laws in the early years of the Twentieth Century." *Id.*, at 309.

[8] Black's Law Dictionary 641 (10th ed. 2014); see also P. Durkin, Re-

But if the parties' extended etymological debate persuades us of anything, it is that care is called for. The words "employee" and "employment" may share a common root and an intertwined history. But they also developed at different times and in at least some different ways. The only question in this case concerns the meaning of the term "contracts of *employment*" in 1925. And, whatever the word "employee" may have meant at that time, and however it may have later influenced the meaning of "employment," the evidence before us remains that, as dominantly understood in 1925, a contract of *employment* did not necessarily imply the existence of an employer-employee or master-servant relationship.

When New Prime finally turns its attention to the term in dispute, it directs us to *Coppage* v. *Kansas*, 236 U. S. 1, 13 (1915). There and in other cases like it, New Prime notes, courts sometimes used the phrase "contracts of employment" to describe what today we'd recognize as agreements between employers and employees. But this proves little. No one doubts that employer-employee agreements to perform work qualified as "contracts of employment" in 1925—and documenting that fact does nothing to negate the possibility that "contracts of employment" *also* embraced agreements by independent contractors to perform work. Coming a bit closer to the mark, New Prime eventually cites a handful of early 20th-century legal materials that seem to use the term "contracts of employment" to refer *exclusively* to employer-employee agreements.[9] But from the record amassed

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lease Notes: The Changes in Empathy, Employ, and Empire (Mar. 13, 2014) ("Over time" the meaning of several employ-related words have "reflect[ed] changes in the world of work" and their meaning "shows an increasingly marked narrowing"), online at https://public.oed.com/blog/march-2014-update-release-notes/.

[9] See, *e.g.*, 1 T. Conyngton, Business Law: A Working Manual of Every-day Law 302–303 (2d ed. 1920); *Newland* v. *Bear*, 218 App. Div.

before us, these authorities appear to represent at most the vanguard, not the main body, of contemporaneous usage.

New Prime's effort to explain away the statute's suggestive use of the term "worker" proves no more compelling. The company reminds us that the statute excludes "contracts of employment" for "seamen" and "railroad employees" as well as other transportation workers. And because "seamen" and "railroad employees" included *only* employees in 1925, the company reasons, we should understand "any other class of workers engaged in . . . interstate commerce" to bear a similar construction. But this argument rests on a precarious premise. At the time of the Act's passage, shipboard surgeons who tended injured sailors were considered "seamen" though they likely served in an independent contractor capacity.[10] Even the term "railroad employees" may have swept more broadly at the time of the Act's passage than might seem obvious today. In 1922, for example, the Railroad Labor Board interpreted the word "employee" in the Transportation Act of 1920 to refer to anyone "engaged in the customary work directly contributory to the operation of the railroads."[11] And the Erdman Act, a statute enacted to address disruptive railroad strikes at the end of the 19th century, seems to evince an equally broad understanding of "railroad

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308, 309, 218 N. Y. S. 81, 81–82 (1926); *Anderson* v. *State Indus. Accident Comm'n*, 107 Ore. 304, 311–312, 215 P. 582, 583, 585 (1923); N. Dosker, Manual of Compensation Law: State and Federal 8 (1917).

[10] See, *e.g.*, *The Sea Lark*, 14 F. 2d 201 (WD Wash. 1926); *The Buena Ventura*, 243 F. 797, 799 (SDNY 1916); *Holt* v. *Cummings*, 102 Pa. 212, 215 (1883); *Allan* v. *State S. S. Co.*, 132 N. Y. 91, 99, 30 N. E. 482, 485 (1892) ("The work which the physician does after the vessel starts on the voyage is his and not the ship owner's").

[11] Transportation Act of 1920, §§304, 307, 41 Stat. 456; *Railway Employees' Dept., A. F. of L.* v. *Indiana Harbor Belt R. Co.*, Decision No. 982, 3 R. L. B. 332, 337 (1922).

employees."[12]

Unable to squeeze more from the statute's text, New Prime is left to appeal to its policy. This Court has said that Congress adopted the Arbitration Act in an effort to counteract judicial hostility to arbitration and establish "a liberal federal policy favoring arbitration agreements." *Moses H. Cone Memorial Hospital* v. *Mercury Constr. Corp.*, 460 U. S. 1, 24 (1983). To abide that policy, New Prime suggests, we must order arbitration according to the terms of the parties' agreement. But often and by design it is "hard-fought compromise[]," not cold logic, that supplies the solvent needed for a bill to survive the legislative process. *Board of Governors*, *FRS* v. *Dimension Financial Corp.*, 474 U. S. 361, 374 (1986). If courts felt free to pave over bumpy statutory texts in the name of more expeditiously advancing a policy goal, we would risk failing to "tak[e] . . . account of" legislative compromises essential to a law's passage and, in that way, thwart rather than honor "the effectuation of congressional intent." *Ibid.* By respecting the qualifications of §1 today, we "respect the limits up to which Congress was prepared" to go when adopting the Arbitration Act. *United States* v. *Sisson*, 399 U. S. 267, 298 (1970).

Finally, and stretching in a different direction entirely, New Prime invites us to look beyond the Act. Even if the statute doesn't supply judges with the power to compel arbitration in this case, the company says we should order it anyway because courts always enjoy the inherent au-

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[12] The Act provided for arbitration between railroads and workers, and defined "employees" as "all persons actually engaged in any capacity in train operation or train service of any description." Act of June 1, 1898, ch. 370, 30 Stat. 424. The Act also specified that the railroads would "be responsible for the acts and defaults of such employees in the same manner and to the same extent as if . . . said employees [were] directly employed by it." *Id.*, at 425. See Dempsey, Transportation: A Legal History, 30 Transp. L. J. 235, 273 (2003).

thority to stay litigation in favor of an alternative dispute resolution mechanism of the parties' choosing. That, though, is an argument we decline to tangle with. The courts below did not address it and we granted certiorari only to resolve existing confusion about the application of the Arbitration Act, not to explore other potential avenues for reaching a destination it does not.

*

When Congress enacted the Arbitration Act in 1925, the term "contracts of employment" referred to agreements to perform work. No less than those who came before him, Mr. Oliveira is entitled to the benefit of that same understanding today. Accordingly, his agreement with New Prime falls within §1's exception, the court of appeals was correct that it lacked authority under the Act to order arbitration, and the judgment is

Affirmed.

JUSTICE KAVANAUGH took no part in the consideration or decision of this case.

SUPREME COURT OF THE UNITED STATES

No. 17–340

NEW PRIME INC., PETITIONER *v.*
DOMINIC OLIVEIRA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

[January 15, 2019]

JUSTICE GINSBURG, concurring.

"[W]ords generally should be 'interpreted as taking their ordinary . . . meaning . . . at the time Congress enacted the statute.'" *Ante*, at 6 (quoting *Wisconsin Central Ltd.* v. *United States*, 585 U. S. ___, ___ (2018) (slip op., at 9)). The Court so reaffirms, and I agree. Looking to the period of enactment to gauge statutory meaning ordinarily fosters fidelity to the "regime . . . Congress established." *MCI Telecommunications Corp.* v. *American Telephone & Telegraph Co.*, 512 U. S. 218, 234 (1994).

Congress, however, may design legislation to govern changing times and circumstances. See, *e.g.*, *Kimble* v. *Marvel Entertainment, LLC*, 576 U. S. ___, ___ (2015) (slip op., at 14) ("Congress . . . intended [the Sherman Antitrust Act's] reference to 'restraint of trade' to have 'changing content,' and authorized courts to oversee the term's 'dynamic potential.'" (quoting *Business Electronics Corp.* v. *Sharp Electronics Corp.*, 485 U. S. 717, 731–732 (1988))); *SEC* v. *Zandford*, 535 U. S. 813, 819 (2002) (In enacting the Securities Exchange Act, "Congress sought to substitute a philosophy of full disclosure for the philosophy of *caveat emptor* . . . . Consequently, . . . the statute should be construed not technically and restrictively, but flexibly to effectuate its remedial purposes." (internal quotation marks and paragraph break omitted)); *H. J. Inc.* v.

Northwestern Bell Telephone Co., 492 U. S. 229, 243 (1989) ("The limits of the relationship and continuity concepts that combine to define a [Racketeer Influenced and Corrupt Organizations] pattern . . . cannot be fixed in advance with such clarity that it will always be apparent whether in a particular case a 'pattern of racketeering activity' exists. The development of these concepts must await future cases . . . ."). As these illustrations suggest, sometimes, "[w]ords in statutes can enlarge or contract their scope as other changes, in law or in the world, require their application to new instances or make old applications anachronistic." *West* v. *Gibson*, 527 U. S. 212, 218 (1999).

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-14546

D.C. Docket No. 8:16-cv-00410-CEH-TBM

MARK A. SACCULLO,
as Successor Trustee of the Anthony L.
Saccullo Irrevocable Trust for the benefit
of Mark A. Saccullo,

Plaintiff-Counter Defendant-Appellant,

DOROTHY A. SACCULLO,

Counter Defendant-Appellant,

TAX COLLECTOR OF CHARLOTTE
COUNTY, FLORIDA,

Counter Defendant,

versus

UNITED STATES OF AMERICA,

Defendant-Counter Claimant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

(January 11, 2019)

Before MARCUS, NEWSOM, and ANDERSON, Circuit Judges.

NEWSOM, Circuit Judge:

One relic of the English legal tradition holds that, as a general matter, the sovereign (here, the United States) is not bound by statutes of limitation or subject to laches. The question before us is how this vestigial rule—*nullum tempus occurrit regi*, or, as the parties here call it, the "*Summerlin*" principle, after *United States v. Summerlin*, 310 U.S. 414, 416 (1940)—interacts with a Florida law designed to correct technical flaws in property-conveyance deeds.

At issue in this case is whether Fla. Stat. § 95.231, which operates to cure certain defective deeds after the passage of five years, applies to a parcel on which the United States has asserted a federal estate-tax lien. Here's the (very) short story: In 1998, the appellant's aging father executed a deed conveying property to a trust created for the appellant's benefit—but unfortunately, failed to procure a second witness, as Florida law requires. Following the appellant's father's death in 2005, the United States assessed an estate tax on the property—which it said remained in the estate despite the attempted conveyance—and, when the tax remained unpaid, imposed a series of liens. The question here is whether *Summerlin* forestalls enforcement of § 95.231's five-year-cure provision to defeat the United States' estate-tax claim. We hold that it does not. Section 95.231 cured the deed in question, thereby effectuating the intended conveyance and transferring

the property out of the father's estate, well before the United States' claim could have vested. The Florida statute, therefore, didn't cut off a preexisting claim in a way that might offend *Summerlin*; rather, it simply—and validly—prevented that claim from coming into being in the first place.

I

A

Mark Saccullo has lived on the property at issue here, the site of his childhood home, since 1991. In 1998, Mark's father Anthony, who owned what we'll call "the Property" in fee simple, executed a deed that purported to convey it to the "Anthony L. Saccullo Irrevocable Trust for the benefit of Mark A. Saccullo." For the most part, the deed conformed to the necessary formalities, and it was properly notarized and recorded in December 1998. There was just one glitch: the deed bore the signature of only one witness, not the two required by Fla. Stat. § 689.01. That failure effectively negated the conveyance—at least for the time being, but more on that later—and despite the deed, Anthony retained title to the Property.

When Anthony died in December 2005, Mark became the trustee of his father's irrevocable trust. Mark filed an estate-tax return and—mistakenly it now seems—included the Property among the estate's assets. In 2007, the IRS assessed an estate tax of almost $1.4 million, apparently under the impression that the estate

still owned the Property. Shortly thereafter, Mark, acting in his capacity as trustee, conveyed the Property via quitclaim deed to himself and his wife.

Because the estate-tax liability remained delinquent, the government filed two tax-lien notices with Charlotte County, Florida—one against the estate in 2012, and another against the Property in 2015. The IRS later administratively seized the Property and unsuccessfully sought to sell it, as the estate-tax liability increased to $1.6 million.

B

After the administrative seizure, Mark filed a quiet-title action in the United States District Court for the Middle District of Florida, contending that the liens didn't cover the Property because it was (in fact) not part of his father's estate when he died.[1] The government counterclaimed, seeking to foreclose on its liens.

The government subsequently moved for summary judgment on its counterclaim arguing, as relevant here, that the Property remained in Anthony's estate, and was thus "subject to [the government's] tax lien" because, as explained above, "the 1998 deed was not properly witnessed."[2] In opposing the

[1] Federal question jurisdiction arises under 28 U.S.C. § 2410, which provides that district courts may hear quiet-title actions concerning property on which the United States has a lien.

[2] The government also argued that the deed was void because it failed to properly identify a grantee. The district court rejected that argument, and the government does not repeat it here.

government's motion, Mark relied on Fla. Stat. § 95.231, which, in relevant part, states that

> [f]ive years after the recording of an instrument required to be executed in accordance with s. 689.01 . . . from which it appears that the person owning the property attempted to convey [the property], . . . the instrument . . . shall be held to have its purported effect to convey [the property] . . . as if there had been no lack of . . . witness or witnesses . . . in the absence of fraud, adverse possession, or pending litigation.

Fla. Stat. § 95.231(1). By dint of that provision, Mark said, "the deed would have had any defects cured . . . by operation of law" in December 2003, five years after the deed's initial recording.

The district court granted the government's summary-judgment motion, holding that despite § 95.231(1) the Property remained in the estate and that the IRS could therefore foreclose on its liens. First, the court concluded that § 95.231(1) did not create good title in the trust because the deed's missing second witness was not among the technical defects that the statute operates to cure. Second, and in any event, the court held that § 95.231(1) is essentially a statute of limitations, which, under *Summerlin*, does not bind the United States. Accordingly, the district court ordered foreclosure and sale of the Property and required Mark to vacate within 30 days.

This appeal followed.[3] Although we initially denied Mark's motion to stay the order of sale pending our review, we later granted his renewed stay motion and directed the parties to submit supplemental briefing on the question whether Fla. Stat. § 95.231 "is an ordinary statute of limitations that should be subject to the rule set forth in *United States v. Summerlin*, 310 U.S. 414 (1940)."

II

Before diving too deeply into *Summerlin*, we need to establish a state-law baseline: As a matter of Florida property law, who owned what, and when? To answer that question, we look first to the text of § 95.231. Again, in relevant part, that statute provides that, absent exceptions that don't apply here, "[f]ive years after the recording of an instrument required to be executed in accordance with s. 689.01 . . . from which it appears that the person owning the property attempted to convey [the property], . . . the instrument . . . shall be held to have its purported effect to convey [the property] . . . as if there had been no lack of . . . witness or witnesses." Fla. Stat. § 95.231(1). The statute goes on, in a separate section, to state that "no person shall assert any claim to the property against the claimants under the deed or will or their successors in title" after 20 years. *Id.* § 95.231(2).

[3] Because this appeal comes to us on summary judgment, we review the district court's decision *de novo*. *United States v. Spoor Tr. Of Louise Paxton Gallagher Revocable Tr.*, 838 F.3d 1197, 1201 (11th Cir. 2016).

Section 95.231's second clause—which cuts off claims after 20 years—plainly falls within *Summerlin*'s ambit, as it is "clearly a limitations statute." *Earp & Shriver, Inc. v. Earp*, 466 So. 2d 1225, 1227 (Fla. 2d Dist. Ct. App. 1985). But this case isn't about the second clause—we are, after all, just now passing the 20-year mark following the 1998 deed's initial recording. Rather, this case turns on the statute's first clause, which, when read in conjunction with the second, makes clear that § 95.231 "is not a traditional statute of limitation but is a curative act with a limitation provision." *Holland v. Hattaway*, 438 So. 2d 456, 461 (Fla. 5th Dist. Ct. App. 1983). The question we must answer is whether *Summerlin* nonetheless applies.

A

First, a threshold issue: Setting aside the United States' involvement—and for the moment, *Summerlin*—is the witness-related defect here the kind of technicality that § 95.231(1) operates to rectify? The district court held that it isn't. The court reasoned that the statute "cannot be used to create title where none existed" and that the absence of the prescribed number of witnesses rendered the deed statutorily incurable.

That is incorrect, as both parties agree. In its brief to us, the government concedes that "the absence of a required witness signature" did not "invalidate[] the 1998 deed beyond the reach of [the] statute." Section 95.231(1) expressly

states that after the requisite five-year period a recorded deed "shall be held to have its purported effect" despite the "lack of . . . witness or witnesses." Thus, at least in the ordinary case, a missing witness is precisely the kind of defect that the statute was designed to cure.

B

The parties' agreement ends there. They diverge over § 95.231(1)'s operation—in particular when, and how, the statute cures defective deeds. The dispute here turns on § 95.231(1)'s statement that an otherwise-defective deed "shall be held to have its purported effect" five years after it is recorded—and, in particular, how to understand the phrase "shall be held." Fla. Stat. § 95.231(1). Mark contends that the statute's curative properties are automatic and self-executing—and, therefore, that the once-defective 1998 deed was rendered "valid by operation of state law in 2003," five years after the deed was originally recorded. The government, in contrast, asserts that under § 95.231(1)'s language a valid cure requires some form of formal adjudication—either judicial or administrative—before marketable title transfers. As the government put the matter at oral argument, the term "'held' requires a holding." Oral Argument at 13:23.

Both readings are plausible. It's true, as the government asserts, that the "shall be held" language could be understood to supply a rule of decision for an

adjudicative proceeding, such that the phrase indeed "requires a holding." According to one dictionary definition, for instance, "hold" means "to decide in a judicial ruling," as in "the court held that the man was sane." *Webster's Third New International Dictionary* 1078 (2002). But the word "held" is not only, or even principally, court jargon. "[S]hall be held" could just as sensibly be construed to mean something like "shall be considered"—to take just one fairly prominent example, "We hold these truths to be self-evident . . . ." And indeed, the same dictionary that supplies a court-related definition also—and in fact beforehand—defines "hold" to mean "consider, regard, think, judge"—as in "held by many to be the greatest contemporary tennis player." *Id.* *See also*, *e.g.*, *Oxford English Dictionary Online*, http://www.oed.com (Dec. 28, 2018) (in relevant part, defining "hold" to mean, first, "[t]o accept and entertain as true [or] to believe" or "[t]o think, consider, esteem, regard as," and, alternatively, to mean "[o]f a judge or court: [t]o state as an authoritative opinion [or] to law down as a point of law [or] decide").

Happily, it's not up to us to pick and choose between these competing constructions of § 95.231(1). We are bound by the Florida courts' interpretation of Florida law, *see*, *e.g.*, *Bradshaw v. Richey*, 546 U.S. 74, 76 (2005), and although the Florida Supreme Court hasn't squarely addressed the specific question before us, the clear weight of Florida authority favors the held-as-"considered" reading.

Earp & Shriver v. Earp, for instance, involved an appeal from a judgment "declaring void a deed for"—as here—"lack of subscribing witnesses." 466 So. 2d at 1226. The Second DCA reversed, holding—without qualification or intimation that anything further was required—that "[a]fter the requisite passage of time, the statute cured the deficiency in subscribing witnesses." *Id.* at 1227. *Glanville v. Glanville*, 856 So. 2d 1045 (Fla. 5th Dist. Ct. App. 2003), is to the same effect. There, when a grantor sought to invalidate a deed on the ground that it was not properly witnessed and acknowledged, the grantee raised § 95.231(1) as an affirmative defense. Citing *Earp* with approval, the Fifth DCA held that "the statute bar[red] the claim" because the suit "was filed more than five years after the deed was recorded." *Id.* at 1047. Taken together, these cases show that, after five years, the statute not only shields a once-defective deed from judicial attack, but also—of its own force—affirmatively mends it back to health.

We hold, then, that Mark didn't have to go to court to enforce § 95.231(1)'s curative provision. Instead, the deed was "held"—as in considered—"to have its purported effect" by operation of law in December 2003, five years after it was initially recorded.

III

So where does that leave us vis-à-vis *Summerlin*? Under *Summerlin*, "[w]hen the United States becomes entitled to a claim, acting in its governmental

capacity and asserts its claim in that right, it cannot be deemed to have abdicated its governmental authority so as to become subject to a state statute putting a time limit upon enforcement." *Summerlin*, 310 U.S. at 417. Put slightly differently, when a statute of limitations "invalidate[s a] claim of the United States, so that it cannot be enforced at all," the time bar—as against the government, anyway—is unenforceable. *Id*. In the sections that follow, we first review the doctrine and underlying policy of the *Summerlin* rule, and then determine whether the rule applies in this case.

A

As noted at the outset, the so-called *Summerlin* rule dates to well before the *Summerlin* decision itself. Riding circuit in an early case, Justice Joseph Story invoked the rule and, for support, cited English cases and commentaries stretching back to the 1200s. *See United States v. Hoar*, 26 F. Cas. 329, 330 (C.C.D. Mass. 1821). The "centuries"-old *nullum tempus* principle, he observed, sprang from the concern that the "king is always busied for the public good, and, therefore, has not leisure to assert his right within the times limited to subjects." *Id*. So too in the young Republic, Story continued, there was a "great public policy of preserving the public rights, revenues, and property from injury and loss, by the negligence of public officers." *Id*. The Supreme Court later agreed, acknowledging that *nullum tempus* survived the Revolution and the founding and inured to the United States as

an "incident[] of . . . sovereignty." *United States v. Thompson*, 98 U.S. 486, 489 (1878).

Over time, courts have made clear that *nullum tempus* provides a hedge against, well, bad government. In particular, the rule is founded on the concern that the public suffers when the government sleeps on its rights. *See United States v. Delgado*, 321 F.3d 1338, 1349 (11th Cir. 2003) ("This principle protects public rights vested in the government for the benefit of all from the inadvertence of the agents upon which the government must necessarily rely.") (quotations omitted). Thus, whereas individual citizens can be penalized for inattentiveness in enforcing their rights, the United States cannot be. *See, e.g.*, *Guaranty Trust Co. of N.Y. v. United States*, 304 U.S. 126, 132 (1938) ("Regardless of the form of government and independently of the royal prerogative once thought sufficient to justify it, the rule is supportable now because its benefit and advantage extend to every citizen, including the defendant, whose plea of laches or limitation it precludes.").

Importantly here, the *Summerlin* principle has its limits. In *Guaranty Trust*, for example, the Supreme Court held that the *nullum tempus* rule is inapplicable where the United States has not "acquired a right free of a pre-existing infirmity." 304 U.S. at 142 (citing *United States v. Buford*, 28 U.S. 12, 29 (1830)). There, for instance, because the relevant limitations period had expired *before* the United States acquired the claim it sought to enforce, *nullum tempus* did not apply. *See*

id.; *see also United States v. California*, 507 U.S. 746, 757–58 (1993) (applying similar logic in a subrogation claim and holding that "*Summerlin* is clearly distinguishable"). As the Ninth Circuit nicely summarized matters in *Bresson v. Commissioner*, "[t]aken together, *Summerlin* and *Guaranty Trust* suggest two countervailing principles." 213 F.3d 1173, 1176 (9th Cir. 2000). "On the one hand," the court explained, "if the United States comes into possession of a valid claim, that claim cannot be 'cut off' later by a state statute of limitations." *Id*. But "[o]n the other hand, if a claim *already has become infirm* (for example, when a limitations period expires) by the time the United States acquires the purported right, the rule of *Summerlin* will not operate to revive the claim." *Id*. In short, the *Summerlin* principle can't create rights that do not otherwise exist.

B

What, then, of this case? Does *Summerlin* forestall the operation of § 95.231(1) or not? Because, following Florida's lead, we have held that the statute is self-executing, the question admits of an easy answer. We hold that *Summerlin* is inapplicable here because, by operation of § 95.231(1), the Property dropped out of the estate in December 2003, five years after the deed was originally recorded—and, importantly, roughly two years before Anthony died, and thus before any claim asserted by the United States could have accrued.

As already explained, the *Summerlin* principle applies only "[w]hen the United States becomes entitled to a claim." *Summerlin*, 310 U.S. at 417. If a valid claim never materializes—or, as in *Guaranty Trust*, comes with a "pre-existing infirmity"—then *Summerlin* doesn't come into play. 304 U.S. at 142. Just so here. The United States' claim to Anthony's estate accrued, at the earliest, when he died in December 2005. But by operation of § 95.231(1), Mark had acquired good title to the Property two years earlier, in December 2003—five years after the defective deed was recorded. Accordingly, we do not have here "a situation in which a valid cause of action had accrued to the United States only to perish later through the passage of time." *Bresson*, 213 F.3d at 1178. Rather, § 95.231(1) prevented the Property from becoming part of the United States' "claim" in the first place.

Not only is this case not within the letter of the *Summerlin* rule, it is not within its spirit, either. This isn't a situation in which the United States missed out on a claim because some government employee was asleep at the switch and negligently let a clock run out. Because Mark's father didn't die until 2005, no amount of diligence on the part of the IRS could have made it possible for the government to acquire a valid estate-tax claim before the deed was statutorily cured in 2003. As in *Guaranty Trust*, "the circumstances of the present case admit of no appeal" to *Summerlin*'s policy underpinnings, because "[t]here has been no

neglect or delay by the United States or its agents, and it has lost no rights by any lapse of time." 304 U.S. at 141.

IV

In sum, we hold that Fla. Stat. § 95.231(1) cured the deed by operation of law in December 2003, that the Property was at that point validly transferred to the trust, and that *Summerlin* is inapplicable here because by the time the United States asserted its tax lien the Property no longer remained in the estate. We therefore reverse the district court's entry of summary judgment on the United States' foreclosure claim as to the Property and remand for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

1385 STARKEY, LLC, Appellant, v. SUPERIOR FENCE & RAIL OF PINELLAS COUNTY, INC., Appellee.	)	Case No. 2D15-5579

Opinion filed January 18, 2019.

Appeal from the Circuit Court for Pinellas County; Bruce Boyer, Judge.

Thomas C. Jennings III of Repka & Jennings, P.A., Clearwater, for Appellant.

Christopher L. Johnson, Oviedo, for Appellee.

PER CURIAM.

1385 Starkey, LLC (Starkey), seeks review of a final judgment awarding Superior Fence and Rail of Pinellas County, Inc. (Superior Fence), damages for civil theft. The final judgment was entered after the trial court prohibited Starkey from participating in the trial of this action because Starkey had been administratively dissolved. We reverse because the trial court erred in denying Starkey's motion to continue the trial in order for Starkey to reinstate itself as an active entity.

Superior Fence filed suit against Starkey, an active Florida limited liability company, in 2009. In 2010, Superior Fence filed its second amended complaint, which is the operative complaint, asserting claims of civil theft, replevin, and conversion. In response, Starkey filed a counterclaim and third-party complaint. The trial court scheduled a pretrial conference for Monday, October 26, 2015, and scheduled a bench trial for November 3, 2015. The order setting trial provided that all motions except motions in limine were to be filed and heard before the pretrial conference absent good cause.

Despite this language, Superior Fence filed a motion to dismiss Starkey's counterclaim and third-party complaint on October 23, 2015—the Friday afternoon before the Monday morning pretrial conference. The basis for the motion was that in 2013 Starkey had been administratively dissolved as an entity by the Florida Department of State and that under chapter 605, Florida Statutes (2015), Starkey was prohibited from prosecuting or defending the action. At the same time, Superior Fence filed a motion asking the court to take judicial notice of a document from the Department of State that showed Starkey's dissolution was for failure to file an annual report. The record does not reflect any reason why the motions had not been filed at an earlier date in order to be heard prior to the pretrial conference.

Although we do not have a transcript of the pretrial conference, the motion to dismiss was apparently addressed at that time. The parties dispute whether the trial court denied the motion or deferred ruling on it, and an order was not entered reflecting any ruling on the issue.

At the start of the trial on November 3, 2015, Superior Fence sought to reargue the motion to dismiss. Starkey responded that the trial court had previously denied the motion and argued that the pretrial ruling should stand. In fact, Starkey stated that at the pretrial conference the court had ordered Starkey's counsel to prepare a written order denying the motion, which Starkey had with it and which it proffered to the court. Superior Fence responded that the court had deferred ruling.

The trial court did not directly address the parties' differing recollections as to what had occurred at the pretrial conference. Instead, the court permitted Superior Fence to "renew" its motion and to argue that dismissal was required under section 605.0212(6), Florida Statutes (2015). Starkey maintained that under section 605.0709 it was entitled to fully participate in the case in order to wind up its business and affairs. It indicated that it had not previously reinstated itself because it understood that the court had denied the motion to dismiss at the pretrial conference and that it could proceed to defend itself as part of the winding up process.

The court recessed for twenty-five minutes. When the proceedings resumed, the court asked Starkey if it had anything to add. Starkey reiterated its position that the court had previously denied the motion and, in light of that, expressed surprise that the court was reconsidering the issue. Starkey further argued that if the court was inclined to dismiss the case as to Starkey then a continuance was warranted so that Starkey could take the steps necessary to reinstate itself to active status.

The court stated that it was going to grant Superior Fence's motion and preclude Starkey from participating in the case, either to defend itself or to prosecute its counterclaim and third-party complaint. Starkey renewed its request for a continuance

to give it time to reinstate itself, noting that it was winding up its affairs and should be permitted to participate in the trial. It requested a recess until that afternoon so that it could "correct this matter immediately" and make payment of the requisite funds for reinstatement. The trial court denied this request and proceeded with a bench trial in Starkey's absence. The court ruled in favor of Superior Fence and directed counsel for Superior Fence to submit a proposed final judgment. In the meantime, Starkey took the necessary steps for reinstatement. On November 12, 2015, it filed a certificate from the Department of State reflecting that it had been returned to active status as of November 6, 2015.

Despite this filing, on November 16, 2015, the trial court rendered final judgment in favor of Superior Fence. Starkey filed a motion for new trial and a motion for rehearing and for relief from judgment on November 19, 2015, citing its reinstatement along with section 605.0715, which provides that reinstatement will relate back and take effect as of the date of the administrative dissolution and that the company "may resume its activities and affairs as if the administrative dissolution had not occurred." § 605.0715(4)(b). The trial court denied the motions without a hearing. This appeal followed.

The parties cite to differing statutory sections to argue their respective positions as to whether Starkey was entitled to participate in the litigation after it was administratively dissolved for failure to file its annual report. They also cite and attempt to harmonize two seemingly inconsistent cases from this court dealing with analogous statutes addressing dissolved corporations. See Trans Health Mgmt., Inc. v. Nunziata, 159 So. 3d 850 (Fla. 2d DCA 2014); PBF of Fort Myers, Inc. v. D&K P'ship, 890 So. 2d

384 (Fla. 2d DCA 2004). We decline to address whether their attempt at harmonization is correct (or the threshold question of whether the cases are indeed inconsistent) because regardless, under the circumstances here, we conclude that the trial court abused its discretion in denying Starkey's motion to continue in order that it could reinstate itself as an active entity.

This court has previously recognized that "in certain circumstances, the denial [of a motion to continue] may create an injustice which outweighs the policy of not disturbing the trial court's ruling." Ramadon v. Ramadon, 216 So. 3d 26, 29 (Fla. 2d DCA 2017) (alteration in original) (quoting Fasig v. Fasig, 830 So. 2d 839, 841 (Fla. 2d DCA 2002)). In this case, the trial court's decision to deny Starkey's motion for a continuance occurred after the court allowed Superior Fence to reargue its motion to dismiss on the morning of the trial. Had the court permitted Starkey to reinstate itself to active status prior to the beginning of trial, the effect of reinstatement would have been to make it as if the dissolution had never occurred. See § 605.0715(4). In summary, the trial court should have granted Starkey's request for a brief continuance on the morning of trial to allow Starkey the opportunity to reinstate itself so that Starkey would have been able to fully participate in the trial rather than suffer a judgment from an uncontested trial. See id.; see also Chakra 5, Inc. v. City of Miami Beach, 254 So. 3d 1056, 1062-63 (Fla. 3d DCA 2018) ("[W]hen the issue of an entity's status with the Florida Secretary of State is raised, the appropriate course by a trial court is to abate the action for a brief period of time to permit compliance with the statute; only after a failure to comply within a reasonable time may sanctions such as dismissal be considered.").

Based on the uncertainty as to the trial court's ruling at the pretrial conference and the court's decision precluding Starkey's participation in the trial after denying its request for a brief continuance in order to reinstate itself as an active entity, we reverse the final judgment and remand for further proceedings.

Reversed and remanded.

SILBERMAN, VILLANTI, and ROTHSTEIN-YOUAKIM, JJ., Concur.

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

JOHN HAGGIN,
Appellant,

v.

ALLSTATE INVESTMENTS, INC., a Florida corporation,
and **ANN Z. KING,**
Appellees.

No. 4D18-568

[January 16, 2019]

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Lisa S. Small, Judge; L.T. Case No. 502012CA021136XXXXMB.

Chris Alan Draper of Greenspoon Marder, LLP, West Palm Beach, for appellant.

Steven M. Selz of Selz & Muvdi Selz, P.A., Jupiter, for appellee Allstate Investments, Inc.

LEVINE, J.

In 1998, appellant signed a lease guaranty for a 1,400 square foot space in a shopping center for monthly rent of $1,174. Over time, the space for the lease between the landlord and tenant increased to 2,720 square feet with monthly rent of $5,428. In 2012, the landlord sued the tenant and appellant, as guarantor. The landlord claims that the lease signed by appellant in 1998 included a "continuing guaranty." Furthermore, the landlord relies on appellant's own deposition testimony to support the claim that the guaranty was valid. Appellant claims that the guaranty applied only to the term of the lease and a single option to renew for three years.

We find that the plain language of the lease governs. The guaranty refers to the lease, which has a term of three years with "an option to renew this Lease for one (1) additional three (3) year term." The guaranty was limited to the term of the lease and its solitary three-year option to renew. Thus, the guaranty was not a continuing guaranty. We therefore reverse

the trial court's granting of summary judgment for the landlord and find for appellant.

In 1998, the tenant entered into an agreement with the landlord for a three-year term. An addendum executed the same day as the lease stated:

> Landlord grants to Tenant an option to renew this Lease for one (1) additional three (3) year term subject to the following:
>
> . . . .
>
> (e) All other terms and conditions of this Lease shall remain unchanged with the exception of monthly Base Rent which shall be increased during the renewal term of each anniversary of the Commencement Date . . . .

Appellant then signed a lease guaranty to the tenant's lease with the landlord. Appellant signed the guaranty and "agree[d] that this guarantee shall remain for the renewal, modification, extension or waiver of this Lease." Through the years, there were several modifications and amendments to the original lease. In 1999, a modification increased the space rented and increased the rent. In 2001, an amendment extended the option to renew for five years ending in 2006 and increased the amount of rent. In 2006, another amendment extended the option to renew for another three years ending in 2009 and increased the rent. Finally, an amendment in 2008 extended the option to renew until 2014. The 2008 amendment also increased the rent again, topping $5,428 per month in the first year. Appellant did not sign any of these modifications.

In 2012, the landlord sued the tenant and appellant, as guarantor, due to the tenant's failure to pay rent. Appellant and the landlord both filed motions for summary judgment. The landlord argued that the language of the guaranty contemplated modifications, renewals, and extensions of the lease. Further, the landlord relied on appellant's deposition testimony. At one point in his deposition, appellant testified that he thought he signed the guaranty for a "three year lease." Later, when asked if the 2006 modification was covered by the guaranty, appellant said, "It looks like it is covered by the guaranty, sir." The landlord filed an affidavit stating in part that he would not have gone forward with the lease without a continuing guaranty. Appellant also filed an affidavit stating that he was not informed of the lease's modifications.

The trial court granted summary judgment in favor of the landlord. The trial court found that the "language of the guarantee is reasonably

susceptible to differing interpretations and is therefore ambiguous." The trial court relied on appellant's deposition transcript as well as the affidavits from appellant and the landlord to conclude that the guaranty was a continuing guaranty. As a result, the trial court entered a judgment in favor of the landlord for $291,802. This appeal follows.

This court reviews an order granting summary judgment de novo. *Volusia Cty. v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 130 (Fla. 2000). Further, we also review whether a contract is ambiguous as being a question of law. *Soncoast Cmty. Church of Boca Raton, Inc. v. Travis Boating Ctr. of Fla., Inc.*, 981 So. 2d 654, 655 (Fla. 4th DCA 2008).

We start our review by looking at the plain language of the contract. "An agreement is ambiguous if as a whole or by its terms and conditions it can reasonably be interpreted in more than one way." *Nationstar Mortg. Co. v. Levine*, 216 So. 3d 711, 715 (Fla. 4th DCA 2017). As a general rule, only if the contract is ambiguous will the parties' intent become "a question of fact for the fact-finder, precluding summary judgment." *Life Care Ponte Vedra, Inc. v. H.K. Wu*, 162 So. 3d 188, 191-92 (Fla. 5th DCA 2015). However, if the agreement is unambiguous, then the plain language of the contract governs and there is no need for parol evidence of the parties' intent. *See Vocelle & Berg, L.L.P. v. IMG Citrus, Inc.*, 125 So. 3d 843, 844-45 (Fla. 4th DCA 2013).

"Under Florida law, a guaranty for a lease can be continuing, but it must expressly state that it is intended to cover future transactions for the guarantor to be liable for extensions and renewals." *Sheth v. C.C. Altamonte Joint Venture*, 976 So. 2d 85, 87 (Fla. 5th DCA 2008). A guaranty is continuing

> if it contemplates a future course of dealing during an indefinite period, or if it is intended to cover a series of transactions or succession of credits, or if its purpose is to give to the principal-debtor a standing credit to be used by it from time to time. Thus, a continuing guaranty covers all transactions, including those arising in the future, which are within the description of contemplation of the agreement.

Fid. Nat'l Bank of S. Miami v. Melo, 366 So. 2d 1218, 1221 (Fla. 3d DCA 1979).

Does the plain language of the agreement include a continuing guaranty, or does the agreement demonstrate a guaranty applied only to a term-of-years lease with a single, three -year renewal? We conclude that

the lease, and the guaranty signed by appellant, was limited to the original three-year term with "an option to renew this lease for one (1) additional three (3) year term." Thus, appellant's liability as guarantor was restricted to the clear limits on the option to renew as laid out in the agreement and its addenda. Since the language of limitation on options to renew is clear and unambiguous, then the guaranty could not be construed as being a continuing guaranty.

The "renewal, modification, extension or waiver" language in the guaranty does not change this result. Reading the guaranty *in pari materia* with the lease does not alter the fact that the lease applied to a three-year term with a single, three-year renewal. Any "renewal, modification, extension or waiver" would be limited by the parameters of the term of the lease and its option to renew. Because the guaranty referenced this particular lease, the guaranty was limited by the terms of the original lease.

Further, the guaranty did not meet the definition of a continuing guaranty because it did not "expressly state that it is intended to cover future transactions." *See Sheth*, 976 So. 2d at 87. Nor did the guaranty "contemplate[] a future course of dealing during an indefinite period, or . . . cover a series of transactions"; rather, the guaranty operated for the finite period of time delineated in the original lease. *See Melo*, 366 So. 2d at 1221.

Given the clear and unambiguous language of the lease and addenda, there was no need to consider parol evidence as to the parties' intent. Therefore, the trial court erred in considering appellant's deposition and the parties' affidavits to the extent they added anything to the analysis.

Even if the lease were ambiguous—which it is not—we still would rest on the fact that the original lease and addenda, including the option to renew and guaranty, were drafted by the landlord. "[A]n agreement of guaranty is construed against the party who prepared or presented same." *Miami Nat'l Bank v. Fink*, 174 So. 2d 38, 40 (Fla. 3d DCA 1965). Because the landlord drafted the documents, they must be construed against the landlord. This means that instead of construing the guaranty as a continuing guaranty, we construe it as an agreement limited to the original term in the lease and the solitary three-year term of renewal.

For all of these reasons, we reverse the summary judgment entered in favor of the landlord and remand with instructions to enter judgment in favor of appellant.

Reversed and remanded with instructions.

GROSS and CIKLIN, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.