

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JULY TERM 2005

O'KEEFE ARCHITECTS, INC.,

Appellant,

v.

Case No. 5D05-651

CED CONSTRUCTION PARTNERS LTD., ET AL.,

Appellee.

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Opinion filed July 29, 2005

Non Final Appeal from the Circuit
Court for Orange County,
Janet C. Thorpe, Judge.

Lee L. Haas of Haas & Castillo, P.A.,
Clearwater, and Deborah A. Gibson of The
Marks Law Firm, P.A., Orlando, for Appellant.

Kevin P. Kelly and Timothy L. Hughes of
GrayRobinson, P.A., Orlando, for Appellee.

PER CURIAM.

The appellant, O'Keefe Architects, Inc., appeals a non-final order compelling arbitration and staying the case in circuit court. We affirm in all respects. We write only to reiterate that an issue concerning whether a demand for arbitration is timely is a question of fact to be decided by arbitration, and not the trial court. See *CED Constr., Inc. v. Kaiser-Taulbee Assoc., Inc.*, 816 So. 2d 813 (Fla. 5th DCA 2002); *Pembroke Indus. Park P'ship v. Jazayri Constr., Inc.*, 682 So. 2d 226 (Fla. 3d DCA 1996). See

also Alderman v. City of Jacksonville Fire & Rescue Div., 902 So. 2d 885 (Fla. 1st DCA 2005). This concept encompasses the position that arbitration is unnecessary because of the expiration of the statute of limitations. See *CED Constr.*. We do, however, certify conflict in this regard with *Reuter Recycling of Florida, Inc. v. City of Dania Beach*, 859 So. 2d 1271 (Fla. 4th DCA 2003).

AFFIRMED.

PLEUS, C.J., ORFINGER and MONACO, JJ., concur.